The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

MEETING OF THE PARLIAMENT

Thursday 28 January 2016

Session 4

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Scottish Parliament

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[The Presiding Officer opened the meeting at 11:40]

General Question Time

The Presiding Officer (Tricia Marwick): Good morning. Question 1, from Patricia Ferguson, has not been lodged. The member has provided an explanation.

M8, M73 and M74 Motorway Improvements

2. Richard Lyle (Central Scotland) (SNP): To ask the Scottish Government whether it will provide an update on the M8, M73 and M74 motorway improvements project and its implementation. (S4O-05495)

The Minister for Transport and Islands (Derek Mackay): February 2016 will mark 24 months since construction began on this complex infrastructure project and significant progress has been made on several key routes and structures. Two thirds of the new M8 between Baillieston and Shawhead is now complete and work on the new underpass at Raith, at junction 5 of the M74, is well under way. Officials will continue to work closely with the construction contractor to deliver the project on time in spring 2017.

Richard Lyle: I welcome the work that the Scottish Government is doing to improve traffic flow in what is a congested area in my region. What action is the Scottish Government taking and what further action could be taken to reduce noise pollution along sections of the motorway? Will fencing be erected alongside the M74 as part of the on-going motorway improvement plan works?

Derek Mackay: I know that Mr Lyle appreciates that the works are necessary and are worth the wait and the inevitable disruption. I advise him that the project is being delivered in accordance with all the relevant regulations and legislation, including those relating to noise. Prior to works commencing, the contractor agreed mitigation measures with the local authority, which has the necessary powers to ensure that those are implemented. My officials will work closely with the contractor and the local authority to ensure that noise levels are kept to a minimum through the use of best-practice techniques where practicable. The investment in the motorway network is well worth while to improve connections and I am sure that that will be welcomed by all members.

NHS Greater Glasgow and Clyde (Planning)

3. Paul Martin (Glasgow Provan) (Lab): To ask the Scottish Government what its response is to the NHS Greater Glasgow and Clyde paper, "Service and Financial Planning for 2016/17 and beyond". (S4O-05496)

The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison): As I have said in response to the member's questions on the subject over the past two weeks, the chair of NHS Greater Glasgow and Clyde has confirmed that the document is a draft discussion paper that was prepared for the board's directors to inform internal discussion on the board's financial position for 2016-17. It was written prior to the issue of the Scottish Government's budget in December, when a substantial increase in national health service funding was announced.

As the chair John Brown's statement of 15 January confirms, the draft discussion paper does not contain definite proposals or an approved plan that the board intends to implement. None of the contents, including those relating to Lightburn hospital, have been approved by the board or referred to the Scottish Government for consideration.

Paul Martin: As the minister confirmed, the document contains a proposal that confirms the possibility of the closure of Lightburn hospital. On 13 January, the minister advised me that that proposal had not been brought to her attention. Will she confirm that, before 13 January, there were discussions with the health board on the possibility of making £60 million of savings and on the document?

Shona Robison: No proposal has been put to me on the closure of Lightburn hospital and there have been no discussions with NHS Greater Glasgow and Clyde about Lightburn hospital.

On future budgets, I have said to Parliament previously that Scottish Government officials will work with all boards on the efficiency savings that they need to make. Those savings will be reinvested in front-line services. One focus of those discussions will be how we can develop more shared services across not just the NHS but the whole public sector. I would have thought that Paul Martin would welcome that to protect front-line services.

Jackie Baillie (Dumbarton) (Lab): The cabinet secretary is quoted in my local press as saying that she did not know about and would not approve the proposed cuts at the Vale of Leven hospital. Given that statement, will she tell us whether she knew about the closure of ward 6 only in December? Was she notified of that by the health board?

Shona Robison: NHS Greater Glasgow and Clyde will inevitably introduce changes in the services that it provides. When those changes are major and significant, we expect the board to consult the community. As Jackie Baillie knows, boards adjust their services all the time; it would be unreasonable for them to do otherwise. However, as she rightly said, I have made clear to her and to the local community that the vision for the Vale, as developed by this Government after Jackie Baillie's Government closed accident and emergency services there—[*Interruption*.]

The Presiding Officer: Order.

Shona Robison: Jackie Baillie's Government was set to close the Vale of Leven hospital, and it was this Government that saved the hospital and delivered the vision for it. This Government will ensure that services such as emergency care continue at the Vale. Jackie Baillie would be better advised to listen to the reassurance that I have given, rather than continuing to generate fear and alarm in the local community. I am sure that the local community will benefit from that continuation and welcome that assurance.

Fair Trade Nation

4. Claudia Beamish (South Scotland) (Lab): To ask the Scottish Government whether it will provide an update on Scotland's progress as a fair trade nation. (S4O-05497)

The Minister for Europe and International Development (Humza Yousaf): At the start of Fairtrade fortnight 2013, I had the great pleasure of announcing that Scotland had been declared one of the world's first fair trade nations. Since then, significant achievements have been made. Every local authority has active fair trade groups, and two thirds of our local authorities have been awarded fair trade status. In addition, more towns, communities and schools have achieved fair trade status each year, and nearly 1,200 schools are part of the fair trade school scheme.

Scotland has also seen the launch of the only fair trade sports ball supplier in the UK: Bala Sport. I am pleased to say that good progress has been made since the initial announcement in 2013, and I thank all the people, businesses, public bodies, community organisations and individuals who have helped to achieve that considerable success.

Claudia Beamish: The World Fair Trade Organization lists 10 aims for a fair trade nation. Three of those aims are:

"Ensuring no Child Labour and Forced Labour ... Commitment to Non Discrimination, Gender Equity and Women's Economic Empowerment"

and

"Respect for the Environment".

Has Scotland as a fair trade nation been assessed against that organisation's aims? If not, will the minister consider looking at those aims?

Humza Yousaf: I have not seen the aims from that organisation, but everything that Claudia Beamish mentioned aligns exactly with our aims for Scotland as a fair trade nation, so I would be happy to take those principles into consideration. The fair trade status that we have managed to achieve comes with a heavy and robust set of criteria, many of which align with the criteria that Claudia Beamish mentioned. I will look in more detail at the organisation that she mentioned and I am happy to respond. It certainly seems eminently sensible that we should consider those criteria.

Gender Recognition Act 2004 (Update)

5. Alison McInnes (North East Scotland) (LD): To ask the Scottish Government what its position is on updating the Gender Recognition Act 2004 to bring it into line with international best practice, as called for in the Council of Europe Resolution 2048 (2015). (S4O-05498)

The Minister for Local Government and Community Empowerment (Marco Biagi): Scotland has a good record in that area. In 2015, Scotland was ranked by ILGA-Europe—the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association—in its rainbow map as the most inclusive country in Europe for lesbian, gay, bisexual, transgender and intersex equality, as a result of meeting 92 per cent of the organisation's 45 criteria.

However, the Scottish Government is aware of concerns about the process of obtaining gender recognition under the Gender Recognition Act 2004, and it is carefully considering the issues that have been raised by the Scottish Transgender Alliance's equal recognition campaign. Any changes to the 2004 act would require full consultation, and any legislation in the Scottish Parliament to amend the act would have to be for the next session of Parliament.

Alison McInnes: I am grateful that the minister is considering the representations from the equal recognition campaign. The 2004 act marked a step forward at the time, but it is now outmoded and in need of reform. Gender recognition should be based on declaration, without the need for a panel of doctors and lawyers examining the evidence, and the minimum age for getting recognition should be reduced. Legal recognition of non-binary gender should also be introduced.

It is within the Scottish Parliament's devolved competence to amend the 2004 act to bring it into line with what the equal recognition campaign is calling for. Will the Scottish Government agree to

consult at least on those important matters, with a view to reforming the legislation?

Marco Biagi: As I have said, we are considering the issue, which I have already met the Scottish Transgender Alliance to discuss. We have noted the United Kingdom Women and Equalities Committee report, and I have discussed its inquiry with my colleague the member of Parliament for Lanark and Hamilton East, who took part in it.

I would not want to prejudge the outcome of any consideration and any subsequent consultation, but the record of this Government is that we were the first national Government in Europe to fund a transgender rights programme; we included trans and intersex matters in the Offences (Aggravation by Prejudice) (Scotland) Act 2009, which we supported; and we have the most progressive marriage legislation on trans issues. That should give comfort that we take trans and intersex rights seriously and are always prepared, where there is a strong case, to act on them.

Scottish Courts and Tribunals Service (Meetings)

6. Claire Baker (Mid Scotland and Fife) (Lab): To ask the Scottish Government when it last met the Scottish Courts and Tribunals Service and what issues were discussed. (S4O-05499)

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): Scottish Government officials last met the Scottish Courts and Tribunals Service, including its chief executive, on 14 January. A number of issues relating to the courts system were discussed. The chief executive of SCTS is a key member of the justice board, and through that forum regularly updates Scottish Government and justice board members on the progress of courts reform and the SCTS contribution to delivery of the justice strategy.

Claire Baker: The Scottish Court Service's 2012 consultation document that proposed the recent court closures, recognised that accommodation at Kirkcaldy sheriff court was not fit for purpose and that there was a need for a new sheriff and jury centre for the people of east Fife. The sum of £23 million has just been announced for a justice centre in Inverness, with Scottish Government backing and part funding. Does the minister agree that the plans for a Kirkcaldy justice centre need to be brought forward as soon as possible?

Paul Wheelhouse: The member is quite right that the Scottish Government will be investing £5 million in 2016-17 towards the development of a new collaborative justice centre in Inverness, which will bring together justice and other bodies and provide a hub for justice technology. That will demonstrate the value of the proposed model and support justice throughout the Highlands. Work will commence on-site this year, with a view to the centre being operational in 2018.

The Scottish Courts and Tribunals Service will continue to explore all funding options for further justice centres, which will include further discussions with the Scottish Futures Trust on a potential solution for Fife and Lanarkshire.

Oil and Gas Industry (Support)

7. Christian Allard (North East Scotland) (SNP): To ask the Scottish Government whether it will provide an update on its support for the oil and gas industry. (S4O-05500)

The Minister for Business, Energy and Tourism (Fergus Ewing): We already provide support, in particular through our enterprise agencies and the energy jobs task force. In addition, today we have announced £379 million of Scottish Government support for the north-east economy, including a £125 million contribution to the Aberdeen city deal. I know that the member and others will welcome that substantial investment in the region.

Christian Allard: I thank the minister for his answer, which will be very much appreciated in the north-east. Does the minister agree that, given that the United Kingdom Treasury benefited from hundreds of billions of pounds of revenue from the north-east in the good years, it now needs to take action to support the sector and must take action in the March budget to put in place a more supportive fiscal regime for the oil and gas industry?

Fergus Ewing: Yes, I do. It is correct to say that the industry is tackling costs and improving efficiency, but it is for the UK Government to deliver no later than the spring budget the necessary tax measures that the industry needs, which are to encourage investment in exploration; to maintain and enhance investment in late-life fields to prevent premature cessation of production; and to bring in new investors by clarifying decommissioning liabilities, which are blocking deals unnecessarily. The UK has had, in the good days, over £300,000 million of tax from the oil and gas industry based in Scotland—now it is payback time.

Lewis Macdonald (North East Scotland) (Lab): I understand that the Scottish Cabinet had a special briefing on the oil jobs crisis earlier this week. Can the minister therefore now tell us how many jobs have been lost in Scotland as a result of the downturn in the oil and gas sector?

Fergus Ewing: The Oil & Gas UK estimate is that 65,000 jobs have been lost throughout the

UK. That is an extremely serious matter and is precisely why the First Minister set up the energy jobs task force over a year ago. The task force has helped young people by preventing the loss of their apprenticeship with the £5,000 provision. It has reached out to around 1,500 people with direct support at three events in the beach ballroom and at Pittodrie park. It has held innumerable events and has had buy-in from the whole industry. Oil & Gas UK and the industry support its work and it will continue with a whole range of measures.

The Cabinet met this week and we are considering what more we can do. We are determined to do everything practical to maintain and support the industry at this difficult time.

National Health Service (Staff)

8. Graeme Dey (Angus South) (SNP): To ask the Scottish Government how many staff work in the national health service and how this compares with 2006. (S4O-05501)

The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison): Under this Government, a record high number of staff work in the NHS. There were 137,727.9 whole-time equivalent staff as at September 2015 compared with 127,061.9 whole-time equivalent staff in September 2006. That is an increase of more than 10,600 whole-time equivalent staff, or 8.4 per cent.

Graeme Dey: At the risk of being parochial, how many additional staff were recruited by NHS Tayside over that period? How does that break down in terms of consultants, doctors, nurses, midwives and so on?

Shona Robison: Staffing has vastly improved over the past decade, which has enabled more staff to work in NHS Tayside. NHS Tayside has seen more than 7 per cent more staff, including more than 200 qualified nurses and midwives, and more than 150 consultants. In those consultant numbers, there has been a particularly big increase in emergency medicine consultants. They are up by 342 per cent, or 17.1 whole-time equivalents, from five to 22.1. I hope that the member welcomes that.

Homophobic, Biphobic and Transphobic Bullying

9. Jim Eadie (Edinburgh Southern) (SNP): To ask the Scottish Government what action it is taking to address homophobic, biphobic and transphobic bullying. (S4O-05502)

The Minister for Local Government and Community Empowerment (Marco Biagi): The Scottish Government takes bullying very seriously. Bullying of any kind, including homophobic, biphobic and transphobic bullying, is unacceptable and must be addressed wherever it arises.

We want all children and young people to be free from discrimination so that they can learn and reach their full potential. Our "A National Approach to Anti-Bullying for Scotland's Children and Young People" sets out a common vision and aims to ensure that work across all agencies and communities is jointly focused on tackling all types of bullying, including prejudice-based bullying. That guidance is currently being refreshed by a working group that includes LGBT Youth Scotland and Stonewall Scotland.

Jim Eadie: The minister will be aware that there are still lesbian, gay, bisexual and transgender young people in Scotland who are afraid to go to school because of their fear of being bullied. What more can the Scottish Government do to ensure that all teachers are fully equipped to tackle bullying wherever it takes place, be that in the classroom or the playground, and that every school in the country has an appropriate policy in place to tackle that important issue?

Marco Biagi: I very much agree with the member that the issue is important.

The member raised the issue of policies. We know that 28 councils have local authority-wide anti-bullying policies for schools that mention homophobic bullying; two are developing them; and the remaining two—Stirling Council and Aberdeen City Council—have been approached to work with the respect me service to do so as well.

The Scottish Government's respect me anti-bullying service is funded by it to be the training body for anti-bullying work across the country. Some 700 teachers have been trained to be trainers, and since 2007, 100 per cent—I say again: 100 per cent—of the training that respect me has delivered has included specific work on prejudice-based bullying, including homophobic bullying.

NHS Greater Glasgow and Clyde (Meetings)

10. Duncan McNeil (Greenock and Inverclyde) (Lab): To ask the Scottish Government when the Cabinet Secretary for Health, Wellbeing and Sport last met the chief executive of NHS Greater Glasgow and Clyde. (S4O-05503)

The Cabinet Secretary for Health, Wellbeing and Sport (Shona Robison): Ministers and Scottish Government officials regularly meet representatives of all health boards, including NHS Greater Glasgow and Clyde.

Duncan McNeil: When the cabinet secretary visited my constituency in late November, concerns about the future of Inverclyde royal

hospital were dismissed as having “no substance”. However, a recent health board paper has revealed that the hospital’s repair bill has soared to a staggering £65 million, 80 per cent of which falls within the clinical space. Given the sheer scale of the maintenance backlog, does the cabinet secretary now understand why my constituents are anxious about the future of the hospital? Will she now agree to a full public consultation so that the people of Inverclyde can have their say on the future of their local hospital?

Shona Robison: I caught most of what Duncan McNeil said. I reassure him that the IRH’s future is very important to local health service delivery. As I said to Paul Martin earlier, none of the issues in the board’s draft discussion paper have formally been put forward for consideration, or been put to me.

Duncan McNeil mentioned backlog maintenance and I will write to him on the detail of that. A lot of progress has been made on high-risk backlog maintenance by prioritising.

First Minister’s Question Time

12:00

Engagements

1. Kezia Dugdale (Lothian) (Lab): To ask the First Minister what engagements she has planned for the rest of the day. (S4F-03194)

The First Minister (Nicola Sturgeon): Later today I have engagements to take forward the Government’s programme for Scotland. The Government is also today setting out details of the £379 million contribution that we are making to a £504 million funding package to boost economic growth in Aberdeen and Aberdeenshire.

Kezia Dugdale: The Labour Party very much welcomes that investment.

The national health service is our most precious public institution. The dedicated staff who work in it help to bring us into this world and they care for us in our time of need. The delivery of NHS services depends on having motivated and well-supported staff. This week, the scale of the pressure on our NHS because of Scottish National Party cuts and mismanagement was exposed. The Royal College of General Practitioners warned of a deepening GP crisis and the Royal College of Nursing said that there needs to be a change in the health service—and quickly.

Our NHS is at breaking point. Hardworking, loyal staff are crying out for help. Will the First Minister tell me how many days were lost in our NHS last year due to staff stress?

The First Minister: I agree that the NHS is our most valued, cherished and precious public service. I also agree that the service could not and would not be delivered without the dedication and the contribution of the staff who work in it. That is why I am very proud that since this Government took office in 2007 the number of people working in our health service has increased by 10,500.

Next year we are increasing the NHS’s budget by £500 million. As well as that investment, we have set out very detailed plans about how we want to reshape and reform the NHS. We want to build up social care—£250 million of that investment will be put into increasing social care—and we want to improve primary and community care to keep people out of hospital. We have planned five new elective treatment centres, so that when people do have to go into hospital they can get that care quickly and efficiently.

Kezia Dugdale mentioned comments from the Royal College of General Practitioners and the RCN, and we listen very carefully to what those organisations have to say. I note that she omitted

to mention yesterday's comments from the Royal College of Emergency Medicine. It said that the United Kingdom has the best performing accident and emergency services in the world and that Scotland has the best performing A and E services in the United Kingdom. We should say a massive thank you to NHS staff for that.

Kezia Dugdale: I asked the First Minister about the stress that NHS staff are under and she just clapped herself on the back. Yet again, she gave me a long response that was not an answer to the question that I asked.

