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Official Report

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Tuesday 12 May 2015

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Scottish Parliament

Tuesday 12 May 2015

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

Time for Reflection

The Presiding Officer (Tricia Marwick): Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader today is Ms Maria McGill, chief executive of the Children's Hospice Association Scotland.

Ms Maria McGill (Children's Hospice Association Scotland): Presiding Officer, members of the Scottish Parliament, thank you for the opportunity to address you today.

For all of us, there will be times when the threat of dying intrudes on our lives and expectations. It might be when the doctor diagnoses you with cancer. It might be when your mother starts to show the signs of dementia. It might be when your child is born with a life-shortening condition.

This is children's hospice week, and the theme is, "Take a moment."

CHAS is Scotland's only children's hospice service, providing vital love, care and support for babies, children and young people with life-shortening conditions across Scotland. Our vision is that every baby, child and young person will have access to palliative care when and where they need it.

CHAS puts the child who needs care and support at the heart of everything that we do. We provide opportunities for fun, play and enjoyment alongside palliative and end-of-life care, understanding their importance even against a background of serious illness and the likelihood of early death. We support a child's and their family's choice of life-enriching opportunities and shared experiences, helping the child and his or her siblings to live life to the full, creating treasured memories.

We work with families and other health and social care professionals to develop anticipatory care plans that capture the family's wishes, hopes and dreams at an early stage and on a regular basis.

We do all of that in a way that is rights based and ensures that the care that we offer is safe, effective and person centred and promotes wellbeing, in line with getting it right for every child and the articles contained in the United Nations Convention on the Rights of the Child. Our aim is to help families stay connected to their natural and

local support networks and to help them maintain and develop positive coping strategies.

However, coping with the death of a child is possibly the hardest thing that a parent will ever have to do. CHAS helps families find to a way through the grief and stays beside them every step of the way while they make their difficult journey.

A mum said to me recently:

"Just the three of us sitting on the couch, with no noises or wires stuck all over her little body, just one tube in her nose. Julianne felt like ours for the very first time. It was like being home."

Please take a moment to think of these families.

Topical Question Time

14:03

Crofting Commission Convener's Resignation

1. Tavish Scott (Shetland Islands) (LD): To ask the Scottish Government whether it will make a statement on the resignation of the convener of the Crofting Commission. (S4T-01012)

The Minister for Environment, Climate Change and Land Reform (Aileen McLeod): I thank Tavish Scott for lodging this topical question. Susan Walker stepped down as commissioner and convener of the Crofting Commission on 8 May after three years in post. In that time, she led the commission through a period of transformational change. I take this moment to put on record my sincere thanks and appreciation to Susan Walker for all her hard work and for making such a positive contribution to crofting during her time as commissioner and convener.

From when I first met Susan Walker, which was shortly after I was appointed crofting minister, I have been impressed by her vision and passion for crofting and Scotland's crofting communities, as well as by her expertise and her many achievements since taking office, which include a comprehensive review of Crofting Commission policies and procedures, tireless work to raise the profile of the Crofting Commission and her positive contribution to Scottish Government policy making on crofting.

I wrote to the Rural Affairs, Climate Change and Environment Committee following Mrs Walker's decision to step down, and I will meet the commission on 22 May to discuss options and next steps for filling the vacancies of convener and commissioner that now exist.

Tavish Scott: Does the minister accept that a couple of things have to happen as a result of the commission convener resigning, which has simply never happened before? First, the Government should accept a nomination for commission convener that is based on the commissioners choosing one of their own; and, secondly, the commission should drop a one-size-fits-all approach to crofting regulation and instead implement an approach based on sensible plans for the different crofting counties, allowing decrofting so that crofters can borrow money for their businesses on the assets of their croft. Will the minister undertake to take both of those matters forward?

Aileen McLeod: Both of Susan Walker's roles were appointed but, in the spirit of being constructive and collaborative, I am open to discussing options with the commissioners in the

first instance—obviously, they are meeting next week—and with colleagues in the chamber and through further correspondence with the RACCE Committee. I am also happy to continue discussions with Tavish Scott, further to our previous discussions when we met on 23 April, together with his colleague Liam McArthur.

Tavish Scott: I am grateful to the minister for that approach and I welcome it as constructive and what is needed. Will she accept that Susan Walker had the impossible task of implementing the Crofting Reform (Scotland) Act 2010 which, in the eyes of crofters, simply has not worked and which has already led to the Government having to rush through emergency legislation? Will the minister therefore undertake to work with crofting assessors, the Scottish Crofting Federation and, indeed, crofters across the crofting counties to ensure that agriculture and land use are what we are trying to achieve rather than work for lawyers, bureaucrats and the Scottish Land Court?

Aileen McLeod: To be short, I would be very happy to do so.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): I note that the chief executive of the Scottish Crofting Federation, which is the representative body for crofters, has said that it is not about the democratic legitimacy of the ex-convener of the Crofting Commission and, indeed, that the federation had worked very well with her. He also said that the commissioners had a big enough job to face in dealing with the legacy without washing dirty linen in public. What steps will the minister take to ensure that the moves to modernise crofting under Susan Walker's excellent but frustrated leadership will be continued?

Aileen McLeod: As Rob Gibson acknowledges, Susan Walker made a very valued and lasting contribution to the Crofting Commission. She led the commission through a period of transformational change that has helped to build strong foundations on which the organisation will now move forward. I look forward to meeting the commission next week and to discussing the opportunities and the work ahead. As I said to the member in my letter to his committee, although the legislation enables ministers to select and appoint a new commissioner and convener, I want to take a considered and consultative approach to filling the vacancies. I believe that we have an opportunity to further improve the commission's operation, transparency and accountability, and I want to engage with the commission and, in due course, the RACCE Committee in that process. I am happy to keep the Parliament fully informed as well.

Rhoda Grant (Highlands and Islands) (Lab): I, too, thank Susan Walker, certainly for being very

constructive in her dealings with me. I agree with Tavish Scott that the commissioners should be allowed to appoint their own chair. Certainly, concerns have been raised with me that the minister has not met the commissioners since her appointment. I am glad that, in her previous answer, she said that she is going to put that right and meet them next week. However, should she not have done that sooner in order to listen to their concerns and, indeed, deal with the problems that arose before we reached this situation?

Aileen McLeod: In reply, I can say that I met Susan Walker on 28 January this year to discuss the Crofting Commission. Later the same day, I also had a meeting with the Government's crofting stakeholder forum. I also met the Scottish Crofting Federation on 11 March, as well as having a meeting with the cross-party group on crofting. Officials contacted the commission at my request on 15 January to arrange a meeting for May, and that initiated a suggestion to change the date of the commission's board meeting away from 13 May to a date that we could make. The meeting with the commissioners is next Friday, and I am very much looking forward to meeting them then.

Jamie McGrigor (Highlands and Islands) (Con): As convener of the cross-party group on crofting, I too wish to thank Susan Walker for her service and hard work, and for her regular attendance at the cross-party group. Does the minister agree that the most democratic way forward—and one that has crofters' support—is for the elected commissioners to determine Susan Walker's replacement? Does the minister agree that a replacement for Susan Walker should be decided on as soon as possible so that the Crofting Commission avoids any period of uncertainty and instead can focus on its key role of regulating—and not only regulating, but supporting—our crofters?

Aileen McLeod: I agree with that, and I reiterate to Jamie McGrigor that, as I have said in both the letter to the RACCE Committee and members in the chamber, I will meet the commissioners next Friday. I am very open to discussing options with them in the first instance, but also with colleagues throughout the chamber and in further correspondence with the RACCE Committee. I am keen and happy to keep the Parliament fully informed of those discussions.

Human Rights Act 1998 (Abolition)

2. Mark McDonald (Aberdeen Donside) (SNP): To ask the Scottish Government what the implications for Scotland would be of the abolition of the Human Rights Act by the United Kingdom Government. (S4T-01013)

The Cabinet Secretary for Social Justice, Communities and Pensioners' Rights (Alex

Neil): The Scottish Government's position is that implementation of the Conservative Government's proposals would require legislative consent and that this Parliament should make it clear that such consent will not be given. On 11 November last year, this Parliament passed a motion in support of the Human Rights Act 1998 by a majority of 100 to 10.

There is currently insufficient detail in what is proposed to predict with any certainty the impact on Scotland. However, given the almost unanimous opposition in this Parliament and among Scottish members of Parliament at Westminster, it would remain open to exclude Scotland from legislation to repeal the 1998 act or for the Scottish Government to pass legislation to give effect to a range of rights in policy areas that are within devolved competence.

If the UK Government followed through on its threats to withdraw from the European convention on human rights, people in Scotland would no longer be able to take cases to the European Court of Human Rights. The ECHR is the world's most successful human rights treaty and it has been hugely influential around the world. It is incumbent on this Parliament to send a clear message that the proposals are unacceptable and will not receive our support.

Mark McDonald: I am grateful to the cabinet secretary for his comprehensive answer. Given that, in 2013, Strasbourg ruled against the UK in a measly 0.48 per cent of cases, does he agree that we are seeing a case that is built on sand and which is actually extremely dangerous posturing by the Conservative Government?

Alex Neil: The Scottish Government believes that the European Court of Human Rights fulfils an essential function as part of the ECHR system. It is essential that citizens have the right to petition the Strasbourg court when they feel that their rights have been breached. The statistics demonstrate that rulings against the UK are comparatively rare, but that is not reflected in some of the rhetoric that we hear.

Mark McDonald: The cabinet secretary highlighted that he considers that the Scottish Parliament would need to be asked to give consent through legislative consent motions and that he would be minded to recommend that we refuse such consent. Has he received any indication from the UK Government that it would seek the Scottish Parliament's consent via legislative consent motions?

Alex Neil: We have not received any information about the UK Government's intentions. The Queen's speech will take place in the next two weeks or so, and I hope that in or around that we

will get more details of what the Conservative Government proposes.

Claire Baker (Mid Scotland and Fife) (Lab): There is no case for abolition and I firmly believe that the Human Rights Act 1998 should stay. It is appalling that one of the Conservative Government's first acts is to attempt to abolish the 1998 act and leave ECHR. As with many of its policies, ideology and rhetoric are being put above the practicalities and impact of delivering policies. How does the cabinet secretary plan to keep the Parliament informed of any discussions that he has with the UK Government?

Alex Neil: I am happy to give an undertaking on that. As I said in my first answer, in November last year, the Parliament voted on this very issue and, with the exception of the Conservatives, we were united in our opposition to scrapping the legislation and withdrawing from the European convention on human rights. I am happy to keep Parliament informed, as and when I have information to give to Parliament.

Patrick Harvie (Glasgow) (Green): I understand—perhaps the cabinet secretary can explain whether the Scottish Government agrees—that if the Tories, who I see have not bothered to turn up to defend their position, scrap the Human Rights Act 1998 without withdrawal from ECHR, and if the other signatories to the convention accept that position, the Tories might not need a legislative consent motion. Consent would be needed for withdrawal from the convention but not necessarily for scrapping the act. That would give rise to fragmentation not just within the different parts of the United Kingdom but even within Scotland. Police Scotland, for example, would be subject to different rights regimes when dealing with devolved criminal justice matters and reserved drugs and terrorism matters. Is that an accurate description of the situation, particularly in relation to legislative consent?

Alex Neil: Rather than speculate, it will be better if I wait to hear exactly what the proposal is. I can then give Patrick Harvie a more precise reply. The proposal goes beyond the powers and legislation to set up this Parliament. For example, the Good Friday agreement in Northern Ireland has ECHR requirements built into it. The matter therefore affects not just Scotland and the Scottish Parliament but, in particular, Northern Ireland and the Stormont Parliament. It also affects people in England—and the National Assembly for Wales and people in Wales. I am happy to give a specific answer to the question once I see the detail of what is proposed.

Neil Findlay (Lothian) (Lab): I congratulate the new MPs entering the UK Parliament this week, but I hope that the understandable euphoria of

Scotland's new batch of Scottish National Party MPs is curtailed somewhat, because there is no doubt that the plan to get rid of the 1998 act is just one in a long list of policies that will see the new Tory Government attack the young, the old, the weak, the vulnerable and of course migrants and trade unions. Does the cabinet secretary agree that we should fear for the rights of ordinary working people across the UK and that this is just the first grenade being lobbed in what will be a bloody assault?

Alex Neil: I agree in general terms with Neil Findlay. It is clear, from a range of policy pronouncements that have been made on a range of issues—on welfare cuts, for example—that legislation and measures proposed by the new Conservative Government give a lot of cause for concern, particularly for the more vulnerable members of our community.

On human rights, we are all vulnerable, irrespective of our social or economic status. Human rights are a fundamental that affects every individual in our society. We in this Parliament, and people across the United Kingdom—including, I believe, some Tory MPs—would be very concerned about any dilution of human rights legislation in this country.

Margaret Mitchell (Central Scotland) (Con): Does the cabinet secretary consider that there is an opportunity to sort out some of the not inconsiderable problems that have arisen from the incorporation of ECHR directly into Scots law via the Scotland Act 1998? The Cadder ruling demonstrates that the consequences had not been fully appreciated.

Alex Neil: We cannot decide to tear up a whole system of law because there are rulings that we like and others that we dislike. Week to week, I am sure that many of us see judgments made in the courts that we might not agree with, but that is not an excuse to get rid of the court system.

It is fundamental that our human rights are protected under ECHR. As Mark McDonald pointed out, ECHR has played a vital role in upholding the rights of individuals and organisations. It would be a sad day if we were to tear up our membership of ECHR or in any way dilute the protection provided by the Scotland Act 1998 and other pieces of legislation that cross-reference ECHR. It is a fundamental framework for the protection of human rights in our country.

Human Trafficking and Exploitation (Scotland) Bill: Stage 1

The Presiding Officer (Tricia Marwick): The next item of business is a debate on motion S4M-13107, in the name of Michael Matheson, on the Human Trafficking and Exploitation (Scotland) Bill.

14:20

The Cabinet Secretary for Justice (Michael Matheson): I am delighted to open this stage 1 debate on the Human Trafficking and Exploitation (Scotland) Bill. I record my thanks to the Justice Committee for its consideration of the bill and to the many stakeholders who contributed to that process.

The trafficking of human beings and their use as commodities for profit is a vile crime that affects the most vulnerable in our society. It is a serious, complex and multifaceted crime that affects both children and adults.

Although human trafficking is an international, cross-border crime, we know, sadly, that it also occurs within Scotland. Preventing and tackling the trafficking of human beings in Scotland is a joint responsibility of the Scottish Government, the United Kingdom Government, the police, prosecutors, local authorities, support agencies and others. Working together with those agencies on a national level and an international level, we intend to make Scotland a hostile place for traffickers and those who exploit others, and to better identify and support potential and confirmed victims.

We should be proud that the Scottish Parliament has played an important role in raising awareness and understanding of the crime. The Parliament's Equal Opportunities Committee published a report on migration and trafficking in December 2010. Subsequently, there have been a number of other reports and publications in the area, including inquiries by the Equality and Human Rights Commission and Scotland's Commissioner for Children and Young People, and Jenny Marra's consultation on her proposed member's bill. We are grateful to all those who have contributed to our understanding of the issues that are caused by the heinous crime and its impact on affected adults and children.

Working with other relevant agencies, the Scottish Government has taken forward a range of actions in response to those and other reports. We have actively participated in the United Kingdom interdepartmental ministerial group on human trafficking, and we responded to the UK Government's review of the national referral

mechanism for identifying and supporting victims of human trafficking. In 2011, we had our first successful prosecution in Scotland of a specific human trafficking offence, and Police Scotland established a dedicated national human trafficking unit in April 2013. In addition, the Crown Office and Procurator Fiscal Service now has dedicated expert fiscals to prosecute human trafficking offences.

This is not just about punishing the perpetrators. The victims of those vile crimes need time both to recover and to be able to reflect on their experience, and they have the right to expect immediate support and assistance that is based on their individual needs. To facilitate that, the Scottish Government has continued to provide funding to the trafficking awareness-raising alliance—TARA—project and Migrant Help to support adult victims and improve training for front-line professionals. We have also provided funding to the Scottish guardianship service, which works to support unaccompanied asylum-seeking children, including child victims of trafficking.

The bill looks to build on the good work that has already been undertaken. It aims to make Scotland a hostile place for traffickers and to better identify and support potential and confirmed victims.

Specifically, the bill includes provisions to clarify and strengthen the law against traffickers and those who exploit individuals. It introduces new measures to disrupt and prevent trafficking and to disrupt those who exploit others. It ensures the rights of trafficked victims to access support and assistance. It places a duty on the Lord Advocate to publish guidance about the prosecution of credible trafficked and exploited victims who have committed offences. It ensures a strategic, cross-agency approach to tackling trafficking and exploitation.

Human trafficking is, by its nature, a hidden crime. It is driven by a complex range of issues that can operate across borders. The bill is an important step towards ensuring a strategic Scottish response to the issue. However, legislation is only one part of the solution. Therefore, the bill will commit Scottish ministers to publish and, importantly, regularly update a trafficking and exploitation strategy.

The strategy will set out a vision and key objectives for a multi-agency approach to tackling human trafficking in Scotland. Actions will include raising awareness and understanding of trafficking, the provision of training for front-line workers who may come into contact with trafficking victims, and improved data collection and intelligence sharing.

Given some of the Justice Committee's stage 1 evidence session discussions, it is important to be clear that we recognise that crimes of human trafficking and exploitation affect children and adults. The Scottish Government is committed to protecting all children and young people from abuse or neglect. The trafficking of children, whether in Scotland or internationally, is undoubtedly one of the most heinous acts of child abuse conceivable.

Almost all the bill's provisions have equal application to both adult and child trafficking victims. However, trafficked children are best supported in our established system for children in need. Getting it right for every child, our national approach to improving the wellbeing of children and young people, firmly places the primary responsibility for child victims of trafficking in the child protection framework. We believe that that is the most effective way to support vulnerable and traumatised young people in their recovery.

