



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Wednesday 16 January 2013

Session 4

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Scottish Parliament

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[The Deputy Presiding Officer opened the meeting at 14:00]

Business Motion

The Deputy Presiding Officer (John Scott):

The first item of business is consideration of business motion S4M-05377, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Freedom of Information (Amendment) (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during stage 3 of the Freedom of Information (Amendment) (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limit indicated, that time limit being calculated from when the stage begins and excluding any periods when other business is under consideration or when a meeting of the Parliament is suspended (other than a suspension following the first division in the stage being called) or otherwise not in progress:

Groups 1 to 3: 45 minutes

Groups 4 to 7: 1 hour 20 minutes.—[Joe FitzPatrick.]

Motion agreed to.

Portfolio Question Time

Education and Lifelong Learning

College Budget Reductions (North East Scotland)

1. Alison McInnes (North East Scotland) (LD): To ask the Scottish Government what assessment it has made of the impact that proposed budget reductions will have on colleges in North East Scotland. (S4O-01679)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): The Government's key consideration has been to fund colleges in a way that allows the sector to continue to maintain student numbers. We are doing so. I welcome the commitment of Aberdeen College and Banff and Buchan College to merge, which will provide even better opportunities to plan the delivery of learning on a regional basis and to identify where there is unnecessary duplication or waste.

Alison McInnes: The latest published figures show that in 2010-11 Banff and Buchan College and Angus College received £823,907 and £333,564 respectively as discrete funding in recognition of their rurality. In response to a Scottish Parliament information centre inquiry on my behalf, the Scottish Further and Higher Education Funding Council has revealed that it is reviewing the funding methodology that is applied to rural colleges. Will the cabinet secretary explain why that is the case, what methodology is being considered and when the revised model will be announced? Will he guarantee that colleges serving rural areas will continue to receive adequate additional funding after regionalisation in respect of rurality and remoteness?

Michael Russell: I expect that the effect of regionalisation will be to enhance the funding of Scotland's colleges according to need. Indeed, I would be surprised if any member in the chamber was arguing for a funding formula that did not reflect the needs of colleges. My letter of instruction to the Scottish funding council over a long period of time since I have been minister has always stressed the importance of recognising where need exists. I personally have always argued strongly with the funding council and others for recognition of rurality. If those are the key issues that are worrying Alison McInnes, I am happy to set her mind at rest about them. I hope that she is not proposing to spend money that is not required or to reward inefficiency. I am very pleased that the boards of Aberdeen College and Banff and Buchan College have recognised the strength of merger and of what will arise from merger, and the need for regionalisation.

Nanette Milne (North East Scotland) (Con):

The cabinet secretary will of course be aware that in the first round of funding discussions a few years back Angus College and Banff and Buchan College faced some of the largest cuts in Scotland. Can he give an assurance that colleges serving rural areas will not be hit again and that they will be treated this time on a level playing field?

Michael Russell: Colleges serving rural areas have always been treated on a level playing field and have been treated supportively. Indeed, I am pleased by the enthusiasm that Angus College, for example, is showing for its merger with Dundee College. I say as gently as I can to the member that the Tories' new-found enthusiasm for backing college funding is very much at odds both with their record south of the border and with their approach to education, which has been luddite in the extreme in my view.

College Regionalisation

2. Graeme Dey (Angus South) (SNP): To ask the Scottish Government what progress has been made on the plans for college regionalisation. (S4O-01680)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): I think that we are all very pleased with the progress that is being made. A new regional structure for the college sector has now been established. Most colleges have opted to merge, and we anticipate better opportunities to plan the delivery of learning, to the ultimate benefit of the learner, and for significant efficiencies. In the minority of regions where there will continue to be more than one college, we expect the creation of college federations to deliver similar benefits.

Graeme Dey: According to Angus College, Dundee College and it are making excellent progress towards their agreed vesting date of 1 November 2013. To ensure a successful merger, however, the new college will require financial support. The merger partnership board is working on a transition bid for funding, which, if successful, will be supplemented by judicious use of existing reserves. What encouragement can the cabinet secretary offer the colleges that the bid will be looked upon favourably?

Michael Russell: We have always recognised that merging colleges will incur exceptional and transitional costs. Colleges will need support to manage those costs, although they have substantial reserves that can and should be applied in such circumstances. We are providing £15 million to the college transformation fund and, of course, I will look sympathetically and closely at any bid for resources that might be required to support decisions to merge.

Decisions to merge benefit learners in particular, but they also benefit staff. The regionalisation process will lead to a single set of terms and conditions across the sector, and will, in almost all circumstances—and I want to see in all circumstances—mean a guarantee of no compulsory redundancy. That is very valuable and worth a lot to hard-working staff in colleges.

Liz Smith (Mid Scotland and Fife) (Con): As a supporter of the college sector, I ask the cabinet secretary when it will be possible for him to announce the full costs of the college regionalisation process.

Michael Russell: When the process is completed.

George Adam (Paisley) (SNP): Will the cabinet secretary provide an update on colleges that have already merged and their experience of merger?

Michael Russell: I will be glad to do so because there are some very good examples. The principal of the City of Glasgow College has indicated that the college has achieved considerable economies of scale and been able to do things that it would otherwise not have done. I have spoken comparatively recently to the principal of the newly created Edinburgh College, and she told me that it finds itself in a much stronger position and is better able to deliver right across the board for students and learning in this city. Colleges that have previously had experience of merger, such as Forth Valley College, show the great strengths that have emerged from such mergers.

I am glad that we have had the courage and determination to implement the merger programme in consultation with the college sector. It is producing and will produce great benefits.

Educational Attainment (Pupils from the Poorest Backgrounds)

3. Neil Findlay (Lothian) (Lab): To ask the Scottish Government what action it is taking to improve the educational attainment of pupils from the poorest backgrounds. (S4O-01681)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): This is a very important area. Raising the educational attainment of pupils from the poorest backgrounds is a key priority, and curriculum for excellence is the major tool for such improvement. Last year, the raising attainment group, which comprises a number of experienced headteachers, provided me and the wider audience of every teacher in Scotland with expert advice in the area that was based on their successes in raising attainment in their schools. Their evidence, coupled with the work being developed by the Association of Directors of Education in Scotland and Education

Scotland, identifies the key actions that are needed to successfully raise the attainment of all children, including the most deprived.

We are delivering the conditions for raising the educational attainment of all young people, including those from the poorest backgrounds, through implementation of the curriculum for excellence and investment in teaching and leadership, which is vital in this area, through the work of the national partnership group.

Neil Findlay: Recent school attainment results show a stark divide between the attainment of pupils in areas of multiple deprivation and those who are in more affluent areas. The cabinet secretary has described some of the wider issues, but will he tell us what practical steps will be taken day to day in schools to address the widening gulf?

Michael Russell: I can do better than that; I can refer the member to the report of the attainment group, and I will be happy to provide him with a copy of it if he has not seen it. It is very simple. It is a series of questions about teaching practice and work within schools, and it seeks to ensure that every teacher is involved in the activity. The difference is made when schools, teachers and leaders in schools recognise that the attainment of pupils from the poorest backgrounds is a key issue and ensure that their school is focused on it.

When we look at the work of a variety of schools in Scotland, we see that, in the words of Avis Glaze, the Ontario educator, "poverty is not destiny". Some very good schools are servicing areas of multiple deprivation and are making enormous progress. The issue is why other schools in the same area are not doing so, and making sure that best practice in one area can transfer to another area. That was a key issue for the attainment group, which has continued to develop work on that issue. I will also continue to do so through curriculum for excellence and in other ways.

Educational Attainment (Impact of Lead Exposure)

4. Patrick Harvie (Glasgow) (Green): To ask the Scottish Government what information it has on the impact on educational attainment of exposure to lead in childhood. (S4O-01682)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): We are aware of the large body of international evidence that links lead exposure to a number of poor outcomes, including low attainment, but it is not currently possible to use official data to link individual instances of lower attainment with exposure to lead early in childhood.

Patrick Harvie: Given the growing evidence about the connection between exposure to lead in early childhood and educational attainment, as well as a host of other education, health and behaviour issues, is it time that the Government agreed to conduct an assessment of the level of lead contamination of land, in particular in the vicinity of primary schools?

Dr Allan: The member was right to point to studies that cover the effect on, for example criminal behaviour, IQ and learning disability.

A number of measures have been taken over the years to eliminate lead, not just from petrol and the atmosphere but from paint and other items in schools. I am conscious of the need to maintain the purity of water in the school estate. Whenever a complaint is made to Scottish Water about not just schools but other buildings that have lead pipes in them or lead communication pipes to them, action is taken. If the member is concerned that that is not happening in individual schools, I will be more than happy to hear from him about it.

College Waiting Lists (Audit)

5. Drew Smith (Glasgow) (Lab): To ask the Scottish Government when the audit of waiting times for colleges will be published. (S4O-01683)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): An update for members of the Scottish Parliament on the work has been placed in the Scottish Parliament information centre today. It shows that in a large number of cases people who appear on so-called waiting lists are not, in fact, waiting for a course at all, because they have taken up another course, failed to gain the entrance qualification, moved into employment or chosen some other option.

Moreover, a significant number of people appear on more than one waiting list. We are currently verifying final figures with the colleges that are participating in the audit and we will publish the full report shortly.

Drew Smith: I am sure that members look forward to the publication of the figures.

It has been reported in the media that 936 potential students have been turned away from North Glasgow College. Stow College says that it has turned away more than 17,000 potential students in the past three years. Langside College, Anniesland College, the City of Glasgow College and John Wheatley College all say that they could not accommodate requests, and the City of Glasgow College, which the cabinet secretary mentioned in an earlier answer, says that it has had 8,021 applicants on a waiting list in the past year.

When will the Scottish Government be honest and admit that slashing college funding results in fewer opportunities for the people in my city who require a college place?

Michael Russell: I tried to indicate to the member that he should be very careful. I have tried that so often in the Parliament. For example, I made it clear to Mr Findlay in October that the figures need to be treated with great caution. I have said the same thing to Liz Smith, to Liam McArthur and to other Labour members. However, members were determined not to listen, for reasons that are political and have nothing to do with education.

If the member turns to the audit of college waiting lists update for MSPs that is in SPICe, he will learn some interesting facts. For example he will learn that

“Different processes for applications and waiting lists means”—

this is the result of audit and analysis—

“that waiting lists are not comparable between colleges and cannot be aggregated”,

and that

“there is duplication of applicants ... and that the majority of those on a waiting list had in fact enrolled at a college”.

Indeed, paragraph 8 says:

“The analysis also took into account a follow-up survey by one college in the sample. This college contacted every individual on the waiting list to ascertain their continued interest in a place at the college: less than 5% of the original total indicated they remained interested.”

Of course, there is still work to be done—I am not being uncautious about that.

The chart in the update also indicates that, even on an initial analysis, waiting lists were able to be reduced by 72 per cent. One of the conclusions—and further work is required—is that it will be necessary to

“make recommendations for improving the application and waiting list process and overall data handling”

of colleges.

I know how desperate members are to weigh in on this matter because they think that, somehow, they are going to get a political advantage, but I would say to them that they should be very careful. I have said from the beginning that the figures are not reliable, and now we have an audit that says that that is the case.

Neil Findlay (Lothian) (Lab): Will that new phenomenon in the information technology world, the Mike Russell app, have a calculator feature so that the cabinet secretary can keep abreast of increases in college waiting lists and provide

better figures for his boss this year than he did last year?

Michael Russell: We know that Mr Findlay's stock-in-trade is that sort of glib rudeness—*[Laughter.]*

The Deputy Presiding Officer (John Scott): Order.

Michael Russell: It also fulfils the classic definition of tragedy, which is something that is funny and then is no longer funny.

However, the reality of the situation—as I keep telling Mr Findlay, although he refuses to be warned—is that he has to be extremely careful with his figures, because the figures that he has been quoting are not true.

Neil Findlay: I never mentioned any figures.

Michael Russell: Mr Findlay prefers to shout, he prefers to bawl and he prefers to use those figures. It would be quite useful if one day Mr Findlay learned something about education.

Neil Findlay: On a point of order, Presiding Officer. The cabinet secretary should check the *Official Report* because, in my question, I never quoted one figure. Perhaps he wishes to correct himself.

The Deputy Presiding Officer: I do not think that that is a point of order, Mr Findlay, but you have made your point.

Higher Education (Access)

6. Jim Eadie (Edinburgh Southern) (SNP): To ask the Scottish Government what steps it will take to ensure that universities meet their obligations as proposed in the Post-16 Education (Scotland) Bill to widen access to higher education for children from deprived backgrounds. (S40-01684)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): Our universities are already making progress around widening access. However, most agree that there is scope to do more.

I have been encouraged by the level of engagement that has been shown by universities with the work that has been led by the Scottish Further and Higher Education Funding Council on outcome agreements, which include widening access objectives. On 18 December we announced support for a further 1,020 articulation places, which traditionally appeal to students from poorer backgrounds.

With the proposals that are set out in the Post-16 Education (Scotland) Bill, I am confident that our universities will continue to work with us to

deliver a better deal for students from deprived backgrounds.

Jim Eadie: Does the cabinet secretary agree that the requirement for universities to widen access is absolutely vital but is only part of the solution, and that more needs to be done to encourage universities to support, advise and motivate students through guidance, outreach services and greater counselling provision, so that no young person is discouraged from accessing higher education, no matter what their background or where they come from?

Michael Russell: Our universities should widen their doors as far as they will go, but young people need the ambition and the aspiration that are required to walk through them. They also need encouragement—they do not need to be put off. In that regard, I noted some headlines this morning that were provoked by Liam McArthur and which would, essentially, put young people off wanting to go to university. The comments that motivated those headlines were very foolish. If that is liberal democracy, I am glad that it is in its death throes.

The reality is that widening access should be a job that we are all engaged in. We should all be talking strongly about why it is important that young people's aspirations are as high as possible. We should be working with the National Union of Students and others to ensure that we encourage entrants to university, and we should, of course, be providing students with guidance and support.

The Deputy Presiding Officer: Brief questions and answers will allow us to get through more questions.

Student Debt

7. Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): To ask the Scottish Government how it plans to ensure that student debt in Scotland remains the lowest in the United Kingdom. (S40-01685)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): It is the policy of the Scottish Government that there will be no tuition fees. That has been a major factor in ensuring that, on average, student debt in Scotland is a fraction of that accrued by students elsewhere in these islands. In 2011, the average student loan debt for a Scottish student was £6,480, compared with £17,240 in England.

In addition to student loans that are offered with preferential terms, we also provide bursaries to those from the lowest-income households, which will more than meet our commitment to a minimum income of £7,000.

The new student support package for 2013-14 for Scottish students is generally regarded as the best on offer.

Jamie Hepburn: Given that, since tuition fees were first introduced in 1998, their maximum level has increased by 800 per cent in England and that 69 per cent of those who were on the graduate endowment scheme in Scotland are still paying back their debt, does the cabinet secretary agree that those who advocate tuition fees—either up front or by the back door—as if they would not affect student debt are quite wrong to do so?

Michael Russell: They are absolutely and utterly wrong to do so, and I am pleased that, today, the First Minister raised the issue that a right to a free education might be seen as a basic human right and enshrined in a written constitution for Scotland. That would be a tremendous thing to do. [*Laughter.*] I cannot understand why two of the Tory members present are laughing at that. To laugh at basic human rights is a very strange thing to do.

Instrumental Music Tuition (Advice to Local Authorities)

8. Iain Gray (East Lothian) (Lab): To ask the Scottish Government what recent advice the Cabinet Secretary for Education and Lifelong Learning has given to local authorities regarding charging for instrumental music tuition. (S40-01686)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): The Government is setting up an instrumental music group to examine the issues around the provision of instrumental music tuition, including charges applied by local authorities. I am happy to confirm that the group will meet for the first time this month and report its findings by the summer. The Government will continue to take the issue forward in that way.

Iain Gray: The problem with that answer is that, while the instrumental music tuition group meets, East Ayrshire Council is planning to cut 50 per cent from its budget for instrumental music tuition and Clackmannanshire Council is considering a proposal to abolish music tuition in schools altogether. Unless ministers tell councils to sustain those services while they consider how they can be improved, surely the councils' actions simply make a mockery of ministers' protestations in the chamber.

Dr Allan: Iain Gray will not be too surprised to hear that I do not agree with his assessment. As I indicated, I have set up a group that will try to bring local authorities to a common position on the matter, on which it will duly report.

Around the country, the position on instrumental music tuition differs from local authority to local authority, but there is an expectation that the group will at least address how to ensure that, as a basic minimum, courses that provide a Scottish Qualifications Authority qualification are not subject to charging. It will also try to ensure that local authorities can agree on a common position.

Iain Gray will be aware that the Government has spent £1 million on providing new instruments for music tuition around the country. I hope that he welcomes that.

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I am grateful to the minister for his comments and note what he says about those who wish to sit an SQA or other qualification in music. Will he make that aspect of the group's work a priority? At the same time, will he consider whether there are enough instructors in Scotland to ensure that our young people have the access to musical tuition that we would all want?

Dr Allan: I am sure that David Green, who convenes the group, will want to consider the availability of instructors as well as the costs. I hope that he will make recommendations on that.

University Marine Biological Station Millport

9. Kenneth Gibson (Cunninghame North) (SNP): To ask the Scottish Government what recent discussions it has had with the University of London regarding the future of the university marine biological station Millport. (S4O-01687)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): The Scottish Government has no formal role in the decisions that the University of London has made about the future of the university marine biological station Millport. However, I have spoken to the vice chancellor of the University of London to emphasise our concern about the impact of the closure decision on the community of Cumbrae, and will meet stakeholders tomorrow.

Kenneth Gibson: I know how hard the cabinet secretary has worked to secure the best possible future for that vital marine research facility. Will he confirm that, at tomorrow morning's stakeholders meeting and beyond, all avenues will be explored to retain an educational institution that is crucial to marine science and the Cumbrae economy?

Michael Russell: Yes. I pay tribute to the local member, who has worked hard on the matter and has been in regular touch with me. It is not a matter for Neil Findlay or any other Labour member to jeer at. The local member's work has been, and continues to be, significant.

The Scottish Government recognises the importance of the jobs and the economic benefit

that the station provides. I am fully aware of the fact that many academics and students in Scottish universities and schools place the marine station at Millport high on their list of priorities and have used it wisely. Indeed, I have seen the petition about the matter and the work of many people on it.

However, the decision is being made by the University of London and the Higher Education Funding Council for England. The institution is owned by the University of London—it is not in Scottish ownership—and the failure of the owning organisation to make significant investment in its infrastructure is a major feature in the issue.