Let me give her the answer. Figures obtained by Scottish Labour showed that last year, NHS staff lost more than 287,000 days because of stress. That is an increase of 21 per cent compared to just two years ago. The issue really matters, because it puts vital NHS services that are facing SNP cuts under even more pressure.

One of those services is the children's ward at St John's hospital in Livingston, which is currently under review and is potentially under threat of closure. The First Minister will tell us that that is a decision for the health board, but she has overruled officials before and she should do so again now. My constituents want a simple yes or no in answer to this question: can the First Minister confirm, once and for all, that she will not allow the children's ward at St John's to be either closed or downgraded?

The First Minister: On the point about stress among people who work in our NHS, I started my answer to Kezia Dugdale by recognising the contribution of those who work in our NHS. I also said—and this is a point that she chose to ignore—that since this Government took office there has been an increase of 10,500 in the number of people working in our NHS.

Yet again, we have a divide in this Parliament between a Labour Party whose members come here and present what they describe as problems and an SNP Government that is getting on with the job of delivering the solutions for our NHS and other public services in Scotland.

On St John's hospital, it is interesting that in her first question Kezia Dugdale asked me to listen to the Royal College of General Practitioners and the Royal College of Nursing, to which I replied that we always do, but in her second question she asked me to say now, before an independent review has concluded, that I will ignore any recommendations from the Royal College of Paediatrics and Child Health, which is carrying out the independent review that she talked about.

I will take absolutely no lectures from Scottish Labour when it comes to St John's hospital in Livingston, because when I took office as health secretary in 2007 Labour had taken away from St John's hospital services such as trauma orthopaedics and emergency surgery, and there were concerns locally that St John's would be downgraded from being an acute hospital and possibly even closed.

Neil Findlay (Lothian) (Lab): Rubbish!

The Presiding Officer (Tricia Marwick): Order.

The First Minister: Since then, this Government has protected A and E services at St John's, with consultant cover extended. We have invested £3 million in a new magnetic resonance imaging scanner at St John's. We have invested £7 million in capital funding for short-stay elective surgery. There has been a £300,000 investment in respiratory services at St John's. We have refurbished the labour ward and the special care baby unit. We opened a new laboratory medicine training school. We have invested £3.3 million in an endoscopy unit. We have opened a regional eating disorders unit—and, of course, one of the five new elective treatment centres that we plan over the next parliamentary session is planned to be at St John's hospital.

This Government has protected St John's hospital from the cuts that were imposed on it by the former Labour Administration. [*Interruption*.]

The Presiding Officer: Order.

Kezia Dugdale: If the First Minister is so good at protecting services at St John's, why cannot she protect the children's ward? It is that simple. Perhaps the truth is that St John's is being not reviewed or closed but reprofiled.

The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy (John Swinney): Try a bit harder!

The Presiding Officer: Order.

Kezia Dugdale: The reprofiler-in-chief is carping from the sidelines.

People can see that this Government is pulling the wool over their eyes. Just this week emails that my colleague Neil Findlay uncovered revealed that the health secretary has been pressurising officials to delay a decision on St John's until after the election. Now we know that the First Minister will not guarantee that the children's ward will stay open.

Kicking unpopular decisions into the long grass is becoming a hallmark of this Government, and not just in the Lothians. We know that NHS Greater Glasgow and Clyde is preparing for budget cuts of up to £60 million, which will include the closure of services and cuts to staff numbers.

The First Minister has it in her power to stop that happening. She can save the Lightburn hospital and protect the children's ward at the Royal

Alexandra hospital. She can secure emergency care at the Vale of Leven district general hospital and protect NHS staff numbers in Glasgow. Will the First Minister give a 100 per cent guarantee, right now, that all those services will be protected in their current form?

The First Minister: I hate to be the bearer of more bad news—at least, it is bad news for Kezia Dugdale—but I happen to have been the health secretary who saved Lightburn hospital in Glasgow. That is possibly one of the many facts that has escaped Kezia Dugdale's preparation for today's First Minister's questions.

I can give Kezia Dugdale a tip. It is really good, when asking questions, to be able to adapt the questions in response to the detailed factual answers. The truth of the matter is that this is the Government that has protected St John's hospital from the cuts to it that were planned by the last Labour Administration. We will go on taking the decisions that protect St John's hospital and hospitals around our country.

This time last week, if memory serves, Kezia Dugdale was asking me to invest more money in local authorities. Today, she is asking us to put more money into the national health service. She is yet to tell us where any of that extra money will come from. Therefore, I issue an open invitation to her. I am holding the draft budget—I stress that it is a draft document. I am happy to pass it to Kezia Dugdale and if she wants to send it back to me with marks to show where Labour wants to introduce cuts in the budget to get the extra money that it keeps talking about, I will be happy to listen to her.

The fact of the matter is that we do not get any ideas from Kezia Dugdale and Labour; we just get whinging from the sidelines. The focus group report that was published this week, which Labour tried to suppress—[*Interruption*.]

The Presiding Officer: Order.

The First Minister: It said: "Voters recall Labour"—[*Interruption.*]

The Presiding Officer: Order.

The First Minister: It is okay, Presiding Officer. I was not going to quote the part that says:

"For Scottish voters, Labour is indistinguishable from the Conservatives—just less competent".

I was going to quote this part:

"Voters recall Labour trotting out a long list of policies, with no conviction that they could deliver".

Nothing has changed. That shower is not fit for opposition, let alone government.

Kezia Dugdale: On the first focus group quote that the First Minister read out, the only person acting like a Tory in the chamber this week is John Swinney, who is enforcing austerity on councils across Scotland. [*Interruption*.]

The Presiding Officer: Order.

Kezia Dugdale: Again, in response to a specific question about services in our hospitals across the country, there was no direct commitment to save those services. That will be noted by everyone.

The First Minister had the chance to provide much-needed relief to thousands of staff and families across the country. She could have guaranteed that the proposed cuts to NHS services would not take place, but she did not do that. Let that message go out to people across the Lothians, to patients in Glasgow and in Paisley, to families in Dunbartonshire and to people the length and breadth of this country. Is it not the case that, although the SNP says that it will protect the NHS, the reality is that it is threatening our local services with the axe?

The First Minister: Yet again, we have from Labour whinging about what, in its view, the SNP is doing wrong, with no concrete proposals about what we need to do differently.

In a few weeks' time, John Swinney is going to ask Parliament to vote for a budget that delivers £500 million of extra funding to the NHS next year. For the first time, the budget for the health portfolio is going to reach £13 billion—I think that, when we took office, it was £9 billion. There are 10,500 more people working today in our NHS. We have protected local services that Labour was planning to close. Does anyone remember the Monklands and Ayr accident and emergency units that were facing the axe under Labour but which are open and treating patients today because this SNP Government saved them?

I am more than happy to put the health record of this Government to the people of Scotland in a couple of months' time and ask them to judge it against the woeful record and the woeful present performance of this Labour Opposition.

Secretary of State for Scotland (Meetings)

2. Ruth Davidson (Glasgow) (Con): To ask the First Minister when she will next meet the Secretary of State for Scotland. (S4F-03192)

The First Minister (Nicola Sturgeon): No plans at present.

Ruth Davidson: The long-anticipated Aberdeen city region deal will be signed today, paving the way for the package of £250 million investment in the Aberdeenshire economy. It is good to see the north-east getting the help that it needs to support jobs. I welcome today's deal and hope that it holds out a brighter future for both the city and the shire.

On top of that, the Scottish Government has announced extra infrastructure funding, including £200 million to increase capacity on key rail links between Aberdeen and the central belt. That work has been on the books since 2007—the entire lifetime of the current Scottish Government. I ask the First Minister to confirm that the money is new, when it is being released and when the work will be carried out.

The First Minister: All the money that we have announced today will be available to Aberdeen and Aberdeenshire, to benefit those areas, over the same timescale as the city deal. To recap, a funding package of £504 million has been provided for Aberdeen and Aberdeenshire today, £125 million of which is coming from the United Kingdom Government—we are very grateful for that—and £379 million of which is coming from the Scottish Government.

There are many transport projects that we want to undertake, but we must prioritise them and find the money for them. Today, we are committing the money for the improvements that will speed up rail links between the central belt and Aberdeen. I hope that Ruth Davidson will warmly, and without any equivocation, welcome that. In addition, we are announcing money for trunk road funding, including funding for the Laurencekirk junction, which has been required for a long time. We are also giving to Aberdeen certainty, which other councils do not have, about its housing investment over the next five years, and we are announcing money for housing infrastructure and additional money to help with digital connections in Aberdeen and Aberdeenshire. That is a good package.

I will be in Aberdeen on Monday, making further announcements about how the Scottish Government will focus on helping the oil and gas sector in particular.

Ruth Davidson: Our party is, and always has been, for healthy competition. Therefore, I am delighted to see the Scottish Government trying to outdo the UK Government today. It is important that our two Governments work together, and this is exactly the kind of partnership that I believe most people in Scotland want to see.

However, I cannot let the moment pass without raising one key point. If the First Minister had had her way, right now we would be eight weeks away from separation. I ask her to tell us, in all honesty, what situation she thinks is better for Scotland today: the one that we have, with our two Governments, with all their resource, stepping in to support the north-east at this time; or the one that she hoped for, preparing for a life outside the UK, with oil at $30 a barrel and Scotland's finances about to be blown to pieces?

The First Minister: There is no difficulty in answering that question. I think that this Government, this Parliament and this country having all the powers that we need to grow our economy is by far the better position for us to be in.

Given that the Prime Minister is going to be in Aberdeen today, perhaps this is a moment that I cannot let pass either. Understandably, there is a lot of focus on what the yes campaign said about oil during the referendum. However, to my deep regret, the yes campaign did not win the referendum—the no campaign won the referendum. Therefore, perhaps we should look at what the no campaign said about oil during the referendum. In February 2014, David Cameron promised a "£200 billion oil boom" if Scotland voted no. Maybe when he is in Aberdeen this afternoon he can tell us what happened to that money. [*Interruption*.]

The Presiding Officer: Order. I have two constituency supplementary questions.

Kevin Stewart (Aberdeen Central) (SNP): Without knowing about the welcome additional funding from the Scottish Government, *The Press and Journal* today described the £250 million Aberdeen city region deal as slightly underwhelming. It amounts to only about a third of the investment that has gone into the Aberdeen western peripheral route. Does the First Minister share my view that Aberdeen deserves more from the UK Government than the £125 million that has been allocated, particularly considering that the Treasury has benefited from the more than £300,000 million of North Sea oil revenues that have flowed from Aberdeen to London?

The First Minister: Kevin Stewart makes a very good point indeed. Nevertheless, today is a good day for the north-east of Scotland. As I have said, I welcome the city deal agreement, which is seeing the Scottish and the UK Government commit £125 million to support infrastructure and innovation in the north-east. However, I know that Aberdeen and Aberdeenshire asked for more significant investment than that, which is why the Scottish Government has decided to commit, and today confirmed, £254 million of additional support for key infrastructure in the north-east. Of course, as I have already said, that brings the total amount of Scottish Government support announced for the north-east today to £379 million. The Cabinet Secretary for Infrastructure, Investment and Cities invited the UK Government to match that additional commitment, and we will continue to discuss with it increasing its contribution.

As members will be aware, earlier this week the Cabinet discussed the challenges facing the north-east. I will make further commitments to support the industry when I visit Aberdeen on Monday.

Duncan McNeil (Greenock and Inverclyde) (Lab): The First Minister will be aware of the announcement made yesterday by Texas Instruments that it intends to cease production at its Greenock plant and relocate to America, Japan and Germany, with a potential loss of 365 jobs. I am sure that the First Minister will agree that that would be an undeserved fate for the highly skilled and committed workforce at the plant and, indeed, for our already fragile Inverclyde economy. A glimmer of hope of course exists, in that we still have time to attract a new owner to the plant. Will the First Minister take this opportunity to commit the Scottish Government and its agencies to playing a full role in the task force that was set up yesterday by Inverclyde Council leader, Stephen McCabe, so that we can attract a new owner to secure those jobs and address the underlying fragility of the Inverclyde economy?

The First Minister: Yes, I will give those commitments in full. I appreciate that this will be an extremely worrying time for employees of Texas Instruments and their families. As Duncan McNeil rightly points out, Texas Instruments has made it clear that it wants to sell the plant as a going concern, to save as many of the jobs as possible. It has also made it clear that, in any event, it does not anticipate any jobs being lost until late 2017. That means that we have an important window of opportunity to work with the company to do everything that we can to help to find a buyer who will maintain jobs in Greenock.

Scottish Enterprise is fully engaged. It will work with the company to explore all possible options for supporting the business and retaining jobs. The Scottish Government will be fully engaged in that work as well. I can tell members that Fergus Ewing has today written to the leader of Inverclyde Council saying that the Scottish Government will support the task force in any way that we can and suggesting a meeting on Monday of next week. We will do everything that we can to preserve the company and the jobs in it. In that regard, the Government and our agencies will leave no stone unturned.

Climate Change (Spending)

3. Jim Hume (South Scotland) (LD): To ask the First Minister what the Scottish Government's response is to the Committee on Climate Change's concerns that its spending on climate change is set to be reduced in 2016-17. (S4F-03202)

The First Minister (Nicola Sturgeon): We continue to spend significant sums on climate change mitigation, with budgets totalling more than £900 million over two years supporting progress towards our world-leading targets. Of course, it is a widely recognised fact that the United Kingdom Government is hampering the renewable energy sector and putting at risk millions of pounds of investment in the Scottish and UK economies. If the UK Government had kept its previous commitments, the viability of many projects would not now be in question and Scottish Government support would have been maintained. In addition, the UK Government's decision to cut the green deal home improvement fund has led directly to a £15 million cut in consequential support for energy efficiency. The Scottish Government will continue to argue against the UK changes to energy policy, as we have done consistently. Of course, across other areas, we have seen an overall increase in our budgets of £13.3 million.

Jim Hume: The question was actually about the Scottish budget. Everyone who has looked at the First Minister's budget can see that climate change funding has been hammered, with £50 million less in 2016. This is not the first time that the green energy budget has been the victim. In 2013, we were told that money was released for other projects; in 2015, we were told that funds were reallocated to other priorities; and, in 2014, the budget was not cut, it was "reprofiled". When the First Minister got off the plane from Paris and said that the rest of the world should be like her, did she want them to hammer their climate change budgets, too?

The First Minister: If Jim Hume had been listening, he would have heard that my answer was actually about the Scottish Government budget. We cannot spend money on things that UK energy policy does not allow us to spend money on and if we exclude the changes to the Scottish Government budget that have been necessitated by the changes to UK energy policy, we see that Scottish Government budgets on climate change have increased by £13.3 million. That is the reality.

I hope that, notwithstanding his party's previous coalition with the Conservative Party, Jim Hume will join the Scottish Government in arguing that the UK Government's changes to energy policy are wrong-headed. They harm our ability to meet climate change targets and to discharge our obligations to the environment, but they also harm not only the Scottish economy but the UK economy. I look forward to having his support in future in that regard.

Patrick Harvie (Glasgow) (Green): The First Minister once again describes Scotland's targets as world leading but the world is leading from a 2°C threshold to a 1.5°C threshold in the Paris agreement—the world is leading towards greater ambition and the Scottish budget seems to be leading in the other direction. How on earth can we take that seriously?

The First Minister: As I pointed out, that is not the case: if we take out the impacts of UK Government policy, we are increasing our commitment to the environment and to meeting climate change targets. I am absolutely convinced that we have a responsibility to do that. Interestingly, when I was in Paris, it was not only I who talked about not only Scotland's targets but its performance being world leading; other countries described Scotland's targets and performance in that way.

I recognise that we have a responsibility to intensify and accelerate our work over the lifetime of the next session of Parliament if we are to play our part in taking the world to a more ambitious place on climate change. I am determined, as are my fellow ministers, that we do exactly that.

Fiscal Framework

4. Kenneth Gibson (Cunninghame North) (SNP): To ask the First Minister whether the Scottish Government will provide an update on discussions on the fiscal framework. (S4F-03203)

The First Minister (Nicola Sturgeon): The Deputy First Minister and Cabinet Secretary for Finance, Constitution and Economy met the Treasury again to discuss the fiscal framework last week. Discussions between our respective officials have been on-going all this week and the Deputy First Minister will meet the Chief Secretary to the Treasury again next week to try to get for Scotland a fair deal on the fiscal framework.

I say again that I want a deal on the fiscal framework. I want Scotland to get the additional powers that were promised to it and I will not, as First Minister, sign up to an agreement that is unfair to the people of Scotland.

Kenneth Gibson: Does the First Minister agree that it is crucial to get the balance right in the negotiations in order to ensure that the Smith principle of no detriment to Scotland or to the rest of the United Kingdom is embedded in the fiscal framework? Does she share my astonishment that Tory MSPs have been urging her to sign a deal regardless of whether it is good for Scotland, which shows once again that the Tories always put London's interests first, rather than the interests of the people of Scotland?

The First Minister: Yes—I agree with that. Let me make it clear that the Scottish Government is working in good faith to try to deliver a deal that is fair to Scotland—and, indeed, fair to the UK—on issues such as the block-grant adjustment, set-up costs, capital borrowing and dispute resolution. All those issues are important and we will not sign up to a deal that systematically cuts Scotland's budget regardless of anything that this Government does or future Scottish Governments do. The big question now is whether the Tory Government in London will also act in good faith to try to get that deal.

I am not sure that I am astonished that Tory MSPs are asking us to sign up to a deal that will not be good for Scotland. However, I have to say that I am pretty aghast that Labour appears also to be asking us to do that. The negotiation is between the Scottish Government and the Treasury: it is astounding how quickly Scottish Labour defaults to taking the side of the Tory Treasury. It seems that the better together alliance is alive and well.

Foster Carers (Allowance)

5. Cara Hilton (Dunfermline) (Lab): To ask the First Minister what action the Scottish Government is taking to ensure that every foster carer receives a minimum allowance. (S4F-03193)

The First Minister (Nicola Sturgeon): We are planning a national review group with representatives from the Convention of Scottish Local Authorities, Social Work Scotland and the Fostering Network. The group will agree a methodology for calculating allowances based on the needs of children who are living in foster care and kinship care, what the minimum rates of allowance will be and a suitable timetable for their introduction. The group's work will begin early this year and will conclude as soon as possible. The implementation of a new system will, of course, take account of any new welfare powers that accrue to the Scottish Parliament.