The necessary support for children—unlike that for adults—is set out in GIRFEC and enshrined in legislation. That legislative framework means that the necessary support provisions are already set out in statute.

Jenny Marra (North East Scotland) (Lab): I take the cabinet secretary back to a point that we debated in committee. He said that three pieces of legislation provide that support. Does he agree that a child who is trafficked into Scotland and finds themselves exploited deserves a legal guardian who knows the legal process and can get them through their trauma, rather than having a named person who may be a headteacher or a health worker who is not trained in the legal process, which seems to be his preferred approach?

Michael Matheson: There are a number of different routes. For example, local authorities have a statutory obligation to appoint a children's social worker who can help an individual to navigate the process.

On guardians providing support, that matter can be better addressed through the strategy, so that we can ensure that we have the right measures in place for individuals as and when appropriate.

Our intention is therefore to address any additional support for child trafficking victims primarily through the trafficking and exploitation strategy. The strategy will be instrumental in providing a framework to enable us to work more effectively with partners in the crucial task of appropriately identifying trafficked children.

I turn to some of the bill's specific proposals. One of the most fundamental proposals is the creation of a single offence of human trafficking

that deals with all relevant forms of exploitation. The proposal underpins much of the bill.

The requirement to criminalise human trafficking is set out in a number of international instruments, including United Nation protocols and, building on those, the Council of Europe Convention on Action against Trafficking in Human Beings and the European Union trafficking directive.

The single offence in the bill draws on those international definitions, criminalising the arrangement or facilitation of a victim's travel with a view to their exploitation. The bill defines the elements of travel and exploitation broadly to deal with the full range of circumstances in which trafficking or intended trafficking can arise. We believe that that is better than rigidly adopting the wording in the EU directive or the UN protocols because, for example, our proposal does not require prosecutors to prove the means by which an individual was compelled to travel. That will facilitate the prosecution of those who are engaged in human trafficking.

I am aware that concerns were raised in stage 1 evidence sessions about the use of "travel" in the definition. However, it is clear from our proposal that we will criminalise the movement of victims both internationally and within the UK. We are also clear that our proposal will ensure that those who arrange the movement and those who facilitate it—for example, by harbouring or receiving people—will be brought to justice. Our approach to the issue is reflected in legislation that was passed recently both in Northern Ireland and in England and Wales, ensuring a consistent approach across the UK to this cross-border crime.

Also discussed during the evidence sessions was the question of a statutory defence for a person who commits an offence as a consequence of their victim status. The bill currently places a statutory duty on the Lord Advocate to prepare and publish guidelines for prosecutors that provide for consideration of non-prosecution of credible or confirmed victims of trafficking or the slavery, servitude and forced or compulsory labour offence. When he gave evidence, and in a subsequent letter, the Lord Advocate expressed concern that a statutory defence that included specific exemptions could restrict the protection that is afforded to victims. We remain of the opinion that the inclusion of a statutory defence in the bill that placed a burden on an accused person to demonstrate to the satisfaction of the court that they were a victim of human trafficking would not be an effective tool to protect victims and that guidelines or instructions from the Lord Advocate would better meet the aims of the bill and the needs of victims.

Jenny Marra: Will the cabinet secretary give way?

Michael Matheson: I want to make progress. Ms Marra will get a chance to deal with some of these issues later in the debate.

Another major issue relates to something that is not in the bill. A number of witnesses and respondents to the Justice Committee's call for evidence have suggested that the bill should criminalise the purchase of sex. I am conscious that that is an emotive and complex area. Therefore, I have committed to meeting stakeholders on both sides of the argument; indeed, I have already met some stakeholders since my appearance at the Justice Committee. However, I am also mindful of the views of the committee, which does not believe that the issue should be addressed in the bill.

The Scottish Government acknowledges and is grateful for the work of the Justice Committee and all those stakeholders who gave evidence or responded to the committee's call for evidence. We are also grateful for all the work that has been undertaken by many different groups over the past few years, including the Equal Opportunities Committee, Scotland's Commissioner for Children and Young People and others who have raised awareness and understanding of the heinous crime of trafficking. I am pleased that the Justice Committee supports the general principles of the bill and broadly agrees with many of the bill's proposals. We are also grateful to the committee for its consideration of the issues, and we are actively considering its helpful comments and recommendations.

We believe that the bill will allow us to better identify and support potential and confirmed victims and ensure that Scotland is a hostile place for traffickers and those who exploit others.

I move,

That the Parliament agrees to the general principles of the Human Trafficking and Exploitation (Scotland) Bill.

The Presiding Officer: I point out to members that we have a little bit of time in hand and that, if they were to take interventions, we would be able to compensate them for that.

14:34

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I welcome the opportunity to speak on behalf of the Justice Committee, which is the lead committee in consideration of the bill. I, too, would like to thank all those who took the time to provide evidence to the committee: there is, of course, a full list of them in annex A of our report. I add that even if someone has not been invited to give oral evidence, all the evidence that is provided, which comes from as wide a range of people as possible, is invaluable to the committee.

As well as taking formal evidence, the committee was keen to speak informally to victims of trafficking and exploitation, and with the front-line workers who support them. We did that in advance of our tackling stage 1, and we did it by splitting into three groups. The trafficking awareness-raising alliance—TARA—Barnardo's Scotland and the Scottish guardianship service were happy to host our visits, so I would like especially to thank them for giving us an invaluable insight into the issues that victims face, how arrangements are currently working and how they might be improved.

In addition, I want to thank members of the Justice Committee, which is—I am currying favour—a pleasure to chair. That gets me no brownie points from them; I know them too well. I also thank the members of our clerking team, who try to keep me on the straight and narrow, and I thank the Scottish Parliament information centre.

Recent and unfolding tragedies in the Mediterranean remind us of the desperate measures that people are willing to take to escape fear, war, poverty and violence in their home countries. The committee is keen to keep a close eye on how that issue develops and, of course, on the response that is made to it, although we are aware that no amount of legislation will deter the desperate.

Human trafficking and exploitation are serious and complex crimes that know no borders. They extend well beyond the sex trade and involve provision of cheap labour for a number of purposes, all of which are exploitative and all of which involve people being used as a commodity. As we know, Scotland is not immune to such crimes, but it is clear that there are real difficulties in identifying the perpetrators, who need to be brought to justice, and the vulnerable victims, who are in need of real support and protection. It was clear from our visits that victims do not always see themselves as having been trafficked. Indeed, someone may start off as an illegal immigrant but in reality be the victim of traffickers. It is an extremely complex issue.

The recent tragic events aside, in recent years we have become more aware of incidents of human trafficking and exploitation happening closer to home. Agencies in Scotland reported that there were 55 potential victims of human trafficking in 2013, and 111 in 2014—those statistics come from the national referral mechanism. Trafficking is, of course, a hidden crime. As I have said, victims often believe that they are in a relationship with their trafficker and that they are not being trafficked, or they fear retaliation against themselves or their families.

In Scotland, a lot of excellent work has been done in the past few years by the Parliament's

Equal Opportunities Committee, the Equality and Human Rights Commission, the Commissioner for Children and Young People in Scotland, Jenny Marra—through her proposal for a member's bill—and Parliament's cross-party group on human trafficking, which is chaired by Christina McKelvie. In addition, similar legislation has been passed in England and Wales and in Northern Ireland.

The Justice Committee unanimously supports the general principles of the bill, and we believe that it will help to identify and to bring to justice the perpetrators of trafficking and exploitation, and to provide better protection and support for victims. However, we have made a number of recommendations that are aimed at improving certain aspects of the bill, some of which have already been addressed by the cabinet secretary. I have complained before about the way in which we do things—it seems to me that we put the cart before the horse. We should report, then the cabinet secretary should be able to comment on the report. But there we go.

In the time that is available to me, I will pick out a few highlights. I will also touch on a number of related policy issues that are not dealt with in the bill, but which were raised during evidence.

There was broad support among witnesses for the provisions in section 1 of the bill, which creates a single offence of human trafficking for the purposes of all forms of exploitation of adults and children, but we heard from a number of witnesses that the definition of the offence should be more closely aligned with international definitions and that there is a danger that the emphasis that the definition puts on the term "travel" might result in its not capturing adults and children who are moved from city to city, or from one area to another in this country. We have asked the Government to look at that again. I heard what the cabinet secretary said, but sometimes trafficking does not involve any movement at all, so I do not know whether the committee will be wholly satisfied with the Government's position: that is up to the committee.

One area that generated a lot of debate among witnesses and committee members was whether the duty that the bill will place on the Lord Advocate to publish guidelines on prosecution of credible trafficking victims who have committed offences will provide adequate protection. Some witnesses argued that a statutory defence for a person who commits an offence as a consequence of being a victim should be included in the bill, in addition to the provision that is made for prosecutorial guidelines. We understand that similar measures on a statutory defence were included in similar legislation in England and Wales, and Northern Ireland.

There were compelling arguments on both sides of the case. The dean of the Faculty of Advocates argued that a statutory defence would provide an additional safeguard for victims, whereas the Lord Advocate was concerned that—as the cabinet secretary said—it would place the onus on a person to demonstrate that they are a victim, with evidence being led before a jury, and he argued that guidelines would give more flexibility for prosecutions to be abandoned or for the court to set aside a conviction based on evidence or intelligence, at any time. I think that it is fair to say that we were to some extent in a quandary as to which was the more convincing case. This is the trouble when we have arguments being put forward by the dean of the faculty on one hand and the Lord Advocate on the other—the last one who spoke has us believing them.

In evidence, the cabinet secretary confirmed that prosecutorial guidelines and statutory defence are not mutually exclusive. We asked him to consider the position further. He has made his position clear today: we will see where that takes us. We welcome the Lord Advocate's intention to publish instructions rather than guidelines, in order to give more weight to the document.

The committee also welcomes measures that will allow legislation on proceeds of crime to be used against traffickers. It is only right that people who have profited from trafficking and exploiting vulnerable people have the property and income that they have gained from that criminal activity confiscated. We agree with the Government that that will help to create a hostile environment for traffickers to operate in.

A general theme that arose throughout the evidence taking was that the bill should place greater emphasis on the needs of child victims of trafficking and exploitation. We felt, therefore, that there would be significant merit in including in the bill a section relating to child victims. From what the cabinet secretary said, I hear that that has not met with a positive response from the Government—it is to be in the strategy. However, we may press on. In particular, we were persuaded that more clarity is required to ensure that child victims receive appropriate and consistent support across all areas of Scotland, and we asked the Scottish Government to consider whether that should be clearer in the bill or whether it should be included in the forthcoming trafficking and exploitation strategy—the Government has moved to the latter.

We support the inclusion of a presumption of age section in the bill, which would mean that if a person's age is uncertain but there is reason to believe that they are a child, they should be treated as a child in order that they can receive immediate access to support and protection.

Some people might pretend to be older than they are because they think that that is more secure for them, and many others will not have any paperwork or might not even know their date of birth. Therefore we are pleased that the Scottish Government is considering that issue further.

Finally, we received a number of submissions calling for the bill to be amended to include provisions that would criminalise the purchase of sex. There are, of course, others who would strongly disagree with that policy. We did not discuss the substance of the rights and wrongs of any legislation on that, but members took the view that the bill is not the vehicle that would do the issue justice. We were struck by evidence from Amnesty International and others that argued that we would do a disservice to victims of trafficking, sexual exploitation and prostitution if the issues were conflated in one piece of legislation. In addition, the committee took the view that criminalisation of the purchase of sex would have implications beyond the matters that are dealt with in the bill, so we took the view that the bill is not the correct vehicle. I stress that we did not consider whether criminalisation of the purchase of sex was the right thing to do, but whether it could be done in the bill. We took the view that it could not. It was a question of process, rather than substance.

We agree with Scottish ministers that there is a need for training and education to raise awareness so that we can identify and provide support for all victims of trafficking—especially children. The bill has done that and it will continue to do it—that has also happened through the offices of various members—including Jenny Marra and Christina McKelvie—who have taken the matter forward. We have raised the profile of the whole agenda, particularly with regard to exploitation in workplaces, which is sometimes seen as a lesser part of the problem.

I have touched on some of the issues that were raised in evidence during the committee's stage 1 consideration of the bill, and I am sure that other committee members will pick up areas that I have not had time to cover. For instance, I hope that somebody speaks about the national referral mechanism, which we could see is flawed. I look forward to hearing other contributions to the debate.

14:44

Elaine Murray (Dumfriesshire) (Lab): The act to abolish slavery in the United Kingdom was passed in 1883. However, each year around 50 to 100 people are imported into Scotland to live in a modern form of slavery: people who are constrained and exploited for financial gain by those who traffic them. Human trafficking is not

human smuggling, although sometimes the word “trafficking” is used to describe smuggling. As members have said, recently we have seen appalling scenes of thousands of people drowning while being smuggled into southern Europe. Some of those people may have been trafficked, but most will not have been. They were, of course, also victims of unscrupulous criminals who make money out of fear and poverty and who make money out of those who flee war and persecution. The difference between smuggling and trafficking is that the latter involves further exploitation in the country or countries to which the victim is brought, whereas the smuggler effects only the illegal entry into another country.

Scottish Labour strongly supports the bill. I congratulate Scottish ministers on introducing it and I congratulate my colleague Jenny Marra on acting on the need to legislate on the issue and proposing her own member's bill in 2013, on which much of this bill is based. Jenny Marra will speak in the open debate, and I will be very interested to learn whether she believes that the bill fully addresses the matters that she sought to address, or whether she believes that amendments should be considered. From her intervention on legal guardianship, it seems that she believes that further amendment is required.

Jayne Baxter and I, as Labour members of the Justice Committee, would like to thank the committee clerks, the Scottish Parliament information centre and the witnesses who provided evidence to the committee. Prior to the committee taking formal evidence, Jayne Baxter, Roddy Campbell, Graham Ross from SPICe and I visited the Scottish guardianship service, run by the Scottish Refugee Council and Aberlour Child Care Trust, where we heard from guardians and two young people who had received their services and are now embarking on study and careers in Scotland. That visit was extremely useful and very thought provoking.

Similar legislation has already been passed in the UK and in Northern Ireland. Those acts received royal assent only earlier this year, so we are not able to assess the success or otherwise of their implementation. The bill differs in some aspects from them. Some of the differences were noted in the committee's stage 1 report and will be discussed this afternoon and, I anticipate, during the consideration of amendments at stage 2.

The victims of human trafficking are vulnerable for many reasons that may prevent them from being able to escape their situation. They may trust their trafficker—someone who is fleeing oppression and persecution in their own land will have no trust in the agencies of that state. As Christine Grahame said, a trafficked person may not realise that they have been trafficked. As

agents of a foreign state the police, immigration officials and medical professionals may be perceived as much more threatening to the victim than the trafficker whom they know. The trafficker can play on fears about what could happen if the authorities get hold of the victim, and the victim may also be concerned about what might happen to their loved ones back home if he or she takes actions that result in the trafficker being prosecuted.

There is every likelihood that the victim's experience of fleeing from oppression in their own country, leaving behind friends and family and being unable to contact them or to know whether and how they are surviving, and their subsequent exploitation will cause severe trauma and mental ill health. That is why support for the victims of trafficking is so important, and we welcome its inclusion in the bill. However, we do not believe that the provisions as drafted are strong enough. In particular, we agree with witnesses that the provision for "counselling" should be replaced by a provision for "psychological assessment and treatment".

Witnesses to the committee supported the creation of a single offence of human trafficking. The definition of the offence in the bill differs from that agreed by the Council of Europe Convention on Action against Trafficking in Human Beings. Some witnesses, including those from the Scottish Trades Union Congress and the Faculty of Advocates, were concerned that that might mean that Scotland would not fully meet its obligations under the convention. The cabinet secretary explained to the committee that use of the European definition could result in some activities that are currently crimes in Scots law being decriminalised—although he has given a different explanation today. We would like to avoid both possibilities, and hope that at stage 2 an amendment can be drafted that will align the wording in the bill more closely with our international obligations and will not decriminalise actions that currently are rightly considered to be crimes.

We share the concerns of many witnesses about the definition of trafficking's dependence on travel. Clearly the provision and arranging of travel are key factors in trafficking, but it could be that not everyone involved in a trafficking operation contributes to arranging and/or providing transportation. Someone might, for example, provide only the accommodation in which the victim is imprisoned after they have been transported into Scotland and before they are taken elsewhere. I listened to what the cabinet secretary said about that situation, but I would not like to think that somebody who is not involved in the facilitation of travel but is part of a trafficking

operation may escape prosecution under the bill because of the reference to travel.

The exploitation of victims of trafficking takes a number of forms including sexual exploitation and prostitution; forced labour and domestic servitude; the removal of organs; and forced criminality such as cultivating cannabis. Police Scotland was concerned that forced criminality might not be covered in section 3 of the bill and pointed out, along with the Lord Advocate, that the issue of the so-called consent of the victim to being held in servitude or performing forced labour should not provide a defence for the perpetrator. I understand that the cabinet secretary intends to lodge amendments covering those issues, which we would welcome.

The committee had interesting discussions about whether there should be—as Christine Grahame has argued—a statutory defence for victims of trafficking. I was pretty much convinced that there should be until I heard the Lord Advocate's argument that there should not. He made a persuasive argument regarding the use of prosecutorial instructions rather than the guidelines that are currently offered in the bill.

I am not yet convinced that statutory defence and prosecutorial instructions are mutually exclusive. As I said earlier, a trafficked person may not realise that they are a victim of trafficking. I am not qualified in law, so I do not know the answer to the potential situation that I am about to describe. What would happen if it became apparent in the course of a trial that the accused was a victim of trafficking?

If the COPFS did not know that the accused was a trafficked person prior to bringing the prosecution, it could not comply with the Lord Advocate's instructions, and a statutory defence could then be applied to the accused. I do not know whether the revelation that the accused was trafficked would always mean that the trial would be called off—obviously the case would not have been brought in the first instance if the full facts had been known. We need to explore that situation a little further at stage 2.