I am keen to find a solution for Cumbrae, the Scottish academic community and those who use the station, but it will not be easy to do so because of the lack of investment. However, I look forward to tomorrow's meeting. There will be a good discussion about what is possible and we will move forward from there.

Margaret McDougall (West Scotland) (Lab): Does the cabinet secretary agree that what the Millport marine station offers students is unique, because it provides in a compact and ideal location the diverse range of marine environments that is required for the study of marine ecology? I understand that the Scottish Government has invested heavily in the marine station at the Scottish Association for Marine Science at Oban. Does he agree that the facility in Millport should also be protected, because of the diverse environment that it provides for students?

Michael Russell: I do not agree that the Millport station is unique, because I do not think that it is unique, but I agree that it is valuable—one should not be inaccurate. The existence of SAMS at Dunstaffnage is important. There were discussions between the two institutions some years ago that did not result in a final outcome; I know that many people regret that.

The University of the Highlands and Islands is one of the players in the matter. It is regrettable that no Scottish university has stepped forward to say that it wants to take responsibility for the station. However, I am keen for us to have a wide-ranging discussion and to involve the key stakeholders, including the University of London. I will therefore keep my thoughts and my options open, and we will see what transpires.

Further and Higher Education (Participation)

10. Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): To ask the Scottish Government how it encourages young people from poorer backgrounds to participate in further and higher education. (S4O-01688)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): As the member knows, participation is a complex issue that starts in early years and involves working with teachers and parents to encourage ambition. That ambition can then be realised in a system of further and higher education in which access is based on the ability to learn rather than the ability to pay. The Post-16 Education (Scotland) Bill will implement our manifesto commitment to introduce statutory widening access agreements, which will deliver more opportunities for those from poorer backgrounds.

Patricia Ferguson: Will the cabinet secretary outline how he plans to ensure that young people from the worst data zones in Scotland benefit from measures and how measures can be targeted towards them? Will the cut of up to £1,000 per year in student bursaries help or hinder young people in constituencies such as mine who wish to go on to study at college or university?

Michael Russell: It would be utterly perverse to represent the best funding package in these islands as a cut of any sort. Only the Labour Party could do that in the present circumstances—no, perhaps the Tories could do that, too, as they are gifted in such misrepresentation.

This is the best funding package in the whole of these islands. It is supported without reservation by the National Union of Students. It will encourage wider participation, as will the reforms to the college sector and the work that we are doing in higher education. A generous member—I am sure that Patricia Ferguson would want to see herself in that way—would welcome the hard work that is being done and would want to back it rather than cavil about it.

English and Maths (Transition between Primary and Secondary School)

11. Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): To ask the Scottish Government whether the transition between primary and secondary school can contribute to problems for secondary 1 and S2 pupils in English and maths. (S4O-01689)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): A wide range of factors can cause some young people not to achieve their potential in English and maths following the transition to secondary school. Under curriculum for excellence, reporting across schools is important to ensure well-planned and smooth transitions.

There is a strong focus on building literacy and numeracy across the curriculum. Education Scotland supports authorities and schools with sharing best practice on transitions through a

variety of approaches, including seminars and guidance.

Malcolm Chisholm: Is the minister concerned that, while the number of secondary school teachers fell by 7.6 per cent in the last three years for which figures are available, the number of maths teachers fell by 9.1 per cent and the number of English teachers fell by 10.5 per cent, which resulted in larger classes, given that the general secondary population fell by only 2.3 per cent? Does he have any regrets at all about abandoning the previous Administration's policy of having classes of 20 for English and maths in S1 and S2?

Dr Allan: The member will be aware that the Government makes efforts to ensure that, when subjects have a shortage of teachers, the supply need is met. The Government has stated its view about the ineffectiveness of aspects of the previous Government policy that he mentioned.

It is important to say that literacy and numeracy are embedded in curriculum for excellence and are given very high priority. For instance, the Government does not shy away from the substantial dropping-off in numeracy standards that was shown in the most recent survey of literacy and numeracy, although I should say that that survey was conducted before curriculum for excellence was fully implemented.

Colleges (Access for Disabled People)

12. James Dornan (Glasgow Cathcart) (SNP): To ask the Scottish Government who is involved in helping widen access to colleges for disabled people. (S4O-01690)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): As I said in answer to the first question, the Government's key aim has been to fund the college sector in a way that allows it to maintain student numbers. I am pleased to say that we are doing so, to the benefit of all learners including those who are disabled.

The regional outcome agreements that are developed between the Scottish Further and Higher Education Funding Council and colleges will not only safeguard but promote better educational outcomes for learners with additional needs. I believe that to be a robust approach that will ensure that the interests of that group of learners are met.

James Dornan: A number of cases have been reported in Glasgow, including in my constituency, in which local authority departments have claimed that it is not their responsibility to pay for the personal assistants who are required for students with a physical disability to attend courses at college. That has caused huge worry and concern for those prospective students, who wish to

continue with their education. Does the cabinet secretary agree that it is imperative that local authorities work to ensure that access to further education is open to all and is not limited by an unwillingness to provide the support that is necessary for students to attend?

Michael Russell: Yes. Responsibility for a student with a disability can be and often is shared between health, social work and the education provider. It involves medical, living and teaching needs. It is in the interests of the public purse and, vitally, of the student that there is a growing together of those statutory responsibilities and that organisations work together and co-operate in a co-ordinated manner to deliver the best possible service for the person who matters, which is the learner. I would be more than happy to consider any cases in which it is felt that that is not happening and to use my good offices to try to assist.

Young Carers (Support)

13. Claudia Beamish (South Scotland) (Lab): To ask the Scottish Government how it supports young carers in balancing the demands of schoolwork and caring responsibilities. (S4O-01691)

The Minister for Children and Young People (Aileen Campbell): We recognise the dedication of young carers and the support that they need. Due to the continued priority that we give to supporting young carers, there is now much more recognition of their needs. That is resulting in greater impetus at the local level to help to ensure identification and support in schools.

The additional support for learning acts place duties on education authorities to identify and meet the additional support needs of all their pupils, including young carers.

We fund the Scottish young carers services alliance to produce the Eryc and Trayc toolkit to equip primary school teachers with the necessary skills and knowledge to identify and support young carers. Work is continuing to support and promote the continuous roll-out of the toolkit. Similarly, resources for secondary schools, also funded by the Scottish Government, will be launched in the next few months.

Claudia Beamish: I thank the minister for that detailed answer. Issues are certainly being taken forward through the Scottish young carers services alliance in relation to support, but there are also headlines in the young carers strategy that recognise the important role of school staff in identifying and supporting young carers, and local authorities' carers strategies should reflect that. Can the minister tell the Parliament whether there are any plans to monitor those developments

during 2013 and check uniformity across local authorities and individual schools? Concern about that has been raised with me.

Aileen Campbell: I know that Claudia Beamish has a real interest in the subject. I met her at the young carers festival in West Linton last year.

As I outlined, we provide support to young carers in a number of areas, but identifying who and where they are is important, too. That is why, for the first time, data has been collected in the census about young carers and their additional support needs.

We have a duty to support young carers and we also want to ensure that that monitoring is in place. That is done through local authorities, with whom we have dialogue, and the Scottish young carers services alliance, which is collecting data through its monitoring of the roll-out of the important Eryc and Trayc toolkit. We need to ensure that we have the relevant data to ensure that we get policies in place that give young carers the support that they need.

Teacher Training (Pupils with Additional Support Needs)

14. Alex Fergusson (Galloway and West Dumfries) (Con): To ask the Scottish Government what training is given to teachers to help pupils with additional support needs. (S4O-01692)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): The teaching standards set by the General Teaching Council for Scotland require teachers to be able to identify and respond appropriately to pupils with difficulties in or barriers to learning. During initial teacher education, student teachers will gain sufficient knowledge of the most common additional support needs for them to be able to support the child in question themselves or, if necessary, to seek specialised information and specialised support. Teachers' career-long contractual requirement to undertake continuing professional development provides further opportunities for them to augment what they have learned during initial teacher education.

Alex Fergusson: I am grateful for that response and indeed acknowledge and recognise that some progress has been made in this area in recent times. Nonetheless, the evidence overwhelmingly points to the fact that successful detection of learning difficulties in the very earliest years makes the biggest difference to children's life chances. To that end, is the minister able to tell me what additional resources might be available specifically for nursery and primary 1 teachers?

Dr Allan: The member is right to highlight that early intervention is crucial to ensuring that—to use our own language—we get it right for every

child. Indeed, my colleague Aileen Campbell has been busy in that respect.

Schools and local authorities are doing many things on this matter. For example, teachers' continuing professional development through many means, including the glow web service, is very much about identifying the additional needs that children might have. I return to the fact that element 2.1.4 of the standard for full registration for a teacher stipulates that as a requirement—and, indeed, a requirement that is increasingly understood.

To pick out one example, I note that the identification of dyslexia above many other things—or perhaps I should say alongside many other things—can make an enormous difference and we have launched our dyslexia toolkit to aid its identification at the earliest possible stage.

Language Teaching (One-plus-two Model)

15. Angus MacDonald (Falkirk East) (SNP): To ask the Scottish Government what recent progress has been made in introducing the European Union one-plus-two model of language teaching. (S4O-01693)

The Minister for Learning, Science and Scotland's Languages (Dr Alasdair Allan): On 20 November 2012, the Scottish Government published its response to the languages working group report "Language Learning in Scotland: A 1+2 Approach". We have accepted all of the report's 35 recommendations, either in full or in part, and are now working with local authorities and other stakeholders to discuss and agree the next steps in taking forward our commitment to a one-plus-two languages policy, building on last year's successful joint conference with the Association of Directors of Education in Scotland. We are providing funding for 10 pilot projects in primary and secondary schools across Scotland in the current school year to demonstrate how a one-plus-two model might best be delivered and have also earmarked £4 million for languages within funding for developing the Scottish schools curriculum to assist local authorities in taking forward the policy in 2013-14, subject to parliamentary agreement to the budget bill.

Angus MacDonald: I am sure that the minister will join me in welcoming Falkirk Council education services' support for this new model of language acquisition in Scotland. Indeed, they have now embraced the proposal for foreign language learning from primary 1; at the moment, such learning begins in P6 in most Falkirk district schools. Is the minister able to assure the chamber that, when the EU one-plus-two system is rolled out, Gaelic will be one of the locally available plus-two language options?

Dr Allan: I certainly welcome the support that has been shown in Falkirk and evidenced in the local press for the one-plus-two model. As I have done previously, I can indeed confirm that Gaelic will be among the languages included in the project.

The Deputy Presiding Officer: Question 16 has not been lodged, but an explanation has been provided.

College Courses (Students with Additional Needs)

17. Ken Macintosh (Eastwood) (Lab): To ask the Scottish Government what action it is taking to prevent reductions in the availability of college courses for students with additional needs. (S4O-01695)

The Cabinet Secretary for Education and Lifelong Learning (Michael Russell): This Government's key aim is to fund the college sector in a way that allows it to maintain all student numbers and access and I am pleased to say that we are doing so to the benefit of all learners. The regional outcome agreements developed between the Scottish Further and Higher Education Funding Council and colleges will not only safeguard but promote better educational outcomes for learners with additional needs. I believe that this robust approach will ensure that the interests of this group of learners are met.

Ken Macintosh: I thank the cabinet secretary for his reply, although I am concerned that he does not recognise the scale of the problem facing young students. The Scottish Consortium for Learning Disability conducted a survey in which it found that a third—in fact, more than a third—of all part-time courses for students with learning disabilities were cut last year. In the face of such figures, is the minister able to tell me exactly what powers he has and what his role and responsibilities are with regard to addressing the needs of young students with additional needs and why he is not intervening effectively to stop this situation?

Michael Russell: Perhaps the member should have checked with the Scottish Consortium for Learning Disability before asking that question. At my meeting with the SCLD director, Lisa Curtice, and the Enable Scotland chief executive, Peter Scott, on 6 December, I talked to them about what we require to do—that was not the first meeting that I have had with them. As I indicated in my answer, both those organisations are engaging in the outcome agreement process and are ensuring that students have an opportunity to influence provision. I asked both of them to bring forward new approaches to deliver opportunities for students with learning disabilities so that this key sector is protected, and they will come back to me

with those proposals. Let us unite in supporting those students, rather than divide in the way that Mr Macintosh invited us to do.

Freedom of Information (Amendment) (Scotland) Bill: Stage 3

14:40

The Deputy Presiding Officer (John Scott): The next item of business is stage 3 proceedings on the Freedom of Information (Amendment) (Scotland) Bill. For dealing with the amendments, members should have the bill as amended at stage 2, the marshalled list and the groupings. The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon. The period of voting for the first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate. Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call that group. Members should now refer to the marshalled list of amendments.

Before section 1A

The Deputy Presiding Officer: Group 1 relates to information under arrangements made by Scottish public authorities. Amendment 7, in the name of Elaine Murray, is the only amendment in the group.

Elaine Murray (Dumfriesshire) (Lab): In lodging all the amendments that I am presenting for Parliament's consideration today, I have attempted to reflect the Finance Committee's discussion of amendments that I lodged at stage 2. I have not resubmitted the same amendments, but my stage 3 amendments have the same purpose: to strengthen the amended act; to ensure that its provisions are used; and to ensure that past or future creation of arm's-length external organisations and the commissioning of large-scale contracts to provide services on behalf of public authorities do not diminish the public's right to know.

At stage 2, I introduced two amendments that dealt with the future creation of arm's-length bodies and major contracts undertaken on behalf of public bodies to the value of more than £1 million. Those amendments attempted to retain responsibility for freedom of information with the public body where the operation of functions had been given to ALEOs or transferred through major public sector contracts. Although committee members—and, indeed, the cabinet secretary—had sympathy for the intention of those amendments, they felt that the amendments as proposed would not achieve that intention and they were unclear on how the proposed

requirements would be enforced and what the terms of such arrangements would be.

Amendment 7 seeks to amend the original Freedom of Information (Scotland) Act 2002 by inserting into section 3, “Scottish public authorities”, a requirement to make arrangements regarding access to information relating to the exercise of functions that have been transferred out of the direct responsibility of an authority. The amendment would ensure that, when a public authority establishes a body or makes a contract to the value of more than £1 million for the purposes of exercising the authority’s functions or providing services on its behalf, the authority must make arrangements to ensure that it receives information in the possession of the body so established or the contractor if the authority receives a freedom of information request for that information. The requirement would not be retrospective but, after the bill’s enactment, public authorities, ALEOs and major public sector contractors would be required to have arrangements in place by which the authority could access information if requested to do so under freedom of information legislation.

At stage 2, the cabinet secretary raised concerns that the information referred to in my amendment on public sector contracts might include more than the performance of the contract and that there could be a conflict with the Public Records (Scotland) Act 2011. In my view, amendment 7 makes it clear that the information relates to the exercise of functions or the provision of services that would have been subject to FOI legislation had they continued to be undertaken directly by the public authority. Section 3(1)(b) of the Public Records (Scotland) Act 2011 provides that

“records created by or on behalf of a contractor in carrying out the authority’s functions”

are public records of that authority. That means that an authority’s records management plan must set out the arrangements for managing its contractors’ records as well as the records that are created by the authority. I believe that the approach adopted in my amendment 7 is similar, and I believe that the potential conflict between the amended FOI act and the Public Records (Scotland) Act 2011 is therefore resolved.

I know that the Scottish Information Commissioner has expressed support for the policy intention of amendment 7 but has questioned whether the value of the contract is inclusive or exclusive of VAT. In my view it clearly would be exclusive of VAT, as the value of a contract is the value to the contractor, not the value to the United Kingdom Treasury.

I move amendment 7.

14:45

Gavin Brown (Lothian) (Con): I am not convinced that amendment 7 is strictly necessary or desirable. I am not convinced that it is necessary because section 5 of the Freedom of Information (Scotland) Act 2002 gives the Government power to make an order that designates a body as being subject to FOI. In my view, that is the appropriate means to do that. The fact that that has not been done in the period since the 2002 act was passed is neither here nor there. It is important that we see the mechanism being utilised and, for that reason, I do not think that amendment 7 is necessary.

With regard to the desirability of amendment 7, in the absence of a regulatory impact assessment I am slightly nervous about what impact it may have and I am slightly concerned that it could cut against the better regulation agenda.

For those reasons, we will not support amendment 7.

Willie Rennie (Mid Scotland and Fife) (LD): I support amendment 7, which is sensible. If we are trying to get a regime that follows the public pound, this is the way in which we should proceed. It seems to be a relatively simple, devolved way of operating that would mean that rather than relying on the retrospective section 5—which is worthy and should always be used—we could have a proactive scheme so that we could keep track of the public pound in the FOI regime. It is sensible, especially given the erosion of the FOI regime’s coverage, to which the Deputy First Minister has alluded, and I think that that is the way in which we should proceed.

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): Amendment 7 is similar in many respects to an amendment that Elaine Murray lodged at stage 2, although I appreciate that she has made some changes to reflect the discussions that took place then.

As I said at stage 2, I am not unsympathetic to the intention behind amendment 7. Certainly, consultation has shown that the public favour the public authority being the access point to information. However, my concerns about amendment 7 are very similar to the concerns that I had at stage 2: the amendment may have unintended or, indeed, unpredictable consequences.

Amendment 7 concerns any organisation that is “exercising any function of the authority or providing any service whose provision is a function of the authority”.

Given the numerous organisations that that might include, it quickly becomes apparent that it would be unclear which organisations might be expected

to hold information on behalf of a particular public authority. It will become almost impossible for an authority to know what information it holds and that will become exacerbated when information is held further down the supply chain.

Administering the arrangements could place a burden on all public authorities, as well as an additional administrative burden on affected organisations. It would also place a considerable policing burden on the Scottish Information Commissioner.

Amendment 7 provides that the relevant information relates to

“the exercise of the function ... or ... provision of the service”.

The meaning of that is unclear and imprecise. It leaves considerable potential for ambiguity and uncertainty as to what information may be within scope.

Of particular practical concern are the arrangements. I point out to members that “arrangements” is undefined in amendment 7. The arrangements

“must include provision to ensure the timely provision to the authority”

in the event of a request for information. That would apply down the supply chain and it would become increasingly difficult for the authority to comply with, as it has no direct control down that chain.