As a preliminary step towards a fair and transparent system of allowances for kinship carers and foster carers, we are providing £10.1 million of funding per year now to councils to ensure that kinship care allowances are set at the same level as foster care allowances. That will improve the lives of around 5,200 children.

Cara Hilton: I thank the First Minister for her answer.

Research that was published last week by the Fostering Network Scotland revealed wide variation from one Scottish local authority to the next in the payments that are received by foster carers. Allowances vary by as much as £127.31 a week for a child, and 88 per cent of Scottish local authorities pay less than £159 a week, which is the national minimum allowance for foster carers in Wales. Last year, more than half the local authorities in Scotland froze fostering allowances, which resulted in a real-terms cut.

It is nine years since the Scottish Government first proposed to develop a national minimum allowance. I hear its promises today, but nine years on, foster carers in Scotland remain short-changed compared to those in the rest of the

United Kingdom, as 5,000 children a year are looked after without the security of a national minimum allowance. Foster carers need more than promises.

The Presiding Officer: We need a question.

Cara Hilton: Will the First Minister act now to end the postcode lottery and to deliver a fair deal for Scotland's foster carers?

The First Minister: It might interest Cara Hilton to know that one of the local authorities that pays under £100 a week is Fife Council, which is a Labour minority council.

However, the key issue is more important here. Scottish Government guidance already recommends that councils use the Fostering Network's annually reviewed recommended minimum allowances. The Fostering Network and, indeed, Cara Hilton are right to raise this issue. We need a national level of caring allowances so that foster carers and kinship carers are treated fairly in every part of Scotland. That is why the work that I have described is so important. I hope that it has the full support of Cara Hilton and the rest of the Parliament.

Cadet Forces

6. Liz Smith (Mid Scotland and Fife) (Con): To ask the First Minister what role the Scottish Government considers that cadet forces play in society. (S4F-03196)

The First Minister (Nicola Sturgeon): In Scotland, there is a long tradition of army cadets making a contribution to youth work. That work provides structure, support, and interesting and challenging activities for those who choose to get involved. The cadet forces in Scotland, along with other uniformed organisations, contribute to implementation of the national youth work strategy. We note and welcome the contribution that the army cadet forces that are located in communities across Scotland make to improving the skills and ability of our young people.

Liz Smith: Given that very positive reply, will the First Minister confirm that the completely unacceptable description of the United Kingdom cadet recruitment process as "cannon fodder"—which so angered all of our cadet forces—is not the official view of the Scottish Government? Has she asked the spokesman who made those comments to apologise?

The First Minister: As Liz Smith knows, I immediately said that that was not appropriate language to use about our cadet forces. I have made that clear to anybody and everybody who is willing to listen, and I do so again.

As I said in my answer, we appreciate the contribution that cadet forces make; all of us across the chamber appreciate very deeply the contribution that all of our armed forces make to Scotland, and to keeping us all safe.

World Leprosy Day 2016

The Deputy Presiding Officer (Elaine Smith): The next item of business is a members' business debate on motion S4M-14761, in the name of Bruce Crawford, on world leprosy day. The debate will be concluded without any question being put.

Motion debated,

That the Parliament recognises what it sees as the fantastic work that is being carried out by the Stirling-based organisation, The Leprosy Mission (TLM) Scotland, in helping people across the globe who have leprosy; understands that it is estimated that between 600 and 700 people, particularly those living in extreme poverty, are diagnosed with the disease every day; considers that TLM Scotland is having a significant impact across the world and acknowledges its work in helping people to achieve freedom from stigma and poverty, and hopes that World Leprosy Day, which will be marked on 31 January 2016, will assist in bringing awareness and increased recognition to its cause.

12:33

Bruce Crawford (Stirling) (SNP): First, as usual, I sincerely thank all members who signed the motion. I particularly thank those who have stayed behind to listen to and take part in the debate.

World leprosy day is a major date in the calendar for those who are fighting the scourge on humanity that is leprosy. Every year, on the last Sunday in January—in some countries it lasts a whole week—the whole world has a chance to stop and consider the plight of people around the globe who are affected by leprosy. It is also an opportunity to take stock and to celebrate the many stories of hope, transformation and restoration that have been achieved by the Leprosy Mission Scotland. Many other organisations—particularly the churches—are involved alongside the Leprosy Mission Scotland in dedicating themselves to the same ultimate goal of eradicating leprosy from the planet and thus transforming people's lives.

However, world leprosy day is also an important opportunity to grapple with the scale of the problem that, depressingly, still exists around the world and the impact that it has on individuals and communities. This year, world leprosy day will be on Sunday 31 January.

I have had the pleasure of visiting the Leprosy Mission Scotland office in my constituency on many occasions during my time as an MSP, and the staff and volunteers there do a remarkable job. Some of them are in the public gallery today and I welcome them to the Scottish Parliament. Most recently, I had the pleasure of visiting its office at Livilands at the beginning of November, when the Minister for Europe and International Development paid an official visit. Not only was that visit a fun and enjoyable occasion, we were provided with a detailed briefing on Leprosy Mission Scotland's most recent projects, including the fantastic work that it is doing in Dhaka.

In 2013, the Leprosy Mission Scotland received just under £300,000 of Scottish Government funding to help with a rehabilitation project in Dhaka in Bangladesh. The aim of the project is to provide an improved quality of life for people with leprosy and people with physical disabilities, all with, rightly, a particular focus on women. The organisation plans to set up self-help groups for people with disabilities so that they can be given training in income-generating activities, and it intends to help to develop the capacity of individuals and communities to get better access to rights and entitlements to health services and to improve access to education for their children.

The Leprosy Mission Scotland has been helping people around the world since 1874, providing education and support to those who are affected by the disease. The mission has had about 200 projects in 30 countries, mainly in Africa, Asia and around the Pacific, bringing healing and much-needed justice to people who are affected by leprosy, and it has now agreed that, for the next few years, most if not all of the support that is raised in Scotland will go to help people who are affected by leprosy in seven countries—Angola, Bangladesh, India, Myanmar, Nepal, Nigeria and South Sudan.

It was great to go along and see the fabulous work that the chief executive, Linda Todd, and her remarkable team of staff and volunteers do on a daily basis at the Leprosy Mission Scotland.

As members might imagine, leprosy is a disease that commonly comes from places of poverty. Dirty surroundings, overcrowding and poor nutrition, housing and sanitation all make people more susceptible to leprosy infection. Thankfully, more than 95 per cent of people are naturally resistant to the disease, but let us remind ourselves of the sheer scale of the challenge that the Leprosy Mission Scotland is grappling with across the world. Every day, 600 to 700 people are diagnosed with leprosy—that is an incredible one person every two minutes—and the disease is still prevalent in 16 countries, with more than half of those who are affected being in India.

However, it is not all bad news. In the past 20 years, more than 14 million people have been cured of leprosy and the disease has been eliminated from more than 100 countries. Leprosy can be cured, and early diagnosis and treatment with multidrug therapy for six to 12 months can prevent physical and psychological problems from escalating. However, as well as medicines and surgery, those with complex cases may require

therapy, rehabilitation, vocational training, housing options and much more.

For thousands of years, leprosy has been a source of fear and outrage. In many countries, it is still seen as a taboo topic. Sadly, there are still simply too many stories about people who have been disowned by their partners or family and cast out of their communities because of the fear and lack of knowledge about the disease. The fear, persecution and prejudice in many communities mean that people who are affected by leprosy do not just have to cope with the effects of the disease but often have to face stigma, persecution and injustice, making life doubly difficult.

Justice can come in many forms; it varies widely from place to place and from country to country. Removing the stigma that is attached to the disease not only helps to encourage those who are affected to seek treatment but helps their families and the wider community to understand much more about the illness. The Leprosy Mission Scotland's efforts in the education field are vital. It is working exceptionally hard to tackle the misunderstanding and the stigma that is associated with leprosy. The mission very clearly continues to demonstrate compassion, dedication and enthusiasm towards its ultimate goal of defeating leprosy worldwide.

My attention was brought to the issue of leprosy in primary 6, when a great old teacher of mine told us the story of Mary Slessor from Aberdeen. Mary Slessor, who eventually became known as the white queen of Calabar, did so much work on leprosy. I remember the impact that her work had on me, so I am very pleased to take part in today's debate.

I know that everyone in the Parliament will hope with all their being that the Leprosy Mission Scotland is as successful as it is humanly possible to be in eradicating this disease. It is entirely possible to end this scourge on humanity—it just needs common effort and will to make that happen.

12:41

Kenneth Gibson (Cunninghame North) (SNP): I thank my colleague Bruce Crawford for securing this important debating time today. With your indulgence, Presiding Officer, I wish to apologise to the chamber: as I will chair the cross-party group on epilepsy at 1 pm, I must unfortunately leave the debate before its conclusion.

Leprosy is a bacterium that is transmitted through constant exposure to those who are living with the disease. If we came into contact with it, most of us would not be affected and our immune systems would fight it off. However, there are those—people weakened by malnourishment, for example—who cannot fight and overcome this unbearable disease.

Unfortunately, much of the world does not even know that leprosy still exists, as many associate it with diseases of the ancient past. However, it is prevalent and common in more than 100 countries worldwide, with the greatest prevalence in developing countries. More than 200,000 cases were diagnosed in 2014 alone. It is surely time to increase awareness and work towards eradicating this horrible disease once and for all.

For more than 30 years, treatment has existed to cure the disease. Although that has dramatically decreased the number of sufferers, those with leprosy are often ostracised and must live in communities that marginalise, stigmatise and impoverish them, as Bruce Crawford touched on. Most are unable to continue with employment, obtain an education, or have any prospect of marriage, which in some societies is banned for them by law.

Even in 20th century Europe, leprosy sufferers could be banished to leper colonies. The Spinalonga colony on the island of Crete, which operated from 1903 to 1962, is probably the most famous. Others from Latvia to Spain survived even longer.

Because of how they are treated, those who contract leprosy often ignore the symptoms, making the disease worse while running the risk of infecting others. The first signs and symptoms of leprosy start with the appearance of black or discoloured spots on one's skin. Additionally, the small nerves on the skin's surface become damaged, creating a loss in pain sensation. When those nerves have been damaged, a simple stone in one's shoe or speck in one's eye can cause significant harm, as those with leprosy have lost the body's trigger response to feel pain. Sadly, without proper treatment, the nerves will continue to get worse, and can cause paralysis to muscle tissue, leading to "clawing" of the feet and hands. Cuts and burns often left unnoticed can lead to significant infections and ultimately cause disability for those suffering from leprosy. Although treatment can cure the disease and prevent the further degeneration of nerve and tissue damage, unfortunately it is unable reverse the damage inflicted.

The Leprosy Mission Scotland has travelled to schools, youth groups, congregations and service clubs across the country raising awareness and support for the eradication of this debilitating disease, working tirelessly to

"educate the people of Scotland about what leprosy is, and perhaps more importantly what it isn't—given age-old myths associated with it; how it affects the lives of those infected, as well as those around them."

Other projects include the Schoonhaven lepers' village in Ghana, which was established in 1926. It is a settlement for cured lepers who, when discharged, are often disowned by their families because of the nature of the disease and the traditional dread of it. The settlement has since provided a safe haven for 120 people who survive by subsistence farming, Government stipends and donations from well-meaning individuals and organisations.

In Mozambique, the Mepapa community was set up to treat those suffering from leprosy; today, it is home to 50 families with 834 members, 73 of whom have leprosy. Although the community has little support and no access to a local health clinic or school, the Evangelical Church of Christ in Mozambique, supported by the Church of Scotland, now provides a variety of resources and services to support the community, including agricultural equipment, seeds, medication, personnel and educational resources.

We recognise world leprosy day on Sunday 31 January. Since 1991, more than 14 million leprosy patients have been cured. However, although numbers are continuing to fall, there are those who remain untreated, and most are not aware of leprosy's harmful effects other than how it impacts on their appearance. My hope is that we can continue to educate people, as the Leprosy Mission Scotland has done for so long now, and I support its vision, which is

"to transform the lives of people affected by leprosy, resourcing care and cure, taking them from rejection to acceptance and from poverty to economic independence."

12:45

Claire Baker (Mid Scotland and Fife) (Lab): I am pleased to speak in the debate, and I congratulate Bruce Crawford on securing it. I also welcome representatives from the Leprosy Mission Scotland to the public gallery this lunch time.

As Bruce Crawford has said, this Sunday, 31 January, is world leprosy day. It is an important means of focusing people's minds and highlighting the condition's impact on too many people around the world. People with the condition live in the poorest countries in the world, and it too often leads to their living a life of isolation, extreme poverty and stigma.

The fact that people still suffer from this disease is a tragedy. As other members have pointed out, it is completely curable. Nevertheless, in 2014, 214,000 people were diagnosed with leprosy, and it is estimated that millions are still going undiagnosed. Although the condition has an incubation period of around five years, it can take up to 20 years to manifest itself. It can be cured with modern medicine, but if it is not tackled early enough, it can lead to life-changing disabilities.

Attitudes towards leprosy are historical and complex, and the stigma is long established and deeply rooted in many cultures. In India, 17 laws currently discriminate against people with or who have had leprosy, but such fear and discrimination come from a lack of education about the disease, and more needs to be done in that respect. Bruce Crawford has mentioned the countries that are supported by the Leprosy Mission Scotland; India, Bangladesh and Mozambique are supported by the charity Lepra, and as Mr Crawford has made clear, such dedicated charities play an important role in the work that they carry out with other partners.

Small amounts of money can make a huge difference to countries' health and education structures with regard to improving lives and raising awareness. With £15, for example, a community volunteer can be trained to recognise the signs of leprosy. That is important; indeed, we should not underestimate the importance of local people, community activists and peer discussions in this matter. As we have seen, very stubborn issues to do with long-standing views and stigma are often tackled most effectively with the involvement of local people. It is not just a matter of changing the basic policy; hearts and minds need to be won over, too.

Lepra also hosts the academic journal *Leprosy Review*, which looks at, for example, research into the medical, physical and social aspects of leprosy and information relevant to leprosy control. It is important that we support academic research as well as take direct action.

This Sunday, we have the opportunity to raise awareness of the condition, and I see that a social media campaign is planned along with petition signing and fundraising activity. As Bruce Crawford has pointed out, the Leprosy Mission Scotland is based in Stirling, which is in my region, and I note that many churches in Fife have a close relationship with the organisation, including St Leonards in St Andrews, whose minister has taken part in Leprosy Mission Scotland mercy missions to Nepal. It is an important part of the contribution that we can make that volunteers travel to support local projects and offer their skills and experience.

However, we also need international commitment and co-operation to challenge attitudes and practices. India's laws are a case in point, and show that this is a human rights issue. As well as aid and support, there is a need for diplomacy and a political argument about tackling discrimination and stigma needs to be won.

I wish the Leprosy Mission Scotland well with its plans for Sunday. I know that there will be

speakers at a number of church services across Scotland, and I thank all the volunteers in Scotland who spend their time fundraising, raising awareness of the condition and travelling overseas to support the many activities that are taking place.

12:49

Stewart Maxwell (West Scotland) (SNP): Like other members, I congratulate Bruce Crawford on securing this important debate. Leprosy, or Hansen's disease, as it is also known, is an ancient disease, having been recorded in records for at least 2,500 years. It is a disease that has been greatly feared by many. Indeed, the word "leper" does not just mean a person suffering from leprosy; it has the additional meaning of social outcast, because that is what a sufferer from leprosy was: a person who was considered unclean, with all the implications of being morally deficient as well as physically afflicted.

Few diseases have carried such a heavy social burden as leprosy. That is curious, as leprosy is not an inherited condition, nor—even though it is a bacterial infection—is it highly infectious. As other members have said, around 95 per cent of the world's population have natural immunity to the leprosy bacterium.

The reason why leprosy was so feared was that it was so disfiguring and disabling, but today leprosy is a perfectly curable disease. A drug to successfully treat leprosy became available in the 1940s, although it was not until the 1970s, with the availability of multidrug therapy that it became possible to consider eradicating leprosy.

Leprosy persists still. There are certainly not the great numbers of people that it afflicted in years gone by, but still there are people suffering from leprosy today. In 1985, around 5.2 million people suffered from leprosy. By 2014, there were around 200,000 cases worldwide. That represents a fall in the prevalence of leprosy of more than 75 per cent. That is a fantastic achievement and one that not enough people are aware of.

Sadly, however, there are some places where there are pockets in which leprosy is endemic, including in Nepal, Brazil, Sudan and Indonesia. Like with tuberculosis, another ancient disease, there is still a stigma attached to leprosy, which means that people are sometimes reluctant to come forward for diagnosis and, perhaps more important, treatment. That is a great pity, because only early diagnosis and treatment allow the patient to be cured before they have suffered permanent nerve damage, which is what causes the disfigurement and disabilities that are associated with the disease.

The Leprosy Mission Scotland is a Christian charity based in Stirling, which has been operating since 1874, just one year after the Norwegian doctor G H A Hansen discovered the bacterium that causes leprosy.

The Leprosy Mission Scotland is not only concerned with looking after those with leprosy and curing them; it also works for justice for those who suffer from the stigma that is associated with the disease. People still fear leprosy, and a person who is diagnosed may find themselves evicted from their home and ostracised by their neighbours and they may lose their job. That is despite the fact that, once a person starts treatment for the disease, they are very quickly no longer contagious and are able to lead a perfectly normal life. Early diagnosis and prompt treatment mean that it is possible to have a full recovery, to suffer no long-term effects and to be completely cured. However, the social consequences of having contracted leprosy are not so easily overcome.

World leprosy day falls on the last Sunday in January each year—it is on 31 January this year. In 2016, the Leprosy Mission Scotland wishes to focus on rebuilding Nepal. The World Health Organization has stated that the prevalence of leprosy in Nepal is 2.6 cases per 10,000 population, with the number of reported cases in Nepal standing at 3,225 in 2013.