Christine Grahame: On a point of fact, the Lord Advocate took the view that, if it transpired in the course of a trial that the person was a victim of trafficking rather than the accused, the case against that person would be abandoned. I seem to recall that he said that.

Elaine Murray: I thank the member for that—I simply highlight the need for clarity on that issue of concern.

As we have heard, many witnesses were concerned about the lack of specific reference in the bill to child victims. The counter-argument is that child victims are already covered by existing

legislation to protect children in Scotland and specific provision is therefore not necessary. That may be so, but agencies that work with trafficked children need to be clear about how the bill will work alongside other legislation. A section on support for child victims or some cross-referencing with existing legislation would be very helpful.

We are sympathetic to arguments that there should be a presumption of age, to which Christine Grahame referred, as it is unlikely that there will be actual proof of age for children who have been trafficked. We also believe that the terms “young” and “youth” should be removed from the bill and that a child should be defined clearly—as in other legislation—as a person below the age of 18.

There were many representations on a matter that is not covered in the bill but which was covered in the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015: the criminalisation of the purchase of sex and the decriminalisation of its sale. Many Nordic countries already have such legislation and have witnessed a reduction in both prostitution and trafficking for sexual exploitation.

As members will know, my colleague Rhoda Grant had hoped to introduce a member’s bill on the issue, but unfortunately she did not receive sufficient cross-party support to have it discussed. It would be possible to amend the bill before us at stage 2 to replicate the provisions of the Northern Ireland bill, and it is quite possible that amendments may be lodged at stage 2. I am aware that the cabinet secretary, as he said, and the bill team intend to meet—and have met—both proponents and opponents of the proposals to discuss the issues. I look forward to hearing about his conclusions regarding those discussions when they have taken place.

Speaking personally on the matter rather than on behalf of Scottish Labour, I agree with the principle that men who exploit women, rather than the women who are exploited, should be the offenders, but I have serious reservations about introducing major changes to legislation at stage 2 when such amendments have not been subject to the degree of scrutiny that our legislative system provides at stage 1. I have in the past criticised the Government for introducing major changes at stage 2—including, for example, the proposal that provisions in the Prisoners (Control of Release) (Scotland) Bill would be introduced as amendments to the Criminal Justice (Scotland) Bill at stage 2. Nevertheless I would welcome the opportunity for further discussion provided by possible amendments, although my preference would be for a stand-alone bill as Rhoda Grant originally proposed.

The subject of human trafficking is very important, and the discussions that have taken

place in committee and the evidence that was taken have been extremely revealing and interesting. I look forward to further discussion at stage 2, and I am pleased to reiterate Scottish Labour’s support for the general principles of the bill.

14:54

Margaret Mitchell (Central Scotland) (Con): I welcome the stage 1 debate on the Human Trafficking and Exploitation (Scotland) Bill. As the Justice Committee convener stated, before taking formal evidence the committee members split into groups and embarked on three fact-finding visits in February—to the trafficking awareness-raising alliance, to Barnardo’s Scotland’s safer choices project and to the Scottish guardianship service. Gil Paterson, Christian Barnard and I visited the trafficking awareness-raising alliance—commonly known as TARA—in Glasgow, where we benefited tremendously from discussion with members of that organisation who have in-depth knowledge and experience of working on the front line with victims.

I was also extremely fortunate to have a one-to-one meeting with a survivor of trafficking. Her story and the obstacles that she had overcome proved invaluable in helping me to understand the complexities surrounding this deeply troubling issue and I was both immensely impressed and humbled by her courage, her determination, and her optimism about the future despite her horrific experiences.

Fifty-five victims of trafficking were reported in Scotland in 2013 and the UK Parliament estimates that there may currently be as many as 4,000 victims of trafficking across the UK. I pay tribute to Jenny Marra for her not inconsiderable efforts to raise awareness about the issue and to help ensure that it is a legislative priority.

My thanks also go to the Justice Committee clerks, to my fellow committee members and to the convener for all their hard work. However, it is all those who gave evidence, including representatives of organisations operating on the front line in tackling trafficking in Scotland, who have made the suggestions that will improve the bill and its provisions.

Those improvements include looking at the specific language that is used within the bill. It was suggested that, in some circumstances, the language lacks clarity. For example, the point was made that in section 1 of the bill, which covers the definition of trafficking, the use of the term “travel” may imply only international movement, thus failing to take into account the fact that trafficking victims within the UK are moved from city to city.

Although that view has been disputed by the Lord Advocate, it seems sensible that any perceived ambiguity should be addressed to ensure clarity. I hope therefore that the Scottish Government will support the committee's request to

"give further consideration to the wording in this section"

at stage 2. That will help to ensure that Scotland's definition complies with internationally accepted definitions and that there will be no loopholes in the legislation that could adversely affect prosecutions.

In addition, many witnesses—including Barnardo's Scotland and the Law Society of Scotland—expressed concern about how the bill deals with children. I will comment on that issue in more detail in my closing remarks.

For now, I will concentrate on what I firmly believe to be a crucial issue, namely the provision of a statutory defence for victims. Section 7 of the bill places a duty on the Lord Advocate to publish guidance about the prosecution of credible trafficking victims who have committed offences. That covers, for example, those involved in cannabis farming.

The Lord Advocate has stated in written and oral evidence that he is willing to consider upgrading the duty to publish guidance to a duty to publish instructions on the non-prosecution of victims. However, a number of witnesses—including the Faculty of Advocates and Amnesty International—have called for a statutory defence to be included in the bill, as is the case in the UK's Modern Slavery Act 2015 and in the relevant legislation in Northern Ireland.

In the Lord Advocate's letter to the committee, which seeks to clarify his position on the matter, it is far from clear why there cannot be instructions for prosecutors as well as a statutory defence for victims. Quite simply, it makes sense to provide a safety net for victims when the Crown Office and Procurator Fiscal Service has been unable to find evidence of a credible claim to being a victim of trafficking.

Christian Allard (North East Scotland) (SNP): Does the member accept that, although the two are not mutually exclusive and that we could have instructions and a defence, it is a matter of procedure? Technically, we could have both, but does the member not agree that it is not in the spirit of the bill to put a burden on victims to declare that there is a connection? That overrides the idea that we could have both.

Margaret Mitchell: I am happy to address those points. As Christian Barnard says—

Christine Grahame: It is Christian Allard.

Michael Matheson: Allard.

Margaret Mitchell: My apologies—it is Allard.

The Presiding Officer: He has a heart.

Margaret Mitchell: In fact, the point was confirmed by Mr O'Neill from the Scottish Refugee Council, who stated:

"We do not see statutory guidelines, which are about prevention, and a statutory defence, which provides an additional safeguard for individuals when the system—for whatever reason—breaks down, as being mutually exclusive; we see them as being part of a holistic approach."—[*Official Report, Justice Committee*, 3 March 2015; c 8.]

I welcome the cabinet secretary's confirmation that the two are not mutually exclusive. I hope that, despite his comments on the subject in his opening speech, the Scottish Government will reconsider and will bring forward a statutory defence provision at stage 2.

To answer Christian Allard's point specifically, although such a provision would place an onus on the victim to prove their status as a victim of trafficking, the crucial point is that a statutory defence would provide an additional safeguard for victims. I believe that victims deserve and should be afforded a choice as to whether they want to take advantage of the defence.

I look forward to hearing other members' views on that issue and on the other provisions in the bill.

The Presiding Officer: We now move to the open debate. I remind members that, if they wish to take an intervention, we will return the time to them.

15:02

Roderick Campbell (North East Fife) (SNP): I refer to my registered interests as a member of the Faculty of Advocates and Amnesty International.

I am pleased that trafficking has remained high on the political agenda in the current parliamentary session. We have been on a journey, from the day in 2007 at the Hub in Edinburgh when Baroness Helena Kennedy unveiled the Equality and Human Rights Commission's report to the creation of a cross-party group on the issue, and from Jenny Marra's proposed member's bill to where we are now. Above all else, the bill that we are discussing today proves that the Parliament takes human trafficking seriously.

The committee's evidence sessions were informative and highlighted broad support for the proposals, although they raised a number of issues. In relation to definitions, there has been concern that section 1 is not identical to the EU directive and, in particular, there is concern about

the use of the word “travel”, which is not incorporated in the directive. Concerns were expressed by many, including James Mulgrew of the Law Society of Scotland, that travel can be within countries as well as to countries and that the bill should make that explicit. I accept that there is an argument, and the committee agreed that we ought to ask for the issue to be considered further. However, I am more inclined to agree with the Lord Advocate’s view that the bill does not imply that travel is somehow geographically limited.

I am happy that, at stage 2, we will ensure that a person’s consent cannot be used as a defence to the offence of slavery, servitude and forced labour. However, on the question of a presumption of age provision, to comply with article 13.2 of the EU directive, there is an argument that such a provision ought to be expressly provided for in the bill. I think that the Lord Advocate accepted the argument, as he said that it would be “helpful” to have that in the bill. I am, of course, aware of the arguments to the contrary, which concern unintended consequences; I simply think that we should reflect further on the issue before stage 2.

On the equally tricky issue of whether a statutory defence should be available to victims of trafficking who are subsequently charged with an offence, or whether we should be content to rely on the Lord Advocate’s instructions to prosecutors—a draft of which was produced following the committee’s evidence sessions—I acknowledge that progress is being made. We are now talking about instructions rather than guidelines. In my view, those are more likely to prove to be of more practical benefit to victims of trafficking than a statutory defence itself. Although I accept that a statutory defence is available in other jurisdictions, such as England and Wales, we heard in evidence that it would be excluded in relation to a huge number of offences—Assistant Chief Constable Graham suggested that 130 offences would be exempted. The victim would have to do the hard work to plead the defence and would also have to satisfy procedural requirements, such as giving fair notice of the defence to the Crown. Further, of course, a statutory defence would not impact on situations in which an individual’s trafficked status is discovered only after trial.

As others have mentioned, we heard evidence from James Wolffe of the Faculty of Advocates that the two approaches are not mutually exclusive, and the cabinet secretary accepted that. The question is whether, if we accept that the Lord Advocate’s guidelines or instructions are likely to be more effective, they should preclude the incorporation in the bill of a statutory defence. What we have to consider at stage 2 is whether incorporation raises more problems than it solves.

On whether, following Northern Ireland’s lead, a sex-buyers law should be included in the bill, we have to accept that there is a link between the sex trade and human trafficking, although human trafficking is far wider than that—a recent court case in Perth, for example, revolved around trafficking for the purposes of a sham marriage. Moreover, the issue of the purchase of sex extends well beyond trafficking. In addition, we have the practical problem that, in contrast to the provisions in the Northern Irish bill, which were included from the start, no such provisions currently exist in the bill. If we were to embark on their incorporation at stage 2, we would have also to embark on the taking of evidence in a substantial way. Indeed, in her evidence to the committee, Siobhan Reardon of Amnesty International echoed the concerns of the Council of Europe’s experts that, if the criminalisation of the purchase of sexual services is to be seen as a measure for reducing the demand for sex and, therefore, for reducing sexual exploitation and human trafficking, there is a need to ensure that such a measure does not drive the victims of trafficking underground and make them more vulnerable to exploitation. It is quite clear that, if we go down that route at stage 2, it will be a major piece of work, with a consequent impact on the bill’s timetable.

However, I am glad that the cabinet secretary has met or will meet representatives of both sides of the argument, including representatives of the churches. I met UK Feminista recently and I agree strongly with it that the issue is not going to go away, and that it is right and proper that Scotland’s Parliament should encourage a debate to take place.

The bill contains an important commitment to a human trafficking strategy. We heard from many witnesses on the strategy, and two themes were stressed again and again: prevention and awareness. Events such as the conference that was held last autumn in Edinburgh, with representatives of prosecuting authorities from throughout the British isles, assist in raising awareness, as does the work of the many organisations that operate in the field, such as the Scottish Refugee Council and TARA. However, raising awareness of trafficking needs to be tackled by public bodies throughout Scotland—not just by the police but, in particular, by employers and those who regulate employment. Prevention is, of course, more problematic. It is also clear that any strategy needs to be kept under review, and I am glad that the bill provides for the Government to be under a legal duty to report to Parliament and to continue to report to it regularly.

The support and assistance that is to be available to the victims of trafficking under section 31 will need to be set out further.

Finally, although it is not part of the bill, I refer to the Oppenheim review of the national referral mechanism. It will be interesting to see how pilots develop elsewhere in the UK and useful for the Scottish Government to keep under consideration the possibility of participation in a pilot here.

This is an important bill and I wish it well as it proceeds through Parliament.

The Deputy Presiding Officer (John Scott): I draw members' attention to the fact that there is a little bit of time available this afternoon to allow them to develop their ideas and take interventions.

15:09

Jenny Marra (North East Scotland) (Lab): I am relieved to be standing here today to speak in Parliament's first debate on the Human Trafficking and Exploitation (Scotland) Bill. If I wind back to November 2011, when Baroness Helena Kennedy produced her report on her inquiry into human trafficking in Scotland, I recall that the heinous crime of trafficking did not attract the recognition or concern of Government and public services that it does today. After reading Baroness Kennedy's report, I became concerned about human trafficking, and specifically about knowledge among those in our public services of the crime, the victims and the situation that they face, because we know that it is our doctors, nurses, police and prosecutors who are likely to be the first to come into contact with victims and with the people responsible for trafficking.

In that vein, I wrote to Police Scotland, asking to attend a training session for police officers in detecting the victims and perpetrators of human trafficking. Six months on from that request, after several reassuring phone calls from the police telling me that those training sessions do happen, I was eventually invited to the Scottish Police College at Tulliallan. I travelled down on a rainy Friday morning and sat in a room with 12 police officers, all of whom were men. They were being given what was clearly an introductory lecture on human trafficking. When they started to ask questions, I realised that they were our border police—the officers who stand at passport control at Prestwick airport and at all our ports and airports across the country. Those police officers will often be the first to come into contact with potential trafficking victims. Fourteen years after human trafficking became a criminal offence in this country, our border police were receiving an introductory seminar on the crime of human trafficking.

Trafficking has been under the radar for a long time, and that is why it is such a profitable business for criminal gangs and why human rights abuses continue under our noses in this city and in

communities right across the country this very day. It is also why the provision in the bill on a Government strategy on human trafficking, reviewed every three years, is particularly important. I will pick up on that where Rod Campbell left off.

For a few years now, I have been calling in the chamber for human trafficking awareness training to be delivered across our public services. Nurses, doctors, social workers, paramedics and all our police and prosecutors should have at least a cursory knowledge of the crime of trafficking and the key indicators in identifying victims. The strategy in the bill and its review every three years will allow the Scottish Government to set out a plan for that, and will allow the Parliament and the country to scrutinise that action plan and to keep coming back to look at how we are raising awareness and tackling trafficking in our communities.

Trafficking is an international and complex crime with massive financial incentives, and I have believed all along that the only way to properly tackle trafficking in Scotland is for all our communities to be on their guard against it, so that traffickers know that Scotland is a place where their heinous human rights abuses are not welcome.

It was a Marxist philosopher who said:

"Indifference is the deadweight of history."

We must therefore consistently return to the issue and ask ourselves what more we can do. That is why reviewing the strategy every three years is critical. It is not nearly enough for the cabinet secretary—

Sandra White (Glasgow Kelvin) (SNP): Will the member give way?

Jenny Marra: I would like to make a little bit of progress; I will take an intervention later.

It is not nearly enough for Parliament to pass the bill this year and wash our hands of it. Human rights must be constantly guarded, protected and examined—we can see that the threat to human rights is constant, as was raised at topical questions today.

On other issues, such as the statutory defence, I share the concerns of some members of the committee, because I am not absolutely clear, from what either the Lord Advocate or the cabinet secretary said, about why we cannot have both instructions and a statutory defence. It is my understanding that the Modern Slavery Act 2015 in England and Wales has both protections—instructions and a statutory defence—and that the instructions that are currently used by the Crown Office in Scotland are the same as those that are used by the Crown Prosecution Service in

England and Wales. There are therefore two mechanisms to ensure that things work properly there. I would welcome the opportunity to return to that issue at stage 2.

Moreover, I have concerns about the lack of provision for children in the bill. Presumption of age is included in the European directive and in England and Wales in the Modern Slavery Act 2015. I also have great concerns about the lack of provision for guardianship for child victims of human trafficking, which I raised with the cabinet secretary in his opening speech.

At the Justice Committee, the cabinet secretary explained to me that he was satisfied that the three existing children's acts cover the issue, and that there is no need for legal guardianship for a child who has been trafficked. I dispute that strongly. Should we not be giving a child who has been trafficked into this country and abused the legal protection of support from a trained person who has the legal knowledge to safeguard their rights throughout the legal and administrative process and to help their recovery? Is the provision of trained professionals not the least that we can do for children who find themselves in this country under the most inhumane and degrading conditions?

Christian Allard: Will the member take an intervention?

Jenny Marra: No.

The cabinet secretary told me that the named person—a health worker or a headteacher—would be able to perform that task adequately. That is his preferred arrangement. I suggest to him that there are already exhausting demands on a named person, to which the additional burden of being the legal guardian of a trafficked child—a role for which they have not been trained—should not be added. The Convention of Scottish Local Authorities has also raised concerns about funding.

If I have time, I will take an intervention now.

Christian Allard *rose*—

Sandra White *rose*—

The Deputy Presiding Officer: Christian Allard is on his feet first.

Christian Allard: I thank Jenny Marra for taking an intervention. I want to make it clear that the direction that she is taking is the same as that taken by the Westminster Government: the legislation concerns only child trafficking from abroad. I ask her to reflect on the fact that the bill before us is about all children, whether they are British or come from another country. The aim is to ensure that legislation is applied to all children in

Scotland, wherever they come from and whatever their identity.

The Deputy Presiding Officer: I will give you another 50 seconds, Ms Marra.

Jenny Marra: I agree with the member that all children, whether they are trafficked within the UK or Scotland or have come from abroad, deserve legal protection. However, some social workers, headteachers and health workers do not have the legal training that is necessary to see a vulnerable child through the complex legal and administrative process that they have to go through once they have been identified as a victim of trafficking. I ask the cabinet secretary to reflect on that.