Dr Murray herself pointed to an issue around interpretation of the value of the contract. I heard what she said and it may be that she thinks that she knows what is meant by “£1 million” in amendment 7 but, with the greatest respect, I am not sure that that is sufficient if there is a lack of provision about what it means, with regard to the example that she used.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I am glad to hear that Nicola Sturgeon accepts the principle of amendment 7. If she is keen on the principle but not the detail, why did she not lodge an amendment of her own that could have embodied the substance of amendment 7 without some of the problems that she claims would arise from it?

Nicola Sturgeon: If Malcolm Chisholm is patient, he will hear me say more, in the course of the afternoon, about how the Government intends to ensure that the Freedom of Information (Scotland) Act 2002, as amended by the bill, stays up to speed with changes in how public services are delivered. I will say more about my intention to bring forward a section 5 order in early course, which I have already spoken about. In the context of later amendments, I will say more about how I foresee that applying to ALEOs, for example.

Having considered amendment 7, I do not believe that even an amended version of it would fulfil properly the laudable intentions that lie behind it. I therefore invite Dr Murray to withdraw the amendment.

I note the point that Gavin Brown makes fairly, that the changes that are proposed by the amendment have not been subject to consultation or the normal assessments that would be undertaken, despite the fact that the amendment would have very far-reaching implications.

As I said to Malcolm Chisholm, when we debate other amendments I will say more about the use of section 5. However, in all the circumstances and for all the reasons that I have outlined, I invite Dr Murray to withdraw amendment 7.

Elaine Murray: I believe that the cabinet secretary is making the interpretation of the amendment unnecessarily complicated. Public authorities already have mechanisms in place to deal with freedom of information requests and the amendment is not retrospective—it refers to ALEOs and contracts that will be made in the future. The public authorities making those arrangements already have systems in place, and the amendment will ensure that the systems continue once the functions have been transferred.

I press amendment 7.

The Deputy Presiding Officer: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As it is the first division of the afternoon, I suspend the meeting for 5 minutes.

14:52

Meeting suspended.

14:57

On resuming—

The Deputy Presiding Officer (Elaine Smith): We move to the division on amendment 7.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)

Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahan, Michael (Uddingston and Bellshill) (Lab)
 McMahan, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Drew (Glasgow) (Lab)
 Urquhart, Jean (Highlands and Islands) (Ind)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brown, Gavin (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Carlaw, Jackson (West Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Goldie, Annabel (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)

Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Walker, Bill (Dunfermline) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 40, Against 74, Abstentions 0.

Amendment 7 disagreed to.

The Deputy Presiding Officer: Group 2 is on the purposes of the FOI act. Amendment 9, in the name of Michael McMahon, is the only amendment in the group.

Michael McMahon (Uddingston and Bellshill) (Lab): The Finance Committee has been looking at a few bills recently and an inconsistency in the Government's approach to the use of a purpose clause in those bills has come to light during our deliberations. For example, when discussing the Land and Buildings Transaction Tax (Scotland) Bill, officials made clear the value of having a purpose clause in place in order to avoid misinterpretation of the bill's intent. However, in relation to the Freedom of Information (Amendment) (Scotland) Bill before us, we were told by the cabinet secretary at stage 2 that such a clause should be rejected, because adding such a clause

"could lead to the act being interpreted in a very different manner from the one in which Parliament originally intended it to be interpreted."—[*Official Report, Finance Committee*, 5 December 2012; c 1937.]

That was despite the fact that it was made clear in the consultation document on the original FOI act that the purpose of the law was to allow

information about our public services to be accessed by the public. How can that be misinterpreted?

The original consultation stated that the law should cover

“all Scottish public authorities and service providers”.

The Scottish Government’s six principles also refer to FOI as

“an essential part of open democratic government and responsive public services.”

However, that does not form part of the law, and the Government argues that to introduce clarity on the purpose of the 2002 act could have “unintended consequences” or

“change the fundamental ethos of the legislation”.—[*Official Report, Finance Committee*, 5 December 2012; c 1936.]

How can it be the case that to introduce a purpose clause to state what the original act was intended to do can be said to change its fundamental ethos and be to the detriment of the bill and the use of FOI legislation?

Quite simply, the insertion of a purpose clause is needed because the Scottish Government’s consultation in 2010 and the evidence that we have had from various sources indicate that the law is not delivering what MSPs intended or what the public wanted. Therefore, we need to legislate explicitly for what we all say that we support so that we can uphold the enforceable right of the people of Scotland to access information. That is what was promised in 2002, but doubt has been raised about whether that is what we have. The inclusion in the Freedom of Information (Scotland) Act 2002 of the provisions that are proposed in amendment 9 would remove that doubt.

I move amendment 9.

15:00

Willie Rennie: I support Michael McMahon’s proposals.

I think that we have a problem. We could almost say that there is a crisis in the freedom of information regime. There is a lack of confidence among the public that the Scottish Government and its agencies are acting appropriately. In recent years, there have been a number of incidents in which the Government has withheld information unnecessarily and now there is suspicion among the public about whether the Government is fully embracing the freedom of information regime.

John Mason (Glasgow Shettleston) (SNP): Will the member give way?

Willie Rennie: No, not just now.

Kevin Dunion said that, at the time of its passage, the 2002 act was

“generally viewed as amongst the stronger access to information laws in the world.”

However, he went on to say that

“Scotland’s FOI regime is at risk of slipping behind other legislatures.”

The purpose clause that is proposed in amendment 9 would set out clearly why the legislation is needed and would send a signal to public sector workers as well as ministers that they should be open and embrace openness, because that leads to better government.

I support amendment 9.

Gavin Brown: Some good arguments have been put forward by the Campaign for Freedom of Information in Scotland and by members, but I still have reservations about inserting a purpose clause in the original act through an amending act. Broadly, the 2002 act has performed fairly well, and I think that the bill’s provisions and some of the amendments that we are considering today will do enough to address the weaknesses of the original legislation.

There are genuine concerns about unforeseen consequences, and I note that when the 2002 act was passed, a formal decision was taken not to have a purpose clause. Having listened carefully to the arguments, particularly those that were made at stage 2, on balance I find myself unable to support amendment 9.

Nicola Sturgeon: As we have heard, amendment 9 advocates the insertion into the 2002 act of a purpose clause. I hope that even Michael McMahon would reflect on the fact that there may well be a fairly substantive difference between inserting a purpose clause into a bill at the outset and inserting a purpose clause into an act that has been in existence for eight years and which has been subject to interpretation over that time by the Scottish Information Commissioner and, on occasion, the courts.

The arguments against amendment 9 remain the same as they were when it was first proposed at stage 2. I do not believe that a purpose clause is required for the 2002 act to continue to deliver on its underlying principles. As a matter of good law making, if the act were failing to deliver on those principles—unlike Willie Rennie, I do not believe that that is the case—the proper way to address that would be through careful amendment of the act’s provisions rather than to try to overlay it with a purpose clause, the effect of which is deeply uncertain.

Whatever criticisms some people may make of the 2002 act—in particular, the one that can be made, with some justification, about the fact that

section 5 of the act has not yet been invoked to extend the act's coverage—I do not believe that it can be argued with any credibility that there is any doubt about what the freedom of information legislation is designed to achieve.

The long title of the 2002 act states that it is an act to make

“provision for the disclosure of information held by Scottish public authorities or by persons providing services for them”.

Section 1(1) of the act states:

“A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.”

Therefore, in my view, the act's intention and purpose are crystal clear.

It is also important to reflect on the 2002 report that was made by the lead committee when the original Freedom of Information (Scotland) Bill was progressing through Parliament. The report said that the committee was

“not persuaded of the need for a purpose clause”.

The 2002 act already makes information that relates to the provision of public services available to persons who request it, so I do not believe that the amendment is necessary or that it adds anything. Further, and perhaps more concerning, I believe that such an amendment, eight years into the life of an act of Parliament, could have unintended and unpredictable consequences.

It is not clear to me how amendment 9, if it were passed, would be measurable or workable in practice. Crucially, it is not clear what the legal effects of the amendment would be, for example, in relation to applying the existing conditions for disclosure and the operation of the current framework of exemptions. The commissioner and the courts would have to reconsider the meaning of all the provisions in the act against the new purpose clause. That would lead to great uncertainty for authorities and for the public who want to access information.

When the 2002 act was passed, its provisions were carefully considered by this Parliament and its committees and the purpose and the intentions of the provisions were clear. Amendment 9 would require reinterpretation of the act in light of the purpose and, as I have said, that would lead to uncertainty and unpredictability.

The law can always be improved. We are debating an amendment bill because we recognise that the law needs to be improved. However, I do not accept that there is any lack of clarity about the purpose of the 2002 act and therefore I do not consider that the amendment is necessary. In light of my comments about potential uncertainty, I do not believe that it is

helpful or desirable either. I therefore invite Michael McMahon to withdraw amendment 9.

Michael McMahon: I do not believe that this is a particularly complex issue. It is more about principle than detail. The omission in 2002 of a purpose clause appears more and more to be a mistake. If we have the clarity that the cabinet secretary says that we have, why are more and more issues arising and being taken to the courts?

Public bodies take different approaches, despite performing similar functions. More and more cases are coming under dispute and whether a request for information meets the purpose of the 2002 act is continually being challenged. I and others believe that the purpose clause would help to clarify the intent behind the 2002 act and give clarity in determining whether a refusal to provide information falls outwith the purposes of that original act. I therefore urge members to support my amendment for that very simple purpose.

I press amendment 9.

The Deputy Presiding Officer: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)

Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Drew (Glasgow) (Lab)
 Urquhart, Jean (Highlands and Islands) (Ind)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Gavin (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Carlaw, Jackson (West Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fergusson, Alex (Galloway and West Dumfries) (Con)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Goldie, Annabel (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)

Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Walker, Bill (Dunfermline) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 40, Against 75, Abstentions 0.

Amendment 9 disagreed to.

Section 1A—Designation of Authorities

The Deputy Presiding Officer: Group 3 is on exercise of power to designate authorities. [*Interruption.*] Could I have order in the chamber, please?

Amendment 8, in the name of Elaine Murray, is grouped with amendment 1.

Elaine Murray: Amendment 7 was intended to deal with arm's-length organisations that might be created and major public sector contracts that might be entered into by public authorities in the future. Amendment 8 deals with those that have been created since the Freedom of Information (Scotland) Act 2002 was passed but have not been designated because ministers in successive Governments have not used their power under section 5 of the act.

When the 2002 act was passed, the then Minister for Justice, Jim Wallace, indicated that there would be early consultation on extension of the act to cover registered social landlords and major private finance initiative/public-private partnership contracts. Consultation was undertaken in 2006, but it was not followed by designation. A discussion paper was issued in 2008 but, again, there was no action. There was further extensive consultation, including a draft order, in 2010, but to date, the section 5 power has not been used. Perhaps the cabinet secretary will advise us today that it will be used shortly, but even that would not alter the validity of amendment 8.

Since the 2002 act was passed, housing stock has been transferred from local authorities to housing associations in Glasgow and in Dumfries and Galloway, to mention only two areas, a plethora of arm's-length bodies have been established by public authorities to provide services on their behalf, and public authorities have entered into major contracts with private and third sector organisations to provide services on their behalf. In all those cases, the public's right to

information under the act was lost on transfer of the function or service out of the direct control of the public authority. The public's right to information has therefore diminished since the passing of the act in 2002.

Amendment 8 requires the Scottish ministers to give particular regard to the public's access to information that is held by bodies that have been created by Scottish public authorities to exercise functions on their behalf or contractors that hold a contract with a value greater than £1 million to provide services on behalf of a Scottish public authority when considering how to exercise their section 5 power to designate Scottish public authorities. In other words, the amendment would specifically require ministers to consider designating such bodies or contractors and thereby to address the information deficit that has evolved since the 2002 act was passed. It would not force ministers to do that; it means that they would have to have particular regard to those bodies.

The amendment is perfectly reasonable, and I do not understand why it could not be acceptable, as it would not create any problems in the way that amendment 7 might have done. It simply requires the ministers to have particular regard to the bodies that are transferred out of the control of public authorities.

In relation to amendment 1, I lodged an amendment at stage 2 to replace the requirement to consult "other persons" whom ministers considered appropriate with a requirement to consult

"members of the public and other interested parties".

The cabinet secretary advised that the phrase

"such other persons as they consider appropriate"

was a standard consultation obligation and that the phrase "other interested parties" was ill defined. There was uncertainty around the meaning of "interested" and the consequences if someone who had not been consulted asserted later that they had an interest and ought to have been consulted. However, at stage 2, the cabinet secretary made no comment on the inclusion of "members of the public". I hope that that indicates that there was no objection to that part of the amendment.

Amendment 1 seeks to avoid those problems by retaining the standard consultation phrase and merely inserting a requirement to consult members of the public in addition to the persons specified in the amendment to section 5 of the 2000 act. As it stands, the amendment bill requires ministers to consult

"every person to whom the order relates ... persons"

who

"represent such persons, and ... such other persons as they consider appropriate."

The addition of "members of the public" makes it clear that persons who are not directly affected by the order but who might have a view on whether the Government should designate an authority using its section 5 power have the right to be consulted.

I move amendment 8.

Gavin Brown: Amendment 1 would add in the words

"consult members of the public".

A briefing note to the Finance Committee by the Scottish Information Commissioner at stage 2 said:

"I would therefore urge the Committee to consider how the current proposed wording will provide the necessary safeguards to ensure the general public, and those who represent them, will be appropriately represented in any future consultation."

I think that that is fair and sensible, so I will support amendment 1, and I urge other members to do the same.

15:15

Willie Rennie: As I said earlier, the Deputy First Minister referred in a previous contribution to debate on the bill to the fact that there has been an erosion in the coverage of the freedom of information regime. She has tempted us numerous times that she will reveal later on when the list will be reviewed. There is great anticipation—certainly among Liberal Democrats—that that will be done quite soon.

The Scottish National Party has been in office for six years, and I do not think that we can wait too much longer to find out which of the other 130 ALEOs are going to be included in the freedom of information regime. When the Deputy First Minister makes that decision, I think that amendment 8 will assist her in making decisions about which ALEOs should be included, because it is really about public function and public funds. The Campaign for Freedom of Information has always focused on ensuring that we follow the public pound when considering freedom of information. I therefore think that what Elaine Murray proposes in her amendments is perfectly sensible, so I support amendments 8 and 1.

Nicola Sturgeon: Extending the coverage of the 2002 act is obviously a separate issue from this amendment bill, but it is clearly a matter that has been closely connected to the bill's passage and it has featured in many of our discussions on the bill. The Government's amendments to the bill

that were agreed at stage 2 sought to address concerns about the lack of use of the section 5 power to extend coverage. As a result, the bill as amended widens the scope of consultation on extension and introduces the requirement for Scottish ministers to report regularly to the Parliament on the use or otherwise of the power to extend coverage. The amendments in group 3 also relate to extension of coverage.

Amendment 8 seems to me to be unnecessary. I think that it adds confusion to the current requirements in section 5 of the act. I accept—this has been a common theme in what I have said on the issue—that the power in section 5 has been unused, but I do not believe that that means that section 5 is inadequate for the purposes of any Government that wants to extend the scope of freedom of information. I say directly to Willie Rennie that I do not consider that amendment 8 would help me in the considerations that I have had and will continue to have about the use of section 5. Everything that I need to consider the extension of coverage is in section 5 already.

At present, section 5 concerns organisations that appear to ministers to exercise functions of a public nature or which, under contract with a public authority, provide services that are a function of the public authority. The purpose of making a designation under section 5 is to provide access to information that is considered desirable. To that extent, amendment 8 would add nothing to the existing provision. However, it would have the effect of focusing attention on particular groups. The majority of bodies that fall within the scope of designation under section 5 will already be bodies established by authorities. Amendment 8 would therefore not add to the existing law.

Malcolm Chisholm: How can we be sure that bodies will be added as a result of the amendments that the cabinet secretary made to the bill in relation to reporting to Parliament? Further, how can we be sure about what kind of bodies—for example, ALEOs—may or may not be included?

Nicola Sturgeon: I think that the amendments that we have already made to the bill greatly add to the accountability of ministers to Parliament for ensuring that due consideration is given and that there is a regular reporting period. It will then be for the Parliament to hold ministers to account.

I have already said—Willie Rennie has referred to this a couple times in this debate—that coverage has been eroded by the creation of ALEOs. I will say something about that in particular for the next group of amendments. However, I do not accept that we can have an obligation on ministers that means that, come what may, every review will lead to bodies being added, because we would eventually get to a point

at which there might be no bodies that it was appropriate to add. Ministers have to retain the ability to make a judgment in that respect. Through the amendments that we have already made to the bill, we have increased the accountability of ministers and the obligation on them to explain themselves to Parliament regarding the decisions that they take.

To return to my comments about amendments 8 and 1, in relation to the provision of services, proposed section 5(2A)(b) in amendment 8 calls for a particular focus on larger contracts, suggesting that it is not desirable to include lower-value contracts. I do not think that that limitation is appropriate, because I believe that every case should be considered on its merits. I suggest that section 5 is already adequate to capture bodies that are providing public services, so a requirement to have particular regard to certain bodies does not add anything.

Confusingly, the language that is used in amendment 8 also varies slightly from the language that is used in section 5 by referring to the exercise of any functions or the provision of services on the authority's behalf. The amendment contains no reference to functions being of a public nature, but there is reference to services, and that would contradict section 5(2)(a), and raise a question about whether it broadens the types of bodies that can be covered.

Identifying bodies

"where the total sum to be paid by the authority under the contract exceeds £1 million"

also seems to be somewhat arbitrary, particularly as some bodies might have multiple smaller contracts with an authority that would not be covered if none of them exceeded £1 million on their own, even if, taken together, they did exceed £1 million. I therefore urge Elaine Murray to withdraw amendment 8.

I turn briefly to amendment 1, which was considered at stage 2 and would require consultation to be with members of the public. I note in passing that that has always been the case with consultation to date—members of the public have always been consulted. I understand that there are concerns that the consultations on the extension of coverage that have been carried out to date have not sufficiently targeted consumers or service users in relation to the organisations proposed for coverage. However, I am not convinced that introducing a general requirement to consult members of the public would assist in satisfying those concerns. The purpose of the Government's previously agreed amendment is to widen consultation on extension to include other persons who are considered to be appropriate. For

example, as stated in the explanatory notes, it would be appropriate to consult

“those likely to use the services of a body proposed for coverage”.

That will ensure that each consultation can target those who will be affected or interested, and that that includes members of the public. I know that there have been expressions of support for amendment 1 but, all things considered, it does not satisfy a clear policy objective and, therefore, in practice, I argue that it is unnecessary.