In April 2015 there was of course a devastating earthquake in Nepal. It was a particularly devastating blow for those Nepalese who suffer from leprosy, a disease that is prevalent among the poor and which also causes people to fall into poverty. In fact, the Leprosy Mission's Anandaban hospital, not far from Kathmandu, was the only hospital in the area with the facilities to treat many of the earthquake victims.

On world leprosy day this year, let us applaud the work of the Leprosy Mission Scotland, which is bringing hope, justice and dignity to so many, and let us also remember the victims of the terrible earthquake in Nepal.

12:54

Jackson Carlaw (West Scotland) (Con): I, too, welcome the opportunity afforded by the debate, and I thank Bruce Crawford for that. I associate myself with all the comments that have been made so far during this short but informed debate. Indeed, I do not wish to repeat everything that has already been said.

I would like to speak a little bit more about the issue of stigma. I was born in April 1959. In November that year, William Wyler's 11 Academy award-winning Metro-Goldwyn-Mayer film starring Charlton Heston, "Ben-Hur", was released. If there

is a greater recruiting sergeant for stigma and prejudice about leprosy, it is difficult to think what it might be.

The film is impossible to escape even today because it is shown at least once a month somewhere, and yet without any context. It is difficult to think of anything in popular culture that has ever been released subsequently that counters its portrayal of leprosy in any way. I cannot think of any drama that has been associated with trying to show the context of leprosy in the modern era. For many people, leprosy is a biblical disease for which there is no cure, even though common sense dictates that the reality must be different.

That is very unfortunate because the prejudice that many people face, whether that is individuals being evicted from their homes, families breaking down, children being denied education, people being unable to find work or people being denied medical treatment, is all fuelled by ignorance—as is the case for other illnesses that we have previously discussed in the chamber. In this case the ignorance is not borne out by the reality, which is that, even though people still contract it today, the disease can be successfully and inexpensively treated, restoring to people their dignity and opportunity in life.

That is why I am delighted to be able to congratulate the Leprosy Mission Scotland on the 140 years of contribution made, which is so fitting with the narrative of Scottish involvement in the wider world. The Leprosy Mission's campaign this year to celebrate the 140 years is to encourage the participation of young people through a gap year across 140 churches, to further extend the work of trying to eliminate and counter the effects of the disease and the prejudice associated with it. I am also delighted to be able to congratulate the Government on the support that it has given, which has been referred to in the debate and which plays a part in the charity's work.

It is great that some of the individuals involved are here in the public gallery, which is not always the case when we comment on or celebrate a particular organisation. On behalf of the Parliament, I say that we are very grateful for the work that they do, which enhances the reputation of Scotland and tackles in a modern context a disease that can be beaten and yet still exists.

I hope that we reflect on the on-going subconscious stigma that can sometimes be translated into the minds of young people. I remember vividly that, at the time, "Ben-Hur" represented leprosy as almost more terrifying than the Daleks—I was at that age when I first saw the film. Leprosy was represented as something that had to be shut away, feared and shunned. I do not remember anything that corrected that view other than my own interest in seeking to identify what the reality might be and reading about it on a proactive basis. I did not find myself exposed to better information on a reactive basis.

That is something that we should reflect on as we try to counter the stigma that is still attached to a disease that can so easily be cured with effort and money.

The Deputy Presiding Officer: Thank you, Mr Carlaw. For future reference, I point out that, if you turn your back on the microphone, it makes it difficult for members and the official reporters to hear.

12:58

John Mason (Glasgow Shettleston) (SNP): Thank you, Presiding Officer—at least that gave those of us in the back benches the benefit of seeing Jackson Carlaw's face.

I thank Bruce Crawford for securing a debate on this important topic.

First, I will comment on the specifics of the Leprosy Mission. I have known of the mission for a long time and think very highly of it, as do others in the chamber. As other members have said, for many of us leprosy was something that we heard about as a child, and since then there has been an assumption that it was one of those diseases that we have dealt with and which has gone away. Sadly, that is not the case.

I was looking at Wikipedia and found similar figures to those that have already been quoted: in 2012 there were 230,000 new cases, with half of them being in India. The good news in terms of figures is that 16 million people have been cured of leprosy in the last 20 years. Of course, being cured does not necessarily take away the stigma.

All of that came home to me in the 1980s when I lived in Nepal. Leprosy was still fairly common there, and I frequently saw people with real deformities caused by the disease, even if it was no longer active in their bodies. Nepal is a society that values physical contact, and that raised questions such as whether people should hug someone who had clearly had leprosy.

There is still a huge amount of stigma around leprosy today, just as there was in Jesus's day, when people with leprosy had to ring the bell as they approached and shout, "Unclean!" I know that the Leprosy Mission Scotland is keen that we do not use the word "leper" because it has so many negative connotations, as Stewart Maxwell pointed out.

Charities such as the Leprosy Mission Scotland deserve our support in financial and other ways, which leads me to the other point that I want to

make regarding the wider issue of charity fundraising and in particular the changes flowing from the Etherington report. The report stems from the fact that some charities have clearly been overzealous—to say the least—in their fundraising activities. As a result, the intention is to have a fundraising preference service whereby someone could reset their preferences and opt out of having any charity whatsoever contact them.

That could prevent an existing charity from contacting one of its own regular supporters, if that person had misunderstood the new system. They might have thought that they were asking only that no new charity contact them whereas in fact they were asking that no charity contact them. I am a little unclear on the whole issue and on whether the Etherington report will fully apply in Scotland. I have written to Alex Neil about the matter, which I know he is aware of as he attended the event in Parliament a little while ago that was run by the Office of the Scottish Charity Regulator and the Institute of Fundraising Scotland and which raised the issue specifically. I want to mention that specific issue today, as the Leprosy Mission Scotland has raised it with me.

There is a feeling that leprosy is one of a number of neglected tropical diseases, and that Governments in the international community have not prioritised it sufficiently. I very much hope that today's debate will help to redress the balance.

13:01

The Minister for Europe and International Development (Humza Yousaf): I thank Bruce Crawford for bringing the debate to the chamber. He mentioned in his speech that he and I visited the Leprosy Mission Scotland at the end of last year, and I am delighted that its volunteers and staff, and the director Linda Todd, are in the public gallery today.

I was blown away by the work that the charity does. As important as the motion is in recognising that world leprosy day is taking place this Sunday, the Leprosy Mission Scotland's work is more important, and I ask all members of the Scottish Parliament, if they are passing through Stirling or even if they are not, to pop into its offices and see for themselves the amount of work that it does. It is an incredible organisation, especially given that the team is so small.

One thing that struck me was the dedication of the volunteers. The staff do a fantastic job and work above and beyond the call of duty, but I was also struck by how many people from the local community give up their free time to help to spread awareness of leprosy and have been doing so for many years.

I was impressed with the Leprosy Mission's grass-roots community credentials, and I am delighted that its representatives are here today and that I am able to extol the virtues of the good work that they do. I am not just saying that because they gave me a wonderful cup of tea and a few pastries on my previous visit.

We have heard some excellent contributions from members on all sides of the chamber. We have members' business debates precisely to raise awareness of issues that would not necessarily get time in the chamber otherwise, and awareness of leprosy is one of those issues.

I will re-emphasise some of what has been said, without—I hope—repeating too much of it. Leprosy is one of those diseases that many people, when we speak to them about it, are astounded to hear still exists. Bruce Crawford and I were discussing that during our visit, and that view is shared by the Leprosy Mission Scotland, which still has people coming to it and saying that they did not even realise that the organisation was needed because they thought that the disease been eradicated many moons ago. Leprosy has not been eradicated, of course, and it is to our shame as an international community that a disease that was prevalent in the time of Christ, and even before that, is still causing suffering among many people around the world.

Almost all members in the chamber made the point—Jackson Carlaw did so very powerfully—that stigma still exists for those who suffer from leprosy. It is important that we tackle that stigma in countries in which leprosy is prevalent, because it will present a barrier for people who could be cured or treated. If they are portrayed as outcasts and treated as people who are undeserving, that can be an absolute barrier for them. In the worst of cases, some of the stigma comes from the fact that some cultures' beliefs suggest that leprosy is a result of a person's bad actions in the past or even in a past life. That is certainly a social stigma that we are encouraged to try to defeat.

The Scottish Government has invested over £480,000 supporting the Leprosy Mission Scotland's work in Bangladesh. That money has helped to improve the quality of life of people living with leprosy and has improved their socioeconomic status by providing loans and training for income-generating activities. That latter point is quite important, because providing loans and training for income-generating activities helps to defeat the social stigma that exists for somebody who suffers from leprosy. From their being treated as an outcast by their society and culture, it can help to defeat the social stigma if they are suddenly able to access a loan and capital to become a businessman or businesswoman in their local area, provide a

service and maybe have a team working under them.

Through the Leprosy Mission's rehabilitation programme in Dhaka, we have supported people left disabled by leprosy, giving people—especially women—the skills and knowledge that they need to access the Government health services that they are entitled to, as well as improving access to education for their children.

Scotland has a very good record of contributing to global health. I will go into that in a second, but I had better touch on John Mason's question about the Etherington report. He will of course receive a full response from Alex Neil in good time to the letter that he wrote to him, but I can tell him now that the Scottish Council for Voluntary Organisations and the charity regular regulator in Scotland—OSCR—are in a process of consultation with the sector about how the Etherington report should apply to Scotland. I think that that is probably the best approach to take: speak to the sector, bring its members round the table and hear their views.

In essence, the SCVO and OSCR want to achieve two objectives from the consultation. The first objective is that there should be a positive environment in the sector that can help charities and non-governmental organisations to flourish, which is very important. The second objective, which is equally important—I think that John Mason will understand this—is that there should be public trust and confidence in the sector. If we can achieve those two objectives, that will mean that we do not have to apply fully all the Etherington report recommendations. It is important that the NGOs and others are consulted to see what can be done in order to achieve those two objectives.

The United Nations sustainable development goals were produced last year, and it is important that infectious diseases are tackled as part of achieving those goals. We all have a responsibility to do that both at home—the sustainable development goals can be implemented at home as well—and overseas. Scotland was one of the first nations to sign up to the UN's sustainable development global goals in July 2015. Those goals came into effect on 1 January this year, and they will be implemented through our national performance framework. We will do everything that we possibly can to ensure that we assist in that effort not only at home but, importantly, overseas and abroad.

I am proud that Scotland is a good global citizen and playing its part in the fight against leprosy and other global health challenges. I commend the efforts of not only the Leprosy Mission Scotland—I take my hat off to those involved—but leprosy missions worldwide. The disease of leprosy cannot be eradicated without a collective effort internationally, involving not only one organisation or organisations in Scotland but organisations across the world. However, it is because of the backbone of the volunteers who give up their free time to work to defeat the disease that I think that we will ultimately be successful in seeing the complete eradication of leprosy from everywhere in the world.

I am happy to support the motion from my colleague Bruce Crawford.

13:09

Meeting suspended.

14:30

On resuming—

Succession (Scotland) Bill: Stage 3

The Deputy Presiding Officer (Elaine Smith): Good afternoon. The first item of business this afternoon is stage 3 of the Succession (Scotland) Bill.

In dealing with the amendments, members should have the bill as amended at stage 2, which is SP bill 75A, the marshalled list, which is SP bill 75A-ML (Revised), and the list of groupings, which is SP bill 75A-G (Revised). The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon, and the voting period after that will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

Members who wish to speak in the debate on a group of amendments should press their request-to-speak buttons as soon as possible after I call the group. I would be grateful if members could now refer to the marshalled list of amendments.

Section 6—Death before legacy vests: entitlement of issue

The Deputy Presiding Officer: Group 1 is on survivorship. Amendment 1, in the name of the minister, is grouped with amendments 7, 9 and 10.

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): Section 31 of the Succession (Scotland) Act 1964 provides that, in a common calamity, the younger person is regarded as having survived the older. As recommended by the Scottish Law Commission, section 9 of the bill replaces that presumption with a new survivorship provision that provides that, in a common calamity, neither person is presumed to have survived the other.

We have identified a small number of statutory provisions that need to be brought into line with the new "failed to survive" terminology to ensure that they work properly. They are the provisions that allow direct descendants to inherit if a child predeceases a parent. Under the existing law, those provisions are not relevant to a common calamity involving a parent and child because the child, as the younger person, would always be regarded as surviving the parent.

Dr David Nichols from the Law Society of Scotland highlighted the tension between sections 6 and 9 through the following example. A father leaves the residue of his estate to his daughter, and then both father and daughter die in circumstances in which the order of deaths is uncertain. Section 9 says that the daughter fails to survive her father, but her children cannot inherit under section 6 because the daughter did not die before the date of vesting. A similar point arises in sections 5, 6 and 11 of the 1964 act, which rely on the primary beneficiary predeceasing.

The amendments in group 1 replace the references to "predeceased" in those sections with "failed to survive" so that all the provisions in the bill and the 1964 act are in line with, and get the benefit of, the new survivorship provision in section 9 of the bill. Direct descendants of a child will therefore be able to take the child's share of an estate should the child and the parent die in a common calamity.

TrustBar gave written evidence on the matter to the Delegated Powers and Law Reform Committee without the benefit of sight of the amendments. I hope that it is reassured by the focus in the amendments on the terminology that is used in survivorship provisions.

I move amendment 1.

Amendment 1 agreed to.

Before section 18

The Deputy Presiding Officer: Group 2 is on executors. Amendment 2, in the name of the minister, is grouped with amendments 3 to 5, 5A, 5B, 6 and 8.

Paul Wheelhouse: Currently, all executors dative except spouses whose prior rights exhaust an estate are required to find caution. An executor dative is usually appointed by the court because there is no will for the administration of an estate. The Scottish Law Commission recommended that the statutory requirement on executors dative to obtain a bond of caution should be abolished. A bond of caution is an insurance policy that protects the beneficiaries and creditors from loss caused by maladministration, negligence or fraud. The SLC made that recommendation on the basis of the financial and administrative burdens that are created and the difficulties that exist in obtaining bonds of caution, the cost, the limited number of providers, delays in issuing caution and the conditions that providers sometimes attach to the bond.

We consulted on the abolition of bonds of caution along with the other provisions in the bill. There was support for their abolition, but it was clear that, at the least, alternative safeguards would be needed in some circumstances, so we said that we would not abolish bonds of caution without further consultation on such safeguards. The bill therefore did not include any provision on bonds of caution.

However, since that decision was made, Zurich Insurance—one of the two institutional providers of caution—has said that it will, from 1 February 2016, stop issuing bonds of caution to executors. The only provider of caution is RSA Insurance Group, which requires that a solicitor be appointed in each case; Zurich does not. That will impact adversely on estates that could be wound up without the involvement of a solicitor. In particular, under section 3 of the Intestates Widows and Children (Scotland) Act 1875 confirmation in uncontentious small estates—currently under £36,000—can be applied for under a simplified procedure in which the sheriff clerk prepares the inventory and takes the oath. That supported process means that an executor dative does not have to engage a solicitor unless he or she wishes to do so, which means that the estate does not have to bear legal costs.

In order to minimise the impact of the change in the caution market with the attendant costs on uncontentious small estates, amendment 2 will amend the Intestates Widows and Children (Scotland) Act 1875 and the Confirmation of Executors (Scotland) Act 1823 to remove the requirement for executors dative in those estates to find caution. The amendment expressly provides that it will apply to on-going applications that have not been determined by the time the change comes into force.

I turn to amendment 3. Section 2 of the Confirmation of Executors (Scotland) Act 1823 requires caution to be found in all cases except where there is an executor nominate or the executor dative is the intestate's spouse and has right, by virtue of sections 8 and 9(2) of the Succession (Scotland) Act 1964, to the whole estate. Civil partners have the same rights under the 1964 act but are still required to find caution.

Amendment 3 will extend the spousal exemption to civil partners whose prior rights under sections 8 and 9(2) of the Succession (Scotland) Act 1964 exhaust the whole estate.

Amendment 3 also provides powers to Scottish ministers to modify section 2 of the Confirmation of Executors (Scotland) Act 1823 to add to the cases in which caution is not required to be found.

Having only one provider of caution is undesirable, and although the remaining provider has given us assurances that it has no intention of withdrawing from the market, we are not able to say what business decisions that remaining provider may make in the future. Therefore, we need a solution to deal with the possibility of the remaining provider withdrawing, otherwise we will be in the position in which a bond of caution is required as a matter of law before confirmation can be granted but there is no ability to obtain it. Given that uncertainty, we need to be able to deal with a range of potential matters. Amendment 4 therefore provides a power for Scottish ministers to abolish the requirement for caution altogether.

I turn to amendments 5, 5A and 5B. In the light of that uncertainty, and in order to ensure that we can deal with the fullest range of situations in the most appropriate way, including the issues that were raised in the consultation about the need for safeguards, amendment 5 will provide broad powers for ministers to be able to make regulations setting out conditions that must be met before courts may appoint an executor dative. The conditions might include the court's being satisfied that the person is suitable for appointment, or that the court be provided with particular information about the person seeking appointment, or the estate.

The regulations may apply to all executor dative appointments or to particular types of executors dative. If the regulations make provision that requires the court to determine the suitability of an executor dative, the regulations may set out factors or information that the courts should have regard to in determining if the person is suitable for appointment; they may require that the court should be satisfied that the individual is suitable if certain conditions are met; or they may allow or require the court to impose its own conditions, which must be satisfied before a person is suitable for appointment. To provide further flexibility, the regulations may make different provision for different executor datives.

I would like to acknowledge the helpful suggestions that were made by Eilidh Scobbie at this week's Delegated Powers and Law Reform Committee evidence session. We have taken on board her comment in relation to amendment 5, as set out in manuscript amendments 5A and 5B, which are intended to make clearer the intention of the provision.

Amendment 6 provides that regulations made in exercise of the powers under amendments 3, 4 and 5

"may include ... supplementary, incidental, consequential, transitional, transitory or saving provision"

as required and will be subject to affirmative procedure. The regulations may also modify enactments. Where regulations are made to abolish the requirement for caution, they may modify the act resulting from this bill. For example, if the requirement for caution was abolished completely, the power to make exceptions would no longer be necessary and would be repealed.