I thank the Scottish Government for adopting Labour's bill on trafficking in Scotland. I believe that it is the first human rights bill to be considered by this Parliament. I hope that we can get the provisions on children right as the bill passes through stage 2.

15:17

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): I pay tribute to the members of the cross-party group on human trafficking, which is chaired by me and Jenny Marra, for the work that they have done over many years in bringing the subject to our attention, in many cases supporting the victims of trafficking.

I thank the Justice Committee very much for a comprehensive report. I managed to get through most of the report last night, and its summary of recommendations was an extremely helpful way of navigating a very detailed report. Many of the committee's recommendations echo many of my thoughts—that is a good thing in my respect.

In 1998 I read a report written by UNICEF, which suggested that farmers in Côte d'Ivoire used enslaved children, many of whom had come from surrounding countries and had been trafficked into that country for the cocoa trade. In 2000, the BBC produced a documentary that described very well child slavery on commercial cocoa farms in Côte d'Ivoire. In 2001, the US State Department estimated that there were 15,000 child slaves in cocoa, cotton and coffee farms in Côte d'Ivoire, and the Chocolate Manufacturers Association—as it was then—acknowledged that child slavery is used in the cocoa harvest.

Those three pieces of media—the two reports and the BBC documentary—triggered in me an interest and a commitment to get involved and do as much as I could. At that time, a campaign was being run against a very well-known chocolate manufacturer, which was using cocoa beans from some of the very farms that had trafficked children. That was a successful campaign in that the

company changed how it gathers its wares for chocolate, and it now has fair trade chocolate on offer.

At that point, I got involved in Stop the Traffik, which is a global organisation that is keen on raising awareness of the issue and making a difference. It has certainly made a difference over the years in many areas, including support for legislation in California and other parts of the world. When I was elected in 2007, I decided to use my interest in human trafficking to embark on a series of tours and talks, held mainly in church halls and community group halls across Lanarkshire and other areas, to support Stop the Traffik. One Saturday night, so many people came along to the event in Cadzow parish church, which sits right in the centre of Hamilton, that they actually stopped the traffic and the police had to be involved. That gave me a real insight into how people understood the issue of trafficking and wanted to be involved in helping to deal with it.

As we know, human trafficking is, sadly, big business and it has strong links with serious and organised crime. We in Scotland are quite rightly focusing on getting the right legislation in place to deal with the issue. I want to ensure that we have the structures to both enhance the status of, and support, victims and, as Jenny Marra said, to give statutory responsibility to the relevant agencies to develop and implement an effective Scottish anti-trafficking strategy.

Human trafficking is often linked to forced labour, domestic servitude and prostitution. It is an appalling crime, so the bill is a welcome step in seeking to tackle that profiteering from human misery. It is crucial that we are focusing on victim support as well as criminal law. It is absolutely right that every support is offered to people who have been through such horrific experiences. I have met and spoken to many of them, and their stories are horrendous.

As we know from the recommendations in the report, the committee is aware that there are shortcomings in the bill that need to be addressed. I welcome the cabinet secretary's views on that and his intention to look at how child protection laws can help children who are trafficked, but I understand some of the shortcomings in the current laws.

I am particularly concerned about children being caught up in this evil abuse. The Lord Advocate has appointed a specialist prosecutor to deal with cases involving these abhorrent crimes, but we need to go further to protect children, who are over 20 per cent of those who have been trafficked in Scotland. Children who are trafficked are often sexually exploited or forced into slavery, and the physical and psychological scars can last a lifetime. I pay tribute to a number of social workers

who I knew in Glasgow. Just a few months before I was elected in 2007, I was working with those social workers, who were working with unaccompanied asylum-seeking children, many of whom had been trafficked. I pay tribute to the work that the social workers did at that time. One of the members of our cross-party group—Jim Laird—was one of those social workers, and he is now very heavily involved in this area.

The bill needs to define what we mean by a "child". That might sound obvious, but there is a real danger that children, especially those aged between 16 and 18, will slip through the net. We therefore need clarity on that provision. We must also ensure that the provisions in the children's hearings system on the welfare of the child dovetail with the bill's provisions. Children are more vulnerable to the crimes in question, as are those with mental or physical disability or illness. However, we need to consider vulnerability in a broader context so as to ensure that circumstantial issues such as ethnicity, cultural background and socioeconomic or migrant status get the needed clarification.

The Home Office is not very helpful in that regard, so any intergovernmental relationships that the cabinet secretary has with the Home Office would be helpful to ensure that we get the clarity that we need on the issue. It is essential that we tighten up the loopholes to provide a clear and seamless protection system right across the age range. Trafficked children need to have access to the specialised counselling and support that they so desperately need, but provision of that is patchy across local authorities. I support some of the calls from Barnardo's Scotland, which has rightly called for the introduction of independent child trafficking guardians on a statutory footing. That is a key issue for me.

This complex and multifaceted problem respects no borders and it represents a profound violation of an individual's human rights. I agree with all the comments that have been made today.

The Deputy Presiding Officer: Will you draw to a close, please?

Christina McKelvie: At this juncture, I have grave concerns about any bid to undermine or repeal the Human Rights Act 1998.

There are many other aspects of the issue that I am interested in—as you know, Presiding Officer—one of which is the non-prosecution of victims. At a recent meeting of the cross-party group on human trafficking, the Lord Advocate said that he would put instructions or guidelines beyond any ambiguity, and I look forward to that.

The Scottish Parliament has shown the way on many issues over the years. We must work with

each other, our colleagues at Westminster and our colleagues in the EU—

The Deputy Presiding Officer: You must close, please.

Christina McKelvie: —to make traffickers pay and end slavery once and for all.

15:25

Alison McInnes (North East Scotland) (LD): I start by praising Jenny Marra for resolutely pursuing the issue and for her member's bill, which was the catalyst for the Human Trafficking and Exploitation (Scotland) Bill. It was reported that almost 45,000 people responded to Ms Marra's consultation, but despite that considerable engagement, many people in Scotland would still be shocked to learn about the extent of the abhorrent crime of trafficking.

It is understandably difficult to accurately estimate the number of victims, but the figures indicate that at least hundreds of people have been trafficked within and into Scotland—people who are controlled through coercion, low pay, emotional dependence, dislocation or violence. Those are appalling, traumatic circumstances in which to live. People might similarly be shocked to learn that victims are not simply confined to sweatshop factories, private sex flats or domestic servitude. They are in more public settings too—hidden in plain sight on farms and in hotels and restaurants. The work of police officers, border officials and social workers is made that bit harder if others cannot alert them to potential victims, and clandestine trafficking operations will ruthlessly exploit any trace of ignorance.

I hope that the bill will prove to be a catalyst for change. It presents an opportunity to increase awareness among the public and professionals, strengthen detection and prosecution procedures, foster co-ordination and intelligence sharing between agencies and establish an end-to-end service for vulnerable victims. I welcome the bill, but I will go on to highlight some of the issues that are worthy of further consideration at stage 2.

I remain open-minded about the introduction of a statutory defence in the bill. The Lord Advocate has outlined compelling reasons why a statutory defence would pose practical difficulties. I urge all those who are in favour of its inclusion, including the Faculty of Advocates and Victim Support Scotland, to respond to the evidence that we heard recently from the Lord Advocate.

There is some evidence that existing non-statutory guidance is not preventing victims from being criminalised. Aberlour Child Care Trust draws members' attention to the recent case of two Vietnamese children who were arrested and

held in HMP Polmont following a raid on a cannabis farm. Even after it was ruled that they were likely trafficking victims, they were detained for six weeks. Recommendations in paragraphs 56 and 57 of the Justice Committee's stage 1 report on the bill call on the cabinet secretary to consider that issue further, and I urge him to do so.

As other members have said, one of the most significant omissions from the bill relates to trafficked children. As the committee observes at length in its report, there is scope to further strengthen the protections for such children. Scotland's Commissioner for Children and Young People, Tam Baillie, went so far as to say:

"the complete absence of children from this Bill fails to take into account the vulnerabilities of children and young people as in need of specialist care and support when identified as trafficked, exploited or separated."

The bill lists the extensive assistance that adults may require following identification, from accommodation to counselling and translation services to medical treatment. Let me pause here and mention that, in paragraph 69 of the committee's report, we recommend that the cabinet secretary amends the bill at stage 2 to remove the word "counselling" and replace it with the term "psychological assessment and treatment", which much more fairly reflects the complexity of the support that is needed.

Returning to the point that I was making, I note that the bill does not specify what support child victims are entitled to. The relevant section does not even define a child as any person under the age of 18. I listened to the cabinet secretary's explanation that those basic facts are set out elsewhere in legislation. However, witnesses have argued strongly that there is merit in reiterating those facts for the purposes of clarity and to encourage universal compliance. I support that call.

The committee heard that the absence of a presumption of age clause could compromise the ability of every child to access services. Identifying victims' ages might be hindered by a lack of documentation or because someone has reason to lie about their age. If there is doubt or dispute, it seems reasonable to err on the side of caution and assume that an individual is entitled to children's services.

I am sympathetic to calls by the Scottish children's commissioner and Barnardo's Scotland for the seriousness of offences involving children to be taken into account in sentencing through a statutory aggravation.

I remain open to persuasion about whether the bill should put guardians for separated children on a statutory footing. We are talking about a substantial number of the most vulnerable

children. Aberlour Child Care Trust and the Scottish Refugee Council tell us that, since 2010, their service has helped to guide 60 child victims of trafficking through the asylum process.

There has been some suggestion that the bill presents an opportunity to criminalise the purchase of sex. Irrespective of members' views, the committee rightly concluded that that would not be appropriate. Legislating in that area would require thorough consultation and dedicated evidence sessions. It would be incumbent upon members to look objectively at what works elsewhere and consider how our existing legislation is operating. Surely only a stand-alone bill could provide the space required for mature, informed discussion to occur. Anything less would do sex workers and the victims of trafficking an injustice. The Government has acknowledged again this afternoon that this is a very complex area. I encourage the cabinet secretary to rule out supporting any attempt to change the law through the bill.

Scotland should project itself, domestically and internationally, as a country that is neither receptive to nor profitable for such a callous industry—it should be a hostile destination. However, Scotland must also embrace and support victims of this most severe of crimes. That is not always an easy balance, but it is one that we must strive to achieve for the sake of those whose rights are violated to such a gross extent.

The bill is an important step towards adoption of the victim-centred approach to human trafficking that is advocated by Scotland's national action plan for human rights, victims organisations and countless experts.

Scottish Liberal Democrats will support the bill at decision time.

15:32

Sandra White (Glasgow Kelvin) (SNP): Victims of human trafficking can face horrendous suffering and there is absolutely no place for human trafficking in any society. I will touch on some aspects of the bill. As we know, it has six parts; I will refer to some of them.

First, the bill will create a new single offence of human trafficking and a strengthened offence in relation to slavery, servitude and forced labour, and it will provide for circumstances where an offence is aggravated. Secondly, the bill will place a duty on the Lord Advocate to publish guidelines on the prosecution of credible trafficking victims who have committed offences and place a duty on ministers to provide support to adult victims of trafficking. Thirdly, and importantly, it will provide for the confiscation of property and will amend proceeds of crime legislation to categorise all

trafficking and exploitation offences as lifestyle offences. Finally, it will place a duty on the Scottish ministers to produce and keep under review a human trafficking strategy.

I hope to return shortly to two of those issues—forced labour and the human trafficking strategy. First, I will touch on the extent of trafficking. The national referral mechanism reports that, in 2014, it received 111 referrals of potential victims of trafficking in Scotland. Of those, 62, or 56 per cent, were female, and 49, or 44 per cent, were male. Of all victims, 86, or 77 per cent, were adults and 25, or 23 per cent, were minors. Sexual exploitation is the most common reason for adult female trafficking, and labour exploitation the most common reason for adult male trafficking. It is important to look at those figures.

The bill is welcome. As the cabinet secretary said, it will make Scotland a hostile environment for human traffickers. It will also help to support victims and identify their needs.

The bill's focus is on victims' needs but, under the proposals, those who continue to peddle such human misery will face the toughest penalties. The bill will for the first time create a new single offence of trafficking for all forms of exploitation of adults and children and for those who seek to exploit others, with a maximum penalty of life imprisonment. The bill has many strengths, and the committee has pointed to some of them, as have other members. It is a step forward for us in these particularly difficult times.

I mentioned the number of referrals that the national referral mechanism received. That shows that sexual exploitation is the most common reason for female trafficking and that labour exploitation is the most common reason for male trafficking. As I said, those are important facts.

I take on board what the cabinet secretary, the committee and Elaine Murray said about criminalising the purchase of sex. I have been at meetings with Rhoda Grant. I have been through various consultations and spoken to various workers with her and to various groups, and I attended the meeting with the Northern Ireland minister. I had a good listen to what was said. I agree with Elaine Murray and others that the bill is not the correct piece of legislation for such a provision.

When we spoke about the matter, I think that Rhoda Grant said that a stand-alone piece of legislation would be the best approach. That would be the most appropriate way to go forward. I picked up on the figures because they show that there is greater sexual exploitation of women, but other parts of the bill touch on male and female forced labour. I do not think that the bill is the proper vehicle to deal with the purchase of sex,

and I would certainly support a stand-alone bill for the criminalisation of using prostitutes.

I return to part 1 of the bill, which deals with forced labour, and the part that deals with the trafficking strategy. I was going to raise that with Jenny Marra, but perhaps the cabinet secretary can answer some of the questions in summing up.

Alison McInnes mentioned people who live in absolute fear. Possibly all of us have had constituents who came to see us because they were concerned about people—perhaps neighbours or people in shops round about them. I know that I have, and unfortunately I have ongoing cases. Such people are lured to our country by the thought that they will get a good job. That could be any form of job not in the sex industry—it could be in a restaurant or hotel.

Sometimes, people go through what they think is a proper agency. When they land here, their passports are taken off them. They work for next to nothing and are forced to live in horrendous, overcrowded conditions. When they complain, they are threatened with violence and moved to another part of the country. That is horrific. Those people came here to earn money, perhaps to send back to their families—most times, the money is to be sent back to their families—but they are trapped in poverty and the horrific trafficking of forced labour. The bill covers that, and I hope that it will be strengthened in some way.

I hope that the trafficking strategy, which Jenny Marra mentioned, will strengthen the forced labour part of the bill. She mentioned social workers, doctors, teachers and named persons. I want to know whether the strategy will include local authorities and enforcement officers along with the police. Sometimes, local authorities go into premises and discover that people are working or living in horrific conditions. I would like a wee bit of clarification on that, as we are looking at the bill in the round.

It is important that we stop the horrific sex trade, but it is equally important to stop the horrific exploitation of people who come here to try to have a better life for themselves and their families but are forced into labour. They are forced to work for 12, 14 or even more hours a day for next to nothing. They have no passport and they can never get back home. I would like a wee bit of clarification on that.

15:39

Rhoda Grant (Highlands and Islands) (Lab): I very much welcome the Human Trafficking and Exploitation (Scotland) Bill. I, too, pay tribute to Jenny Marra's work to raise the issue when she proposed her member's bill. It is because of her hard work that we have a Government bill at stage

1. Her work has brought the issue to the fore and focused the Scottish Parliament's attention on the exploitation of people on our very doorstep, as has the work of the cross-party group on human trafficking, which she co-convenes with Christina McKelvie.

Most people think that human trafficking is something that happens to people from abroad. In reality, people are also taking advantage of the vulnerable, for their own profit, close to home. Human trafficking is not just about moving people across national borders but about moving them from house to house and town to town. We have all heard stories of vulnerable homeless men being exploited for cheap labour, which we recognise as human trafficking and exploitation. We must also consider that the sexual exploitation of women and girls is a form of human trafficking. Many women and girls from Scotland are being moved around as we speak.

All those people are held not only by force but by their own vulnerability. Our society must protect them. Therefore, I welcome the bill's efforts to increase legal protection and ensure support for victims. However, more must be done to prevent individuals from being exploited in the first place. I will concentrate on what the bill does not do.

We must remember that the majority of human trafficking victims are women and children. Therefore, we must look at the issue through the prism of gender inequality. The majority are being trafficked for the purpose of sexual exploitation, which we must put in place measures to prevent. We must also end the demand.

I truly believe that the market for prostitution leads to people being trafficked to Scotland for sexual exploitation purposes. "Equally Safe: Scotland's strategy for preventing and eradicating violence against women and girls" recognises sexual exploitation and prostitution as violence against women and girls, yet our laws penalise the victims of the violence rather than the perpetrators of it.

Northern Ireland has passed its own human trafficking legislation, which incorporates the sex buyer law and thereby recognises that demand fuels the industry. The sex buyer law decriminalises those who are prostituted—victims should never be criminalised—and criminalises those who purchase sex acts. It also invests in routes out for those who are in prostitution and who want to rebuild their lives. Now that Northern Ireland has passed the law, and the Irish republic is likely to follow suit, Scotland will be seen to be a much more welcoming market for those who traffic the vulnerable into prostitution.

We know that the illegal drugs trade and organised crime are closely linked to people

trafficking. Therefore, we are likely to attract to Scotland an increase in other forms of criminality. Tackling demand for the buying of sex should be a crucial part of the bill, as any delay in passing such provisions will make us a target for traffickers. We must act now.

Countries that have legislated for the sex buyer law have seen a fall in prostitution and human trafficking. They have also seen a positive impact on tackling inequalities. Women are commanding higher salaries, because their society sees them as equal and values rather than exploits them.

The Zero Tolerance Charitable Trust said in its written evidence to the Justice Committee that

“The legality of paying for sex has also been found to influence rates of sex trafficking into the country in question.”

In its written evidence, the White Ribbon Campaign said:

“Sex trafficking is underpinned by the principles of supply and demand. A minority of men in Scotland currently feel entitled to pay women for sex.”