Elaine Murray: The cabinet secretary said that amendment 8 would focus attention on particular groups—of course it would. The very intention of amendment 8 is to look at those groups where bodies have been transferred out of the control of public authorities and the Freedom of Information (Scotland) Act 2002 no longer applies to them, and large-scale public contracts. The amendment would not force ministers to designate such groups, but it asks ministers to give them particular consideration. I also believe that, within the terms of the rest of the amended act, it would also require ministers to report to Parliament what consideration they have given and why they have taken the decision to designate or not to do so. Amendment 8 does not exclude lower-value contracts. It would still be perfectly possible for ministers to consider multiple contracts; it just makes particular reference to those that might be of greater public concern and to which the public might not currently have access.

Amendment 1 is not the same as the amendment that I lodged at stage 2. At that stage, there was no discussion about the desirability or otherwise of consulting members of the public. I will press amendment 8.

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)

Hume, Jim (South Scotland) (LD)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahan, Michael (Uddingston and Bellshill) (Lab)
 McMahan, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Drew (Glasgow) (Lab)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Gavin (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Carlaw, Jackson (West Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Goldie, Annabel (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)

McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (Ind)
 Walker, Bill (Dunfermline) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 39, Against 75, Abstentions 0.

Amendment 8 disagreed to.

Amendment 1 moved—[Elaine Murray].

The Deputy Presiding Officer: The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
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 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)

Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
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 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McMahan, Michael (Uddingston and Bellshill) (Lab)
 McMahan, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Smith, Drew (Glasgow) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
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 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse)

(SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
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 Robison, Shona (Dundee City East) (SNP)
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 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (Ind)
 Walker, Bill (Dunfermline) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 50, Against 64, Abstentions 0.

Amendment 1 disagreed to.

The Deputy Presiding Officer: Group 4 is on reporting on power to designate authorities. Amendment 10, in the name of the cabinet secretary, is grouped with amendments 2 to 5 and 11. If amendment 10 is agreed to, amendment 2 will be pre-empted and I will not be able to call it.

Nicola Sturgeon: The amendments in this group, like the amendments in the previous group, reflect the focus on the extension of coverage that was the key issue during the bill's consultation and parliamentary scrutiny phases.

In seeking to revise an approach that was agreed to at stage 2, I think that there is common ground between the amendments that the Government has lodged and those that Elaine Murray has lodged. Both Elaine Murray and I seek to bring forward the date of the initial report; we also find ourselves in agreement on the revision of the length of the reporting period from three years to two years. I am therefore happy to accept and support amendment 3, in Elaine Murray's name, although I will try to persuade her not to move the other amendments in her name in the group.

Amendment 10, in my name, seeks to bring forward the date of the initial report to no later than the end of October 2015. Amendment 2, in Elaine Murray's name, would bring forward the date of the initial report by two years, to the end of June 2014. As the bill stands, the date is June 2016. A report by June 2014 would be premature. Everyone knows the current position, and the section 5 power has not been used. Given that the act is likely to be commenced in spring, Elaine Murray's proposed approach would allow for little more than a year in which additional information could be reported on.

An initial report in 2015 is a preferable approach, because it provides an adequate timeframe to allow proper and considered analysis of the key issues and, crucially, appropriate engagement with stakeholders, including people who are potentially affected by proposals for coverage. A persuasive point was made in committee at stage 2 by, I think, John Mason, and probably by other members, which was that the initial report should be issued during the current parliamentary session. A requirement for a reporting deadline of October 2015 addresses that concern and means that ministers of this Administration will be accountable for the use of the power to extend coverage.

I emphasise that the periodic reports, important though they will be, will in no way preclude the use of the power to extend coverage at any time in the reporting period. I can confirm that my officials have written to Scottish local authorities today to inform them that I plan to make the first-ever section 5 order as soon as is practicably possible. The initial order—I stress "initial"—will, in the first instance, extend coverage to bodies that are established or created by local authorities to deliver recreational, sporting, cultural and social facilities on their behalf.

I then plan to look at further extension, to ALEOs that carry out other functions. We did not consult on that, and I confirm that I intend to consult the Convention of Scottish Local Authorities, local authorities and other interested parties on bringing councils' other arm's-length external organisations that carry out public functions within the scope of FOI.

Prioritising ALEOs deals with the legitimate point about erosion that has been made. I am still considering other organisations that were previously consulted on and will report to Parliament on my decisions on that. However, I see no reason not to get on with the job of bringing within the ambit of the act first the cultural and sporting ALEOs and then other ALEOs, subject to consultation.

15:30

Gavin Brown: If things move as quickly as the cabinet secretary has just indicated they will, surely there will be something to report in June 2014.

Nicola Sturgeon: That may be the case. What I am saying is simply that a longer period of time would give me the opportunity to also consider further organisations. All things considered, a longer period for reporting makes sense. At the moment, that is set at 2016. By bringing it forward to 2015, we strike the right balance and ensure that there is sufficient time to properly consider not

only the initial—I deliberately stress the word “initial”—order that I am talking about but also other considerations that I want time to make. Crucially, it means that I, or a subsequent minister in this Administration, will be accountable before the next Scottish Parliament elections. That strikes the right balance.

We are on common ground with regard to question 3 and, as I have already said, I am happy to support the amendment. Indeed, it would have been a Government amendment if Dr Murray had not lodged it first. I am happy to accept that a shorter reporting period of two years will help to achieve the policy objective, ensuring that regular consideration is given to the use of the power to extend coverage.

Meanwhile, amendment 4 would appear to force minister's hands in requiring an order extending coverage to be laid within three months after the date of the first report, if no order to extend had been made by that point, although I have made clear my intentions to bring forward an order. My objection to amendment 4 is a principled one, as it would entirely remove ministerial discretion in relation to the timescale for the making of an extension order, which is inappropriate and unreasonable. The amendment is a blunt instrument to ensure that the power in section 5 is used by a certain date. As I have just noted, I intend to bring that forward this year, so I argue that the amendment is unnecessary.

It is important to be clear about the purpose of the reports. As I said earlier to Malcolm Chisholm, they are about ensuring the accountability of ministers to Parliament and are intended to provide an explanation on a regular basis of the use or otherwise of the power to extend the coverage of the act. They are distinct from the process of extension itself and should not serve as a trigger to force the laying of an order.

Amendment 5 makes consequential provision in relation to amendment 4. As I am inviting Elaine Murray not to move amendment 4, I invite her to withdraw amendment 5, too.

Amendment 11 is a change to the definition of the reporting period in section 1A. The amendment proposes an initial reporting period from commencement of the section to the date on which the first report is laid. Therefore, if members agree amendment 10, the initial report is likely to cover the period from spring this year to October 2015. If the existing period of three years were maintained but the earlier initial reporting date were agreed, the reporting period would become retrospective. As the current position is clear, and there has been no extension of coverage, that seems unnecessary.

It should also be noted that the bill allows for reports to include such additional information as Scottish ministers consider appropriate, which would allow for material predating the formal reporting period to be included.

I hope that members will welcome the announcement of the first ever section 5 order and support amendment 10. I ask Elaine Murray not to move the other amendments in the group.

I move amendment 10.

The Deputy Presiding Officer: I advise the chamber that we are extremely tight for time.

Elaine Murray: The bill, as lodged, suggests that the first report will be laid on 30 June 2016. At stage 2, I suggested that we bring that forward to 30 June this year, but the cabinet secretary felt that that was not appropriate because it would require the first report to be laid within two months. I understand that. My feeling is that that probably is a little bit too soon, but other members of the committee had some sympathy for the concerns that I expressed at stage 2. Indeed, John Mason suggested that we should perhaps consider a compromise of 2014 or 2015. I have opted for 2014, but that would still be 12 years after the 2002 act was passed. To be honest, given the announcement that the cabinet secretary has just made, I cannot see how that timescale would present any problems. By contrast, the Scottish Government's amendment 10 moves the reporting period forward only nine months and seems to be overtaken by the announcement that Nicola Sturgeon has just made.

I am pleased that the cabinet secretary has accepted amendment 3. When we discussed in the committee the frequency of reporting, she said that three years felt about right to her, so I lodged amendment 3. I am pleased that she has altered her position and is now happy to have biannual reporting.

At stage 2, I lodged an amendment that was not able to be considered because it exceeded the financial limits and would therefore have required a financial memorandum. Amendments 4 and 5 are a simpler way of achieving the same thing.

Amendment 4 would require that, if the section 5 power has not been used by the time the first report on how and why it should, or should not, be exercised is laid before the Parliament, a draft statutory instrument must be laid before the Parliament within three months. Given what the cabinet secretary said, I do not see that that would create any problems for her, because the Government intends to do such a thing anyway. Amendment 4 addresses the concerns that the power has never been used by requiring that it be used within three months of the first report being laid.

Amendment 5 is dependent on amendment 4 and will not be moved if amendment 4 falls.

Willie Rennie: The cabinet secretary tempted us into believing that she would make a radical change today and announce a big expansion of the remit of the FOI regime. However, although she says said that the expansion will start, we do not have any timing for when it will happen. It needs to be concluded by the start of the summer recess. If it is not, the Scottish National Party will have been six years in office without having implemented it. That is a great disappointment.

We also need to ensure that the changes go way beyond what the cabinet secretary currently plans. Her proposal is a timid response to a demand that has been coming for a long time. I admit that my party's Administration did not implement such an expansion, but the SNP has been in office six years and has done nothing about it. We cannot wait any longer for the regime to change.

I support Elaine Murray's proposals on timing and frequency of reporting. I am pleased that the cabinet secretary has conceded the change from three years to two years. Elaine Murray's other proposals are sensible. I hope that the cabinet secretary will review what she has announced today and be much more ambitious than she currently plans to be.

John Mason: I speak in favour of amendment 10, which is an excellent move in the right direction.

Originally, there was no mention of bringing new parties under FOI at this stage, but there clearly was a public appetite and a campaign to do that. I was particularly concerned about the likes of Glasgow City Council being able to chop bits of themselves off as arm's-length bodies and thereby reduce the scope of FOI, so I was pleased that the cabinet secretary agreed to a specific date for a review.

As has been mentioned, at stage 2 the Finance Committee questioned whether that date could be brought forward to before the next election. I am delighted that that will now happen and I welcome the cabinet secretary's further commitment today.

Nicola Sturgeon: I do not have much to add, except to say that I recognise the appetite for further extension of coverage. Some people, including Willie Rennie, have made a point about erosion. I hoped that he would find it within himself to welcome the fact that I am dealing with that, but I am sure that the issue will continue to exercise Parliament in the months and years to come. I look forward to those discussions.

The Deputy Presiding Officer: I remind members that, if amendment 10 is agreed to, amendment 2 will be pre-empted.

The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)

Torrance, David (Kirkcaldy) (SNP)
 Walker, Bill (Dunfermline) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Urquhart, Jean (Highlands and Islands) (Ind)

The Deputy Presiding Officer: The result of the division is: For 63, Against 52, Abstentions 0.

Amendment 10 agreed to.

Amendment 3 moved—[Elaine Murray]—and agreed to.

Amendment 4 moved—[Elaine Murray].

The Deputy Presiding Officer: The question is, that amendment 4 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McCulloch, Margaret (Central Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Gavin (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Carlaw, Jackson (West Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)

Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Goldie, Annabel (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (Ind)
 Walker, Bill (Dunfermline) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 39, Against 75, Abstentions 0.

Amendment 4 disagreed to.

Amendment 5 not moved.

Amendment 11 moved—[Nicola Sturgeon].

The Deputy Presiding Officer: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Gavin (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Carlaw, Jackson (West Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Goldie, Annabel (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)

Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (Ind)
 Walker, Bill (Dunfermline) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

Against

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahon, Michael (Uddingston and Bellshill) (Lab)
 McMahon, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)

The Deputy Presiding Officer: The result of the division is: For 75, Against 40, Abstentions 0.

Amendment 11 agreed to.

After section 1A

The Deputy Presiding Officer: Group 5 is on Scottish public authorities: Glasgow Housing Association. Amendment 14, in the name of Iain Gray, is the only amendment in the group.

15:45

Iain Gray (East Lothian) (Lab): The effect of amendment 14 is straightforward. It would simply extend the reach of freedom of information

legislation to include Glasgow Housing Association by adding it to the schedule of Scottish public authorities that are so covered. The purpose of the amendment is, at least at the margins, to redeem the bill so that it does the thing that everyone expected that it was going to do, which is to extend FOISA into areas where pretty well everyone believes that it should go.

When the SNP formed a Government in 2007, it said that it was going to extend FOISA using section 5 powers. After three years, in 2010, it finally consulted on an extension, but it failed to act on the outcome, instead deciding to bring forward primary legislation. Surely, it was thought, that would be the vehicle for the extension of FOISA cover that the SNP had demanded in opposition and promised in government, yet, notwithstanding the cabinet secretary's announcement a few moments ago, the bill fails to do the one thing that most people believe it should do, which is to extend the 2002 act. Amendment 14 would at least allow us to claim that the bill does that, if only to include one body—GHA.

I should say that I have no axe to grind with GHA. After all, as housing minister, I was instrumental in setting it up. I would rather have included all housing associations in the amendment, but the fact is that the 2010 consultation consulted only on GHA, so it is the only association that is ready for inclusion. Indeed, respondents were almost universally in favour of that extension. In any case, of the 15,000 council tenants who lost FOISA rights when council housing stock was transferred to housing associations, about 10,000 became GHA tenants, so it is well worth restoring at least their rights to information.

John Mason: Will the member just save time by admitting that he made a mistake with the transfer to GHA?

Iain Gray: The stock transfer to Glasgow Housing Association brought £1 billion of investment into housing in the city that Mr Mason purports to represent.

The 2010 consultation also consulted on the inclusion of other bodies, including contractors who build and maintain public facilities such as prisons, schools and hospitals. However, I did not include them in the amendment to avoid the argument that the costs involved would require a financial memorandum that is not before us.

GHA argues that, in general terms, it provides information on request, so I do not believe that significant additional costs can be identified. The amendment is a worthwhile extension to FOISA, it is ready to go, it covers a body that is prepared for it, widespread support has already been

demonstrated for it, and it is within the scope of even this limited bill.

I cannot see how anyone who is sincere in their commitment to transparency can fail to support amendment 14. Government support for it would be a powerful signal that the cabinet secretary is sincere in the promise that she has now made of swift progress on the FOI regime.

I move amendment 14.

The Deputy Presiding Officer: We are very short of time. I call Willie Rennie and ask him to be brief.

Willie Rennie: I support Iain Gray's proposal. It is even more important than I thought it was because of the cabinet secretary's earlier timid and limited announcement on the extension of FOI. The reversal—the extension of the FOI rights—will not repair the damage caused by the erosion of recent years. I believe that Iain Gray's proposal will put some of that right, so I support it.

Nicola Sturgeon: I understand the intentions behind amendment 14. As Iain Gray has said, I have expressed sympathy for the proposal in the past, and no doubt I will do so again. However, I have to say that it is a bit rich for a member of the party that set up Glasgow Housing Association and failed to ensure that it was subject to FOI to come to the chamber now and lecture this Government.

I also say to Willie Rennie that it is a bit galling for a member of a party in a United Kingdom Government that is not releasing the devolution files under freedom of information to come here and lecture this Government on openness and transparency. The fact that this Government will be the first to introduce a section 5 order will not be lost on the public who are interested in this issue.

It might shock Iain Gray to hear this—and he might not hear it again for a long time—but I agree with him to a certain extent. It is important to ensure that tenants and indeed others can obtain information not just from GHA but from other registered social landlords. We now have the new Scottish housing charter, which provides a means for tenants and other customers to access information from all RSLs, not just GHA, and I want to see how the charter operates in practice before deciding whether GHA and other RSLs should be brought within the scope of the 2002 act. If, despite the charter, there is evidence of a need for further access to information, a section 5 order extending coverage will be brought forward. As a result, although I do not support amendment 14, I do not rule out extending coverage to GHA and other RSLs in future. However, we should allow time to consider whether the right

information is being provided under the housing charter.

Finally, in inviting Iain Gray to withdraw amendment 14, I simply say to him that this Government's actions on freedom of information speak much louder than the Opposition's words.

Iain Gray: This Government usually speaks on FOISA in the courts when it is trying to resist rulings that it should release information.

If the cabinet secretary believes that her housing legislation gives GHA tenants access to the information that they could get under FOISA, what earthly reason does she have for not simply voting yes to amendment 14? Her choice is simple: she can demonstrate her sincerity and commitment to transparency, or she can choose to take the opportunity to try to refight a political fight that she lost 12 years ago.

I press amendment 14.

The Deputy Presiding Officer (Elaine Smith): The question is, that amendment 14 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McInnes, Alison (North East Scotland) (LD)
 McMahan, Michael (Uddingston and Bellshill) (Lab)
 McMahan, Siobhan (Central Scotland) (Lab)
 McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)

Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)
 Urquhart, Jean (Highlands and Islands) (Ind)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Gavin (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Carlaw, Jackson (West Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Goldie, Annabel (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, John (Ettrick, Roxburgh and Berwickshire) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)

Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)
 Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Walker, Bill (Dunfermline) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division: For 41, Against 74, Abstentions 0.

Amendment 14 disagreed to.

After section 3

The Deputy Presiding Officer: Group 6 is on functions of the commissioner. Amendment 12, in the name of Paul Martin, is the only amendment in the group.

Paul Martin (Glasgow Provan) (Lab): Amendment 12 seeks to clarify the range of bodies that are covered by the 2002 act and which will be covered by the provisions in the legislation before us today by requiring the Scottish Information Commissioner to update and maintain a list of all organisations that are subject to the 2002 act. I note the commissioner's comment that she already maintains a partial list, but I have to say that I find it unacceptable that the commissioner, of all people, should be placed in a position in which she is able to maintain only a partial list. If we are serious about improving the public's experience of seeking information from the Information Commissioner and indeed from many of the Government bodies that have been referred to, it should not be beyond the Government to keep and update an accurate and comprehensive list.

I move amendment 12.

Nicola Sturgeon: I appreciate the intention behind amendment 12, but I understand that, as has already been referred to, the Scottish Information Commissioner has raised concerns about the difficulties and resource implications of keeping such a list fully up to date. As has already been noted, the commissioner endeavours to maintain information on bodies that are covered by the legislation to help individuals who want to know whether a particular body is covered. As I understand it, the commissioner's main concern is that it would not be possible to guarantee that any list that was published was always fully accurate and up to date. As a result, unfortunately, I am not able to support the amendment, but I hope—indeed, I am sure—that the commissioner will continue to do whatever possible to clarify which bodies are covered by FOI.