Amendment 8 provides that amendments 2 to 6 will come into force on the day after royal assent in order to minimise any delays in confirmation that might be caused by Zurich Insurance's withdrawal.

By virtue of the specific wording in amendment 2, the abolition of the requirement of caution will apply in relation to any applications under the proceeding applying to small intestate estates that have not been determined before the amendments come into force. The Scottish Courts and Tribunals Service has assured us that the small gap between the withdrawal of Zurich Insurance and the coming into force of the amendments can be managed by it administratively.

We did, of course, look at a number of alternatives, ranging from doing nothing to making wholesale changes with regard to bonds of caution, but for the reasons that I have already outlined the former option would not have been acceptable, and complete reform would have been neither practicable nor possible, given the many issues that were raised in response to our first consultation that have yet to be addressed with the benefit of our second consultation. Nor would emergency legislation have been an ideal option, given that the amendments lie within the scope of the bill.

In considering the evidence, the committee asked whether we had considered a state-funded alternative to bonds of caution that are provided by insurers and pointed to the possible model of the guarantee that is provided by the keeper of the registers of Scotland. When registering an application, the keeper will warrant to the applicant that the title sheet is accurate and might be liable to pay compensation to the applicant if the title sheet is inaccurate and the inaccuracy is rectified. That state guarantee of title was continued under the Land Registration etc (Scotland) Act 2012. Registers of Scotland operates as a trading fund and is entirely self-funded, which ensures flexibility in managing its income and expenditure. Given the funding position and the keeper's involvement in the registration process, we do not think that the model could translate into protecting beneficiaries and creditors from maladministration by an executor. A key difference with the keeper's guarantee is that the applicant for registration is compensated, not a third party relying on the register.

Overall, therefore, I do not believe that such a solution is desirable. Apart from the existing legal impediment, there would, in any case, be many considerations with regard to budget and potential state-aid tests that would need to be resolved.

I move amendment 2.

Nigel Don (Angus North and Mearns) (SNP): It is strange for the convener of the Delegated Powers and Law Reform Committee to get on his hind legs for a stage 3 debate, but I want to talk briefly about the processes that were used to examine the amendments, because I think that they are instructive.

As the minister has made clear, the matter has come upon us rather suddenly. Just over a week ago, on Tuesday 19 January, officials briefed us on the need to look at the amendments; at that point, my committee decided that it would like to take evidence on the proposals, so I am grateful to the clerks—who should be mentioned in dispatches—for the speed with which they managed to put together the panel of witnesses who addressed us on Tuesday 26 January.

The minister has already referred to Eilidh Scobbie, who is a partner in Burnett & Reid LLP, and we also heard from Dr Dot Reid from the University of Glasgow and from John Kerrigan, who is a partner in Morisons Solicitors LLP, who represented the Law Society of Scotland. They gave us a fascinating insight into how they see the issue and provided us with a great deal of reassurance. However, they also raised one or two questions that I am grateful to the minister for answering—he has just addressed several of the points that were highlighted—and, as he pointed out, Eilidh Scobbie suggested a couple of amendments that have been lodged as amendments 5A and 5B. I am grateful to the Presiding Officer for accepting the amendments in manuscript form.

I say all this simply to demonstrate that Parliament is capable of being very swift on its feet when it is forced to be. I am grateful to everyone involved, particularly the witnesses who came across Scotland to give evidence, and for the forbearance of my clerks and my committee in ensuring that we got a great deal of reassurance about the proposals that are before Parliament this afternoon.

John Scott (Ayr) (Con): I, too, welcome the amendments, which were precipitated by the insurance company Zurich's withdrawal from providing bonds of caution. I also welcome the minister's comments, some of which, as Mr Don has already made clear, address the outstanding questions that were left hanging in the air after our committee met on Tuesday.

We think that the Government did the correct thing in lodging the amendments, and we as a committee were reassured when our expert witnesses agreed. We are also aware of the very tight timescale that the taking of evidence and the drafting of amendments have been compressed into, and we know that, should the amendments have any unforeseen consequences or turn out to be deficient in some way, they can be looked at in the next succession bill, which we hope will be introduced in the next parliamentary session.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): There appear to be three ways of dealing with wills: first, there is an executor or executrix nominate, who is decided by the person

making the will. Secondly, there is an executor or executrix dative in cases in which an executor has to be appointed. Thirdly—this applies in the overwhelming number of cases where there is no confirmation whatever—there is an informal winding up of the estate itself.

The issue that we are discussing with regard to this group of amendments relates to cases in which people die intestate or the executor who has been nominated by the person in question is not available and the court needs to appoint another.

If one message comes out of the debate that I hope people will read, it is that this will not touch them at all if they make a will. I am not giving legal advice, but apparently a will can be as short as 10 words: "I appoint X as executor. I leave everything to Y." It is not difficult to do. Please, everyone: get a bit of paper, write it down and make sure somebody has that bit of paper. Then, none of this complication will touch what happens after you die.

I am happy to support the minister's proposal.

14:45

Amendment 2 agreed to.

Amendments 3 and 4 moved—[Paul Wheelhouse]—and agreed to.

Amendment 5 moved—[Paul Wheelhouse].

Amendments 5A and 5B moved—[Paul Wheelhouse]—and agreed to.

Amendment 5, as amended, agreed to.

Amendment 6 moved—[Paul Wheelhouse]—and agreed to.

Section 24—Consequential provision

Amendment 7 moved—[Paul Wheelhouse]—and agreed to.

Section 26—Commencement

Amendment 8 moved—[Paul Wheelhouse]—and agreed to.

Schedule—Repeals

Amendments 9 and 10 moved—[Paul Wheelhouse]—and agreed to.

Succession (Scotland) Bill

The Deputy Presiding Officer (Elaine Smith): The next item of business is a debate on motion S4M-15440, in the name of Paul Wheelhouse, on the Succession (Scotland) Bill.

Before I invite the minister to open the debate, I call the Cabinet Secretary for Justice, Michael Matheson, to signify Crown consent to the bill.

The Cabinet Secretary for Justice (Michael Matheson): For the purposes of rule 9.11 of the standing orders, I advise the Parliament that Her Majesty, having been informed of the purport of the Succession (Scotland) Bill, has consented to place her prerogative and interests, in so far as they are affected by the bill, at the disposal of the Parliament for the purposes of the bill.

The Deputy Presiding Officer: Thank you, cabinet secretary. That means that we now begin the debate.

14:47

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): It gives me great pleasure to open this stage 3 debate on the Succession (Scotland) Bill and to invite members to agree to pass the bill this evening.

At the outset, I thank the members of the Delegated Powers and Law Reform Committee for their hard work and careful scrutiny of what is essentially a technical bill—they have been a great credit to the Parliament. I thank MSPs for their comments on the bill during its passage through the Parliament, and I thank the organisations and individuals who provided oral and written evidence to the committee. Like Nigel Don, I am grateful to the clerks to the DPLR Committee for their support.

In particular, I thank the Law Society of Scotland and the trusts, fiduciaries and executries bar group—TrustBar—who have been generous in giving of their time and expertise as we have developed the legislative proposals. I thank all the witnesses who have supported the process.

Of course, I also wish to thank the Scottish Law Commission for its unstinting patience as we sought its advice on recommendations that it published more than six years ago. That point is not lost on me, nor is it lost on my colleagues throughout the chamber. The commission's advice and views have been invaluable.

I said that the bill was essentially technical, and it is, but it became clear through the scrutiny process that its provisions have the potential to impact on any one of us at an especially vulnerable time in our lives. Ensuring that the bill

fulfils the policy aims of making the law on succession fairer, clearer and more consistent is therefore especially important. These are, after all, the first significant amendments to the law of succession in more than 50 years.

As I indicated during the stage 1 debate, the bill has its origins in the Scottish Law Commission's "Report on Succession", which was published in 2009. This is the second bill to be considered as part of the SLC bill procedure. I take the opportunity to place on record once more my view that the process that is in place to scrutinise these bills is clearly effective in doing the important job of getting good law reform into statute. We can have confidence in that process as we go forward.

The Succession (Scotland) Bill has been welcomed by the profession, and it will make a number of important improvements to the law.

Currently, if a will makes provision for a spouse or civil partner, that remains valid even after the breakdown of the relationship, whether by divorce, dissolution or annulment. For many people, that is an unexpected outcome, and it could lead to undesirable consequences. The bill reverses that aspect of the law.

There is currently no way for a person to seek rectification of a will to enable it to be corrected if it does not accurately express the testator's instructions. That deficiency in the law was highlighted by a case in the Supreme Court, Marley v Rawlings and Another, where Mr and Mrs Rawlings signed mirror wills leaving everything to each other, but if the other had already died, the entire estate was left to Mr Marley, who was not related to them but whom they treated as their son. However due to a clerical error, Mr Rawlings signed the will prepared for Mrs Rawlings and vice versa. The sons of Mr and Mrs Rawlings challenged the validity of the will on the basis that they would inherit under the laws of intestacy. The Supreme Court decided that Mr Rawlings's will should be rectified, but as that was an English case there was uncertainty about what decision the Scottish courts would have reached. The bill will address that issue.

Similarly, an individual might not expect that if they make a new will and then change their mind and cancel it, any earlier will revives and dictates how their estate will be distributed. Again, that is unlikely to be what they intended. The bill will reverse that position so that an earlier will is not revived by the revocation of a later will. That does not prevent the individual from reviving the earlier will by other means, such as by re-executing it or making a new will in the same terms. The only exception is when there is express provision to the effect that an earlier will is revived, as then it will be clear that that is the individual's intention.

The opportunity has also been taken to close a number of jurisdictional gaps to ensure that Scottish courts have jurisdiction where the applicable law is Scots law.

We touched on some of the issues around how survivorship should operate in Scotland when we debated the stage 3 amendments. Although common calamities are not everyday occurrences, we need to have clarity and certainty in the law where there is uncertainty as to the order of death. The bill achieves that clarity.

The bill also sweeps away some very old legislation, through the repeal of the Parricide Act 1594 and reform of the law relating to forfeiture. The notorious Dr Crippen was found guilty of murdering his wife Cora. He inherited from his wife and as he sat in jail awaiting his fate of hanging he wrote a will leaving his estate to his mistress. However, the judge said that

"it is clear that the law is that no person can obtain or enforce any right resulting to him from his own crime",

and Dr Crippen was thus subject to the law of forfeiture. Forfeiture is where an individual loses their right to inherit because they have unlawfully killed their benefactor. At the moment, although such an individual would lose any rights to inherit, the way in which they are treated in the eyes of the law also dictates how any inheritance would be distributed to others. We have therefore made changes to ensure that the law is fairer and more consistent.

The bill also reforms estate administration by putting in place protections for trustees and executors in certain circumstances and for persons acquiring title in good faith. It also reforms other matters, including the abolition of donatio mortis causa and the right to claim the expense of mournings.

It will have been clear that the Scottish Government has listened carefully to the views of stakeholders and the committee, which is why at stage 2 we made a number of changes to the bill.

In succession law, someone must survive to inherit; equally, sometimes, for another person to inherit, it must be clear that the person on whom their inheritance is conditional has died before the testator. Failure to survive does not necessarily mean that a person can be regarded as dying before another person. A person who fails to survive the testator may have died at the same time as them. At stage 2, we made a number of changes to ensure that, where needed to achieve the policy objectives, it is clear that a person died before another person. Earlier today, we made some further small but related amendments to ensure that there are no unintended consequences or surprising outcomes, and that the detail is unambiguous.

Earlier, we debated some unanticipated amendments to the bill that arose out of the business decision of one of the providers of bonds of caution to withdraw from the market. As Nigel Don said, we had a very short space of time in which to consider the impact of that decision and take action to try and mitigate its worst effects. I am very grateful to the Scottish Courts and Tribunals Service for highlighting the problem in the first place and for working with us to get the best possible remedy, given the many constraints that we were under. Once again, the Law Society of Scotland was able to offer its views under significant time pressures and to provide the necessary reassurances on the remedy.

The committee also demonstrated its capacity to take quick evidence and arrive at a view. I very much appreciate the additional scrutiny that the evidence session provided and the input of the witnesses who attended the committee. It gives me even greater confidence going forward that the solution that we have provided for will address an immediate situation and give us the capacity to insulate against any further change that is beyond our control.

We will turn again to the reform of bonds of caution as part of the wider and more fundamental reform of the law of succession, as John Scott indicated. I will continue to reflect on a number of the suggestions that were made at an earlier evidence session, which are more appropriate to our further consideration of bonds of caution.

Voting for the Succession (Scotland) Bill today will ensure that an important area of the law is subject to long-overdue reform. It is an area with which, at some point—or indeed at various points—in our life, we will all come into contact in one way or another. It is therefore vitally important that the law meets expectations and is fit for purpose, and I believe that these reforms will achieve that aim.

I move,

That the Parliament agrees that the Succession (Scotland) Bill be passed.

14:55

Elaine Murray (Dumfriesshire) (Lab): During stage 2 consideration of amendments, the Minister for Community Safety and Legal Affairs said that he was glad to get away from the Justice Committee for a while. I suspect that fellow members of the Justice Committee will agree with me that we were pleased not to have the bill come before our committee along with all the other bills. We are grateful to the Delegated Powers and Law Reform Committee for doing the hard work on this very technical bill.

The down side of the bill not having come before the Justice Committee is that, yet again, I am required to make an opening speech on a bill with which I have very little familiarity. Indeed, I would not care to try to pass an exam on the set of amendments that we have just discussed. If they had been discussed in Latin, I would probably be just about as well educated as to their effect.

The bill deals with issues that are of importance to the majority of people: namely, wills and inheritance. I note that, at stage 2, the minister lodged a number of amendments to clarify some of the issues that were raised at stage 1, and he has done the same at stage 3. As has been said, the bill is based on a draft bill that was produced by the Scottish Law Commission, but it does not include all the provisions of that draft bill. The other provisions in the draft bill will undergo further consultation—indeed, they may be out for consultation at present—with a view to further legislation being introduced in the next session of Parliament. I am sure that members are looking forward to that.

The issue of guardianship has been addressed. The Law Society highlighted concerns about whether a will that appoints a person's spouse or civil partner as a guardian of their stepchildren would continue to take effect if the relationship was terminated and the deceased had not made a subsequent arrangement. An amendment was necessary because the bill revokes a person's existing will—as we have discussed—on divorce or dissolution of a civil partnership. If the bill were not amended, the former partner would not be able to become the child's guardian even if the deceased would have wanted that arrangement to continue.

The bill now also makes it clear that the revocation of a will does not apply where the testator died prior to the annulment of the marriage or civil partnership taking place. That is a bit of a technical issue, but there could be the odd occasion on which someone dies before the process is complete.

The Law Society of Scotland stated in its written evidence that section 1 should apply when

"the testator either died domiciled in Scotland or has heritable property in Scotland."

The bill originally applied to persons who were permanently resident in Scotland when they died, and the committee received a variety of responses on that section at stage 1. At that stage, the committee agreed with the Government's approach. However, both the committee and the Government were persuaded by the Law Society's arguments. The minister explained to the committee that succession to immoveable estate is governed by lex situs, or where the property is

situated. Succession to moveable property depends on where the deceased was domiciled at the time of their death. The bill has therefore been amended so that section 1 applies when the testator was not domiciled in Scotland but owned heritable property here.

The bill enables the courts to rectify a will after the death of a testator so that "simple and obvious" errors can be corrected, with the proviso that someone other than the testator had prepared the will and the testator had issued instructions to that person. There was some discussion at stage 1 of whether that should be extended to wills prepared by the testator—for example, handwritten wills or wills that are produced using an online template. The committee and the minister quite correctly resisted those arguments. The Scottish Law Commission draft bill, on which this bill is based, would have enabled a sheriff in the sheriffdom where the will was confirmed to consider an application for rectification. That provision was not included in the bill as introduced, and amendment at stage 2 has corrected that inadvertent omission.

The bill puts into statute the common-law provision that, when a beneficiary pre-deceases the testator, the beneficiary's direct descendants should inherit. The policy intention has been clarified by amendment at stage 2, and the bill now also enables a testator to identify a beneficiary by category, such as their relationship to the testator, as well as by name. That was a committee recommendation at stage 1.

The bill addresses the situation in which two people who are each other's beneficiaries die at the same time or it is unclear which person died first. If they had been in a legal partnership as spouses or civil partners, the Succession (Scotland) Act 1964 presumes that neither survived and therefore both partners' subsequent beneficiaries will inherit. However, if the two people were not involved in a legal partnership, the law as it stands at present assumes that the younger person survived the older person and therefore only the younger person's beneficiaries will inherit.

The bill, however, did not originally address the issue of a common calamity—again, there has been some discussion of that at stage 3—where an entire family dies in an accident and there are no surviving beneficiaries, in which case the estate would go to the Crown rather than to any surviving relatives. Clarifying that situation is complex, but amendments at stages 2 and 3 have set out conditions in which property may transfer to one member of the group, depending on the order of death.

The bill sets in statute the forfeiture rule, which precludes a person who has unlawfully killed another from benefiting from the result—indeed, the minister illustrated that for us earlier with the example of Crippen. In such cases, the person who has forfeited their rights to the estate by an unlawful killing will be considered, for the purposes of inheritance law, to have failed to survive the testator. A stage 2 amendment clarified that forfeiture included legal and prior rights. I will take that as read, because I am quite uncertain as to what it means, although I am sure that it is probably a good thing.

The bill also abolishes the donatio mortis causa as a legal entity. Again, I had never heard of it. As it stands, a person can make a gift to another in the anticipation that they are going to die, but if they do not die, the gift can be returned to them. The donor can also change their mind and ask for it back and, if the recipient dies first, the gift is returned to the donor rather than given to the recipient's beneficiaries. That seems a rather curious sort of gift, and one wonders how the donatio mortis causa process ever arose in the first place. However, the bill abolishes it as a legal entity. Gifts can still be made on that basis, but they do not require to be made in anticipation of death. As I said, it seems curious that somebody who thinks that they are going to die would make a gift, but then decide that they wanted it back just because they did not die.

As I said, the bill is very technical. I am sure that it will be of great benefit to the future understanding of inheritance law, and that we all look forward to whatever comes forward in the next session of Parliament that will build on the bill's provisions.