The STUC said:

“demand for the trade has been increasing: between 1990 and 2000 the number of men paying for sex acts in the UK almost doubled. Tackling this demand is crucial to reducing and preventing prostitution and trafficking.”

Those are just some of the voices that back the proposed measure. There are many more, and I could spend my whole speech quoting them.

People are being trafficked into our country for the purpose of sexual exploitation. We need only look at Rotherham, where young girls were being trafficked throughout the city so that they could be sexually exploited. Their exploitation did not stop when they turned 18.

People do not need to be foreign to be trafficked and exploited, and the only way to stop the practice is to end the demand. A number of members have spoken against criminalising the use of prostitutes in the bill because of the lack of evidence and consultation. In the previous session, the Justice Committee took evidence on the issue in scrutinising the Criminal Justice and Licensing (Scotland) Bill, when Trish Godman tried to amend that bill. She followed that up with a consultation in her own right before she retired. In this session, I have consulted on the same subject.

The subject has been consulted on to death. We have seen the evidence and know the facts, and it is important to introduce the measure now. I attempted to produce a stand-alone bill on the subject—my preferred option would have been for that bill to have become law—but I did not receive the Parliament’s backing. I wonder how many

more sessions need to pass before we introduce the proposed law.

There are those who say that prostitution is a choice. I admit that there was a time when I, like everybody else, believed that. However, I ask members to think about that a bit more deeply. Would it be okay for them to sell sex? What would make that fine—poverty or escaping domestic abuse? What else? Those are the drivers. If members still believe that prostitution is a choice, I ask them to imagine that they, their sister, their mother, their daughter or their wife was involved. Would that still be okay?

I do not believe that anyone who sees the reality of prostitution thinks that it is okay for someone to exploit another human being for their own power and pleasure. We need to implement the sex buyer law. By doing that, we would build a more equal and safe society, and we would create a society that was unwelcoming to traffickers.

15:46

Christian Allard (North East Scotland) (SNP):

I thank Rhoda Grant for her speech even if I, like other members, do not agree with her that the criminalisation of prostitution should be dealt with in this bill. I agree with a lot of what she said, particularly about a person’s not having to be a foreigner to be trafficked. That is one of the most important things that I was trying to say in my interventions. It is important to understand how wide the bill goes and to keep it as wide as possible, and to reflect on the spirit of the bill.

I thank the other committee members and the convener for all the good work that we did together in drafting the report. I also thank all the organisations and individuals who gave evidence to the committee. We went to see some of them, and I would single out the contribution of the trafficking awareness-raising alliance—TARA—in Glasgow, which does fantastic work. As Margaret Mitchell did, I had the privilege of meeting one of the victims; it was very challenging for me to hear of her experience, although I think it was more challenging for her to share that experience with me. It made me realise that the bill will—and must—make a very big difference.

The committee supports the general principles of the bill, and so do I. One of the most important aspects of the bill is that it treats people like people, whether they are children or adults, wherever they come from and whatever language they speak—it is true that many of them speak different languages. We came to the conclusion that, whether or not they understand what has happened to them, consent should not be involved because the principle of consent has nothing to do with the bill. A lot of victims think that they have

given consent, but Police Scotland gave us a very good insight into why consent should not be seen as an excuse. We have a duty to look after the victims because they are us—they can be British, members of our families or our neighbours. They are just like us, and that is who they are.

The committee talked about all forms of exploitation of adults and children who are vulnerable, because they are the people whom traffickers attack. Vulnerable people are not always children; there are vulnerable adults as well, and we met some of them. Traffickers target adults who have learning difficulties, for example.

A duty to provide for the needs of vulnerable children already exists in the Children (Scotland) Act 1995, as the cabinet secretary said. Again, it is important not to have a them-and-us separation. We want the bill to have the wide remit of saying that we care for everyone in the same way as we care for ourselves. I think that we should keep the bill as it is and not make extra provision for children who have been exploited and trafficked. If we change the spirit of the bill, that will mean that such children will be treated not in the same way as others, but as people who have come from other countries. Many members have talked about that. I want the bill to apply to everyone, regardless of where they come from, and I do not want us to forget the vulnerable adults whom we heard about.

The point that Margaret Mitchell made is extremely important: a statutory defence for victims of trafficking who have committed an offence could be problematic for most cases. We can have instructions from the Lord Advocate and a statutory defence, but when the victim comes before a court, it is more than likely that they will be asked to use the fact that they were trafficked as a defence or a justification. A statutory defence could become a burden. I like the Lord Advocate's commitment to introducing instructions rather than guidance. That is good enough for me. We can put a lot more about that in the strategy that will be produced, and which will be updated.

Another big problem that has not been discussed in the debate is the national referral mechanism. I again refer to the spirit of the bill; the national referral mechanism has a different spirit. I am quite pessimistic about it. For example, I cannot see a UK-wide anti-slavery commissioner changing the attitude of Westminster Governments to victims of trafficking and exploitation. The national referral mechanism is strongly targeted at people who come from abroad; it is extremely narrow in that regard. When we think about it, we realise that it is not really on the side of asylum seekers.

Therefore, having our legislation based on the national referral mechanism causes me some

problems. I know that there is to be a review and that there will be pilots down south. Unfortunately, with the change of Westminster Government, I am still not sure that the NRM will be as good as it could be. I agree with Amnesty International's statement that responsibility for the NRM should be devolved. I will not quote what it said in its briefing—members can read that for themselves. Perhaps the cabinet secretary will reflect on that. If, after the pilots, we find that the NRM is—as we have heard many people say—not fit for purpose, it might be a good idea to think about having responsibility for the NRM devolved. Perhaps we could also think about having our own anti-slavery commissioner.

The Deputy Presiding Officer: Could you draw to a close, please?

Christian Allard: I would like to give the new Westminster Government and the new MPs the benefit of the doubt, but we ought to think about what to do about the national referral mechanism.

Going after traffickers and exploiters who use people as slaves must be a priority for the UK and Scottish Governments. I welcome the recent U-turn in the Westminster policy on rescuing victims of trafficking who end up stranded in the Mediterranean Sea, but I would welcome a similar U-turn on the spirit of the Westminster policy regarding the NRM.

The Deputy Presiding Officer: I would be grateful if you would close.

Christian Allard: The bill will put in place measures to identify better the needs of victims and to support them better. In putting victims at the centre of the bill, we are acknowledging that here in Scotland victims of trafficking and exploitation will be heard, helped and cared for.

15:54

Jayne Baxter (Mid Scotland and Fife) (Lab): Since I was elected to the Scottish Parliament at the end of 2012, I have been involved in several pieces of legislation, each of which has been very important for the interest groups and stakeholders that have been concerned with whatever was the issue.

When I learned that I was to be involved in the bill, I had a deep sense of being given the chance to make a difference for some of the most vulnerable people we could ever imagine. Although the challenges that we face are global and complex, we must not allow that to stop us from doing the best job that we can do as a country and a Parliament to make life fairer and better for victims, and much harder for the perpetrators.

Human trafficking is a blight not just on Scottish society, but on every part of the world. I am pleased that there is an established and growing international consensus that Governments must take strong action to deal with the root causes of human trafficking and its effects.

I acknowledge the work of my colleague Jenny Marra MSP on this topic; her member's bill was clearly a landmark in the development of a Scottish approach to tackling human trafficking. It sought to create a Scottish anti-human-trafficking strategy, to provide for the special treatment of human trafficking-related crime within the criminal justice system and to provide support for the survivors of human trafficking. Those are positive provisions, which we should be grateful to her for promoting.

Human trafficking is a crime against some of the most vulnerable people on the planet. Migrant Help, an organisation that has a stellar reputation for assisting the most vulnerable people, said of human trafficking:

"In general [victims] are often selected as 'prey' because they are already in a marginalised or vulnerable part of their original community. Examples are those in poverty ... those from a particular ethnic or cultural subset ... those who are already badly treated ... those with substance misuse issues ... those with learning disabilities or mental health issues ... those with low self-esteem ... [and] those females from countries where women are traditionally, culturally and institutionally abused."

Those groups have no voice in society. They often cannot speak English and are marginalised and ignored. It is surely incumbent upon us to ensure that they are protected.

The most recent statistics show that in 2014 more than 100 people in Scotland were identified as being potential victims of human trafficking. It is unquestionable that the actual number is significantly higher than that. The majority of people who are trafficked are victims of sexual exploitation; often they are trafficked in order to be forced into sex work. Their ordeals can continue for years and their suffering is unimaginable.

The crime, therefore, is a very serious one. For that reason, the increase in the severity of the punishment for human trafficking is welcome. Although a 14-year sentence was a strong punishment, the introduction of a maximum life sentence for those who are convicted of human trafficking in Scotland sends out a clear signal that Scotland regards human trafficking as being among the most serious crimes that can be committed. Too often, the punishments that are doled out by the courts to people who are convicted of human trafficking have been nowhere near the 14-year maximum. Some have been best measured in months and that is clearly not good enough.

A key provision in the bill is the strengthening of the current slavery, servitude and forced labour offence by allowing the court to consider, in assessing whether a person has been a victim of an offence, the victim's characteristics including their age, physical or mental illness, disability and family relationships. That contextual information, along with the use of explicit aggravations, will allow courts to take account of the clear aggravations of trafficking the most vulnerable human beings.

The bill will place statutory duties on prosecutors and the police regarding human trafficking. The specialist work that is to be committed to by Police Scotland and the Crown Office and Procurator Fiscal Service is important. That work must be monitored and improved upon constantly if we are to have the strongest possible framework for dealing with human trafficking.

The creation of a single offence that encompasses the entirety of human trafficking and exploitation is welcome. The Justice Committee will have to work hard to ensure that section 1 of the bill is a robust and well-defined provision.

The Justice Committee will also have to scrutinise the remainder of the bill closely to ensure that it takes account of the full range of activities surrounding human trafficking. The exploitation of adults and children in this context is wide ranging. The bill must be able to take into account the breadth of experience of those who have been trafficked and provide for proper punishment of the perpetrators.

It is important that we ensure that our approach to human trafficking takes into account Scotland's distinctive approaches to many aspects of criminal justice policy. The Equality and Human Rights Commission is surely correct to identify

"our legal and policy framework for adults at risk of harm and our long-established gendered analysis of violence against women"

as distinctive aspects of Scotland's criminal justice system that must be accounted for even when adhering to international obligations. Throughout the remaining stages of the bill's passage, Parliament must work hard to ensure that those distinctive approaches are incorporated into the bill, and that we do not apply an international one-size-fits-all approach to the problem. I believe that we all share that view.

The bill ought to be supported at this first stage; the overall strategy appears to be a good one. The bill is clearly in need of refinement and it is important that we listen closely to victims groups, the criminal justice community and academic experts in the field in order that we can refine and perfect it.

It is also important that we do not complacently believe that we can simply pass legislation on this, or any other topic, and solve the problem. We must monitor closely the consequences of the legislation and we must work hard to ensure that our strategic approach is best suited to Scotland. Victims must be at the heart of what we do when we face up to the problems of human trafficking. We must not let them down.

16:00

Joan McAlpine (South Scotland) (SNP): I am delighted to speak in support of the bill, which is another example of this Parliament's excellent record of protecting the most vulnerable. Those who perpetrate the crime of human trafficking should face the toughest possible penalties and the victims deserve as much support as we can give them. The bill seeks to provide for both, as well as to raise awareness of the crime and ensure that we are all properly informed about it and are quick to detect it.

As members have said, trafficking covers different forms of exploitation. I will focus on prostitution, as Rhoda Grant has done, which is a very significant form of exploitation that the bill addresses. I am fully in agreement with Rhoda Grant's comments and the calls of a number of important and respected organisations that have pointed to the link between trafficking and prostitution. It is so strong that we need to end demand if we are to remove the incentive that drives the criminals who seek to profit from the sexual exploitation of other human beings.

The Scottish Government includes prostitution in its definition of violence against women, which is quite correct. As Rhoda Grant quite eloquently pointed out, in the past many people sincerely believed that prostitution was a free choice, but the more that one looks into it and reads the experiences of people who have been through it, the clearer it becomes that the vast majority of women involved in prostitution are driven into it by factors such as poverty, exploitation and abuse in childhood.

I welcome the minister saying that he is meeting groups that have a view on this matter; perhaps he is leaving the door slightly ajar for amendments at stage 2. That would put us in the same place as Northern Ireland, the anti-trafficking legislation of which has been widely praised in the debate.

John Finnie (Highlands and Islands) (Ind): Will Joan McAlpine comment on Amnesty's view, which has been expressed by at least one member, that we would do neither subject justice by conflating the issues in this one bill, particularly when evidence has not been taken by the committee?

Joan McAlpine: I attended the event in the Parliament for those who advanced the Northern Ireland legislation. The arguments that have been raised here today, including by John Finnie, were also raised in Northern Ireland. After examining all the evidence, the different political parties in Northern Ireland came together to pass the clause, which they did not feel damaged the rest of their bill. Anything that brings together the Democratic Unionist Party and Sinn Féin obviously has a lot of robust evidence that commanded its support.

I welcome the committee's report and I note that it did not take a great deal of oral evidence on ending demand. However, I also note paragraph 136 in the report, which pointed out that several very respected organisations offered written evidence on the matter. Community Safety Glasgow, which includes TARA, pointed out the very clear links between trafficking and the sex industry and offered more evidence to back that up, if the committee was interested.

As Rhoda Grant said, if we fail to follow Northern Ireland's lead to end demand, which will soon be followed by the Republic of Ireland, Scotland could become a soft touch for criminals profiting from the sexual exploitation of others.

Written evidence was compiled and submitted to the committee by a number of respected organisations, including the STUC, whose briefing is worth quoting at some length. The STUC states:

"Commercial sexual exploitation is a growing problem in Scotland and the UK. The trafficking of women and girls into prostitution in England and Wales is worth at least £130 million annually, while it is estimated that 80,000 people in the UK, mainly women and girls, are involved in prostitution."

It goes on to note that

"demand ... has been increasing: between 1990 and 2000 the number of men paying for sex acts in the UK almost doubled.

The submission quotes a Survivors' Network speaker at Unite the Union's conference on trafficking as saying that

"Without punters there would be no prostitutes. Without prostitutes there would be no trafficking,"

and the STUC calls for

"the Trafficking Bill"

to contain

"a provision for the criminalisation of the purchase of sex."

I quote extensively from the STUC's submission as it is a secular organisation that is committed to social justice. Although the churches have submitted evidence to support ending demand, and I respect their views, I am coming at the issue

not from a religious point of view but from a feminist and social justice point of view.

We have only to look at Norway and Sweden and the evidence on what happened in those countries after they brought in laws to end demand. I will turn to Sweden first. Simon Hagström, the detective inspector from the Stockholm police prostitution unit, has reported that the number of men paying for sex in Sweden has declined since the sex buyer law was adopted, and that between 1996 and 2008 the proportion of men who reported paying for sex declined from 12.7 to 7.6 per cent.

That is significant, because it was noted in written submissions to the committee that there is considerable evidence that men who pay for sex are more tolerant of rape and other forms of violence against women. The evidence from Sweden also shows that the incidence of street prostitution halved from 1999 to 2008, and there was absolutely no evidence to suggest that women were simply being displaced to indoor prostitution or prostitution that was advertised online.

The Deputy Presiding Officer: I ask the member to draw to a close, please.

Joan McAlpine: To address the arguments that such laws push prostitution underground, I come back to the evidence from Northern Ireland. If the punters can find the sex lines and go online and use the internet sites, it should not be beyond the ken of the rest of us to track down criminals who are exploiting women in that way.

While I totally respect the views of others who have expressed concern about the approach of seeking to end demand, I think that, if people sit down and read the evidence, they will come to the same conclusion as me.

The Deputy Presiding Officer: The member must close, please.

Joan McAlpine: If we want to end trafficking, we have to end demand.

16:07

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I recognise the committee's excellent report and pay tribute to the trailblazing work of Jenny Marra, whose member's bill provoked such a massive response to the public consultation.

I know that every member in the chamber finds trafficking a horrendous crime and will welcome the bill's objectives of consolidating and strengthening the law and providing the best possible protection.

As the committee's report reminds us, vulnerability is a salient feature in all instances of

trafficking, given that the victims are subject to violence, control and exploitation. I think that we would all agree that children are the most vulnerable of all. As various members have emphasised, the bill is a bit weak in that area because it lacks special provision, which I am sure will be a major feature of the discussion in committee.

For example, section 5 on statutory aggravation when there is a trafficking background has been widely welcomed, but Barnardo's Scotland and others have stressed that there ought to be an aggravation with regard to the vulnerability of child victims, and I hope that that will be considered at subsequent stages of the bill.

Other members have mentioned the need to define a child as someone under 18; to include a presumption of age provision; and to ensure that the provision of a guardian for child victims is placed on a statutory footing as required by the EU directive.

Finally, with regard to children, there is no specific support and assistance for child victims in the bill. There is of course a general duty to provide support and assistance, which we welcome, but amendments need to be lodged at stage 2 to address that important issue, which should be a central part of the bill. For example, there is a reference to counselling, but that is far too weak and inadequate in relation to the trauma that most victims of trafficking have suffered. The suggestion that that should be replaced by psychological assessment and treatment is absolutely right.

There are various other issues in relation to support and assistance—for example, the time issue. It has been pointed out that there is no minimum time for support and assistance in the bill. As a 45-day period of reflection and recovery is normal now, that—or something more than that—should be made explicit in the bill.

There is also, in relation to section 8(3), the debate that we often find between using the word "may" and the word "must". Again, I hope that some of that wording can be strengthened so that the best possible support and assistance is given to the victims of trafficking. In relation to that, TARA asked whether access to support and assistance would depend on access to the national referral mechanism. Perhaps the cabinet secretary could answer that question in his closing speech.

That leads me on to the national referral mechanism, which I first came across soon after it was set up because I was on the Equal Opportunities Committee when it looked at the issue four or five years ago. This is not an issue that has come up in the debate, but when we took

evidence on the mechanism, there was concern that the immigration status of a referral appeared to be a key factor in deciding whether the person was found to be a credible victim of trafficking. I thought that Christina McKelvie might talk about that because she certainly has in the past.