Paul Martin: I have listened carefully to what the cabinet secretary has said, and I remain unconvinced. We should recognise that the maintenance and updating of a list cannot be the most challenging proposal to have been put before the Parliament. For example, we have passed legislation on a register of tartans, which I recognise may be somewhat different from the updating of a list, but a similar principle applies.

There are many other examples of Government bodies that are required to maintain lists. The Department for Environment, Food and Rural Affairs maintains the national lists of agriculture and vegetable crops, including amateur varieties. If it is good enough for DEFRA to face the challenge of maintaining such lists, surely it is not beyond the Scottish Information Commissioner to ensure that a comprehensive list is made available to ensure that we improve the public's experience of seeking to access public information.

I press amendment 12.

The Deputy Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Baxter, Jayne (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Boyack, Sarah (Lothian) (Lab)
 Brown, Gavin (Lothian) (Con)
 Carlaw, Jackson (West Scotland) (Con)
 Chisholm, Malcolm (Edinburgh Northern and Leith) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Eadie, Helen (Cowdenbeath) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Ferguson, Patricia (Glasgow Maryhill and Springburn) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Ind)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Goldie, Annabel (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Hume, Jim (South Scotland) (LD)
 Johnstone, Alex (North East Scotland) (Con)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Rutherglen) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Macintosh, Ken (Eastwood) (Lab)
 Malik, Hanzala (Glasgow) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Paul (Glasgow Provan) (Lab)
 McCulloch, Margaret (Central Scotland) (Lab)
 McDougall, Margaret (West Scotland) (Lab)
 McGrigor, Jamie (Highlands and Islands) (Con)
 McInnes, Alison (North East Scotland) (LD)
 McMahan, Michael (Uddingston and Bellshill) (Lab)
 McMahan, Siobhan (Central Scotland) (Lab)

McNeil, Duncan (Greenock and Inverclyde) (Lab)
 McTaggart, Anne (Glasgow) (Lab)
 Milne, Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Murray, Elaine (Dumfriesshire) (Lab)
 Pearson, Graeme (South Scotland) (Lab)
 Pentland, John (Motherwell and Wishaw) (Lab)
 Rennie, Willie (Mid Scotland and Fife) (LD)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Dr Richard (Mid Scotland and Fife) (Lab)
 Smith, Drew (Glasgow) (Lab)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Central Scotland) (SNP)
 Allan, Dr Alasdair (Na h-Eileanan an Iar) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Biagi, Marco (Edinburgh Central) (SNP)
 Brodie, Chic (South Scotland) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burgess, Margaret (Cunninghame South) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Campbell, Roderick (North East Fife) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Don, Nigel (Angus North and Mearns) (SNP)
 Doris, Bob (Glasgow) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Eadie, Jim (Edinburgh Southern) (SNP)
 Ewing, Annabelle (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gibson, Rob (Caithness, Sutherland and Ross) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Ingram, Adam (Carrick, Cumnock and Doon Valley) (SNP)
 Keir, Colin (Edinburgh Western) (SNP)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Central Scotland) (SNP)
 MacAskill, Kenny (Edinburgh Eastern) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacDonald, Gordon (Edinburgh Pentlands) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 MacKenzie, Mike (Highlands and Islands) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 Maxwell, Stewart (West Scotland) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (North East Scotland) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McLeod, Aileen (South Scotland) (SNP)
 McLeod, Fiona (Strathkelvin and Bearsden) (SNP)
 McMillan, Stuart (West Scotland) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robertson, Dennis (Aberdeenshire West) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Russell, Michael (Argyll and Bute) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Sturgeon, Nicola (Glasgow Southside) (SNP)
 Swinney, John (Perthshire North) (SNP)

Thompson, Dave (Skye, Lochaber and Badenoch) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Urquhart, Jean (Highlands and Islands) (Ind)
 Walker, Bill (Dunfermline) (Ind)
 Watt, Maureen (Aberdeen South and North Kincardine)
 (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 White, Sandra (Glasgow Kelvin) (SNP)
 Wilson, John (Central Scotland) (SNP)
 Yousaf, Humza (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 49, Against 64, Abstentions 0.

Amendment 12 disagreed to.

Section 4—Historical periods

The Deputy Presiding Officer: Group 7 relates to a minor adjustment. Amendment 13, in the name of the Nicola Sturgeon, is the only amendment in the group. I invite the cabinet secretary to speak to and move the amendment briefly.

Nicola Sturgeon: Amendment 13 will make a small, entirely technical change to section 4 to clarify that an order determining what records should be treated as historical records may make provision for the modification of any “enactment” rather than any “rule”.

I move amendment 13.

Amendment 13 agreed to.

The Deputy Presiding Officer: That ends the consideration of amendments.

Freedom of Information (Amendment) (Scotland) Bill

15:59

The Deputy Presiding Officer (Elaine Smith): The next item of business is a debate on motion S4M-05362, in the name of Nicola Sturgeon, on the Freedom of Information (Amendment) (Scotland) Bill. I ask members who are leaving the chamber to do so quickly and quietly, please, and I invite members who wish to speak in the debate to press their request-to-speak buttons now.

I call Nicola Sturgeon to speak to and move the motion. You have a tight 10 minutes, cabinet secretary.

The Deputy First Minister and Cabinet Secretary for Infrastructure, Investment and Cities (Nicola Sturgeon): I am pleased to open the debate on the Freedom of Information (Amendment) (Scotland) Bill. I thank the Finance Committee for its detailed scrutiny of the bill during its parliamentary stages and the Subordinate Legislation Committee for its reports on the bill. I also thank the organisations and individuals who responded to the consultation on the draft legislation and provided oral and written evidence to the Parliament. I also thank my officials and the bill team for all their hard work on bringing the bill to this stage.

Shortly after the 2007 election, the Government published its six principles of freedom of information, in which we set out our approach to FOI and to working with the Freedom of Information (Scotland) Act 2002. One of those principles committed the Government to adjusting the regime where it was

“necessary and sensible to do so.”

The bill fulfils that objective by proposing modifications to the 2002 act that are intended to add strength and clarity and improve its operation.

As I said in the stage 1 debate, it is a tribute to those involved in the development of the original legislation—as well as to FOI practitioners in Scotland’s public authorities, who implement the legislation daily—that the 2002 act is not in need of more radical overhaul.

The original objective of this amendment bill was to rectify two weaknesses in the legislation—that has always expressly been the case. One weakness became apparent following consultation, and the other was brought to our attention by the former Scottish Information Commissioner. The first relates to the inflexibility of the order-making power by which exemption lifespans are revised. The second concerns the inability to bring a prosecution in the event of

information not being disclosed due to alteration, destruction or concealment, for example. The bill will remove both those weaknesses, thus making the 2002 act stronger.

As a result of the bill, we will have a far more flexible order-making power that will allow for the lifespan of the 30-year exemptions to be considered and revised on an individual basis. Instead of all 30-year exemptions having to remain at 30 years in order to ensure continued protection for more sensitive information, it will now be possible to assess the merits of having reduced lifespans for individual exemptions while maintaining longer lifespans when those are required.

The Scottish Government will now consult key stakeholders and interested parties on a draft order under section 59 of the 2002 act. That consultation will include assessment of both the resources that might be required to implement revised lifespans and how quickly new arrangements can sensibly be introduced.

It will of course be a matter for individual public authorities to determine whether they adopt a proactive or reactive approach to earlier release. However, although I am conscious of potential—though limited—resource implications, I would absolutely encourage a proactive approach.

Since 2009, the Scottish Government has routinely released archived files at 15 years rather than 30 years. Indeed, just two weeks ago almost 400 Scottish Government files were opened under the terms of our 15-year rule policy, which made more information available to the Scottish people.

In that context it is more than regrettable that, as has been reported in the past week or two, the United Kingdom lags behind Scotland in making more information available earlier and is only just moving towards implementing a 20-year release policy. Of course, some of the files that may be of interest around the devolution referendum have not yet been released by the UK Government.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Does the cabinet secretary agree that it was quite wrong of Willie Rennie to suggest that this legislature is lagging behind others?

Nicola Sturgeon: Yes, I do. Although I have great respect for Willie Rennie's views on this matter, he was wrong on a number of things that he said earlier. However, in the spirit of consensus I am more than happy to continue to discuss matters to see how we can find common ground and move forward.

Willie Rennie (Mid Scotland and Fife) (LD): Does the cabinet secretary not accept that reviewing the devolution files is a matter for the officials in the Scotland Office? That is not a

political judgment, because those files involved a previous Administration and it would be quite wrong for a subsequent Administration—one of a different political colour—to review them and decide whether they should be released.

Nicola Sturgeon: I accept that to a point, but this Government has reviewed and released files that were under our control. I am not sure why the same process cannot be followed and the files released. Indeed, I am not sure why that could not have been done earlier. There is nothing to stop the release of those files, and I encourage that to be done so that people can have sight of files that are of great and legitimate interest to people in Scotland. I hope that Willie Rennie will back that and that we can reach consensus on the issue.

Since 2009, more than 12,000 files have been released under our early release initiative. That means—this echoes Jamie Hepburn's point—that Scotland is significantly ahead of the rest of the UK in making public information available earlier.

Also as a result of the bill, the ability to prosecute those who commit an offence under the legislation is made fully effective. That sends a powerful signal to anyone who might seek deliberately to subvert the requirements of the 2002 act. I note with interest that recent post-legislative scrutiny at Westminster of the UK Freedom of Information Act 2000 has also recommended that similar changes be made to that act. I understand that the UK Government is now minded to extend the time that is available to the UK Information Commissioner to bring a prosecution to six months from the point at which the commissioner becomes aware of an offence, rather than six months from the point of the commission of the offence. That is another example of Scotland being ahead of the UK in ensuring that our legislation remains fully fit for purpose.

Neil Findlay (Lothian) (Lab): The cabinet secretary spoke earlier about the need for openness, and she now says that we can be ahead of the game. Would she support legislation to increase openness and transparency in lobbying, so that Scotland can be ahead of the game in that regard as well?

Nicola Sturgeon: I have read in the newspapers about what the member is proposing. When he produces concrete proposals we, as a Government and as individual members, will look carefully at those proposals and decide whether they should be supported. I agree with him in principle that we should encourage openness generally as well as openness and transparency in how we conduct our business in the Parliament, and I look forward to his producing those proposals in due course.

I have covered the two main aspects of the bill, but during its consideration other provisions aimed at strengthening the legislation have been included. I refer to the extension of coverage, which has been a central theme of our discussions. We are all aware—I have never tried to get away from this—that although there has been consultation on three separate occasions, the power to extend has not yet been used by this or any other Administration. I do not believe that that is a failing of the provision, but I accept that the intention behind it has not been fulfilled. That is why I have been pleased to accommodate amendments to the bill based on proposals from the Information Commissioner. Those amendments strengthen the legislation by widening the scope of consultation and requiring periodic reporting by ministers to the Parliament and the use of the power to extend coverage. They significantly increase ministerial accountability and mean that a renewed focus will be placed on ensuring that the coverage of the 2002 act reflects the ever-changing mechanisms of public service delivery as well as the entirely understandable ever-increasing demand for information.

A decision on the extension of coverage, which was consulted on in 2010, was deferred until the bill had completed its passage through Parliament. As I indicated earlier, I now intend to bring forward a section 5 order as soon as is practicably possible. An initial order will cover arm's-length sport, leisure and culture bodies that are set up by local authorities. We have already consulted on the extension to those bodies.

The Scottish Government will also look at extending coverage to other arm's-length organisations that are set up by local authorities and which are carrying out public functions on an authority's behalf, particularly where there has been a demonstrable loss of rights. We will engage with the Convention of Scottish Local Authorities, local authorities, arm's-length bodies and other interested stakeholders to consider the matter further.

I hope that members agree that that approach allows us to address the issue of erosion. As I said earlier, further consideration must be given to extension as opposed to erosion; I have also said that I am not ruling out extending coverage to other bodies in the future.

Gavin Brown (Lothian) (Con): Will the cabinet secretary take an intervention?

Nicola Sturgeon: Do I have time, Presiding Officer?

The Deputy Presiding Officer (John Scott): No, not much—but go ahead.

Gavin Brown: The cabinet secretary says that she will bring forward a section 5 order

“as soon as is practicably possible”.

Can she give us an indication of where she thinks that we will be—for example, come the summer recess?

The Deputy Presiding Officer: Cabinet secretary, please keep your answer brief.

Nicola Sturgeon: I am happy to provide further information and I will provide the Finance Committee with precise timelines. I hope that, by the summer, the initial phase of the work that I have spoken about will have gone through Parliament and that the second stage of work on other arm's-length external organisations will be well progressed.

I am getting the evil eye from the Presiding Officer, so to speak, so I conclude by saying that we have reached an important landmark for freedom of information. It is not the end of the journey, but it is an important milestone along the way.

16:10

Paul Martin (Glasgow Provan) (Lab): It is fair to recognise that this has been a robust debate in many respects. A consensual approach for the future has been offered. However, we should recognise that this is—we have made the point at stages 1 and 3—a missed opportunity to introduce more comprehensive freedom of information legislation and to improve on what was built in Parliament in 2002.

We are disappointed that the Government has used its majority to vote down all but one of the Labour amendments. It must be recognised that many of the amendments were lodged after significant consultation of external organisations, including the Campaign for Freedom of Information, the Scottish Trades Union Congress and Unison.

I had expected that many of the amendments, particularly the one that was lodged by Iain Gray, would have received support from Scottish National Party back benchers. In particular, I refer to Bob Doris, who is quoted on the SNP website as having said in 2009:

“The Glasgow Housing Association must come into line with FOI. An organisation of such significance to the public life of the city needs to be transparent and accountable, as other public bodies currently are.”

That is a pretty strong and comprehensive statement.

I am sure that John Mason has made similar comments. I do not know whether he wants the opportunity to respond, but I would welcome his

view on whether that remains his position, and why he voted against Iain Gray's amendment.

John Mason (Glasgow Shettleston) (SNP): I certainly associate myself with Bob Doris's comments and, at the right time, I absolutely want to see GHA covered by the legislation.

Does Paul Martin agree that the Government has given considerable ground, and that the bill that we will pass today is considerably different from the initial proposal?

Paul Martin: First, I confirm that the bill is considerably different from the 2002 act—it is only four pages long. [*Interruption.*] I am responding to John Mason's question. If the Government were to interrogate the Freedom of Information (Amendment) (Scotland) Bill, that would take considerably less time than the 2002 act.

To be fair to GHA, we should recognise that—as Iain Gray said—it has complied with the spirit of FOI legislation, which I welcome. However, it is simply not good enough for the minister to advise members that the housing charter is in some way an able replacement for the FOI legislation. That is unacceptable. The minister should recognise that the housing charter and other voluntary schemes are not enforceable by law. That point has been made by a number of bodies, including the Campaign for Freedom of Information.

Elaine Murray lodged a number of perfectly reasonable amendments. Amendment 9 sought to ensure that arm's-length external organisations are not used as a vehicle to deprive the public of their enforceable right to access information. I expected that many members would see that as a reasonable approach to ensuring that the public are not deprived—as has happened in the past—of that opportunity and their right to know, which is set out in the 2002 act.

To return to amendment 12, which is my amendment, I reiterate the point that maintaining and updating a register is hardly the Scottish Parliament's Dyson moment. Every day, people in public bodies and private companies maintain registers. Such a proposal is hardly ground breaking.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): When Mr Martin advanced his arguments for amendment 12, he made the point that the Scottish Information Commissioner already maintains a partial list. Does the fact that the commissioner is able to maintain only a partial list not underline the difficulties of maintaining a full list? If the commissioner were able to maintain a full list, I presume that the commissioner would be doing that now.

Paul Martin: If we are serious about delivering the FOI legislation that Parliament passed in 2002,

we must be serious about providing comprehensive and accurate information. I say with the greatest respect to the Scottish Information Commissioner that it concerns me that she is providing information on her website that, technically, could perfectly possibly be inaccurate. We must ensure that the commissioner is provided with the necessary resources for her to provide accurate information.

In addition, I think that the potential costs have been overblown. Many organisations, some of which I have referred to today, provide comprehensive lists of the organisations for which they are responsible, so I see no reason why the commissioner could not emulate that.

I confirm that we will, despite our differences with the Government, support the bill at decision time, although we recognise that the minister continues to face significant challenges—particularly in respect of section 5 referrals under the 2002 act. We want to ensure that she delivers those, so we will give her the opportunity to do so by voting for the bill to be passed at decision time.

16:16

Gavin Brown (Lothian) (Con): I find myself being somewhat less critical of the Government than the Labour Party has been, and than I anticipate the Liberal Democrats will be. In the main, the amended bill is superior to the one that was presented at the beginning of stage 1, with a notable exception—which is, of course, the fact that the royal exemption has been removed. When I listened to the cabinet secretary at stage 1, I thought that I had found a kindred spirit who was a fan of the royal exemption. Alas, she made the error of listening to the majority of the committee—apart from me—and decided to remove the royal exemption.

It is most important that we hear from the cabinet secretary in her closing speech and, in the coming days and weeks, detail on the extension of the FOI legislation's coverage and, in particular, on use of the order-making power under section 5 of the 2002 act, which she mentioned. I think that she has a clear understanding—as members of all parties have—that there is disappointment out there that the power has not been used since the FOI regime started.

I acknowledge the cabinet secretary's use of the wording

“as soon as is practicably possible”,

but I intervened on her to get a handle on what that means in practice. That might be seen as splitting hairs, but given the issue's background and history, and the fact that complaints have come from various parts of Scotland about the

operation—or non-operation—of section 5 of the 2002 act, it is important that as much detail as possible be provided as quickly as possible about the initial stage, which she mentioned in her response to my intervention, and the second stage, to which she intends to progress. The more information that can be provided to the committee and made public, the better things will be for all concerned.

A number of amendments that were defeated would have strengthened the bill and made it a better package overall. Regardless of those amendments having been defeated, Conservative members will support the bill at 5 o'clock. The areas in which I thought a bit more work could have been done include the consultation process under section 5 of the 2002 act. I think that it was acknowledged by all that the initial definition was too narrow. The amendment that the cabinet secretary lodged at stage 2 was welcome; it definitely widened the consultation process. Despite that, Elaine Murray was right to point out the weakness that existed.

However, it was not just Elaine Murray—an Opposition member—who said that. As I pointed out, that was also the view of the Scottish Information Commissioner. At stage 2, having seen the minister's amendment, the commissioner stated again:

"A weakness of the current provision is that it does not require consultation with the users of public services whose rights may be curtailed as a result of changes in public service delivery."