The Deputy Presiding Officer: I call John Scott—four minutes, please.

15:01

John Scott (Ayr) (Con): I welcome today's stage 3 proceedings on the Succession (Scotland) Bill. As the bill completes its parliamentary passage this afternoon, I would once again like to thank the witnesses and stakeholders who have helped to inform the legislative process thus far, as well as the Scottish Law Commission for the considerable work that it has undertaken to see these reforms through to completion. I would also like to thank our DPLR Committee clerks and our legal advisers, who have worked above and beyond the call of duty.

I pay particular tribute to the witnesses who gave evidence for the second time to the DPLR Committee on the Scottish Government's amendments on bonds of caution at very short notice this week. As members will be aware, that was an unusual step, and it broke new ground for the committee, if not for the Parliament.

Previously, the Scottish Government had decided to exclude bonds of caution from the scope of the bill, despite their abolition being one of the Scottish Law Commission's recommendations in its 2009 report, on which many of the bill's provisions are based. The Scottish Government took that decision primarily because there was a lack of consensus surrounding the nature of the safeguards that would be required in the event of abolition. The prospect of having a second piece of legislation on succession law meant that there would be a suitable vehicle to implement any changes in the area of bonds of caution at a later date, allowing more time for inquiry and consultation on satisfactory safeguards. However, the Scottish Government's hand was forced by recent developments, when Zurich Insurance, one of the two insurance providers of bonds of caution, announced that it will withdraw from the market from 1 February 2016, leaving Royal Sun Alliance as the sole provider, as the minister indicated.

The key issue is that Royal Sun Alliance makes the provision of a bond of caution conditional on a solicitor being appointed to administer the estate, whereas Zurich did not. That condition has cost implications for small estates with a gross value of less than £36,000, which currently benefit from the simplified small estate procedure. As we know, the Scottish Government introduced amendments at stage 3 to mitigate the effects of the recent changes in the market.

I was keen to explore the implications of those changes with witnesses earlier this week at committee. Evidence from all our witnesses indicated that the Scottish Government's course of action in response to the withdrawal of Zurich, although a quick fix, is both proportionate and fair. Based on the evidence that we heard, it seems that that course of action is the correct one, particularly given the glacial pace at which legislation on succession law has been introduced and the uncertainties generated in the immediate future by the forthcoming election.

I echo the view of the convener of the DPLR Committee, Nigel Don, who said that the measures are

"not retrospective but transitional, because we are doing it now for the future, but only until we get to the next gate."—[*Official Report, Delegated Powers and Law Reform Committee*, 26 January 2016; c 44.]

In such circumstances, it is incumbent on the successor DPLR Committee and the Parliament to undertake robust scrutiny of what can reasonably be described as stop-gap measures over the coming months and years as a clearer picture of the situation on the ground emerges. On that basis, we in the Scottish Conservative Party were content to support the amendments.

From the outset, the DPLR Committee's scrutiny of the bill was collaborative and consensus driven. From a policy perspective, the majority of the bill's provisions are non-contentious, and the legal profession has been strongly supportive of reform, particularly given that the Scottish Law Commission's first report on succession law, on which the 2009 report was based, was published in 1990—almost three decades ago. I am therefore pleased that many of the SLC's recommendations, which are broadly technical in nature, are being placed on a statutory footing, and I confirm that the Scottish Conservatives will support the bill at decision time.

The Deputy Presiding Officer: That was perfectly timed.

15:06

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am glad that extending the Delegated Powers and Law Reform Committee's remit has created additional parliamentary capacity for dealing with bills that come from the Scottish Law Commission. By their nature, SLC bills address matters on which the SLC has established that there is broad agreement on remedies for errors or omissions or updating existing legislation.

Our taking of evidence and our discussions on the Succession (Scotland) Bill have been interesting and informative, for me at least. Given that we will all die, I am sure that the bill will ultimately touch us all in the disposal of our assets or debts. Even those who have no assets and no debts cannot be assured that they will escape the bill's provisions.

The complexity of and lack of agreement on some succession issues are the reasons why a future Government will have to grasp the nettle of a much more wide-ranging restatement and reform. If Elaine Murray is in Parliament in the next session and is again a member of the Justice Committee to do that, I am sure that she can look forward to that pleasure.

Personal circumstances illustrate things for me. My great-grandfather wrote his will—it was handwritten—in a mere 22 words. It said:

"I David Berry do appoint my granddaughter Helen Mary Berry McGregor my executor and bequeath to her my whole means and estate".

Wills can be that simple. The only trouble was that, when he wrote his will, my mother—his granddaughter—whom he named, was one, and when he died, she was three. Therefore, she was not legally capable; she was legally incapable. However, the process meant that her father, who was administrator in law, became the executor dative to replace my mother, who had been the

executor nominate. He was appointed. Things can be done in that particular way.

I have been touched by the winding up of estates in another way. Just over 10 years ago, a relative's small estate had to be wound up. No house was owned; there were simply some moveable effects. She had written a little will that said that her two daughters were equally to receive the proceeds. That was simply done informally and there was no confirmation.

Through the passage of the bill, I can say that I will have apparently become, and will remain, a vicious intromitter. That means that, because we did not go through the formal process, I will remain liable for the rest of my natural life for any errors that I committed in winding up that little estate and not getting confirmation. The vast majority of small estates are dealt with on that basis. That illustrates some things that may be engaged the next time we look at this very complex area.

I am delighted that we are getting rid of the Parricide Act 1594, which is quite specific—it refers to fathers and sons. We have invented the legal fiction in the courts that, if someone is responsible for the death of the person from whom they will inherit, they are deemed—not withstanding that they are still breathing and consuming food, and so on and so forth—to have become legally dead before the person for whose death they were responsible. That works in proper terms, but it is a bit cack-handed, so it is a good idea to do something about it.

The Deputy Presiding Officer: You really must close, please.

Stewart Stevenson: We had a huge and interesting discussion about common calamities and sequencing of death. The important thing is that we worked out a way in which we can be certain that we are uncertain, in which case the rules of uncertainty can be applied—but of course, only when we are certain that we are uncertain.

The Deputy Presiding Officer: I must ask members to keep tightly to their four minutes.

15:10

Margaret McDougall (West Scotland) (Lab): I thank Stewart Stevenson for his speech, which as usual was educational.

As the minister said, the Succession (Scotland) Bill is mainly technical. As we have heard, it is part of the wider-ranging reforms that are to be made during the next parliamentary session. In effect, the bill is an exercise in tidying parts of the law in advance of further consultation and policy reform. However, in its evidence to the committee at stage 1, the Scottish Law Commission said that the bill's description as technical

"should not in any way be seen as diminishing the importance or effect of the Bill's provisions. Indeed for those who find themselves in situations to which the Bill's provisions apply, they are likely to be highly important."

The changes that are being made are to be welcomed, as they both modernise the laws of succession and bring us more in line with England. I have often found it odd that, even after the breakdown of a relationship, the spouse—if they are mentioned in the will—is entitled to assets. The bill alters that so that, in the event of a divorce, dissolution or annulment, the favourable status of a former spouse is revoked, unless otherwise stated by the testator. The same will now be true if the former spouse was appointed the guardian of the child. That shift means that Scotland and England now have broadly similar positions on the issue, which is to be welcomed.

The changes to survivorship in the event of common calamities are sensible. Currently, the rules state that in the event of spouses dying close to each other in time, the younger spouse is presumed to have survived the elder. Section 9 of the bill changes that so that, when two people die in such circumstances, neither is to be treated as having survived the other. In terms of fatal car crashes and other such events, those changes make sense.

I seek clarity on section 6, which makes provision to deal with the situation when a deceased person's first choice of beneficiary in a will has died before them and the will makes no provision for what should happen in that situation. The rule had been unclear about nieces and nephews, but that was tidied up and the rule was narrowed to include the testator's direct descendants only. However, I am unclear about what that means when there are no direct descendants or when the direct descendants have passed away before the will has been actioned. Will assets be passed to nieces and nephews in the event of there being no direct descendants, unless otherwise stated in the will?

I am happy to support the bill. The changes that it makes are sensible and provide a much-needed update to succession law. The changes attempt to deal with some of the more confusing elements of that law. On the whole, the bill is a technical but important piece of legislation, and I look forward to seeing what role it will play in the wider-ranging policy reform that is forthcoming.

The Deputy Presiding Officer: We will have a brief contribution from John Mason.

15:14

John Mason (Glasgow Shettleston) (SNP): Because the bill was a Scottish Law Commission bill, and because it was being dealt with by the

Delegated Powers and Law Reform Committee, we know that it did not contain anything that was considered controversial. That is why we are having such a friendly and civilised debate this afternoon.

However, it has to be said that the committee received fairly strong legal opinion on each side of some of the points in the bill. For example, as Elaine Murray said, section 1 provides that the section will take effect if the testator "dies domiciled in Scotland." There was respected legal opinion to support such an approach, but there was also respected legal opinion to support a change that would make section 1 apply as long as the testator was domiciled in Scotland when the marriage or civil partnership ended. That raised the question whether the matter should be considered under matrimonial law or succession law.

That is just one example of the kind of debate that we had in the committee. Other subjects that the committee considered included forfeiture and questions to do with the Forfeiture Act 1982, which will need to be considered again. It is to be hoped that more serious potential changes can be examined in a further succession bill before too long.

I was pretty uneasy when I heard about the stage 3 amendments on caution. Other topics in the bill had been consulted on to death, but that issue seemed to appear out of nowhere. However, we took evidence on Tuesday—like other members, I thank the people who gave us evidence and support—and I was greatly reassured. The concept of abolishing caution had been consulted and widely agreed on at an earlier stage, and it was largely on practical grounds that the matter had not been included in the bill, as the minister said. The added urgency as a result of one of the two providers of bonds withdrawing from the market meant that it was sensible to deal with the matter now, and I am happy to support the amended bill.

However, I think that the committee would stress that the lodging of amendments on completely new topics at stage 3 should not become a regular approach to legislation. I think that the Government probably agrees with that.

The DPLR Committee is very different from other committees. When members of the committee mention our membership to fellow MSPs, we tend to get either a sympathetic or a humorous response. I have to say that I have questioned whether the committee should exist. It has not been unusual to have a lengthy briefing for an hour or so, which is followed by a very short, formal 10-minute meeting. MSPs on the committee depend much more than members of other committees do on clerks and legal input, so we have to wonder whether MSPs add much value.

In that context, I should say how much I and, I think, other members of the committee appreciated the input of clerks, advisers and witnesses on the bill. I do not like asking questions that I do not understand, and it was getting pretty close to that at times. Now that the committee has experience of dealing with three bills—the Legal Writings (Counterparts and Delivery) (Scotland) Bill, the Succession (Scotland) Bill and the Bankruptcy (Scotland) Bill, which is a consolidation bill—I am more convinced that we need it to exist, and I see no reason why its remit should not be further revised.

Death happens to us all, but we tend not to talk about it. Many members of the public, perhaps including members of this Parliament, do not have a will. Therefore, although this is a technical area of law, it is also a practical one that affects many people. Any encouragement to people to have wills and otherwise prepare for their departure has to be welcome, as we said in our stage 1 report.

I very much support the bill becoming law, and I hope that the Parliament will be able to do so unanimously.

15:18

John Scott: I thank members for a good—if controversial—debate. From the outset, the passage of the Succession (Scotland) Bill has been characterised by consensus and collaboration. That is testament to the DPLR Committee and its convivial but suitably robust approach to the responsibilities that fall within its remit.

I pay tribute to the Minister for Community Safety and Legal Affairs and his officials, who listened to the committee's recommendations at stage 1 and implemented them by way of amendments at stage 2, which received unanimous support from members. The minister also proactively liaised with the committee on the stage 3 amendments on bonds of caution, which were unexpected, albeit that the changes were clearly necessary in the light of recent developments in the insurance market.

As I said in my opening speech, the bill is predominantly technical. However, as the Scottish Law Commission emphasised last year, such a description should not be thought to diminish the importance or effect of the bill's provisions. For people who find themselves in the situations to which the provisions apply, the bill is likely to be highly important. Margaret McDougall said that, but the point is compelling and worthy of repetition. The bill might be relatively limited in scope, with a focus on technical matters rather

than substantive policy change, but it will have a significant impact on important areas of Scots law in implementing changes that relate to wills, survivorship and forfeiture, as well as protections for executors, trustees and buyers of property.

Let us not forget that the reforms have been many years in the making. I am pleased that the changes that were made to the Delegated Powers and Law Reform Committee's remit in 2013 to enable it to consider certain bills emanating from Scottish Law Commission reports, as mentioned by John Mason, have helped to expedite the placing of parts of the commission's 2009 report on a statutory footing. Perhaps, in the future, that change to the committee's remit will mean that some of the less contentious reforms that the Scottish Law Commission has proposed will be implemented expeditiously and timeously.

In that vein, I commend the Scottish Government's approach of undertaking two separate projects on succession law. Although both projects are based on the Scottish Law Commission's 1990 and 2009 reports, such a legislative approach recommends itself well to areas of the law where there are technical and potentially controversial proposals. However, as we move forward, I urge the Scottish Government to consider how it intends to consolidate the provisions in the bill and any future legislation that might come before the Parliament.

At stage 1, I referred to the comments of Professor Joseph Thomson, the lead commissioner on the succession project, who said at the publication of the 2009 report:

"The aim is to simplify the law radically by providing rules which are easily understood and which at the same time reflect the nature of family structures in contemporary Scotland."

At stage 3, the test of the bill remains whether it achieves the radical simplification that was envisaged by the Scottish Law Commission. The Scottish Conservatives are satisfied that that is the case, and I reiterate my party's support for the bill, which will be reflected at decision time.

I will end on a cautionary note by saying, as others have done, that the last-minute changes to the existing rules on bonds of caution must be subject to post-legislative scrutiny. Although I am reassured that the stage 3 amendments give ministers a range of powers to future proof the arrangements against any further changes in the caution market, I seek further assurances from the minister that this is very much a live issue and that the Scottish Government will endeavour to monitor the developing situation and keep the Parliament suitably updated.

15:22

Graeme Pearson (South Scotland) (Lab): It is my pleasure to speak on behalf of Scottish Labour in support of the Government's approach to the Succession (Scotland) Bill and the amendments that have been presented today. It is right that I should thank Nigel Don and the other members of the Delegated Powers and Law Reform Committee for the work that they have completed on behalf of this Parliament with such speed and such attention to detail. Indeed, as someone who is not on that committee, today's debate helped me to understand some of the complexities that the committee dealt with and the reasons why certain elements were presented at the last minute. I now understand more clearly the approach that was taken.

A number of speakers have talked about the technical nature of this piece of legislation. I am grateful to John Scott for saying that, although the bill has been described as technical, it is, nonetheless, vitally important, bearing in mind the impact that the issue has on people's lives. When I first received the paperwork for the bill, the issues seemed arcane, distant and hardly relevant to day-to-day living. For that reason, I think that the Law Society and the Scottish Law Commission are to be complimented on the fact that they have maintained the pressure on the Government and this Parliament to deal with the bill. For six years, they have paid attention and waited patiently.

I have dealt with a will in the past 18 months as an executor and—because I am an only child—as the person who benefited from it. It should have been a simple process that I should have been able to cope with easily. However, even though there was no conflict involved in the process, I found it anything but simple and easy to deal with. The extremely technical issues that were described this afternoon are vitally important when people are trying to deal with something that they do not want to deal with and are seeking guidance on how to deal with it fairly and with equity, particularly when competing interests are involved.

We all know families that have been split irretrievably because of the way in which someone's estate has been dealt with. The bill does the best that it can to avoid such splits in the future by offering direct guidance on the way in which wills and matters of succession should be dealt with.

The approach that has been offered on the validity of wills following the breakdown of relationships through divorce, dissolution and annulment is absolutely vital, particularly given the complex lives that we now live and the kinds of relationships that we create. I therefore welcome the approach that the committee has endorsed and that we are debating today.

I also note that, like buses in the city, one bill comes along and, before we know it, we are suggesting that there should be a second bill. It is important that we have had something of a superficial examination, at speed, of many of the issues that have cropped up and that the committee has done its best, on behalf of the Parliament, to deliver. However, in the next session, we need to check that the delivered outcomes are what we wanted and that measures to achieve any additional outcomes are included in a bill to be introduced in that session.

I will not go through the detail of the bill, as it has been rehearsed by other members with more clarity than I could bring, but I welcome the protection for trustees and executors, which has been commented on. I also think that the approach to succession forfeiture is much healthier than it was previously.

I commend the committee's approach and reassure the minister that we will support the bill when it comes to the vote.

The Deputy Presiding Officer: I call the minister, Paul Wheelhouse, to wind up the debate. Minister, if you could do so in less than seven minutes, I would be most grateful.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): Oh, that would be wonderful.

15:27

Paul Wheelhouse: That request seems to have been met with great acclaim among the members sitting behind me, Presiding Officer.

I thank all members who have spoken in the debate for their contributions and their interest in this important piece of legislation. It has been a short debate, but it has demonstrated the importance of the bill, not least in Graeme Pearson's testimony of the fact that, in a distressing though simple scenario, the process should have been less stressful than it was. I very much take on board his point.

I welcome the support that has been expressed for the reforms, and I am grateful for the time that members have taken to engage with what, at times, can be a technically complex area of the law of succession. Our earlier debate on the stage 3 amendments perhaps gave a flavour of the careful consideration that has had to be given to the language and terminology in the bill. The bill has, undoubtedly, benefited from a willingness among stakeholders to participate fully in the development of the legislation. There has been little—if, indeed, any—disagreement about the need for these reforms, and the process quickly became one of ensuring that the provisions met the aims of the reforms. My first experience of the process for Scottish Law Commission bills was a very positive one, for which I thank the committee and all the stakeholders who participated.

I mentioned earlier the helpful input that was received from professional representative bodies. For example, in its stage 1 report, the committee echoed the concern of TrustBar that section 9 had the potential to result in more estates falling to the Crown. We subsequently enjoyed a helpful exchange with TrustBar and we are confident that the amendments that we made to the bill at stage 2 addressed that point, although not in the way that TrustBar suggested—indeed, we had some concerns about the practicalities of TrustBar's proposed approach. Nonetheless, the opportunity to enter into an informed discussion with stakeholders about various issues undoubtedly enhanced our policy consideration and contributed positively to the formation of the final provisions.