When I was on that committee, four or five years ago, we heard that in the first year of the national referral mechanism, 76 per cent of UK nationals who were referred to the mechanism were officially recognised as being trafficked. In stark contrast, only 29 per cent of non-British EU nationals and a mere 12 per cent of third-country nationals were officially recognised as being trafficked. I do not know whether that is still such a big issue.

Clearly the mechanism has moved on; there has been a review, which has been generally welcomed, and I think that most people accept the review's conclusion that we should move away from a centralised decision-making process to regional panels, which I think should be multidisciplinary and multi-agency.

Events have moved on, but in the evidence there is still a lot of concern about how the national referral mechanism has operated in other ways. For example, Victim Support Scotland pointed out that

"There is too much emphasis on credibility"—[*Official Report, Justice Committee*, 3 March 2015; c 28.]

and suggested that such an approach would not be applied to others coming forward with claims of abuse. Further to that, Barnardo's Scotland stated that the welfare of vulnerable children would perhaps be better protected by allowing processes to take place with child protection teams rather than through the NRM, so there are lots of issues there. However, I think that we all recognise that there has been progress on that.

Joan McAlpine gave a very powerful speech, as did Rhoda Grant, on the controversial issue of demand for prostitution. I do not think that anyone can deny that there is a strong link between the sex trade and human trafficking and I believe that we have to see that issue through a gender inequality prism and tackle demand, as many witnesses such as TARA and the STUC emphasise.

I also support what Jenny Marra said about the importance of the three-year Government strategy that is required by the legislation—it is a very important part of it. She highlighted the particular importance of awareness raising and training for front-line staff. That is a key issue in relation to identifying people who may be the victims of trafficking.

I think that my time is almost up. There are lots of other details that I think have been covered in the debate and which will come up subsequently. I was particularly interested in the debates around the definition of trafficking and to what extent our definition should be the same as that of the EU directive. There was also disagreement about whether there should be a statutory defence and it seems to me that there ought to be such a defence in addition to the guidelines. Also, I noted the concerns about the word "travel" and I recognise those concerns.

The Deputy Presiding Officer: Could you draw to a close, please?

Malcolm Chisholm: I look forward to the subsequent stages of the bill. I congratulate the committee on its report, the Government on introducing the legislation and Jenny Marra on setting the ball rolling.

16:14

Gil Paterson (Clydebank and Milngavie) (SNP): As a member of the Justice Committee, I am pleased to speak in this debate on such an important issue. There can be nothing lower in humankind than when someone, in attempting to make their life better by moving to another country, finds that the people in whom they have placed their trust to assist them turn out to be involved in the criminal activity of human trafficking.

People can be trafficked to a destination where they are cut off from society because of ethnic groupings and where they face language barriers as well as the fear of violence, against them and perhaps against their loved ones in another country.

People face the realisation that all that has happened because they have been tricked and that they can expect to have a future of slavery or, worse, being forced into prostitution, when all that they wanted to do was to better themselves. To me, that is unimaginable. Therefore, if the bill can help just one person—whether they are an adult or a child, male or female—to escape such a life of hell, it is worth all our parliamentarians working on it to ensure that it is the very best that we can do.

I will focus on a few of the issues in the bill. I agree with much of what is contained in the committee report. During the evidence taking, I listened carefully to the Lord Advocate's case on a statutory defence and found his arguments to be entirely persuasive. The Lord Advocate explained that a statutory defence would require the potentially trafficked person to retell their story and to provide the evidence of being trafficked before a case could be progressed. Notwithstanding the difficulties of dealing with strangers and

officialdom, having to produce evidence in a restricted time would put serious pressure on someone who would be recovering from a traumatic experience. However, if the case could go forward on the suspicion of a person being trafficked, the evidence may materialise during the investigation of the perceived crime in an all-encompassing way. That is what the Lord Advocate envisages, and I believe that it would be the most robust approach.

Margaret Mitchell: Does the member accept that it is not an either/or situation and that we could have instruction from the Lord Advocate and give victims the option of a statutory defence, if they choose to use it?

Gil Paterson: I will come on to that point in a moment.

Since a person who is the victim of trafficking might not be able to provide the evidence from the outset, an Injustice might take place simply because of a statutory right to a defence, which would completely undermine what that right is intended to do in the first place. However—this comes to the point that Margaret Mitchell raises—I note that the cabinet secretary has confirmed that instructions, as suggested by the Lord Advocate, and a statutory defence are not mutually exclusive. Therefore, I will wait for the final outcome before concluding my views on the matter.

I will comment on the calls from some quarters to include in the bill the criminalisation of the purchase of sex. It is fair to say that the committee was reluctant to include that in the bill at this stage. That is because, first, the committee had not taken any evidence on the matter and, secondly, the committee believes that the questions of the purchase of sex and human trafficking are of sufficient importance in their own right that they should not be conflated.

Although I would like to see the reduction and eventual elimination of the purchase of sex, in the meantime we need to do all that we can to find ways to reach women and children who are being trafficked with the sole purpose of trapping them in the vilest way and selling them for sex. The victims who are in those horrendous circumstances are the most in need of rescue but, for a variety of reasons, they are the most difficult to reach. I have listened to the two sides of the debate on the issue and I am worried that, if we change the system and criminalise the purchase of sex, it would be more difficult to find the victims.

It is worth noting that, no matter what system is in place in the western world, prostitution is still in evidence. That suggests to me that there are women, children and men who are trapped and who are very difficult to reach, particularly people

from an ethnic background that people like me could not penetrate.

The measures that are proposed by the Scottish Government in the bill, such as increasing the maximum penalty for offenders to life imprisonment, send a strong message to those parasites that we are after them. The bill also sends a message to the victims of the crime that we know that they are there and will offer them as much support as we can.

I would like to pay tribute to the organisations that are on the front line. Organisations such as TARA and Migrant Help play an invaluable role in supporting victims and encouraging improved training among professionals. They are the true human face of mankind. Their compassion and dedication to tackling this scourge in the world are an inspiration to all.

In politics, there are issues that bring out the best in politicians and political parties, and this is one such area. This Parliament, in one voice, sends out a strong condemnation of human trafficking and those who profit from it.

I welcome the opportunity to participate in this debate and believe that the proposals in the bill will go some way to helping those who are in desperate need of support from society.

16:22

John Finnie (Highlands and Islands) (Ind): I declare an interest, in that I am a member of Amnesty International, and I thank Amnesty and others for the briefings that they provided for this debate. I also thank Jenny Marra for the work that she has done that has led us to this point. We are at a welcome stage.

The cabinet secretary opened the debate by quoting the bill's policy memorandum when he said that this is a

"serious, complex and multifaceted crime."

That is entirely the case. However, we are going to have a single offence coming out of it, which I think is positive.

The first of the committee's recommendations talks about better alignment. The reason for that is highlighted in one of the briefings, which refers to the belief that deviating from internationally accepted definitions might complicate transnational crime investigations with countries that operate within the internationally accepted framework. We need to be conscious of that.

In 2008, Amnesty undertook an inquiry that produced a report called "Scotland's Slaves", which highlighted the prevalence of human trafficking in Scotland. Amnesty called on the Scottish Government to implement parts of the

Council of Europe's Convention on Action against Trafficking in Human Beings, within its devolved powers. I think that this legislation does that and that the dedicated resources that we have heard have been put in place by Police Scotland and the Crown Office and Procurator Fiscal Service, including the special prosecutor, show that action is being taken.

As many have said, this is an international issue, a cross-border issue and—with reference to the word “travel”—is also something that takes place within our borders. I hope that the Scottish Government will give due consideration to that.

Clearly, there are challenges relating to detection, prosecution and support and to the issue of forced criminality, which involves the victim becoming the accused. I welcome the cabinet secretary's positive response on that issue.

The issue of consent has also been addressed. The consent of someone who is held in slavery and servitude is not a defence for the perpetrator. Clearly, the Stockholm syndrome has applied in these circumstances.

As has been said by many people, the issue of statutory defence is one of the most interesting aspects of the bill. During evidence taking, we heard compelling arguments from both sides, and we asked the cabinet secretary to reflect on it. Amnesty and others seek to have that statutory defence included in the bill.

Others have talked of the national referral mechanism, which is the process by which people who have been trafficked are identified, assisted and supported by the UK Government. Malcolm Chisholm referred to the fact that this cross-border issue is often clouded by issues relating to immigration and that, in the current climate, it is considered in the context of hostile public opinion in some instances.

That term—that the issue is clouded by immigration—is not just my personal view. It is the view of the Home Office, which produced a report in November 2014 on its review of the national referral mechanism. It outlined some good practice, but there was also criticism

“of decision making, the quality and communication of decisions and the ability to manage and share information effectively in the best interest of victims”.

That is clearly something that is absolutely vital if we are going to get things right. The report found further

“concerns over the conflation of human trafficking decisions with asylum decisions”—

no surprise at all, given that the same parties are involved on occasions—and

“elongated timeframes for decisions, lack of shared responsibility and provision of relevant information for decision-making”.

We have some way to go. I was one of the committee members who went on the external visits along with the convener and Alison McInnes, and I am grateful to Barnardo's Scotland for the visit that it facilitated. We heard graphic stories about people travelling around the world, often not knowing where they are. We forget at our peril, if we dwell too much on statistics, that it is humans we are dealing with. It is for that reason that calls for the best possible psychological support have my backing.

We heard a lot about the strategy. The cabinet secretary used the term “awareness and understanding”, and I think that there is already some of that. The Equal Opportunities Committee heard from an official from the City of Edinburgh Council about housing officers being likely to be the first point of contact for people who are the victims of trafficking, rather than police officers or other officials, so there is already some awareness in the system.

GIRFEC has been mentioned, and the committee report refers to the merit of including that approach in the bill. There is a good reason why children would be singled out. We know from the International Labour Organization that children make up 26 per cent of victims trafficked for the purposes of forced labour and sexual exploitation, and we are told that, sadly, that figure does not include trafficking for the removal of organs or for forced marriage or adoption. Psychological support of the highest quality should be made available to those victims.

The committee's report also says that more clarity is required to ensure that child victims receive appropriate and consistent support and assistance across Scotland. We heard COSLA's concerns and we clearly want the same facilities to be available regardless of where a victim is found. Similarly, with guardianship, there are options that need to be considered, and others certainly support that provision.

A section in the bill on the presumption of age is important, because we know that children have been incarcerated. As other members have said, there can be great difficulty in determining an individual's age. I am aware of a specific case in the Highlands in which a young man thought that he was on the outskirts of London, when in fact he was on the outskirts of a Highland village, and he ended up in prison although he was quite clearly a victim.

Returning to the definitions, we have talked about the challenge of consistency, and it is not just an issue that the Justice Committee has come up against with this bill but one that recurs

whenever we deal with issues affecting children or young people.

The independent and Green group fully supports the bill and the efforts that everyone is putting in to make Scotland a place that is hostile to the traffickers.

16:28

John Mason (Glasgow Shettleston) (SNP): I very much support the bill and all attempts to abolish or restrict the horrific practice of buying, selling and transporting human beings. Slavery is a word that we all recoil from, and we remember its welcome abolition many years ago, as has been mentioned. However, it seems that variations of slavery repeatedly re-emerge over the years as some human beings in positions of power across the globe seek to exploit and profit from their more vulnerable fellow human beings.

Fundamental to all efforts is the equal value of every human life, and we must constantly reassert that one person is not more valuable than another. I welcome the committee's report, and the range of issues that it considers need to be looked at in more detail and possibly amended at stage 2.

It is good to see that the law is being updated and clarified, and that there is an emphasis on support for victims, especially children. The question is raised whether the word "child" should be more specifically used, rather than words such as "youth" and "young".

The main point that I want to concentrate on today is whether we need to tackle demand as well as supply. In other words, is the Human Trafficking and Exploitation (Scotland) Bill the place to consider the criminalisation of the purchase of sex—as is dealt with in the committee report at paragraphs 133 to 137? As has already been mentioned, that is the route that Northern Ireland has gone down, and I wonder whether we have any real justification for not doing the same.

We had an opportunity before with Rhoda Grant's bill, and I wonder whether we are in danger of missing an opportunity for a second time. The Justice Committee seems to accept the argument of some witnesses that such a move would widen the scope of this bill too much, and that it would deal with other matters beyond the bill's original intention. Yet I wonder whether part of the reason is that it is just such a controversial area and people would rather avoid tackling it head-on.

Christine Grahame: If John Mason will forgive me as a colleague, I think that is an unfair portrayal of the Justice Committee. Our view was that the issue could not be dealt with properly under this bill process. If we had decided to tackle

it, stage 2, involving a whole lot of evidence, would have had to be extended and extended, and we might not have got the bill through as it stands. It was a process issue, not a substance issue.

John Mason: I take the Justice Committee convener's point. I was not aiming any of my comments specifically at the committee. Perhaps the whole Parliament would rather avoid dealing with the issue. Rhoda Grant validly made the point, however, that we have discussed the matter quite a lot in the past. We need to debate it properly in the chamber, either as part of the Human Trafficking and Exploitation (Scotland) Bill or somewhere else, fairly soon.

In other areas that we consider, such as drugs, we tackle both the supply side and the demand side of the equation—we do not just consider one side on its own. Tackling the demand side can be done in different ways. For drugs, we help to support people, and certain things are criminalised, too. On the subject of the purchase of sex, too, I wonder whether we can consider supply alone and not take on the question of demand. Coming from an accountancy background and having studied a little bit of economics, I believe that the two very much go hand in hand.

I accept that not everyone who is trafficked has arrived for the purpose of the sex trade, but we have to accept that it is a very sizeable part of the market—SPICe has referred to a United Nations report saying that it is 79 per cent.

I confess that I find it difficult to talk in this way: discussing markets, supply and demand, purchasers and sellers. How can we compare a human being with some inert substance that is bought and sold? Yet, at the same time, we are talking harsh economics here, and human beings are being treated as commodities by unscrupulous traders who see them only as commodities. We are being somewhat naive if we think that there are no parallels with other forms of trading—as with the drug trade. Surely we have to deal with both the demand side and the supply side. Is this not the right time or the right bill? If it is not, when is the right time, and when will the right bill be here? This year? Next year? Sometime? Never?

I was first elected as a councillor in Glasgow some 17 years ago. A lot of work has been done there on this subject by folk such as Councillor Jim Coleman, by Strathclyde Police and by others. I have attended seminars with speakers from the Nordic countries, and I have become convinced that the vast majority of prostitution is abuse and exploitation of women. I accept that it is not always women, and I accept that it may not always be abuse, but it seems to me that the vast majority of it is.

If we are realistic, we are talking about exploitation here. If we are allowing the demand for the purchase of sex to be uncontrolled, we should not be surprised if criminal elements go to great lengths to meet that demand and to make a profit. Surely we must look at the broader picture of what is going on, and we should not think that we can solve the problem by looking at only one aspect of it.

I welcome the statement from the cabinet secretary, which he has repeated today, that he is meeting representatives of both sides on this point, and I appeal to him and to Parliament as a whole to think through the whole issue.

This is a horrible and harsh topic that we are speaking about today. It is not a subject that calls for a gently, gently approach. We are dealing with hardened criminals who do not care about their fellow human beings, and I believe that we need to take all powers at our disposal, including criminalising the purchase of sex, if we are going to make a real impact on human trafficking.

The Presiding Officer (Tricia Marwick): We now move to closing speeches. I call Margaret Mitchell, who has six minutes.

16:34

Margaret Mitchell: This is an important bill, which aims to

“consolidate and strengthen the existing criminal law against human trafficking and the offence relating to slavery, servitude and forced or compulsory labour and enhance the status of and support for victims.”

There is clearly consensus among members today that there is scope to improve and strengthen the bill at stage 2. As we move forward to the next legislative stage, new provisions should be aimed at encouraging victims of trafficking to come forward, secure in the knowledge that their case will be taken seriously and handled sensitively. Victims need to know that there is adequate support available as they make the crucial and often difficult transition into a new life.

It is to be hoped that, for example, a Scotland-specific panel feeding into the national referral mechanism will help to address some criticisms relating to the NRM, which include the view that some organisations expressed to the committee during evidence that the NRM has become a system that focuses too often and too much on “testing credibility” and data collection, rather than “identification and protection”.

Furthermore, section 11 of the bill, which categorises trafficking and exploitation offences as lifestyle offences, is welcome as it allows profits to be dealt with under proceeds of crime legislation. In addition, trafficking and exploitation prevention

and risk orders will allow the courts to intervene to prevent harm and deter traffickers. Although those measures have attracted broad support, the Law Society of Scotland has warned that a risk order might be disproportionate. Consequently, the Law Society suggests that the test should be one of “significant risk” before an order is imposed.

It is the issue of the possible inclusion of a provision on the criminalisation of the purchase of sex that has been the subject of the greatest divergence of opinion so far. Thirty per cent of the 55 trafficking victims identified in 2003 were linked to sexual exploitation; for that reason some organisations, especially those who support victims, have sought to address the issue by making provision for criminalisation in the bill. However, although the participation of a great many of the individuals involved in prostitution is not voluntary, I remain unconvinced that the bill is the right vehicle in which to address the issue, not the least because, as the committee convener stated, the decision on whether to criminalise the purchase of sex will require in-depth scrutiny of empirical evidence. It has not been possible, in the limited timescales involved, for the committee to undertake the level of scrutiny required. Furthermore, as the committee report states, criminalisation

“would have implications beyond matters dealt with in this Bill.”

Returning to the issue of how the bill deals with children who are trafficked, witnesses highlighted specifically that the bill fails to contain adequate provisions to ensure that the particular vulnerabilities of children are taken into account. Witnesses suggested that such provisions could include the following: a specific offence of child trafficking; placing the appointment of child guardians on a statutory footing; and including a presumption of age clause. The latter is particularly important as clarification of issues surrounding the age of an individual deemed to be a “child” within the bill will be necessary to comply with the relevant EU directive.