I noted the cabinet secretary's comment that consultations will involve members of the public, but given what the Scottish Information Commissioner has said and given that the amendment was not agreed to, it would be welcome if the cabinet secretary could outline in the coming days exactly how she intends to involve the general public, particularly in the initial consultation.

The other area that I felt could have been stronger relates to when the first report under section 5 of the 2002 act ought to be published, about which there was debate at committee. The initial proposal from Elaine Murray was that it be published in 2013, which I felt was too soon; I think that she acknowledged that it might be too soon. The bill initially mentioned 2016, but there was clear acknowledgement from the cabinet secretary that 2016 would be too late.

The position that Elaine Murray adopted in amendment 4 was a superior one. Agreement to that amendment would have given us a year and a half in which to report under the 2002 act's section 5 order-making power. As I pointed out in an intervention, given what we heard about what the Government intends to do, there would be a great

deal to report in a year and a half in terms of what the Government had done under section 5 of that act and in terms of progress. Amendment 4 is a missed opportunity.

I will be happy to return to those points in the closing speeches.

16:22

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Given that yesterday we heard the deputy leader of the Labour Party in Scotland deigning to say that this Parliament is

"not a democratic place in the conventional sense"

and that it is

"a dictatorship",—[*Official Report, House of Commons, 15 January 2013; c 798.*]

I sincerely thank the Parliamentary Bureau for finding the time to schedule a debate on the bill rather than passing it by diktat. Its generosity knows no bounds.

I welcome the bill because it builds on the Scottish Government's good handling of freedom of information legislation and its commitment to build on the original act. If we look at the most recently available annual statistics, which are for 2011, information was released in the majority of cases in which it was requested—almost three quarters of cases. Of the 86 appeals to the Scottish Information Commissioner, some 70 per cent of decisions by the commissioner were wholly or partially in favour of the Scottish Government. Also, 83 per cent of the responses that were provided to requests were issued on time. By any standard, that is a pretty good record. Indeed, it improved on previous years. In 2005, it took longer for requests to be answered and fewer decisions by the commissioner were in favour of the Scottish Government.

We have a good record and the Scottish Government has adopted a proactive approach to releasing information. It routinely releases files for public consumption 15 years earlier than it is statutorily obliged to release them. That has been touched on in the debate; I believe that others would do well to follow that example. Earlier this month, the UK Government refused to accept the Scottish Government's position that files on devolution from 1997 should be released under the 15-year rule.

With the best will in the world towards Mr Rennie, I thought that his explanation was entirely unconvincing: to blame officials is poor cover for a poor decision.

Roderick Campbell (North East Fife) (SNP): Does Jamie Hepburn accept that Mr Rennie's explanation seems to be in marked contrast to the

position of the better together campaign in terms of its demands for more detail on the case for independence?

Jamie Hepburn: Yes, I accept that. Not only that, but I presume that we can now look forward to never hearing from Mr Rennie—whenever a decision is taken by a Scottish Government official—a demand that the Scottish Government adhere to a request for information from him.

The bill is good news. It will pave the way for more information to be made public earlier, thereby building on the Scottish Government's good practice that I touched on earlier.

I also think that we can now see that those who seek to circumvent FOI will be dealt with more severely under the legal framework, which will be very useful. Ministers will have to report back more regularly on use of the legislation, which is also good; to increase scrutiny by Parliament is a good thing.

The Scottish Government has, of course, listened to the committee's and stakeholders' concerns, which is a good approach. We have heard about the change in the position on the royal exemption. Notwithstanding Gavin Brown's disappointment, I think that most people would welcome the fact that the Scottish Government listened to the committee and the stakeholders who spoke to it.

We have also seen movement on when the Scottish Government will have to report back to Parliament on coverage of extension of the 2002 act. I hear that there is some disagreement about when that might happen, but we have seen movement from the Scottish Government's original position. Again, it is listening to the Finance Committee's concerns. All in all, that is a good approach that should be welcomed across the chamber.

I very much welcome the bill.

16:25

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): The bill is quite strange in a sense because, as introduced, it presented us with very little with which to disagree. I think that the only substantial point of disagreement on what was in the bill was to do with the royal exemption. The cabinet secretary gave way on that, so in a sense everybody agrees with everything that was in the original bill. On the whole, the substantive debate today and much of the debate previously has been about what is not in the bill. That debate will continue because, from Labour's point of view, what should be there is still not there.

The cabinet secretary made her headline announcement today, of course, and she

presented it as the answer to all our questions and concerns. However, it is a fact that what she has announced today means that bringing new bodies under the freedom of information legislation will be entirely at the discretion of the Government of the day. That means that that will, at present, be at her discretion, given the SNP's parliamentary majority, which is precisely what our amendments tried to avoid.

The point that I made in an intervention on the cabinet secretary stands: everything that she has brought into the bill is about reports having to be published. There is no requirement whatsoever for any new bodies to be covered by freedom of information legislation. She has said that she will do that at her discretion—no doubt under the pressure that she has been under from the wider public and, indeed, her own back benchers, but that does not mean that any other minister in any future Administration would be under any obligation to introduce any new bodies.

The second point that I made in my second intervention about the cabinet secretary's objection to our specific amendments also stands, because there was nothing to stop her lodging other substantive amendments about ALEOs or any other bodies such as GHA, had she wished to do so, in order to correct our wording if she thought that it was technically wrong. The point about GHA that Iain Gray made was very interesting, because the cabinet secretary invoked the Scottish housing charter. In fact, good as the charter is, there are still grounds for concern, because freedom of information means that the public decide what they will get and when they will get it. The charter means that it will remain entirely at the discretion of the housing authority to withhold or give information and to decide when it is released.

The principle that I put forward in the stage 1 debate remains: if a body takes taxpayers' money, it should follow FOI legislation. That is, of course, consistent with the long title of the bill that we debated all those years ago, which referred to

“the disclosure of information held by Scottish public authorities or by persons providing services for them”.

I believe that there is an issue in respect of article 10 of the European convention on human rights, which embodies the right to form an opinion. That involves getting information in order to be able to form an opinion. Quite a lot of European case law backs that up.

I want to raise another point in the final minute of my speech. We are considering wider FOI issues. My point relates to how FOI is currently interpreted. The cabinet secretary should also address her attention to that. Before Christmas, I asked why a particular report from Healthcare

Improvement Scotland on inspection of acute care at Ninewells hospital had not been released. The health minister said—among other things—that Healthcare Improvement Scotland “may” publish such reports. It seems to me that that is absolutely wrong. That body and other public authorities must publish such reports.

My concern was increased when my colleague Jenny Marra received an email from Healthcare Improvement Scotland today that states that her FOI request about the report, which she placed in December, is not to be granted now but will be granted in March. However, the reality is that the inspection was in September, which was why she asked under FOI why the report had not been released. She is now told that it will be done in March.

I commend the cabinet secretary for setting up the inspections of acute care for older people, but I think that, like Jenny Marra, she should ask why the report has not been released.

16:30

John Mason (Glasgow Shettleston) (SNP):

When we started considering the bill, a number of us identified two main problems with it—the first of which was the idea of a royal exemption. I think that the Finance Committee convener and Michael McMahon were especially concerned about that.

The second problem was that no new bodies had been added to the list of bodies for FOI coverage, which I, among others, was concerned about. The Finance Committee report highlighted those issues, and I think that the report was considered to be fair.

I commend the Government in general and Nicola Sturgeon in particular for listening to the committee and responding to those points. Specifically, the Government removed the royal exemption and agreed to consider additional organisations for FOI coverage. Originally, that was going to be done by June 2016, but as that date would be after the next parliamentary election, the date has been brought forward to October 2015. I accept that some people would like that date to be tomorrow and that others would like it to be yesterday, but there must be a certain amount of willingness to compromise, so the proposed date is acceptable. Those changes to the bill should not be underestimated. They have changed it from what I had considered to be a somewhat disappointing bill to a hugely improved one that is, as far as I am concerned, definitely acceptable.

We should pay tribute to the Campaign for Freedom of Information in Scotland, whose briefings and evidence have been extremely helpful. My judgment is that it has achieved

probably 75 per cent of what it set out to achieve for the bill. Of course, it wanted to achieve 100 per cent, but we can all be grateful to it for the strong case that it made in the bill’s progress through Parliament.

The point has been made that if we were starting from scratch with brand-new FOI legislation, we might do things differently; in particular, such legislation might include a purpose section. I would certainly support such a section. I have supported such provision elsewhere—for example, for the bill that became the Equality Act 2010. I argued for a purpose section for the bill, but the Labour Party argued against it. However, in the case of this bill, we were amending existing legislation and not rewriting it, so I did not consider it appropriate to introduce major amendments that would, as the cabinet secretary said, have overlaid the bill rather than amended it.

The point was also made that mindsets, as well as the legislation, need to change and that it is not just about the law, but about getting people to think differently. I agree. There is still the assumption in some quarters, and perhaps even in Parliament, that information should be confidential unless there is good reason for it to be otherwise. However, I argue the exact opposite: information should not be confidential, unless there is good reason for it to be otherwise, which is why removal of the royal exemption is so symbolic and significant. Of course, not many cases may be affected by that provision, but it is a clear statement from Parliament that there must be a reason for confidentiality of information and that it must not be just because the information refers to a monarch, a Government or an MSP.

Michael McMahon (Uddingston and Bellshill) (Lab): Malcolm Chisholm believes that it was right to remove the royal exemption from the bill. However, had it not been taken out, would it have “overlaid” the bill or would it have “amended” it? If it would have amended the bill, surely a purpose section would have done the same thing?

John Mason: A purpose section would have been an amendment on a specific point. A purpose section would overlay or underlay a bill, which would have changed the bill and the Equality Act 2010 (Amendment) Bill at Westminster.

At the end of the day, we are debating how fast we should move on the bill’s provisions. I think that we all agree pretty well about the direction that we are going in, although some want to go faster while some, like Gavin Brown, want to go slower. However, I believe that the bill shows that we are moving forward.

16:34

Willie Rennie (Mid Scotland and Fife) (LD): I had high hopes for the cabinet secretary. I thought that the words that she uttered in the earlier debate on the bill indicated that she was listening and that she understood; that she was expressing sympathy about the erosion in freedom of information rights that we have seen over the past few years. However, her actions today did not match her words. I was disappointed by her timid response on coverage and unspecified time; Gavin Brown was right to identify that.

The SNP has had more than five years in power, and it has been two and a half years or more since the consultation on extending freedom of information rights over the bodies that were specified in section 5 of the 2002 act, but there has been very little action. I hope that the cabinet secretary comes forward with much more ambitious and bolder plans for extending those rights because, as she herself admitted, people's rights have been eroded.

Documents such as the housing charter will just not be sufficient. The freedom of information regime is a tried and tested system that people understand and that they use well. The Government might not like it, but people do use the system. As a Liberal Democrat, I am certainly proud of it and of the fact that Jim Wallace, with the support of other members, pioneered and piloted the bill through Parliament. However, the principles that were established at that time have also been eroded and it is important for us to repair the damage. The cabinet secretary has a lot of work to do to convince us that the amended act represents not just lip service but real change, and that we will see those eroded rights being repaired.

The public are with it. The Information Commissioner has done a lot of polling and found that most people are in favour of extending coverage to housing associations, trusts, private sector companies who build and maintain local authority schools, hospitals, and prisons that are run by the private sector. The public is all in favour of those bodies being covered by FOI legislation, so if the cabinet secretary is to stay in step with public opinion she should make that change.

It is just not right that tenants in South Lanarkshire can access information about their council and their tenancy while tenants in Glasgow do not have the same rights. The vote on Iain Gray's amendment was disappointing because the Government did not take the opportunity to send out a clear signal that the housing associations are going to be included. It could have also done that for schools and public-private partnership contractors because the public has a right to know. If the public pound is involved, the public

should have the right to know how it is being spent. Keeping that secret does not chime with the FOI principles that were established by the 2002 act.

Malcolm Chisholm was right about article 10 of ECHR. The cabinet secretary needs to be careful about that because challenges have been made in the European Court of Human Rights.

Roderick Campbell: Will the member take an intervention?

Willie Rennie: Not just now.

If they are to make a decision and have freedom of expression, people have a right to information. The Government should be mindful of that.

Jamie Hepburn: Will the member give way?

The Deputy Presiding Officer: The member is in his final minute.

Willie Rennie: I am running out of time.

The Government also needs to be careful because its reputation on freedom of information has been damaged by going to court on at least two occasions over the legal advice on Scotland in the European Union and also over a local taxation system. Also, in the Ayrshire and Arran case, the FOI regime was seen to be valuable in making sure that we learnt the lessons from the deaths of patients.

Freedom of information has real value. It is not just some chattering-class discussion; it is about people, their lives, and their rights. I hope that the cabinet secretary lives up to that ambition.

16:38

Iain Gray (East Lothian) (Lab): Saul Alinsky, the campaign and community organiser in the United States, had as one of his "Rules for Radicals" to "make them live up to their own rhetoric". The idea was that those in power should be forced to deliver on the things that they freely said that they would do. In a way, any debate among politicians about freedom of information is about making us all live up to our own rhetoric. Who would be against openness and transparency?

Of course, the proof of the pudding is in the degree to which we are willing to force ourselves to do that. The cabinet secretary acknowledged that during the debate on my amendment 14 when she said that her Government should be judged by its actions on freedom of information.

Members will expect me to say that such a remark does not serve the Government particularly well, when we consider the speed with which it moved in introducing the bill. Ever since the 2002 act was passed the SNP has said clearly

that FOI should be extended to housing associations, arm's-length bodies and contractors in Government contracts. That is what the SNP argued in opposition, and when it came into government it said that it would make those changes. However, it took the Government until 2010 to carry out the consultation and then it introduced a bill that did not extend FOISA at all. The Government's action on the bill does not live up to its rhetoric.

Nor do other day-to-day actions of the Government live up to its rhetoric. I am thinking about the court cases around local income tax or legal advice on the European Union, when the Government resisted the release of information despite the commissioner's decision. I am reminded of the Professor Qvortrup controversy, when emails were released in stages so that the particularly difficult one came out just before or after Christmas. The Government's actions are nothing to be proud of.

I must be honest and say that no Government or Administration finds FOI particularly easy. I acknowledge that the previous Scottish Executive failed to use section 5 to extend FOI coverage, although we said that it would be desirable to do so. I recall much high-flown rhetoric in 2001 and 2002 about having the best FOI legislation in the world, and I am not sure that we lived up to those aspirations. I thought that we would do. A member said that, given that I was instrumental in setting up GHA, I should have noticed that people were losing their FOI rights in the transfer. I did notice that, but I assumed that my Administration would extend FOI to housing associations. I have to acknowledge that that did not happen.

The point is that FOI legislation tests a Government's moral fibre. No Government likes FOI. FOI is always inconvenient, but it is the right thing. I think that we failed the test today: we could have extended FOI but we missed the opportunity to do so. Today has also been an exercise in futility, because at some point FOI will be extended to the bodies that we have been talking about. The tide of history is running in the direction of more information being available to the public.

I think that the cabinet secretary realises that, which is why she made a concession and promised to use section 5. It is a pity that it looks as if she was dragged kicking and screaming to that position, when she could have extended FOI in the first instance and correctly claimed to be living up to her own rhetoric. The jury is still out on whether, in the long run, she will live up to her rhetoric on openness and transparency.

The Deputy Presiding Officer: We move to the wind-up speeches. I call Gavin Brown; you have up to four minutes—less would be more, please.

16:43

Gavin Brown: I will be happy to oblige, Presiding Officer.

I align myself with what John Mason said about the Campaign for Freedom of Information in Scotland. I do not agree with everything that the campaign says and I did not agree with all its proposed amendments, but it did an excellent job of informing the committee and the debate, and I agreed with a number of its suggestions.

I will talk about areas in which the bill could have been strengthened. I think that we missed a trick today in not agreeing to Paul Martin's amendment 12, on functions of the commissioner. Mr Martin proposed that the commissioner should

"prepare, publish and update as necessary a list comprising those persons or bodies who are Scottish public authorities".

I thought that that was a fairly straightforward proposal, and I was happy to support it. Given that the amendment was not agreed to, I ask the cabinet secretary whether there is a way in which we can strengthen the partial list that currently exists. As a consequence of the vote on amendment 12, Mr Martin's approach has not been put on the statute book, but is there a way of improving the list so that the objective that he sought to achieve can be achieved in practice? I hope that the cabinet secretary will address the matter, either in her closing speech or in the days to come.

I will bring my remarks to a close in a positive fashion because, as I said earlier, we will of course support the bill at decision time. I acknowledge that there are a number of big improvements in the bill. One is the move away from the three-year reporting period to a two-year reporting period. That is generally acknowledged to be fair, and I think that that was one of the few amendments that went through without a vote.

Section 5 of the bill, on time limits for proceedings, is extremely important, as the cabinet secretary said in her opening remarks. The change from six months after the commission of an offence to six months from when sufficient evidence of an offence comes to the knowledge of a prosecutor is crucial. There were potential investigations and prosecutions that did not go ahead simply because we ran out of time.

It was, possibly, inevitable that the previous arrangements would not work. If there are 20 working days to respond to a request, 40 working days to ask for a review if the response is felt to be unsatisfactory and 20 working days to review a response, that cuts a large slice out of the six-month period. The amendment that will be made by the bill that will no doubt be passed at decision

time makes the legislation far stronger and gives real teeth to the prosecution.

I welcome the intention of the cabinet secretary in relation to various points that she alluded to this afternoon. However, this Government and the cabinet secretary's commitment to freedom of information will be judged almost entirely on what is done over the next few weeks and months, with particular reference to the section 5 order-making power. The Government will be judged by what it does, not by what it said today.

16:46

James Kelly (Rutherglen) (Lab): The bill, which the Labour Party will support at decision time, leaves us with measures that are not all that controversial. Of course, we will support measures that ensure that a more flexible approach is adopted to accessing information from historical periods. It makes good sense that, if information is already in the public domain, there is no need for a public authority to publish it. As the cabinet secretary said, if there are offences under the act, it makes sense to ensure that the period for amassing evidence and bringing a prosecution is brought into proper timelines, and the legislation does that.

The major controversy at stage 1 concerned the royal exemption, with many in the Parliament arguing that the public interest clause is sufficient. I am glad that the moderate and calm voice of Kenneth Gibson prevailed on the SNP benches and that the Government backtracked on its proposal.

Today's debate has been instructive in terms of the approach that the SNP has taken. With regard to Michael McMahon's amendment 9 at the start of the debate, I thought that—to use the cabinet secretary's phrase—laying out a purpose at the start of the bill would be good lawmaking. In a situation in which the landscape has changed greatly since 2002 and there have been more disputes about freedom of information, some clarity on the legal process would have been useful.