I also mentioned that this is the second bill to be considered under the Scottish Law Commission procedure. It is worth making the point that this bill is very different from the first—the Legal Writings (Counterparts and Delivery) (Scotland) Bill—because the Scottish Law Commission's report was much older and we needed to carry out our own consultation. Stage 2 for the Legal Writings (Counterparts and Delivery) (Scotland) Bill must have been one of the fastest on record, as there were no amendments, whereas this bill has had stage 2 and stage 3 amendments.

I have been struck by the helpfulness of the Delegated Powers and Law Reform Committee, led by Nigel Don, whom I thank for the positive and constructive approach that he took to the committee's meetings, which has been reflected in the comments of other committee members. I include in that Richard Baker, who has moved on from the Parliament—I thank him for his input. As others have said, the committee was prepared to rearrange its schedule to accommodate late provisions. Its responsiveness has greatly assisted the scrutiny process.

I share the committee's view that our laws need to be accessible to not just the legal profession, but the person in the street. Points were made in the evidence session this week about the need to give proper advice before people die, rather than just advise those who are affected by a death in the family. I have already given an undertaking to ensure that our guidance and websites are updated in user-friendly layspeak, and I reiterate that commitment today.

The phrase "the devil is in the detail" is probably an overused idiom, but it is apt when talking about the bill. Most of us will have had some experience of being caught out by the details. Details are important and, in succession law, we have learned

that small differences in timings of deaths can make big and unexpected differences in the effects of death on an estate. The bill is therefore very important.

Previously and today, John Scott has made a point about the benefits of consolidating the bill with any future bill on succession. I remain open to that possibility and I undertake that I—or, I should say, my successor—will give it full consideration at the relevant time.

Much of what we have done in the bill amends the fallback position when a will does not make express provision about what will happen in a defined set of circumstances. One point that has struck me throughout the process and that will arise again in the consideration of any further reforms to this area of law is the importance of making a will. Stewart Stevenson made that point very clearly. I can understand why people shy away from that or put it off to another day but, as Stewart Stevenson said, a will can be quite a simple document. I am aware through letters that we receive at the Scottish Government of the misery and chaos that can follow when someone dies without a will. I hope that the debate on the bill has caused people to stop and think about their circumstances and to take whatever action they need to take.

I am entirely sympathetic to the view that it was undesirable to have to deal at stage 3 with the changes on bonds of caution. I whole-heartedly welcome the committee's decision to take evidence on that earlier this week. I reassure John Scott that we will use sparingly the fairly wide-ranging additional powers that we have put in the bill.

Stewart Stevenson: I simply note that the evidence that we took led to the manuscript amendments that the Presiding Officer accepted today. That shows the validity of the process that the committee undertook.

The Deputy Presiding Officer: Minister, please note that the debate is now eating into the time of the next debate, so be as brief as possible.

Paul Wheelhouse: Absolutely.

I certainly agree with the sentiment that Stewart Stevenson expresses. I do not envisage such a situation occurring again, even on an irregular basis, in the context of the Scottish Law Commission bill procedure.

Of course, the situation is not of our making, as I hope the debate has clarified. Given the concerns about the impact of Zurich's decision, it would have been remiss of the Scottish Government not to act quickly and do what it could to try to remedy the position. I hope that committee members take comfort from their involvement in that. Doing nothing would have placed a new and unwelcome burden on small uncontentious estates and it would have left the market further exposed should Royal Sun Alliance at some point also withdraw. It would also have created a position where a legal requirement was incapable of being met, resulting in estates being incapable of being wound up.

I will respond to a couple of points that colleagues have made in the debate. I assure John Scott that, if issues arose in relation to the change in bonds of caution, they could be addressed swiftly under the powers in the bill. There is no need to wait for a second bill to achieve that. Although there are plans for a second bill, we do not need to address that particular point through that route. I am grateful to Mr Scott for his kind remarks not just about me but particularly about my bill team, who have worked hard. I appreciate that sentiment.

Margaret McDougall asked where the inheritance would go if there were no direct descendants. I point out that the bequest would fall and go into the residual estate, which is the estate that is available to a named residuary legatee or legatees, or would be devolved under the laws of intestacy. I am happy to put that on the record, and I hope that that clarifies the matter for individuals who are interested in it.

The bill is a worthy one that will bring much-needed reform. I urge members across the chamber to support the bill and pass it at stage 3.

Abusive Behaviour and Sexual Harm (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Elaine Smith): The next item of business is a debate on motion S4M-15441, in the name of Michael Matheson, on the Abusive Behaviour and Sexual Harm (Scotland) Bill. I invite members who wish to speak in the debate to press their request-to-speak buttons, but I notify the chamber that the debate is now very tight for time.

15:35

The Cabinet Secretary for Justice (Michael Matheson): I thank the Justice Committee, the clerks to the committee and the people who gave evidence during stage 1 scrutiny of the Abusive Behaviour and Sexual Harm (Scotland) Bill. I also welcome the support for the general principles of the bill that is given in the committee's stage 1 report.

Abusive behaviour in our communities should not be tolerated. Such behaviour can rob people of their dignity and cause lasting scars on their lives and the lives of their families. Tackling it requires a bold response, so a strong and well-targeted police presence, effective prosecution and a court system that is equipped to deal with it are crucial. However, our laws must also recognise that aspects of abusive behaviour can evolve as technology advances and our understanding of the different elements of abusive behaviour improves.

The bill will ensure that the many dedicated people who work in our criminal justice agencies are better able to deal with abusive behaviour and sexual harm so as to improve the opportunities for access to justice for victims, enhance a justice system that puts victims at the centre while maintaining the appropriate balance for the rights of the accused, and increase public confidence in the justice system.

The Justice Committee focused much of its stage 1 scrutiny on two key aspects of the bill: statutory jury directions and the intimate images offence. We are pleased that the committee—unanimously in relation to the new offence and by majority in relation to the jury directions—supports those two sets of provisions.

The Scottish Government included in the bill the provisions on jury directions to deal with the unfortunate fact that some members of a jury will take with them into the jury room preconceived ideas and ill-founded attitudes about how sexual offences are likely to be committed and how someone subject to a sexual offence will likely react.

Some members of the public continue to think that someone who carries out a sexual offence will almost always require to use physical force, that the person subject to the sexual offence will almost always offer physical resistance and that a report to the police by the victim about the sexual offence will almost always be made immediately. It is unfortunate that people who hold such unenlightened views can allow them to cloud how they assess the evidence in a case. There is comprehensive research that shows that people react in many different ways when a sexual offence is taking place and in the aftermath of an offence. That body of research shows that it is a perfectly normal reaction for a person not to offer physical resistance or report the offence for a period of time.

It is critical that, when jurors make decisions about the guilt of an accused, they consider only the evidence that they have heard in the case. The intent behind jury directions is simple: we want to ensure as much as possible that the jury's focus is only on the evidence that is laid before it and that any preconceived ideas and ill-founded attitudes do not play a part in the jury's decision.

Margaret Mitchell (Central Scotland) (Con): Will the cabinet secretary confirm whether the research to which he refers includes actual jurors?

Michael Matheson: The member may have misheard the point that I made. It was about research into how people react during a sexual offence or after such an offence has been committed. It did not relate to the issue that the member raised.

There is discretion for the judge as to whether a jury direction is needed. If, say, no issues are raised at trial relating to a delay in the reporting of a sexual offence, the jury direction is not required. Even where an issue relating to delay may have been heard in evidence, the judge does not have to give the direction if they consider that no reasonable jury would think that the issue of delay was material to whether the offence had been committed. The bill also provides for judicial discretion and flexibility to ensure that jury directions are required only where they are relevant to the case.

The new intimate images offence is designed to respond to concerns that, with advances in technology, the sharing of private intimate images without consent has become far more widespread in recent years. Such behaviour is unacceptable. Although we know that a number of existing laws can—in certain circumstances—be used to hold perpetrators to account, we consider that reform of the criminal law is needed. A specific offence is justified, and this offence will ensure that victims and perpetrators alike understand that this behaviour is criminal; that it is easier for law

enforcement agencies to take action; and that, in future, it will be clearer that someone has committed such behaviour because a conviction for the specific intimate images offence will be recorded on their criminal record, rather than a more general offence. We agree with the views that have been expressed indicating that raised awareness and education about the dangers of inappropriate use of new technologies is important, especially among young people.

The introduction of a specific domestic abuse aggravator will ensure that, when sentencing, courts always give consideration to the fact that an offence is associated with domestic abuse. It will also improve the recording of such offences. The changes allowing for Scottish courts to hear certain child sexual offence cases that took place elsewhere in the United Kingdom will ensure that there is no hiding place for perpetrators.

We note that the stage 1 report indicates that the committee was not convinced of the benefits of the non-harassment order provisions. We consider that the small but important change in the bill to how criminal non-harassment orders operate will make it easier for protection to be put in place for victims of harassment. It will do so by allowing for a speedy response from the police to protect victims.

The final area of the bill relates to the use of civil orders to protect communities from sexual harm. The bill introduces sexual harm prevention orders and sexual risk orders. The primary purpose of those orders is the prevention of sexual harm. The reforms to the existing civil order regime will provide increased protection for adults and children from those who may commit sexual offences. Police Scotland is supportive of the reforms. Its clear view is that it would rather prevent a sexual crime than investigate and convict someone for that crime. We absolutely agree that these reforms will help with that aim.

It is appropriate that, as with the current system, there should be safeguards in place. Those safeguards include a measure stating that the independent court has to be satisfied that the civil orders are proportionate and necessary, and that an individual can appeal against the making or varying of an order. In addition, the Scottish Government's policy intent is that the individual should be able to make oral representations to the court before an order is imposed. We are considering whether a small change at stage 2 is required to put that matter beyond doubt.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): The committee would very much welcome that change, as it was one of the committee's recommendations. I think that there would have been issues with the European convention on human rights over the right to make representations and the right to have a say. Rather than just having the right to appeal, the right to be heard in advance is very significant.

Michael Matheson: The intention was always that the individual would have the right to make representations. To put the matter beyond any doubt, we are considering whether there is a measure that we can take at stage 2 that would offer further reassurance and clarification in that area.

Both males and females can be victims of domestic abuse and sexual violence. However, we know that women and girls are disproportionately victims of those crimes. Therefore, the bill should be seen as being firmly within the wider context of an extensive range of Scottish Government activity to address violence against women and girls. That activity includes new funding of £20 million—committed from the 2015-16 and 2017-18 justice budgets—for measures to tackle violence against women and girls. That funding is already making a difference, with the handling of domestic abuse court cases being speeded up and Rape Crisis Scotland expanding the support that it is able to offer to sexual violence victims.

The Deputy Presiding Officer: Cabinet secretary, will you draw to a close?

Michael Matheson: I welcome the committee's support in its stage 1 report for the general principles of the bill.

I move,

That the Parliament agrees to the general principles of the Abusive Behaviour and Sexual Harm (Scotland) Bill.

The Deputy Presiding Officer: Many thanks. I reiterate to members that there is no spare time in the debate.

I call on Christine Grahame to speak on behalf of the Justice Committee. You have a maximum of seven minutes.

15:45

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I am pleased to speak on behalf of the Justice Committee, which has scrutinised the Abusive Behaviour and Sexual Harm (Scotland) Bill. I thank our witnesses and those who replied to our call for evidence. In all, the committee received submissions from 34 bodies or individuals, discussed the bill at four meetings and heard from 16 witnesses from the legal and law enforcement professions, academia, groups that work with the victims of crime, the Children and Young People's Commissioner Scotland and the Scottish Human Rights Commission. While I am at it, I want to thank the very hard-working Justice Committee.

We also heard from representatives of the judiciary and, in passing, I would like to congratulate Lord Carloway on his recent appointment as Lord President and Lord Justice General, which was announced shortly after he gave evidence to the committee. I do not think that we sabotaged his appointment, but I do not think that we had anything to do with his elevation either.

The bill is in three parts and part 2 has six chapters, so we cannot really talk about it in the round. I will try to deal with the some of the elements separately. I do not have a lot of time, so I will miss out quite a few of them, but I hope that committee members will pick those up.

As the minister said, there are two main elements. The first is the new offence of the non-consensual sharing of intimate images. The media sometimes calls that "revenge porn", but the committee is aware that not everyone believes that we should use that terminology.

With advances in technology and increasing use of social media, it has become all too easy to use the internet to humiliate other people. When that involves sharing intimate photographs or videos of another person that were never meant to be shared with a wider audience and are perhaps sent out on the internet following an acrimonious break-up, it can be particularly poisonous and harmful. In our report, we support a new offence in the area, and that received some coverage in the media. The press reporting was along the lines that the committee had given the "green light" to making "revenge porn" an offence.

On the same day, the Scottish media carried the story of a young man from Paisley who had been convicted of putting intimate photographs of his ex-partner online. Under common law, he was sentenced to six months in what the press called a "revenge porn" conviction. However, evidence made it clear that it is not always easy to apply the current criminal law in this area. There are grey areas that may allow truly hurtful behaviour to escape criminal censure and, even when a conviction is successful, the courts may lack the sentencing options that the crime merits. Under the bill, the maximum sentence is five years.

The drafting of a new law provides an opportunity to make it clear that sharing intimate images of another person without their consent and with intention or recklessness as to whether it causes hurt or humiliation is a crime. The committee believes that the bill is on the right track, but we have made some observations on the drafting of the offence and we would like the Scottish Government to reflect on them. I suspect that other committee members will pick up on the issues, but an example is the definition of a public place. That is always difficult to define.

In changing the law, there is also an opportunity to make it clear that such behaviour is socially unacceptable. We can have preventive legislation. Most people will know that, but there are some—particularly the young, perhaps—who may lack the insight or maturity to realise just how much harm it can cause.

The committee heard concerns that the bill might lead to the criminalisation of behaviour that some young people might—rightly or wrongly—consider to be okay, normal or everyday, but the majority of the evidence, including the evidence from the Children and Young People's Commissioner Scotland, was that that is not a good reason to exclude young people from the ambit of the offence, not least because the victims of such behaviour are usually young people and they, too, deserve the protection of the law. Images on the internet can live for ever. The committee agrees with that, although we do so in the expectation that the vast majority of cases involving children and young people will not go before the courts or even the children's panel and that there will be some discretion as to what happens with young people.

The second main element of the bill is jury directions relating to sexual offences. The bill proposes that, for the first time, we set out in statute what directions judges must give to juries in certain cases. To put the matter broadly, if evidence is led about an apparent delay in reporting or telling anyone about an alleged sexual assault, the judge must direct the jury that there may be good reasons for the delay. In addition, if evidence is led about an apparent absence of physical resistance to an alleged sexual assault, the judge must direct the jury that there may be good reasons why a person may not have physically resisted such an assault.

The Government's view, as we have heard, is that it is necessary to make that intervention because misconceptions about how people respond to sexual trauma may lurk in the minds of some jurors. There was some agreement in evidence that the Scottish Government was probably right. Juries are, after all, composed of ordinary people, some of whom may well bring their misconceptions into the jury room.

Beyond that point of general agreement, the provision very much split our witnesses; it also split the committee. There was evidence from the Law Society of Scotland, the Faculty of Advocates, legal academics and the judiciary to the effect that the proposals would at best achieve little and at worst risk doing harm. Those witnesses said that the provision would in effect force judges to give guidance about apparent matters of fact that, in the view of the judge, were not relevant to the trial that the jury had just sat through.

Evidence from victims groups, the police, the Crown Office and some other legal academics was equally strong in support of the proposals. The directions were seen as uncontroversial statements of fact that could only be of assistance to a jury in coming to a more informed view. That view prevailed in the Justice Committee's report, with what the report described as "a clear majority" agreeing that the directions may, in relevant cases, help to ensure that justice is done. The majority also took the view that setting out the requirement to give the directions in statute will ensure a more consistent approach in courts. Those of us in the minority would have preferred to wait at least for the conclusion of a forthcoming Scottish Government-sponsored piece of research on decision making by juries before taking any decision in this area.

I knew that I would not have time to address non-harassment orders, the domestic abuse aggravator, new civil orders and sexual acts elsewhere in the UK, which are all important and serious parts of the bill. Because I have not been able to cover all those areas, I hope that other members will take the opportunity to develop those points.

The committee supports the bill's general principles, subject to our recommendations, some of which I know the cabinet secretary is chewing over, if that is not too colloquial a phrase.

15:52

Elaine Murray (Dumfriesshire) (Lab): I thank the clerks, as well as the witnesses who gave written and oral evidence at stage 1.

Two parts of the bill were more contentious than the rest: judicial directions and whether the provisions about the distribution of intimate photographs without consent ought to be extended to other forms of communication.

Section 1, which introduces a statutory aggravation where an offence consists of the abuse of a partner or ex-partner, was generally welcomed by witnesses. The aggravation also applies where an offence is committed against a third party with the intent of causing distress to the partner or ex-partner, such as actions taken or threatened to be taken against a person's child, and where the offender has been reckless about whether they caused the victim to suffer physical or psychological harm; the intent to cause harm does not need to be proved for the aggravation to apply.

Some witnesses would have liked a specific offence of domestic abuse to be introduced. The bill does not do that, although I understand that the Government is consulting on that possibility. The aggravation in the bill also applies only to partners, ex-partners and people who are or have been in an intimate personal relationship. Therefore, it does not apply to the physical or psychological abuse of children or elderly relatives, for example. I hope that were a specific offence to be introduced in the next Parliament, coercive control of a wider range of victims would be included.

Section 2 introduces an offence relating to so-called and inappropriately termed "revenge porn": disclosing or threatening to disclose intimate photographs or films without the person's consent. Again, the offence covers both the intention to cause fear, alarm or distress and recklessness about whether fear, alarm or distress is caused. In the case of both the aggravation and the new offence, not meaning to cause harm to the victim will not be able to be used as a defence.

Witnesses were strongly supportive of that proposal, believing that it will send out an unequivocal message about the unacceptability of such behaviour, which, as Professors McGlynn and Rackley stated in evidence, contributes to the

"normalization of non-consensual sexual activity and creating a climate in which women's sexual expression is not respected."