More generally, there clearly needs to be a reevaluation of the law in relation to that age issue as it affects legal capacity, the age of criminal responsibility and criminal prosecution, medical decisions, and the age that an individual is eligible to serve on a jury versus being eligible to serve in the army. In other words, this is an area of law that should be addressed holistically, taking into account all the various wide-ranging factors involved.

The bill has gained broad support across the political divide and from third sector organisations, seeking as it does to end the scourge of human trafficking and forced slavery in Scotland. In addition, it must also ensure that protection and

support for the victims do not fall short of what is provided in other jurisdictions within the UK. That will be a crucial issue to address at stage 2. In the meantime, the general principles of the bill are sound and will be supported by the Scottish Conservatives this evening.

16:40

Hugh Henry (Renfrewshire South) (Lab): I congratulate Jenny Marra on her tireless work in helping to frame and shape the debate on human trafficking over the past few years. As Alison McInnes said, the number of responses to Jenny Marra's consultation indicates the level of abhorrence that exists right across Scotland. I also pay tribute to the Justice Committee, because—as we would expect, I suppose—it has produced a thorough and thoughtful report that deals sensitively and appropriately with the issues at hand.

Elaine Murray pointed out that in 1883 slavery was abolished in this country. It is hard to imagine that there is still, 132 years later, a form of slavery in this country. In some respects, I think that the vast majority of people in Scotland are completely blind to and ignorant of the problem that exists in our country. They do not realise the extent of this pernicious problem.

I cannot remember who it was, but a member in the debate pointed out that the issue is not the same as migrants fleeing persecution or war in their own countries and simply seeking a new start in life. Christine Grahame was right to point to the tragic scenes that we witness in the Mediterranean. What is happening in this country is that evil criminals are exploiting human beings and, worst of all, exploiting children—not that exploiting women or men is not heinous—for financial gain. They are subjecting children and women to sexual abuse purely for profit.

One report that I read suggests that the scourge of human trafficking, or modern-day slavery—whatever we want to call it—is the second largest money-making crime in the world. There is a difference between it and other forms of criminal activity because, unlike a kilogram of cocaine, a human body can be sold and used and abused over and over again. Tragically, the reality for some women and children in this country today is that they are being used and abused over and over again for the financial gain of a handful of people.

Parliament is right to legislate on human trafficking and exploitation; such legislation is overdue and welcome. Scottish Labour supports the bill, although that is not to say that we do not think that it can be improved. A number of contentious issues have been raised today—one

being the purchase of sex and prostitution. The committee reached a reasonable conclusion on that and I do not think that it could have done anything other than reach that conclusion. However, that is not to say that Parliament cannot seek to use the bill to make changes if it sees fit. Personally, I do not think that the bill is the best way to make such a fundamental change in legislation, but I have a dilemma. I would echo what Rhoda Grant, Joan McAlpine and John Mason said. The question is, if the bill is not used for that purpose—I remain open-minded on that—when will we get the opportunity to do something?

Sandra White suggested that it would be better to have a stand-alone bill. That is true, but we have tried to introduce such a bill. Trish Godman MSP tried to do it in a previous session of Parliament but there was no progress. Rhoda Grant MSP has tried to do it in this session of Parliament and has failed to get cross-party support.

What are we to do when we are faced with a problem that has been so eloquently described by members this afternoon? If the Scottish Government could guarantee that it would respond to those concerns and introduce a stand-alone bill, that would resolve the issue, because it would be better dealt with separately. However, as long as the purchase of sex and prostitution is not being addressed, we leave ourselves open to people—quite rightly—seeking to use the bill as a vehicle to address it. Nevertheless, it is a separate issue from human trafficking and exploitation and, as member after member has pointed out, the two issues should not be conflated.

The issue of statutory defence and instructions is a thorny one: Christine Grahame pointed out the dilemma. What can the humble committee do when it hears the Lord Advocate and a representative of the Faculty of Advocates giving totally different evidence? Perhaps, as some members suggested, we could consider further at stage 2 whether to have both a statutory approach and instructions. The legal minds that have been trained in this are far better than mine, so I hesitate to draw a conclusion at this stage. However, the matter is worth further consideration.

Guardianship has come up, on which we need to ponder. I do not want to reopen, in this debate, the debate about the adequacy of named person legislation. However, given the kind of abuse that the young people we are discussing have experienced, I wonder whether the named person approach is the best way to take the matter forward. We are not talking about a run-of-the-mill situation, in which there is concern about a child and where the named person can intervene. We are talking about real and horrid criminal activity.

Perhaps the cabinet secretary needs to refocus and reconsider that.

Christian Allard: Will High Henry take an intervention?

Hugh Henry: I am sorry, but I do not have time.

We welcome the bill and the increase in sentencing. On support and assistance, we perhaps need to be careful that we do not impose a burden on councils without giving them adequate support.

I leave Parliament with this thought: there are more women in Scotland in prison for offences that have been committed as a result of their having been trafficked than there are people in prison who have been convicted of human trafficking-related offences. The balance in this country is wrong and that is why we need the bill.

16:48

Michael Matheson: I thank all members for their contributions. There have been detailed speeches from members who have been involved, for a number of years, in the issue of tackling human trafficking and exploitation. I have listened with great care to members' views and concerns. I will try to cover as many of the issues as I can, but I apologise to members whose points I do not get the chance to cover.

I turn to what I think Hugh Henry characterised as the "thorny" issue of the proposal for a statutory defence. Obviously, the committee considered that issue, and I am mindful of the views that members have expressed today. Some members are sympathetic to the proposal, but are not persuaded that there should be a statutory defence on the face of the bill in light of the evidence that was received from the Lord Advocate.

I reassure members that we have taken a deliberate approach. We considered the whole issue of a statutory defence being put on the face of the bill and chose not to do so for the specific reasons that I outlined to the committee. We have chosen to take a much more victim-centred approach, which allows us to intervene at a much earlier stage and gives the Lord Advocate and the Crown the flexibility to act at an early stage.

Some members have suggested that we should have the Lord Advocate's guidelines—he has indicated that he is prepared to make them instructions, and we are more than content to lodge an amendment at stage 2 to make provision for that—and a statutory defence in the legislation at the same time. However, as the Lord Advocate has also pointed out, if there were a statutory defence alongside the instructions, the instructions that he published would be governed and

influenced by the statutory defence; it would have a direct impact on them.

The other potential consequence is that defence agents could start to become dependent on what would be the statutory defence approach. That would undermine the victim-centred approach that we are trying to achieve, which will involve identification and intervening at an early stage through the use of the guidelines or instructions. If defence agents then felt that they were just going to use the statutory defence, they would be less likely to flag up to prosecutors any concerns that the individual may have been trafficked.

It is not that the matter was not considered in great detail in the drafting of the bill, but we considered that there was a way in which greater focus could be given to the needs of victims. That is why we are not persuaded that a statutory defence should be put on the face of the bill. I suspect that we will return to that issue at stage 2 in the committee and possibly at stage 3, as well.

Several members raised the issue of the presumption of age. That, too, is a very challenging and difficult area, because the likelihood is that many people—particularly younger people—who have been trafficked will have come from areas and jurisdictions that have no papers, so we will have no way of identifying their age. As things stand in local authorities and social work provision, if a vulnerable person is identified and it is thought that they are a child or a young person although they do not have papers, they should be dealt with as a child or a young person until it is known otherwise, because it can take several weeks or months to come to a confirmed position on identifying and finalising someone's age. The approach that we have taken involves trying to avoid the potential problem of an individual who does not have papers and who may appear to be a child but is not a child ending up being put into children's services, or the other way round.

However, I acknowledge some of the concerns that members have raised and we are looking again at whether we should make provision in the bill to address that issue. The Lord Advocate has raised that issue, too. We will therefore consider whether we should amend the bill at stage 2 to have a statutory presumption of age in order to address those issues and concerns.

On the term "travel" and the approach that we have taken on that, it is important to emphasise that the offence in the bill does not criminalise travel; rather, it criminalises the specific act of arranging or facilitating another person's travel, including by

"recruiting the person with a view to transporting or transferring the person ... transferring or exchanging control of the person"

or

“harbouring or receiving the person”.

Those acts are all part of what was set out in the EU directive. In addition, the approach that we have taken around the definition of the offence, including the term “travel”, is virtually the same as that which has been taken forward in England, Wales and Northern Ireland.

The wording is written to ensure that we have a distinction between human trafficking and exploitation. “Travelling” is an important element of that. However, as I said in my opening speech, it is not about travelling from one country to the next, but about travelling within the UK. We will look to see whether we can amend the bill at stage 2 to provide further certainty and clarity on the matter, given the concerns that have been raised.

I turn to the issue of guardianship, which Jenny Marra and a few other members raised. It goes without saying that we all have an interest in doing the right thing for any child or young person who finds themselves being trafficked. We must ensure that we find a mechanism to achieve that most effectively. Our approach in the bill has sought to achieve that. We have a range of legislation in place that applies to children and young people and a range of agencies have statutory responsibilities that apply whenever a young person or a child is identified as being vulnerable, as would be the case for any child or young person who was being trafficked.

I recognise members’ concerns about having appropriate guardianship for children in such circumstances. Although the approach that I have set out, including the measures that we will progress through the strategy, is the one that we favour at this point, we will look at where we can put in place further mechanisms or provisions to address those issues. That includes the possibility of statutory provisions.

I turn to several other matters that have been raised. There is absolutely no doubt that one of the most important elements in progressing the legislation is the creation of an offence. However, the bill also looks at the whole range of measures that we must take to support and assist those who have found themselves being trafficked or exploited. The strategy will be central in helping to deliver that support and assistance.

I am mindful of Alison McInnes’s concerns about the list of support and assistance measures that is provided in the bill. I reassure members that the list is not exhaustive. What is provided goes beyond that; it does not set out exclusively all that can be provided. However, we will look at amending the bill at stage 2 to change the term “counselling” to “psychological assessment and treatment” to address the issues raised.

I am conscious that the criminalisation of the purchase of sex is a complex issue. Rhoda Grant, Joan McAlpine and John Mason made known their strong views and other members expressed concerns about including that in the bill. I said at the start of the process that I would meet those from both sides of the argument. I have met the half who support the measure, and I will meet those who oppose the inclusion of any such provision in the bill. A substantive issue has been raised, which must be considered. I am mindful of the committee’s view that it does not consider that the bill is the right vehicle for that measure. I assure the committee and the Parliament that, by the time that I arrive at the committee for the stage 2 considerations on the matter, I will be able to set out the Government’s view having met both groups.

The bill has broad support across the chamber. It will make Scotland a hostile place for those who want to indulge in human trafficking and exploitation—a place where they cannot do business. I assure those people that the Government’s approach at stages 2 and 3 will be to build on the bill and ensure that Scotland becomes that hostile place for those who peddle such crime.

Human Trafficking and Exploitation (Scotland) Bill: Financial Memorandum

16:59

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-12553, in the name of John Swinney, on the Human Trafficking and Exploitation (Scotland) Bill's financial resolution.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Human Trafficking and Exploitation (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.—[*John Swinney.*]

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

Business Motion

16:59

The Presiding Officer (Tricia Marwick): The next item of business is consideration of business motion S4M-13122, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a revised business programme for tomorrow, Wednesday 13 May.

Motion moved,

That the Parliament agrees to the following revision to the programme of business for Wednesday 13 May 2015—

after

followed by Portfolio Questions
Education and Lifelong Learning

insert

followed by Ministerial Statement: Outcome of the
UK General Election

Motion agreed to.

Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are two questions to be put as a result of today's business. The first question is, that motion S4M-13107, in the name of Michael Matheson, on the Human Trafficking and Exploitation (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Human Trafficking and Exploitation (Scotland) Bill.

The Presiding Officer: The second question is, that motion S4M-12553, in the name of John Swinney, on the financial resolution for the Human Trafficking and Exploitation (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Human Trafficking and Exploitation (Scotland) Bill, agrees to—

(a) any expenditure of a kind referred to in Rule 9.12.3(b) of the Parliament's Standing Orders arising in consequence of the Act, and

(b) any charge or payment in relation to which Rule 9.12.4 of the Standing Orders applies arising in consequence of the Act.

Palliative and End-of-life Care

The Deputy Presiding Officer (John Scott):

The final item of business is a members' business debate on motion S4M-12957, in the name of Dr Nanette Milne, on the Marie Curie report "Changing the conversation: Care and support for people with a terminal illness now and in the future". The debate will be concluded without any question being put. I invite members who are leaving the chamber to do so quickly and quietly.

Motion debated,

That the Parliament welcomes the publication of the Marie Curie report, *Changing the Conversation*; further welcomes the publication of research commissioned by Marie Curie and carried out by the London School of Economics, which estimates that nearly 11,000 people in Scotland, including in the north east, who need palliative care are not currently accessing such care; notes the finding that people with a terminal diagnosis other than cancer, over 85s, people living alone and people from black, Asian and other minority ethnic groups are less likely to be accessing palliative care; further notes that a palliative approach is often recommended for people living with a terminal illness and includes pain and symptom management as well as physical, emotional and spiritual support; considers that this approach is proven to benefit many different illnesses; believes that, with Scotland's ageing population and with more and more people living longer with multiple conditions, this problem will get worse unless action is taken; understands that the Scottish Government has committed to developing a new strategic framework for action on palliative and end-of-life care by the end of 2015, and looks forward to considering the findings.

17:02

Nanette Milne (North East Scotland) (Con): I very much welcome the opportunity to discuss palliative and end-of-life care. I particularly welcome Marie Curie's latest report, on changing the conversation on terminal illness, together with the important research on access to palliative care that has been carried out on behalf of the charity by the London School of Economics. I am also grateful to colleagues across the political divide who have enabled the debate to take place.

Defined as the active, holistic care of people with advanced, progressive illness, involving the management of pain and other symptoms and the provision of psychological, social and spiritual support, palliative care would clearly benefit very many people as they approach the end of their lives, not just those with terminal cancer, which is the condition that is most commonly diagnosed in those who actually receive that form of care. However, many people in the United Kingdom who would derive benefit from palliative care are either not offered it or receive it for only a very short time before they die.

The current facts are stark and indicate why positive action needs to be taken to support people who are living with a terminal illness, and their families, if they are to be sure of getting the care that they need as their condition progresses. Of the 54,000 people who die in Scotland each year, it is estimated that between 35,000 and 40,000 should have some palliative care. However, the LSE study for Marie Curie found that nearly 11,000 people who need such care are not receiving it and that only one in five people with a non-cancer diagnosis is identified for palliative care. The research further identified that carers across the UK claim that seven out of every 10 people with a terminal illness do not get all the care and support that they need and that a quarter of cancer patients are not receiving palliative care.

The specific groups of people who are less likely to be considered for palliative care are those aged over 85, those who live alone, those from black, Asian and minority ethnic communities and those who live in areas of deprivation. That is simply not good enough and indicates significant inequity of provision—a problem that will undoubtedly get worse as our population ages unless action is taken urgently to address the situation.

At present, a third of the patients in Scottish hospitals are in their last year of life and half of Scotland's deaths occur in hospital, even though most people's preference is to die at home or in a homely setting; we are already well short of providing the end-of-life care that most people seek. Given the predicted 13 per cent increase in deaths over the next 25 years and the fact that many of us who live well into advanced old age will have multiple and complex health problems such as dementia, heart failure, chronic obstructive pulmonary disease or the complications of diabetes or long-term obesity, there is a clear and urgent need for the conversation about terminal care that is recommended by Marie Curie.

We should acknowledge that people with all types of terminal disease, not just those with cancer, can benefit from palliative care, which, ideally, should be planned for from the point of diagnosis of the terminal nature of the illness so that an appropriate care pathway is in place as the condition progresses and that care can be delivered within the community, in a hospice or, when necessary, in hospital.

A significant amount of work remains to be done if we are to achieve a gold standard of palliative care for the maximum number of patients who require it. There has to be a conversation among policy makers, health and social care professionals, service planners and communities about the sort of care and support that we want to give people with terminal illness when their needs

are becoming more complex, are often not being met and are likely to grow in number.

At the outset, health and social care professionals should be prepared to speak openly and honestly to patients and their families and carers about the terminal nature of their illness, and to help them to plan their care pathway by letting them know what services will be available to them and enabling them to make decisions that will help them as their condition progresses. Many health professionals and many families are uncomfortable about having conversations that acknowledge that death for their patient or relative is inevitable sooner rather than later although, depending on the condition and treatment, terminally ill people may live for days, weeks, months or even years after the diagnosis is made.

We need to try to change the culture in Scotland and to encourage more open discussion about death. People seem to be happy enough to make a will and there is growing discussion about organ donation, but there is still a barrier when it comes to acknowledging impending death. Professionals need to be given training and support to ensure that they can give high-quality, person-focused care to people with terminal illness, and better links need to be developed between generalists and specialists such as cardiologists, neurologists and those who specialise in palliative care.

As integrated health and social care develops, the new integrated boards should look to have palliative care at the heart of their strategic plans, because ineffective co-ordination of care between services such as health and social care or general and out-of-hours practice, and between different organisations, can lead to unnecessary delays in care and support. Despite the shortcomings in gaining access to it, palliative care in Scotland is recognised as being of a high standard, but we need to make more progress in achieving equitable access to good-quality terminal care for all patients who require it.

Marie Curie has several suggestions for the Government that it thinks will move things forward. It recommends that a reference to terminal illness, dying and death should be included in the Government's planned revision of its 2020 vision document for Scotland; that palliative care should be an early priority for integration, as I have just described; that, in the new strategic framework for action on palliative and end-of-life care, which is due to be published later on this year, there should be a clear commitment to ensuring that everyone with a need for palliative care has access to it by 2020; that robust data is collected to measure progress and the experience of patients and their families; that training and support are given to health and social care professionals to deliver effective care for people who are terminally ill; and

that a clear resource commitment is made to achieve the aims and objectives of the strategy.