The debate around Iain Gray's amendment to extend the legislation to GHA was interesting. As Paul Martin told us, Bob Doris—whom he quoted—and John Mason have expressed support for extending the FOI legislation to GHA but, during that debate, it was very much the silence of the SNP lambs.

John Mason: I have spoken quite a lot this afternoon. Does James Kelly accept that the amendments that the Government has brought forward are significant and have changed the bill?

James Kelly: As Malcolm Chisholm pointed out, many of the so-called changes that the Government intimated this afternoon concerned powers being invested in ministers. People are looking for real power in legislation not only so that FOI practitioners can be clear about what their duties are but so that the public can be clear about what freedom of information requests they can make.

The SNP's approach to the bill underlines its approach to government. It was amusing to hear Nicola Sturgeon and Jamie Hepburn talk about the SNP Government's good record on FOI when it spent £100,000 trying to block discussion on council tax plans.

Jamie Hepburn: Will James Kelly give way?

James Kelly: I am short of time, or I would let Jamie Hepburn in.

Jamie Hepburn: We did not make the law. Give way.

The Deputy Presiding Officer: The member is in his last minute.

James Kelly: Members should not tell us about the SNP Government's good record—*[Interruption.]*

The Deputy Presiding Officer: Order.

James Kelly: The SNP Government wasted £12,000 of taxpayers' money going to court about legal advice that was not available. What a waste of money that was.

We will support the bill at 5 o'clock, but there is no doubt that the bravehearts in the SNP have been faint-hearts this afternoon. It was a missed opportunity to deliver more openness and transparency.

16:51

Nicola Sturgeon: James Kelly might be well advised to look back at the *Official Report* of his speech and consider whether he wants to make use of any of the new procedures to correct the record. I will not dwell on that any further at the moment.

I thank everybody who contributed to today's debate. It was lively, which is a good thing. We are debating an important subject.

In his usual cheery way, Paul Martin talked about missed opportunities. He wasted an opportunity to recognise that the Government listened to many of the comments that were made about the bill and responded accordingly.

John Mason and Jamie Hepburn were absolutely right to say that the bill is very different today from what it was on introduction. It is

different for a reason: the Government listened to the points that the committee made and proposed amendments as a result.

It is probably difficult to think back now and remember that, at introduction, the most controversial part of the bill was the royal exemption. That measure has not been debated today because it was removed by a Government that listens. Even those who think that we should go further should have the good grace to recognise that.

I am not sure that I could ever have lived up to Willie Rennie's high ideals and principles, but I will always try. I simply say to him—and I say it seriously—that it is a pity that, although he preaches those high ideals, his party completely fails to practice them. I say to him seriously and sincerely that I find that deeply disappointing.

I turn to the main issue that has dominated not the bill but the debates around it: the extension of coverage. The bill was never intended to extend coverage because the power to do so exists in the 2002 act—that is the section 5 power about which we have spoken.

Malcolm Chisholm was right that the debate about the bill has focused more on what is not in it than what is in it, but I have to say that he made an uncharacteristically uncharitable speech. I know how honourable he is, so I am sure that, when he reads the *Official Report*, he will concede that it was uncharacteristically uncharitable. I did not say at any point that what I announced today about the use of the section 5 order was an answer to all the concerns that have been expressed. I said that it was a first step. I stressed the fact that the order about which I was talking was an initial order. Malcolm Chisholm and James Kelly made much of the ministerial discretion to decide whether to use the power to extend coverage. I simply say—particularly to Labour members—that that has always applied. The bill will not change that; the change in the bill is that the ministerial discretion will be the subject of greater accountability to the Parliament than has ever existed before. That is a positive step in the right direction.

Malcolm Chisholm: Will the cabinet secretary give way?

Nicola Sturgeon: I hope that Malcolm Chisholm will be more characteristically charitable in his intervention.

Malcolm Chisholm: I will be charitable in the sense that I recognise and welcome the fact that the cabinet secretary will introduce a section 5 order. However, the point is that that is at her discretion. If she had accepted our amendments, that would no longer have been at the

Government's discretion, because legislation would have required certain bodies to be included.

Nicola Sturgeon: The point that I make to Labour members—including people such as Malcolm Chisholm, who were ministers in the previous Administration—is that the power has always been subject to ministerial discretion. That discretion will now be the subject of more accountability than has ever been the case before and I hoped that Malcolm Chisholm would welcome that.

I concede—as I have conceded before—that, when we look back at the debates on the original bill, it is clear that expectation was high that the power to extend coverage would be used early and regularly. That has not happened. As Gavin Brown was right to say, that has caused disappointment, which I recognise and want to address.

However, it is a bit rich for those whose parties did not extend coverage when they were in government—and for those whose parties are now in government but are not ensuring that UK freedom of information legislation goes even as far as that in Scotland—to criticise the Scottish Government, which intends to make a section 5 order for the first time. I would have thought that those who want freedom of information coverage to be extended would welcome that.

As I said earlier, in developing proposals for future orders—and in discussion with stakeholders and interested parties—I will adopt a staged, function-based approach that prioritises areas in which rights to information have been lost following the transfer of a function or service from a public authority. I do not rule out going further. As I said, I will give that due consideration. However, I do not think that that consideration should hold up the action that I have talked about today in relation to ALEOs.

Iain Gray: Will the cabinet secretary give way?

Nicola Sturgeon: I will give way if the member can be brief.

Iain Gray: I am interested in the prioritisation of ALEOs. I understand the principle that is behind that and I support it, but I worry that there are other significant bodies, extending coverage to which has been consulted on. Why cannot those bodies, such as contractors that are building and running prisons, be included in the early order?

Nicola Sturgeon: I have said that I am considering that. When we debated one such body earlier, I said why I was not announcing such a measure.

The Parliament will continue to debate the issue. As I said to Malcolm Chisholm, because of the changes that we have made in the bill, there

will be much greater accountability for the use of or failure to use the power.

I hope that members will support the bill, as all the parties have said that they will. It is another important step along the road of embedding a culture of openness and transparency. There are more steps to take, including the secondary legislation that will flow from the bill, but I hope that members are assured of our commitment in taking those steps in the months and years that are ahead.

With those comments, I am pleased to commend the Freedom of Information (Amendment) (Scotland) Bill to the Parliament.

Business Motion

16:59

The Deputy Presiding Officer (John Scott):

The next item of business is consideration of business motion S4M-05368, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Tuesday 22 January 2013

2.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Topical Questions (if selected)

followed by Stage 1 Debate: Budget (Scotland) Bill 2013-14

followed by Business Motions

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 23 January 2013

2.00 pm Parliamentary Bureau Motions

2.00 pm Portfolio Questions
Finance, Employment and Sustainable Growth

followed by Scottish Government Debate: Tackling Fuel Poverty

followed by Standards, Procedures and Public Appointments Committee Debate: Review of Cross-Party Groups

followed by Standards, Procedures and Public Appointments Committee Debate: Review of Section 7 of the Code of Conduct

followed by Public Body Consent Motion: The Public Bodies (Abolition of British Shipbuilders) Order 2013

followed by Business Motions

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 24 January 2013

11.40 am Parliamentary Bureau Motions

11.40 am General Questions

12.00 pm First Minister's Questions

12.30 pm Members' Business

2.30 pm Parliamentary Bureau Motions

2.30 pm Scottish Government Debate: Scotland's Mental Health Strategy

followed by Parliamentary Bureau Motions
5.00 pm Decision Time

Tuesday 29 January 2013

2.00 pm Time for Reflection

followed by Parliamentary Bureau Motions

followed by Topical Questions (if selected)

followed by Stage 3 Proceedings: Scottish Civil
Justice Council and Criminal Legal
Assistance Bill

followed by Business Motions

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Wednesday 30 January 2013

2.00 pm Parliamentary Bureau Motions

2.00 pm Portfolio Questions
Rural Affairs and the Environment
Justice and the Law Officers

followed by Scottish Government Business

followed by Business Motions

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 31 January 2013

11.40 am Parliamentary Bureau Motions

11.40 am General Questions

12.00 pm First Minister's Questions

12.30 pm Members' Business

2.30 pm Parliamentary Bureau Motions

2.30 pm Scottish Government Business

followed by Parliamentary Bureau Motions

5.00 pm Decision Time—[*Joe FitzPatrick.*]

Motion agreed to.

Parliamentary Bureau Motion

16:59

The Deputy Presiding Officer (John Scott):
The next item of business is consideration of a
Parliamentary Bureau motion.

Motion moved,

That the Parliament agrees that the Knife Dealers
(Licence Conditions) (Scotland) Order 2012 [draft] be
approved.—[*Joe FitzPatrick.*]

The Deputy Presiding Officer: The question
on the motion will be put at decision time.

Decision Time

17:00

The Deputy Presiding Officer (John Scott): There are two questions to be put as a result of today's business. The first question is, that motion S4M-05362, in the name of Nicola Sturgeon, on the Freedom of Information (Amendment) (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Freedom of Information (Amendment) (Scotland) Bill be passed.

The Deputy Presiding Officer: The next question is, that motion S4M-05369, in the name of Joe FitzPatrick, on the approval of a Scottish statutory instrument, be agreed to.

Motion agreed to,

That the Parliament agrees that the Knife Dealers (Licence Conditions) (Scotland) Order 2012 [draft] be approved.

The Deputy Presiding Officer: That concludes decision time.

Sustainable Biomass

The Deputy Presiding Officer (Elaine Smith):

The final item of business is a members' business debate on motion S4M-04966, in the name of Rhoda Grant, on sustainable biomass. The debate will be concluded without any question being put.

Motion debated,

That the Parliament welcomes the Scottish Government's stated intention that sustainable biomass should be recognised as a limited resource and that it should be used at an appropriate scale and primarily for heat and high-efficiency combined heat and power; notes that the EU renewable energy directive calls for a minimum efficiency rating of 70% for industrial applications; also notes concerns in the wood processing industry throughout Scotland and particularly in the Highlands and Islands regarding wood supply and understands that wood products provide a carbon store; looks forward to the outcome of and would welcome a widespread response to the Scottish Government's supplementary consultation on the Renewables Obligations Banding Review, for which the deadline for views on the proposals on biomass sustainability criteria is 11 January 2013.

17:02

Rhoda Grant (Highlands and Islands) (Lab): I thank members for supporting my motion. This is an important debate as it comes ahead of the Government's decisions following the consultation on renewables obligation certificates for biomass plants.

Biomass has a role to play in providing us with renewable heat. I have seen really good examples of that in the Highlands and Islands—examples such as Sleat Renewables Ltd, which is a community-owned company that uses land-locked forestry in Skye for local heating. It provides advice to its community on the use of wood for heating, and it supplies Sabhal Mòr Ostaig with woodchips for its heating boiler.

Another ideal use where there are sustainable local supplies of biomass is district heating schemes, although there are challenges in using such schemes in rural areas where houses are not close together and shared facilities are not possible. Also, individual biomass boilers are much more expensive than other alternatives. However, local sustainable biomass provides an alternative to expensive electric heating when homes are off the gas grid. It also means that wood is not shipped over long distances, so carbon emissions from transportation are reduced and there is less impact on our often inadequate country roads.

However, the motion is about subsidies for larger scale biomass plants and the impact that they can have on both supplies and carbon emissions. The Scottish Government has just finished consulting on its proposals and I hope that

it will consider the speeches in this evening's debate as part of the process. There are a number of concerns about large-scale biomass plants, especially those that are designed to predominantly generate electricity. We need to ask whether that is the most efficient use of biomass.

Although the European Union has said that biomass should be considered for industrial use only where there is 70 per cent efficiency, the combined heat and power quality assurance programme categorises plants with as little as 35 per cent efficiency as "good quality". It is regrettable that, following its very recent consultation, the United Kingdom Government has not significantly improved the definition; however, it is also the definition used by the Scottish Government. If we are to attempt to attain the efficiency outlined in the EU renewable energy directive we cannot use that definition as the basis for allocating subsidies.

Concern has also been expressed about the sustainability of supply and the impact on our wood processing industry, which tells us—rightly—that by making products from our wood resources it not only utilises our timber resources sustainably but provides us with a carbon store. It believes that wood should be used for energy only when it has no further use and fears for wood supplies.

In the past, Government has said that it will look only at large-scale plants that source fuel from sustainable overseas markets. However, it is unclear to me how we can ensure the sustainability of overseas supplies. The global move to electricity from biomass will increase demand for wood, which, in turn, will lead to higher prices. If we risk reaching a point at which it is no longer economically viable to process wood it might well impact not only on our ability to store carbon in wood products but on our economy, given that wood processing is worth £600 million to the UK economy and employs more than 7,900 people. That is why the industry is alarmed by the move to large-scale biomass electricity plants, even if the vast majority of their fuel is imported.

An increase in global prices and scarcity of supply will also impact on small-scale biomass plants because at the moment it is uneconomical to export the wood that they use. However, increasing the value of biomass might make exporting such wood economically viable which would render useless interventions such as the use of district heating systems to combat fuel poverty.

Higher prices could also lead to unsustainable felling. When developing nations find such a resource that brings them substantial income, can we govern where felling will take place? Indeed, it might also have a knock-on effect on food security in those communities. Dependence on imports

also raises energy security issues. Those are probably subjects for another debate, but I felt it important to highlight them. In any case, we need to make decisions on biomass in the round, noting that it is a limited resource and taking into account our carbon emission targets and the sustainability of our natural resources. All that must then tie in with our economic and social needs.

I am grateful to members who signed the motion and are supporting this debate and ask the minister to consider the issues and come forward with a subsidy regime that deals with what are very genuine concerns.

The Deputy Presiding Officer: As this is a popular debate, I ask members to please stick to their four minutes.

17:08

Angus MacDonald (Falkirk East) (SNP): First of all, I thank Rhoda Grant for securing this welcome and long-overdue debate

As members will be aware, I have been concerned about large-scale biomass-fuelled electricity generating plants for some time now. Indeed, I should declare that previously, as a member of Falkirk Council's planning committee, I successfully moved against a planning department recommendation to support what was at the time a proposed 100MW biomass electricity plant. I note that the application itself has since been increased to 120MW.

After the planning committee refused to support the application, it went to a public local inquiry that was held last May and at which I had the gruelling experience of being grilled by the applicant's eminent Queen's counsel. I have to say that it was not the most pleasant experience in my political life and it is something that I am not in a hurry to repeat. As the application is still live and due to be determined one way or the other by the Scottish ministers, I will understand it if the minister finds himself unable to refer to that specific application in my constituency.

Even prior to the application being lodged in my council ward and subsequently my constituency, I was opposed to large-scale biomass—and indeed remain so. I am fully in favour of small to medium-sized projects and good-quality combined heat and power plants, but in my view large-scale electricity-only biomass has too many arguments against it and precious few, if any, plus points.

Lobby groups such as Friends of the Earth, Biofuelwatch and RSPB Scotland have made a very good case against large-scale biomass electricity production, but one recent development caused me even more alarm. Ash dieback disease, which recently swept across the UK,

attacked ash trees the length and breadth of the country. However, it transpires that other microscopic fungi could come into the country with biomass material and completely devastate our woodlands. According to the Society for General Microbiology, imported logs, woodchips and cut timber can present a serious risk of disease transmission. In my book, that is a risk too far and should be avoided at all costs.

The industry's chiefs have given an assurance that they will not source their biomass fuel from the UK. Forth Energy has stated that it will source imported virgin wood from North America, South America, Russia and the Baltic states. An unsustainable bioenergy industry risks serious damage to wildlife and the climate by driving substantial additional logging overseas.

In addition to all those concerns, there are fears that large-scale use of wood for bioenergy can result in local communities being exposed to increased air pollution, including particulates, nitrogen dioxide, sulphur dioxide and dioxins. That was a major argument that was put forward by the Grangemouth community council coalition when it presented its case at last year's public local inquiry.

Meanwhile, a growing number of scientific studies show that burning wood for energy commonly results in a carbon debt of decades, or even centuries, compared with fossil fuels that might otherwise have been burnt. In addition, although the industry is making great play of the benefits of combined heat and power plants, I have serious concerns about its commitment to the retrofitting and installation of the infrastructure required, given the significant costs involved in rolling out district heating, particularly when money is tight for any major capital investment. My concern is that the firms that promote CHP will promise the heating element of a project simply to get the application approved and then fail to deliver.

In my view, the introduction of large-scale biomass plants in Scotland is a decision that must not be taken lightly. I have highlighted just a few of the many concerns that I have had over the past few years, and I urge the minister carefully to consider the detrimental impact that large-scale biomass plants can have both on our local communities and on the communities halfway around the world that would supply the virgin wood for Scottish biomass plants.

17:12

Claire Baker (Mid Scotland and Fife) (Lab): I thank Rhoda Grant for securing this evening's debate.

How Scotland meets its present and future energy needs is one of the key issues facing this Parliament and future generations. During the 20th century, we saw a massive expansion in energy production and we now live in a modern society in which, when we flick a switch, we expect energy to be available. However, in recent years we have had to pay more and more for domestic energy. While increasing numbers of people are entering fuel poverty, everyone is finding that they are spending a greater share of their income on energy bills. We are also facing significant climate change challenges, and in Scotland we have made a clear commitment to achieving a low-carbon economy.

In trying to meet those challenges, alternative sources of energy need to be explored, but it is clear that we need greater public engagement and confidence in the debate. It is difficult to think of any energy source that does not present a series of challenges or have a host of supporters as well as a group of detractors. It is important that the different needs are balanced in delivering a more sustainable low-carbon cleaner energy future. Several times in this Parliament, I have had meetings with campaigners who are raising concerns over the scale and location of large biomass proposals, and those concerns should be heard.

This evening's debate focuses on wood biomass. As Rhoda Grant highlighted, wood is a limited resource and there are various demands on the sector in Scotland: it plays a significant part in carbon capture; it has industrial uses; it supports our forestry sector; and it provides recreation opportunities. As a limited resource, although there is a potential that the use of by-product and small-scale wood biomass could provide a sustainable alternative energy source, any large-scale biomass in Scotland will need to rely on imported wood as there is not a large enough market in Scotland to support the sector even if we exclude all other interests. The Department of Energy and Climate Change suggests that 10 per cent of wood for biomass will be sourced domestically and 90 per cent will need to be imported. That introduces a whole host of concerns, not least of which is the lack of confidence in the sustainability of the imported wood.