We live in a time when more and more people are living into healthy and active old age, thanks largely to modern developments in medical techniques and pharmaceutical products, but all of us are mortal and, sooner or later, many of us will require palliative or end-of-life care. Some will require it earlier in life if they suffer from a congenital or degenerative neurological or other chronic condition or malignancy, while others will need it much later as a result of diseases that I have already mentioned. I would like to think that, in the foreseeable future, we can achieve a high standard of such care for everyone who needs it, whatever their personal circumstances and wherever they live in Scotland. As well as being desirable, that should be cost-effective. The Nuffield Trust estimates that savings of £500 per person could potentially be made by enabling people at the end of life to be cared for at home or in the community.

I look forward to the debate and to the minister's response, and I hope that everyone agrees that high-quality, accessible palliative care is what we all wish to achieve and what we should be striving for.

17:09

Patricia Ferguson (Glasgow Maryhill and Springburn) (Lab): I congratulate Nanette Milne on securing the debate. She outlined the work done by Marie Curie and the research undertaken on its behalf by the LSE. The report "Changing the conversation" demonstrates ably the need in Scotland to do exactly that—to change the conversation about death and dying and consider how we support those who are at that stage in their lives.

In recent debates on Marie Curie, some of us talked at length about the fact that the charity does not look after just cancer sufferers; a range of people benefit and many more could benefit. Nanette Milne comprehensively covered Marie Curie's argument that we need to look at the care pathways that are available to people from the point of diagnosis.

I will concentrate on carers—the people who support others through a terminal illness. Caring for someone who is at the end of their life can be physically and emotionally draining, not least because the carer knows that their loved one will never get better. Many people who care for someone who is living with a terminal disease do not see themselves as a carer and therefore do not look for or get the support that they need.

The report that Marie Curie commissioned from the LSE shows how important carers are to people

who are living with a terminal illness. The report highlights that people who do not have a live-in carer are less likely to report that they have sufficient support, and it is important to note that they are likely to have a worse perception of pain management and that they are far less likely to access community-based services. All of those are serious deficiencies in the system.

The LSE report demonstrates that more than 50 per cent of people die in hospital but that the vast majority of people would rather die at home. It suggests that having a carer is the single most important factor associated with a home death while, conversely, living alone increases the likelihood of a hospital death.

It is often difficult for people to navigate their way through the layers of professional and personal treatment and care that are involved in sometimes complex conditions. It is often up to the carer to navigate that perilous journey, but carers need support—they are often anxious and stressed. Not only do they have to watch their loved one going through a very difficult time—the most difficult time—but they might have given up work to look after them; they might have had to reduce their household expenses to cope; and they might have to pay higher bills, as looked-after people often need additional heating, supplies and special food. Carers can often be physically tired and emotionally drained because of the tasks that they have to undertake.

Carers put their own lives on hold and often neglect their own needs because of their dedication to their role. In some cases, they try to manage that role alongside the other roles that they fulfil in the family setting—as mothers, wives, husbands and fathers—as well as perhaps trying to be the breadwinner, if it is possible for them to continue to do that.

An important point is that Marie Curie does not think that that is good enough, and neither do I. Marie Curie argues that those who are caring for people with a terminal illness should automatically qualify for support, which should be underpinned by legislation. It thinks that health boards and health professionals should ensure that carers are involved in discussions about the care of the person they look after. In addition, it believes that there needs to be more support for carers and, crucially, that that provision should be consistent across Scotland.

Marie Curie is to be congratulated on many things. The report comes at an important time, so I, for one, thank it for identifying what needs to be done going forward as well as for all the things that it has done for so many years.

17:14

Roderick Campbell (North East Fife) (SNP): I thank Nanette Milne for securing the debate and giving us the opportunity to discuss this important matter. I congratulate Marie Curie on the production of its important document.

As “Changing the conversation” makes clear, because life expectancy is improving, people with a terminal illness are living with more complex needs than before. It also makes it clear that people in Scotland in the last six months of life spend anywhere between 10 and 22 days in hospital, although most people want to be cared for in their homes at the end of their life.

At a recent meeting of the cross-party group on dementia, we discussed end-of-life and palliative care. We were fortunate enough to have Richard Meade of Marie Curie and Amy Dalrymple of Alzheimer Scotland as guest speakers to explain the work that their organisations do on palliative care for people with dementia.

In addition to “Changing the conversation”, Marie Curie recently produced “Living and dying with dementia in Scotland”, which sets the scene. We know that almost 90,000 people in Scotland live with dementia and that the number is set to double by 2031. Close to 60 per cent of people die in hospital but, as I said, the vast majority would prefer to die at home.

A very small number of dementia sufferers receive palliative care, compared with 75 per cent of terminally ill cancer patients. When dementia sufferers get palliative care, it is usually only in the last few weeks of their life. As Marie Curie suggests, only 20 per cent of dementia sufferers who would benefit from palliative care receive such assistance.

Why are people with dementia and others not getting the care that they need at the end of their life? There are a variety of reasons. Location is certainly one of the factors. People in rural communities are at a disadvantage, as are those who live on their own. It is clear that the national health service and voluntary providers have limited capacity to deliver the necessary palliative care training and support to care homes. Care homes have limited capacity to make staff available for training and to improve practice, and they are hampered by the rapid turnover of staff that is prevalent in many care homes and which makes it harder to embed and sustain the right approach. We have problems.

We must accept that terminal dementia has implications for the type of care that is provided. Many of those with the condition have little or no access to specialist care. If dementia is diagnosed as terminal, we need to ensure that those people are provided with the care and support that they

need, in the way that we would with any other person who is diagnosed with a terminal illness.

There are issues with identifying dementia as the ultimate cause of death on death certificates. Often, an infection or other common illness is registered, which creates a culture in which dementia is not recognised as a cause of death in its own right. We must work to improve that. However, there has been an increase in the prevalence of dementia on death certificates. My mother died last year. She had a variety of illnesses, but the cause of death was stated to be dementia.

What can we do generally to help tackle the situation? With an ageing population, it is vital that policy makers, health and social care professionals and charities work together to ensure that people with dementia receive the appropriate care and are fully supported at the end of their life. I would like end-of-life dementia care to become a core part of the national dementia strategy. We should work to reach the point at which people who might benefit from palliative care get it. We also need to focus on collecting appropriate data, so that there is a clear national picture of the level and quality of care being received.

There are some positives. A new palliative and end-of-life care national advisory group was set up at the end of last year and the Government has published new guidance to support clinical and care staff who plan for and provide care during the last days of life. I hope that the minister will comment on the positives in closing.

17:19

Jim Hume (South Scotland) (LD): I congratulate Nanette Milne on bringing the debate to the chamber and highlighting the importance of the report by Marie Curie for the future of the health system as a whole. We have seen the numbers relating to palliative and community care, and through them the underlying causes for the lack of equal and accessible care for everyone who needs it.

I confirm my support for the work of every person who is involved in making those services more accessible. I note the report’s findings that tens of thousands of people are dying each year without having been given palliative care, and that more than half of those who pass away in hospitals had wanted to do so in the comfort of their homes. I find it disturbing that there are visible differences in the care that different groups of people receive based on their age or their ethnic or social background.

Although the fact that advances in technology, medicine and care are helping people to live

longer is a promising indicator in moving towards the goal of better health, more people are developing multiple long-term conditions. The rising numbers of people who are living with multiple and complex conditions mean that the pressure is rising in hospitals, while—as has been said—more than 50 per cent of people want to be cared for at home towards the end of their life.

The report notes that investment in healthcare “remains very much focussed on acute services in a hospital environment”

and not on services in the community. There are unplanned hospital admissions that take up valuable bed days while resources could be directed towards people’s needs at home. As a result of those undesirable hospital bed days, people are losing between 10 and 22 days that they could have spent with their families during the last six months of their lives. As the Marie Curie report highlights, the current situation is not fair.

If we are to make palliative care more equally accessible to everyone who needs it, we must ensure that inequalities that are to the detriment of people receiving care are eliminated. No one should be denied care because of where they live, how old they are or their ethnic background.

There is an opportunity to improve the situation through the integration of health and social care, which will be implemented by early next year. If resources are allocated appropriately and fairly, and if implementation involves all the relevant stakeholders, a lot of people will benefit through increased systemic support and care that treats each person with a terminal illness as equally important.

There are other underlying problems that should be discussed. Many people struggle—understandably so—to come to terms with their conditions, making them withdraw socially and often leading them to develop feelings of loneliness and depression. The last thing that we want is for people with terminal diseases to feel as if they are not equal members of society because of their illnesses and conditions. Tackling social isolation must be a top priority in terms of how care is provided. We need clear uninterrupted information for, and involvement of, the care receiver, close family and friends.

I have spoken about my support for equal access to palliative care for everyone who needs it. I point out my party’s commitment for zero tolerance of any kind of inequality in receiving such care, and our support for ensuring sufficient resources for the integration of health and social care in the community. I hope that the discussion will develop robustly and allow for a multitude of constructive opinions.

I finish by thanking not only Nanette Milne for the debate but Marie Curie for its report.

17:23

Michael McMahon (Uddingston and Bellshill) (Lab): I join colleagues in congratulating Nanette Milne on bringing the debate to the chamber. I thank Marie Curie for producing the “Changing the conversation” report on terminal illness, which is timely and important.

During the previous Edinburgh festival I attended a number of diverse events that were all very enjoyable for a range of reasons. The one that affected me most was a sort of variety show, during which my emotions were pulled in all directions. It is the event that has most stayed in my memory and will live with me the longest. It was effectively a showcase that pulled together a few of the performers who were performing as part of “Death on the Fringe”, which was a series of shows and events looking at death and dying; it was essentially a festival within the festival. Some acts were serious and some were comical, but they all made us think about what it means to live well and die well.

“Death on the Fringe” was part of good life, good death, good grief, which is an on-going charity-led campaign that works to promote more openness about death, dying and bereavement. The campaign’s aim is to make people aware of ways to live with death, dying and bereavement and to help them feel better equipped to support each other through those difficult times.

The specific event that I attended was used to promote a further event that was held last November, when the good life, good death, good grief campaign initiated the to absent friends festival, which is a people’s celebration of storytelling and remembrance. It provided opportunities for people across Scotland to remember and tell stories about dead loved ones.

The good life, good death, good grief campaign is currently a finalist in the Scottish charity awards for its work and I wish it well. It is a hugely significant campaign because Scotland must break free of the cultural shackles that prevent people from talking about end-of-life issues and death itself.

Death, dying and bereavement affect all of us, yet talking about and planning for the experiences and practicalities associated with death, dying and bereavement can be difficult. A few years ago, the cross-party group on palliative care had a presentation and discussion on the history of how we treat death in this country, and it was both fascinating and concerning to discover why we as a nation have developed such a dismal, morose and cheerless attitude towards the subject. The

cross-party group has also heard about the experiences of palliative care experts who have gone to Africa and seen how the attitude towards death and dying in the countries in that continent contrast so starkly with the manner in which we debate the subject.

We need to become more open about death, dying and bereavement because our attitude is holding us back and impacting adversely on how we deliver health services. Because general practitioners find it difficult to discuss death and dying with patients and because patients find it uncomfortable to discuss how they might die, we create an environment in which we curtail an understanding of terms such as “palliative” and “hospice” and we erect barriers that prevent people from obtaining effective services and support.

Marie Curie is, therefore, correct when it says:

“Everyone living with a terminal illness should have access to high quality care and support, which meets all of their needs.”

We have to break down the barriers that prevent that from happening. To get to that point we need to transform the conversation about terminal illness so that people can have the best possible quality of life and death, regardless of their circumstances. It should not be those with the loudest voices and the sharpest elbows who get access to the services that people—especially those from the most deprived communities—need.

We have to make people more comfortable about using words such as “death”, “dead” and “dying” and enable them to make choices relating to their own death and dying. Health and social care professionals and volunteers in all care settings must be made able to have discussions relating to death, dying and bereavement with patients and families. We often hear about the importance of starting early with our young people on reading, writing, the environment and other issues, but we must also ensure that children grow up treating dying as an inevitable part of ordinary life.

Palliative care is often ignored or at best tagged on to far too many of our health strategies. We have to make it available, accessible and appropriate. It is central to meeting the multiple needs of each individual person requiring additional care to live well. The Marie Curie report emphasises, yet again, why we need to make that so, and it is very welcome because of that.

17:28

The Minister for Sport, Health Improvement and Mental Health (Jamie Hepburn): I thank Nanette Milne for securing the debate on what is a sensitive but very important subject. I also thank

Marie Curie for all the work that it undertakes across the communities of Scotland.

The “Changing the Conversation” report that Marie Curie published last month is very helpful. That report and the Marie Curie-commissioned LSE report that has been referred to both helpfully emphasise the importance of creating the conditions in which conversations about all those pressing issues lead to action—action that will make clear the essential priorities for the future co-ordination, planning and delivery of high-quality palliative and end-of-life care for everyone who needs it. Those issues must be considered for everyone, including people who are living with a wide range of conditions, as well as children, young people and their families, who are also sadly affected by conditions for which a cure is not possible.

Our commitment in Scotland to a new strategic framework for action was made in recognition of the need for a nationally agreed set of actions that will deliver the changes that organisations such as Marie Curie have rightly highlighted as being urgently required.

Equity of access to palliative and end-of-life care services, irrespective of where people live or what clinical condition they have, will be a central element of the framework. We have established a new national advisory structure, refreshed stakeholder engagement arrangements and detailed plans to support our commitment to publish a strategic framework for action towards the end of this year. The structures that are now in place provide more effective links with GPs, hospice chief executives, nurses, palliative care specialists and the leadership of national health service boards, local authorities and national scrutiny and improvement organisations. We will achieve improvement by working with people, encouraging participation and ensuring that everyone feels that they can work together towards a common aim, which is to have palliative care available to everyone at the earliest possible opportunity.

The legislative changes that we have introduced on the integration of health and social care set in place a new framework for how services are organised. Jim Hume rightly spoke of the opportunity to improve through the integration process. Integration joint boards will now be responsible for commissioning palliative care services in hospitals and communities, and for ensuring that the combined resources from health and social care are targeted through strategic commissioning. We expect the new integration joint boards to take account of all the issues that are raised by organisations such as Marie Curie and to ensure that their strategic commissioning plans describe and demonstrate how resources,

skills and services will ensure that everyone who needs palliative care gets it, no matter where they live or what condition they are living with.

The third sector has an important role in the integration process. Rod Campbell spoke about the role of the third sector and mentioned Alzheimer Scotland in particular. It is important to remind ourselves that dementia is a terminal illness. In that regard, there are around 1,500 NHS or NHS-paid-for dementia continuing care or dementia specialist beds in Scotland, providing some of the most complex, intensive and challenging care for people in advanced stages of their dementia. Scottish Government officials recently met Alzheimer Scotland to ensure that the work that it is doing on a service model for dementia care at the end of life informs our strategic framework for action, which I referred to earlier.

In taking forward our work on palliative care, the Scottish Government fully recognises that we need to address the taboo that exists in Scotland around discussing death and dying, which Michael McMahon spoke about. We are supportive of good work on people being able to talk about death and dealing with related issues. An example of that is the Scottish Partnership for Palliative Care's good life, good death, good grief alliance, which Mr McMahon mentioned.

On the point that Mr McMahon and others made about doctors feeling confident about discussing death, the Scottish Government is working closely with the General Medical Council in Scotland to support doctors, who often report a need for advice on having the confidence to have an open conversation with their patients on such matters. The establishment of a communication coalition is also being considered, in response to growing calls from key stakeholders to have a more visible strategic commitment and to support more dialogue regarding care preferences when a cure is not possible.

We need to be bold if we want to create the conditions for people to feel able to broach the issues and to move away from the medicalisation of some aspects of palliative and end-of-life care. People know what matters most to them, and they need to be supported to talk to doctors, nurses and care staff about the issue. Talking about preferences for care and being more open when time is becoming short often lead to a much better quality of life and a relief that difficult conversations no longer need to be feared or avoided.

We know that most people want to plan care that supports them to be at home with their families at the end of their lives. That is why anticipatory care planning is now central to health and care in Scotland. A cross-sector group has

been established, with representation from health, social care, housing, the third and independent sector and service users to help embed anticipatory care planning in every locality and enable people to think ahead and to record their wishes. More people need to be supported to have such care plans in place.

With regard to people being supported at home, Patricia Ferguson rightly highlighted the important role of carers of those with a terminal illness. At the end of last year, the Scottish Government published new guidance to support clinical and care staff who are planning on providing care during the last days and hours of life. One of the four key principles that are identified is that consideration should be given

“to the wellbeing of relatives or carers attending the person.”

We have published the Carers (Scotland) Bill, which will ensure better and more consistent support for carers and young carers so that they can continue in that caring role.

Marie Curie has rightly emphasised the importance of being able to have data and information to be able to describe progress. It is particularly interested in the views of informal carers for the evaluation of services—VOICES—survey in England. Our future plans, therefore, must include the enhancement of a national approach to measurement and monitoring. That includes a key indicator on end-of-life care as part of the requirements to measure improvements in health and wellbeing outcomes under health and social care integration.

Those indicators will, of course, need to be tested over time and evolve to reflect the changing needs of individuals, so I will ask officials to ensure that we also encourage the local use of VOICES survey questions to support improvement and provide data at a national level to inform future strategy and policy development. The aim is to ensure that there is a good quality anticipatory care plan in place for those who need it, and we will consider whether there is a requirement for any additional qualitative and quantitative measures on which we can build and improve.

In addition, the Scottish Government has been working in partnership with the NHS, the Convention of Scottish Local Authorities and the third sector to develop a new framework to effectively listen and respond to the voices of those who use health and social care services. Over time, as it is implemented, the stronger voice initiative will provide an increasingly robust framework in Scotland for continuing dialogue with people on what they want from health and social care services.

I hope that that gives an indication of the great importance that this Government places on supporting people who are near the end of their lives and are in what are difficult circumstances for them and for their families. Of course, we will always be willing to consider what more we can do.

Meeting closed at 17:36.

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