Friends of the Earth and Biofuelwatch highlight contradictions between Scotland's support for climate justice and the expected growth in reliance on imported wood for biomass. They have expressed concerns that that expansion will cause huge destruction to vulnerable communities and their food and water security. There is a real lack of confidence in international accreditation schemes, and when considering any applications

the Scottish Government must be aware of and address those concerns.

The Scottish Government's stated aim that sustainable biomass should be recognised as a limited resource and that it should be used at an appropriate scale and primarily for heat and high-efficiency combined heat and power is to be welcomed. Subsidy plays a large role in shaping future energy production, and the decision to exclude large electricity-only stations from renewables obligation certificates should be welcomed. I recognise that the Scottish Government has proposed that a 10MW threshold should apply to electricity-only biomass and that, above that, biomass plants must generate electricity and heat.

There is a loophole that the Scottish Government must address. As Rhoda Grant highlighted, the EU directive recommends that 70 per cent efficiency must be achieved in CHP. The Scottish Government proposal—and the UK Government proposal—is just 35 per cent. We need to increase the level of efficiency that has to be reached to receive subsidy and we should aim to meet the EU directive.

Robust measures must be put in place to ensure that the infrastructure, capacity and market is there to use the heat that is captured, which was referred to by Angus MacDonald. We need to have confidence that applications can deliver what they say that they will deliver. Under current proposals, although 10 per cent heat efficiency needs to be achieved, that heat must be used, not exported, which means that it could be used within a plant to dry wood chips, for example, and still qualify as good quality CHP. In advance of the debate, Forth Energy contacted members to say that it would bring renewable heat to major urban and industrial areas. If that is the case, the achievement of a higher efficiency level should not really be an issue.

This is a short debate in which to explore the issues, but I particularly urge the Government to look again at the proposed efficiency level and to ensure that the power of public subsidy is used to its greatest advantage.

17:17

Jamie McGrigor (Highlands and Islands) (Con): I, too, congratulate Rhoda Grant on securing today's debate.

The Scottish Conservatives have consistently argued that our energy should come from as broad and diverse a range of sources as possible. We therefore believe that sustainable biomass has a role in Scotland, albeit one that will clearly be limited relative to other kinds of energy production and which will often be particularly successful at a

smaller scale and at community level, where it is most appropriate for heat-only or combined power plants. Sustainable biomass also offers a potentially viable alternative option for many of the 30 per cent or so of Scottish households that are not connected to the mains gas grid, many of which are in our remoter regions.

Although we can support electricity generation and heat production from sustainable biomass—and there are some good existing examples of that across Scotland, such as the mid-Argyll community pool in Lochgilphead, forestry housing at Whitegates, and many other examples across the Highlands and Islands—the schemes must be efficient, cost effective and, of course, compliant with all the relevant environmental regulations.

Rhoda Grant is right to highlight the genuine concerns of the wood processing industry—especially in our own region, Highlands and Islands—about the possible impact of any substantial expansion in large-scale biomass. Experts have warned for some time that there is not enough indigenous wood fuel supply available to meet possible future demand in Scotland and that, if biomass supplies are limited, there is a risk of significant levels of imports.

We must try to match wood supplies with demand for biomass products so that biomass can be truly sustainable. We should also bear in mind that biomass feedstock from Scotland could be used for biomass electricity production in England and Wales, especially if other generators decide to press ahead with existing proposals to develop or increase biomass use at coal-fired power stations in England and Wales.

I am also very aware of the importance to many rural communities of the jobs that come from processing timber into solid wood products. Other members, including Rhoda Grant, have pointed out that wooden products act as a carbon store and their use, for example in the construction sector, can displace more carbon-intensive materials such as concrete and plastics.

I read with interest Confor Scotland's practical response to the ROC banding review consultation, which states that biomass

“should complement not displace existing wood users”.

I am also sympathetic to its view that local energy generation can provide more jobs than large-scale biomass power generation.

I echo Angus MacDonald's concerns about the possibility of diseases coming in with wood imports. Especially in the light of the recent past, we must be very careful about that.

The key outcome that we should be aiming at is to achieve some biomass schemes that allow us to meet our energy needs and energy targets

without hitting other parts of the wood-processing sector that are very important to our rural economies. That will be no easy feat. We look forward to the Scottish Government considering carefully and responding to the recent consultation on the renewables obligations banding review.

17:21

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I, too, welcome the debate and thank Rhoda Grant for giving us the opportunity to debate this important subject.

Small-scale biomass is quite easy to support and it is sensible to make use of waste material close to the point at which it is available, be it from forestry or otherwise. It is also sensible to contemplate small-scale local coppicing of resources, if that is appropriate. However, as other members have said, importing substantial timber from halfway round the world makes absolutely no sense. It is worth looking at the effect that might derive from that large-scale delivery of timber from one part of the world to another.

The UK is likely to turn to the Philippines and Brazil, where the sources are likely to be very quick-growing cane crops. The effect of continually replanting crops in a monoculture way simply to burn them elsewhere is to deplete minerals, to reduce biological load in the soil and to reduce biodiversity dramatically in a way that is likely to be uncontrolled. By contrast, when we use local resources in a controlled and limited fashion, we do so in the context of a forestry system that is tightly regulated and requires the replanting of felled timber. That is a truly fungible approach whereby the replacement of a consumer resource is not merely possible but required.

Like other members, I welcome the withdrawal of financial support for new proposals of more than 10MW. It is important that we protect the vital role that trees, and vegetation in general, have in capturing CO₂ and returning it to its constituents. We should focus on small-scale developments, as they can be something that local communities can get involved in and can benefit from, both economically and environmentally. Wherever possible, those communities should, as a minimum, be partners.

It is interesting that our timber industry opposes large-scale biomass. One might think that increased demand, which would drive up the price of timber, would benefit the industry, but the industry recognises that, as the price rises, that will drive buyers out of the market—particularly local, small-scale buyers—reducing the number of buyers and leaving a few very large-scale buyers in the market who will then control the subsequent

price. In this particular case, increasing demand does not necessarily benefit the seller.

We do not have legislative competence in the area of energy; we have merely the administrative powers that have been devolved to us. I am not quite certain where this sits, but one area in which difficulty arises in exploiting the heat that is part of small-scale local biomass concerns freestanding heritable rights of access, which, south of the border, are known as wayleaves. It would be interesting to hear what the minister has to say on that subject. I recall visiting a plant in Dundee that had excess heat that it wanted to deliver to housing that was only a few hundred metres away, but it could not get the necessary protected permissions for the pipes to do so.

I very much welcome the debate, agree with the sentiments expressed and approve of the fact that we will not be burning precious resource in major plants—small scale and local is the way to go.

17:25

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Biomass is a bit like alcohol: it is not intrinsically bad; rather, it is harmful if used in the wrong way. The questions for debate and on which the Government must come to a conclusion are: where the line should be drawn, what the acceptable forms of biomass are, and what should be ruled out.

I think that we would all accept that small-scale sustainable biomass, particularly with locally produced wood, is a desirable form of biomass that we see examples of throughout Scotland. We could probably go further and say that larger-scale use is also acceptable, as long as there is extensive use of heat because, obviously, the availability of heat is one of the potential attractions of using biomass.

There are a number of factors to take into account that suggest to me and many others, particularly those in environmental groups, that any wider use of biomass is not best suited to achieving the Government's climate change low-carbon objectives. An obvious example—which Angus MacDonald referred to—is the time taken between the sequestration and burning of the fuel stock and the resequenter and subsequent absorption of carbon dioxide. That leads to a surplus of CO₂ in the atmosphere that lasts for a long time, and that should be factored into considerations of what constitutes sustainable use of biomass. It appears that, in setting out to produce clear guidelines on sustainability, that carbon debt, along with problems concerning changes in land use and in the monitoring of crops, have been omitted from the equation. Like the campaign group Greener Leith in my

constituency, which has done a great deal of work on this, I urge the Government to look again at those particular matters.

I commend the Government for ruling out electricity-only biomass beyond 10MW, although I may prefer to have no renewables obligation certificates whatsoever for any form of electricity-only biomass, given that it involves efficiencies of only 20 to 30 per cent.

One of the main concerns about the Government's position relates to exceeding the 10MW ceiling for so-called combined heat and power biomass stations. I have praised biomass in so far as it genuinely uses and captures a great deal of the heat but, under UK-wide rules, as Claire Baker and Rhoda Grant emphasised, that could mean efficiencies as low as 35 per cent. If CHP is to receive subsidy, it must have efficiencies of at least 70 per cent.

A further point is made by the no Leith biomass plant campaign in its submission to the recent consultation in which it asked whether the Government is looking at capacity to provide heat or the actual provision of heat. An issue in Forth Energy's application for the Leith biomass plant was the general talk about how it could potentially use the heat all over Leith and Edinburgh, but there were no definite plans and certainly no funding available as far as it was concerned to do so. That is an important issue, too.

I have many other issues to mention and only one minute to go. Clearly, we must look at the importation of wood—if 90 per cent of wood is imported for large-scale biomass, that is not environmentally friendly. We also have to look at the replacement of forests in other countries because that is where the wood will come from. We have little or no control over that. Under current guidelines, biofuels sourced at the cost of forests is not considered sustainable. However, industrial plantations are at present categorised as forests and that leaves a potential loophole to be exploited, to the detriment of the indigenous peoples and environment of the region and to the detriment of the reduction of the carbon debt. We must consider the human rights of people in the countries where the wood has come from.

The standards proposed cannot mitigate the serious climate, environmental and human rights impacts of large-scale biomass. I urge the Government to go a bit further, although I welcome the steps that it has taken so far.

17:29

Alison Johnstone (Lothian) (Green): I thank Rhoda Grant for securing the debate.

Biomass certainly has a role to play in helping us to meet our renewable energy targets on electricity and heat, but we need to be extremely careful. If we install too much of it, we will completely outstrip our timber supply, as the wood panel industry and Biofuelwatch have clearly demonstrated. That will mean rising prices and supply difficulties for the wood panel and construction industries at a time when we desperately need affordable housing, and it will mean that we need to ship in vast volumes of wood from abroad. Quite simply, chopping down foreign forests to burn here in Scotland is a fast way to produce energy, and there is no way the Scottish Government should support that with taxpayers' money.

Why is importing bad? The sustainability of imported wood is incredibly difficult to establish and the existing accreditation schemes have had doubt cast on them time and again. Sustainability kite marks in no way guarantee that the imported wood has not come from monoculture forests that have been planted by multinationals on land that was once natural woodland and which was owned and managed by and for the local communities. As we have seen in Scotland's miles and miles of Sitka spruce plantations, monoculture does not support any level of biodiversity or natural soil regeneration.

The second issue is a human rights one. Stories abound of companies forcing people off their land to create an industrial forestry industry in developing countries. It is vital that Scottish Government support schemes do not promote the import of timber to burn, but that is what will happen if we do not halt some of the large biomass power stations that are in the pipeline, and if we do not vastly improve the efficiency of existing installations.

I support the Government's stated intention as detailed in the motion, but if we are to achieve it we must greatly improve efficiency. The supplementary consultation details the Government's intention to provide ROC support to large-scale biomass projects when they involve good-quality combined heat and power stations. The motion notes that

"the EU renewable energy directive calls for a minimum efficiency rating of 70% for industrial applications".

That should be the minimum definition of good quality, but under the current proposals we could see subsidies being given to power stations that achieve efficiency levels that are as low as 35 per cent.

In its report on the achievability of the Scottish Government's renewable energy targets, the Economy, Energy and Tourism Committee was also concerned about the issue and wished to see

“substantive improvements in the efficiency of proposed biomass plants before they could attract subsidy.”

The bottom line is that there is no place for large-scale plants in Scotland’s energy mix.

I, too, want to congratulate the people who campaigned hard against the proposed biomass plant in Leith and who continue to oppose the plans for plants in Dundee, Grangemouth and Rosyth. Following their inquiries, it is now up to the minister to decide on the futures of the Grangemouth and Rosyth proposals. I will not ask him to comment on those, because he cannot, but I ask him to listen to the strong sustainability arguments, to the Economy, Energy and Tourism Committee’s concerns and to the concerns of the local people who are campaigning.

There is a role for small-scale wood burning for renewable heat, but burning whole trees for electricity is totally inefficient and makes no sense at all in a country that has a world-leading renewables industry that needs investment. The wood panel industry has made it clear in its briefing that using wood to produce power is a good idea, but that the focus should be on creating wood products that lock away carbon for years to come. Jamie McGrigor highlighted that issue.

I want a greater focus to be placed on use of community-scale renewables to heat and power our cities and homes than is placed on oversized and unsustainable proposals. Greens have been calling for the Government to support local authorities to set up public renewable energy companies to push local renewable energy generation and thereby generate much-needed revenue to pay for public services. Through the renewables revolution, we have an opportunity to give our councils the opportunity to meet climate targets and generate much-needed funds. Let us take that opportunity.

17:34

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): I am very grateful to Rhoda Grant for allowing the Parliament to debate these issues. It has been a good and useful debate in which many interesting speeches have been made. There has been a great deal of consensus. From my gleaning of what the members who have spoken in the debate have said, they all recognise that biomass has a role to play. Determining what that role is is a matter of weighing up carefully a number of considerations.

As members know, the Scottish Government has taken a careful and distinct position on biomass over the years. There is no question but that energy from biomass can make a major contribution to our renewables targets. Biomass already contributes more than 90 per cent of the

renewable heat that is generated in Scotland. I think that Rhoda Grant alluded to some local examples in the Highlands and Islands, and I remember that, during my brief and unsuccessful attempt to learn Gaelic at a week-long pre-beginners course at Sabhal Mòr Ostaig, the building was certainly not cold.

To be serious, there have been a number of successful schemes all over Scotland, and as Stewart Stevenson said, local schemes are absolutely appropriate. To use the woody material—the waste material—locally for local purposes means that it is not travelling far. It is perhaps not really usable for any other purpose and might otherwise end up either lying on the forest floor or going to landfill unnecessarily, using up fuel, creating emissions and so on.

We all agree—in so far as I can ascertain from the members who have covered the topic in the debate—that biomass certainly has a positive role to play. Indeed, we want to promote and encourage its use, and to encourage community renewables to use biomass. I have visited communities as different as Comrie and Lossiemouth, where I have played a part in launching or opening biomass facilities, which are popular locally.

Biomass has a number of attributes, such as the ability to control output, which separate it from other renewables technologies and make it strategically valuable. However, there are other differences that have prompted us to revisit the role that biomass should play and the support that we should make available for it. Many members have referred to those differences, including the finite nature of the resource, its importance to other existing sectors and jobs, and the need to ensure that all the biomass that we use is appropriately sourced. All those issues have been raised in the debate.

I am well aware of the active representations made by bodies such as the Scottish Timber Trade Association and Confor, the UK forest products association. Charles Hendry, the former and much-missed energy minister—obviously, we work well with his successor too—attended two meetings that we arranged in Scotland with representatives from the timber sector. They put forward arguments that Jamie McGrigor rehearsed today alongside other members: demand is rising and the sector does not want to see the price that they pay for their material rise. Equally, the panel products industry is an important user of timber and an important customer for timber growers throughout Scotland. We have to weigh up those interests carefully.

The price of saw logs, of course, is much higher than the price of wood fuel, ensuring that saw logs do not enter the wood fuel stream—indeed they

should not—as Alison Johnstone and Stewart Stevenson pointed out. I do not think that members mentioned, unless I missed it, the possible capacity of timber growers to bring additional wood on to the market. There are some practical reasons why some timber cannot be brought on to the market, such the lack of access to more remote forestry, the lack of forest roads or just the economics. Trees that fall in the forest could be used as wood fuel. We want timber growers to maximise their potential, because in turn that enables them to replant. Therefore, the more successful timber growers are, the more we will see replanting. Those are all forestry matters of which Mr Stevenson in particular will have a deep understanding.

As members have said, we have consulted on those issues at great length, and we recently proposed that there should be some form of capacity ceiling, above which support will not be available under the renewables obligation, except for those stations that capture and supply heat. The responses that we have had to our consultations on those proposals and on the sustainability criteria highlight the complex and sensitive nature of the issues and of the options that are available to us.

We have to strike a careful balance. Our approach must be designed to ensure that the fuel that is used in the biomass stations that are built meets requisite and meaningful sustainability standards. At the same time, we need to ensure that those requirements do not create a disproportionate burden for those who operate the stations in question or those who are charged with monitoring them. The system that we put in place must also ensure that we can continue to make progress towards our targets in a sustainable fashion.

In a number of weeks, we intend to announce our decision on the question of support for biomass under the RO. We need to consider matters very carefully. At Rhoda Grant's request, we will study the contributions to this debate and consider them in our deliberations before decisions are made. The debate has therefore been timely, and I thank Rhoda Grant for that.

Obviously, I cannot comment on any individual application that is before me for a decision—I have not done so and I will not do so—but I make the general point that we can enforce and monitor sustainability standards through the conditions of consent that might be applied to individual power station consent determinations.

I want to respond briefly on the level of efficiency standards and the 70 and 35 per cent figures. I accept that concerns exist about the 35 per cent efficiency requirement, but it is important to remember that that is a minimum and that it is in

everyone's interests that energy stations operate as efficiently as possible. It is harder for biomass CHP stations to achieve such a high efficiency level due to issues such as the moisture of the wood fuel and the need to process it.

On imports, imported timber is subject to standards such as heat treatment standards, and I have been advised that it is most likely that pellets that are already heat treated are the form in which the material will be imported.

I appreciate that Mr Angus MacDonald has raised a number of concerns. He has expressed those concerns over a long period and has campaigned consistently on the issue. I acknowledge that, as a local member, he has made his position very clear. All the matters that he has raised must be carefully considered.

I appreciate members' contributions to the debate and thank them for those contributions. As Rhoda Grant said, energy security is an issue that we must also take into account when we consider these matters. In a statement last October, the Office of the Gas and Electricity Markets indicated that capacity falling to 4 per cent by 2015 means that there is a serious issue and that, at least south of the border, the lights may go out—I make it clear that we in our party do not want that to happen—which is why we will be able to export much more of our renewable energy. Although that may be an issue for another day, policy makers and Governments must take it into account. People expect us to keep the lights on. There has been a lack of investment in the UK over a number of decades thereanent, and I am afraid that such matters were not considered in the 70s, 80s, 90s or noughties. There are now serious challenges, all of which policy makers in government on either side of the border must take into account.

I am heartened that all members recognise that appropriately sited and properly used biomass, with the right element of electricity production and heat generation, can make a significant contribution to our energy policy.

I thank all members for taking part in the debate.

Meeting closed at 17:43.

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