Some witnesses, such as those from Scottish Women's Aid and Abused Men in Scotland, argued that the offence was too narrow and should include sound files or texts relating to an intimate situation. Some of us on the committee had considerable sympathy with that viewpoint, but a majority agreed with the cabinet secretary that drawing it too widely could have unintended consequences. I know that my colleague Margaret McDougall, who pursued the matter at committee, will be speaking on it this afternoon.

Other witnesses argued that the offence as drafted was already too broad. Michael Meehan of the Faculty of Advocates cited the example of a person taking a photo of their flatmate asleep on a couch in their underwear and sharing it with another person and that being within the scope of the offence, as the term "intimate image" also includes non-sexual images. I have to say, though, that I would not have much sympathy for the person who shares the image in that situation if it is shared without the consent of the other person.

Concerns were also expressed about whether the offence would criminalise young people involved in sexting. The Children and Young People's Commissioner Scotland argued that the Crown would have discretion and that offences involving children would be referred to the children's hearings system rather than the criminal court. He also argued strongly for an education and information programme to advise children and young people of the dangers of some of these activities.

The bill provides for a defence of sharing an image that was taken in a public place, which means that images of people on a public beach, for example, would not be covered. However, other witnesses drew our attention to the disgusting practice of upskirting, in which photographs of body parts are taken without a woman's consent and distributed. Although such activity is in itself illegal, the distribution of such photographs is not caught by the bill.

The other more controversial issue in the bill is jury direction. The bill amends the Criminal Procedure (Scotland) Act 1995 to ensure that when in a sexual offences trial evidence is led that the victim—or perhaps more accurately complainer—did not tell or delayed telling people about the offence, or did not report or delayed reporting the offence to the police, the judge must advise the jury that there might be good reasons why victims of sexual offences sometimes do not immediately report the offence to another person or the police. Similarly, if evidence is led regarding a lack of physical resistance by the complainer or if the line of questioning elicits such information, the judge must also advise the jury that there can be good reasons why victims of sexual offences do not necessarily physically resist their attackers.

Members of the judiciary such as Lord Carloway and Sheriff Liddle were opposed to such directions, arguing that making such judicial directions mandatory in cases where such evidence has been led or elicited would introduce a precedent and there would be pressure for similar treatment of other offences. They also argued that advice on these matters could be included in the jury manual. The Law Society and the Faculty of Advocates, as well as some committee members, were also unconvinced.

However, Labour members of the committee agree with the Scottish Government on this matter. When the abolition of the requirement for corroboration was introduced in the first draft of the Criminal Justice (Scotland) Bill, we thought long and hard before deciding that we could not support it. We felt that although more sexual offence and domestic abuse cases might come to trial, the prosecution would, without corroboration, be more likely to fail. We were also concerned about the prosecution of other offences on the basis of the evidence of one person.

However, the circumstances that we are talking about here are very different. Juries are made up of ordinary people, and we do not need to undertake a lot of jury research to know that the general public hold misconceptions about sexual offences. Unfortunately, a lot of people still think that a woman's behaviour can contribute to the offence committed against her, and such perceptions can be compounded if the victim has delayed reporting the offence or has not physically resisted her attacker. If evidence on those matters forms part of the trial, the judge should remind the jury that such factors do not constitute consent.

The bill also extends the court's ability to award a non-harassment order for a domestic abuse offence in circumstances where the alleged offender has not been fit to stand trial and the evidence suggests that the person is guilty. Although the committee did not oppose such a measure, members were not clear about how useful it would be in practice, particularly if the person in question was not fit to stand trial in the first place. The bill also extends Scottish courts' jurisdiction to prosecute offences committed against children elsewhere in the United Kingdom—I think that the provision, although welcome, needs to be amended slightly—and it replaces sexual offences prevention orders, foreign travel orders and risk of sexual harm orders with the sexual harm prevention orders and sexual risk orders that can be found in the rest of the UK.

We look forward to having further discussions on the bill at stage 2, but I will be happy to support it tonight at stage 1.

15:59

Margaret Mitchell (Central Scotland) (Con): The Abusive Behaviour and Sexual Harm (Scotland) Bill is an important piece of proposed legislation, which seeks to address hugely vexing, emotive and, in some cases, complex issues.

I am grateful for the constructive views and evidence on the bill's key provisions from the many witnesses who appeared before the committee during the stage 1 scrutiny process. I also thank the committee's clerks for compiling such a comprehensive stage 1 report.

The bill covers six distinct provisions, namely: a domestic abuse aggravator; the non-consensual sharing of images; jury directions in relation to sexual offences; non-harassment orders; sexual acts elsewhere in the UK; and sexual harm prevention orders.

The committee agreed the bill's general principles, and there was general consensus on the findings on the provisions, with the exception of those on jury directions in relation to sexual offences, which was the most contentious provision. Here, the convener and I both considered that, at the very least, more research must be carried out before such a dramatic provision is enforced. I consider that it could set a dangerous and unwelcome precedent by eroding the judiciary's discretion and the separation of powers.

The raison d'être for the provision was to address potential and recognised misconceptions among juries in sexual offence cases about the absence of physical resistance or a time delay in reporting by victims. However, those are both issues that can be dealt with adequately through the use of expert witnesses. The only barrier to that is the cost implications, which have been acknowledged by both Catherine Dyer, chief executive of the Crown Office and Procurator Fiscal Service, and Lord Carloway, the then Lord Justice Clerk. However, cost should not be an issue here.

It is worth stressing that if the aim of the provision is to address issues that are known to make a successful conviction more difficult in sexual offence cases, there is an opportunity at stage 2 to look again at the provision of legal aid to oppose the inappropriate requisitioning of medical records, which are frequently used to discredit complainers. Whereas the complainer or third party has a locus to object to the release of their medical records at the hearing to determine an application for their recovery, in most cases they cannot afford legal representation to object, as currently they are not granted legal aid. That situation could easily be rectified; all that is required is the political will.

I turn now to the domestic abuse aggravator provision, which would result in tougher sentences for perpetrators of domestic abuse committed against a partner or ex-partner. That would now also be extended to a third party such as a child or close friend. The cabinet secretary has confirmed that the measure will apply to a first offence. In such circumstances, the aggravation clearly needs to be applied proportionately and with common sense. Sheriff Derek Pyle has urged caution on that point. He commented that the judiciary has to

"identify the cases where there is concerted and serious abuse as opposed to those which are little more than domestic arguments to be expected of any couple",

as he terms it.

Meanwhile, the Law Society has expressed concern that the inclusion of third parties would make the aggravation "difficult to prove", due to the requirement to establish intention or recklessness.

The introduction of the new statutory non-consensual sharing of intimate images provision was widely supported. It aims to create greater clarity in relation to what is a distressing and humiliating practice for victims, who are often vulnerable adolescents or young adults. However, there were differing views among witnesses on whether that had been achieved, and there was also concern about the practical implications of the consent defence.

The provisions to allow the Scottish courts to cover sexual offences against children within the UK were intended to be practical provisions but, again, they have raised concerns about jurisdiction implications and the definition of Scottish residency.

Although the committee was sympathetic to the intent behind the introduction of non-harassment orders, it questioned the practical implications.

Similarly, although the provisions on reforms to the system of civil orders are well intentioned, they were introduced without full consultation, and serious issues and concerns that have been raised in evidence will have to be addressed. I welcome the Government's commitment to do that at stage 2.

Although the Scottish Conservatives support the general principles of the bill, there is clearly a lot of work to be done at stage 2 to ensure that it is fit for purpose.

The Deputy Presiding Officer (John Scott): We now move to the open debate. I ask for four-minute speeches, as we are tight for time.

16:04

Gil Paterson (Clydebank and Milngavie) (SNP): I rise to speak to one of the most significant sections of the bill: that relating to statutory jury directions in relation to sexual offences.

I declare an interest as a former board member of Rape Crisis Scotland. I do not speak on behalf of any organisation—Rape Crisis Scotland or otherwise—but I am fairly certain that women's organisations in general will agree with most of what I have to say. It is common currency—and a belief that has been held for decades—in the organisations that take care of women and children in circumstances where rape has taken place that the deck is stacked against someone who complains of rape: they know that juries have preconceived ideas before they enter court. That view is commonly held in all the different women's groups.

In a rape trial, juries expect victims to have a particular demeanour: they expect the person to be somewhat excited, traumatised in some regards and to show stress and emotion, including loss of control. When it comes to physical force, juries also expect clinicians to be able to produce evidence that force was used.

There are many reasons why people might delay reporting rape. It is fairly simple: it is common knowledge that in rape cases people feel that they will not be believed; and a common source of trauma is that people do not understand themselves what has taken place. Many rapes are

carried out by someone who is known to the person who has been raped, and the victim fears the consequences not just for themselves but for their extended family, including children who might be in the same room.

Juries expect to see stress and emotion. I have had 40 years' experience in the motor industry, and in my business—now run by my son—we deal with people who have had an accident with their car. Some people can get very emotional, even about a tiny scratch. People, including men, have been known to cry when their car has been damaged. It will be happening today—someone will be very stressed about something that it is very small. They also often say, "Don't tell my husband," "Don't tell my wife," or "Don't tell my boss," and ask to pay for the repair themselves. They do that for a whole range of reasons.

It is the same when it comes to rape trials. Different people act in different ways. Some people can be very concise in what they do because—

The Deputy Presiding Officer: Please draw to a close, Mr Paterson.

Gil Paterson: I have been asked to wind up, so I will just say that we need to educate jurors. Juries must have an open mind and judges giving jury directions will help to educate them and will be good for justice in general.

16:08

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): I welcome the bill. I will take each of its six main proposals in turn.

I support the introduction of a domestic abuse aggravator, which will allow the relevant offence to be placed in the context of domestic abuse and will ensure that that is taken into account in sentencing. Of course, that should not be a substitute for a new specific offence of domestic abuse. Neither the aggravator nor the new offence should be broadened out to include wider family members because the whole bill must be seen within the wider context of the Government's work on violence against women, as the cabinet secretary reminded us.

We were expecting a specific offence of domestic abuse in the bill to capture coercive and controlling behaviour. However, I accept the reasons that were given for further consultation on that. We look forward to legislation on that in the next session.

There could be an addition to section 1(2)(a) to make it clear that the offence occurs regardless of whether it is committed directly against the partner or ex-partner—it is the physical or psychological harm that matters. Perhaps that aspect needs to be made absolutely explicit through amendment at stage 2.

Moving on to the second new element in the bill, I support the new offence of non-consensual sharing of intimate images. As various witnesses pointed out, we may need a clearer definition of consent, perhaps one that is based on the concept of free agreement as outlined in the Sexual Offences (Scotland) Act 2009. I believe that the offence should be extended, because, as Police Scotland reminded us,

"the impact of the written word and sound files of an intimate nature cannot be understated".

An extension should certainly be seriously considered.

It is right that the offence should cover children and young people, and I support Scottish Women's Aid's proposal that the Government should run a campaign of education and information for children and young people on the criminal legal effect of the new offence and its impact on victims.

Moving on to non-harassment orders, I disagree with the committee on that aspect. A loophole in the law was highlighted a year ago by a prominent figure, and I picked that up in questions and debates in Parliament last year. It is not reasonable to expect the victim to instigate a civil non-harassment order in the circumstances that the legislation deals with. Those who say that an order will not have a practical effect should consider the very real practical effect that it will have in making it easier for the police to intervene quickly to protect a victim of harassment. That is precisely the issue that arose last year in a well-publicised situation that was highlighted in *The Herald*.

Moving on to jury directions, the provisions will ensure that jurors' decision making is not marred by erroneous preconceptions. It is clear that there are problems with jurors' views on delays in reporting and the lack of physical resistance in cases of sexual violence, and those two issues are dealt with explicitly in sections of the bill. Other issues are dealt with too, but it is good that those specific points are spelled out in the bill.

Research by Professor Louise Ellison of the University of Leeds and Professor Vanessa Munro of the University of Leicester found that the introduction of judicial directions of the nature of those that are outlined in the bill would be likely to increase the prospects for justice. Given how difficult it has proved to be to secure convictions for rape, in particular, and other sexual crimes, we must do everything that we can to make that more possible.

The Deputy Presiding Officer: The member must draw to a close, please.

Malcolm Chisholm: Time is running out. There is a great deal in the bill about the civil orders, and a little bit less about sexual offences committed elsewhere in the UK, but I do not think that the provisions on either of those will prove to be controversial.

16:12

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): A person knows what sexual and domestic abuse are if they have been a victim of either, but refining a specific set of criminal offences that can bring about successful convictions requires hard work, dedication and comprehension of the Scottish legal system. I welcome the on-going consultation on a definition, and I look forward to the results.

The nature of legislating in this area is convoluted, and it must be precision led. We must discuss and debate, as we are doing today, so that all the potential loopholes are tightened up while we ensure at the same time that there is sufficient flexibility to address different situations. We have heard about many different situations in the debate today.

The Scottish Government must be commended and, I believe, the Justice Committee specifically must also be commended for its thoughtful, caring and compassionate approach in taking evidence. The members took time to listen when witnesses gave evidence in committee, and they raised a range of themes that we can continue to discuss at stage 2.

Under the law as it stands in Scotland, there is a crossover between terms such as "grievous bodily harm" and "domestic abuse". That is central to the need to produce effective legislation that meets the specific needs of victims. As the Scottish Women's Convention pointed out in its submission,

"The overarching objective of the Bill is to improve how the justice system responds to abusive behaviour, including domestic abuse and sexual harm. It also aims to help improve public safety by ensuring that perpetrators are appropriately held to account for their conduct."

I will take a moment to remind members of some of the statistics on domestic abuse in Scotland. In 2014-15 there were 59,882 incidents of domestic abuse recorded by the police, which represented an increase of 2.5 per cent. I hope that the increase has more to do with women feeling more confident about reporting such incidents, but we should not view it only in that context. Of the incidents that were recorded last year, 54 per cent resulted in at least one crime or offence being committed. The victims were mainly women—79 per cent—and the domestic abuse was most likely to take place at the weekends and to happen to people aged 26 to 30.

The big problem remains, however: women are not getting justice in the current system. The bill seeks to redress that situation. Many members will be aware of the successful drive to have Clare's law rolled out in Scotland, which I have greatly supported, and of the work that I have done in increasing awareness of revenge porn—I look forward to that becoming a specific criminal offence. I pay tribute at this point to all the organisations that have informed and helped me on those issues and I look forward to seeing their success result in decent legislation.

There have been good developments that are improving access to justice, but the civil protections that are offered are still not enough of an incentive for more women to seek the assistance of the law. There are too many aspects that discourage women from reporting incidents to the police, and we need to change that. That is why the bill will include the introduction of a statutory aggravator. As the Scottish Women's Convention said:

"Such a measure in relation to domestic abuse sends the message that those who perpetrate such crimes will be adequately punished."

Marking out revenge porn is vital for the victims and for the right to due process, and getting the right convictions will send out the clear message that it is unacceptable and that there will be a zero-tolerance approach to those who do it. Social media give us so many ways in which to express ourselves and our opinions, however bizarre or unpopular they are in some cases, but they give no one the right to post pictures of ex-partners without either their knowledge or their consent. Social media do not provide a licence to abuse.

Personal use of technology in its many forms is very difficult to police. It is so easy to press a button and post a picture, but the sad and tragic tales of the people who have been exposed to revenge porn tell us how utterly devastating the effect can be.

I support the bill in its entirety and I look forward to stage 2. I hope that through the bill process we will create legislation that will mean that perpetrators will pay a hefty price.

16:16

Alison McInnes (North East Scotland) (LD): I am pleased to speak after Christina McKelvie, as I know that she has campaigned long and hard on the issue, as I have.

I thank the Government for introducing the bill. In doing so, it has recognised the need to keep

battling the damage that is done by abusive behaviour and sexual harm. The bill falls short of providing for a new criminal offence of domestic abuse, and I know that campaigners have been concerned by that. However, I consider that the Government is right to have chosen to consult separately on that, which it is doing principally to get the definition right. It is worth taking time to do that. I look forward to a commitment from all parties in Parliament, whatever the outcome of the election, to introduce a bill on a new criminal offence early in the new parliamentary session.

The bill introduces a domestic abuse aggravator, which is to be welcomed. In the little time that I have for my speech, I will focus on two provisions in the bill, the first of which is on the offence of non-consensual sharing of images. That addresses a gap in legislation that has allowed what is known as revenge porn to gain a foothold in Scotland, just as it has elsewhere. The insidious malicious sharing of intimate images can cause victims huge harm and destroy lives, so we need to ensure that perpetrators can be held to account for their actions. The creation of a new criminal offence will be an important step in the right direction.

I believe that there is significant underreporting of revenge porn. It is important that victims do not suffer in silence and that they know that they have done nothing wrong. Specific legislation to tackle those despicable and cowardly acts will give victims the confidence to believe that such violations of their privacy are unacceptable and illegal. In addition to empowering more people to seek justice, the creation of a specific criminal offence will help to overcome any archaic attitudes to that cruel weapon, which is used to cause distress and to embarrass, manipulate or humiliate. Some witnesses urged us to go further and to address written text and voice recordings, as well. However, I agree with the Government's response, which is that it does not wish to dilute the offence or to cause confusion. I agree that we should keep the offence very focused.

Alongside the legislation, though, we should have a national strategy—as recommended by Her Majesty's inspectorate of constabulary in Scotland in November last year—to ensure that young people in particular understand the risks of what is known as sexting. The HMICS report warned that sexting—defined as

"the posting of self-generated intimate images on social media networks"—

is now considered a way of life by some young people, and that it could increase the vulnerability of young people who are at risk of exploitation. I would welcome an assurance from the Cabinet Secretary for Justice that the Scottish Government intends to act on the report's recommendation to develop a strategy to address those risks.

The second provision that I want to mention is that on jury direction. I acknowledge that that particular provision has proved to be controversial. If truth be told, at the beginning of the process, I was not entirely convinced that it is necessary, but having considered the evidence at stage 1, I am persuaded not only by the well-articulated case that was made by organisations including Rape Crisis Scotland and Scottish Women's Aid and the research that was carried out with mock juries, but by some of the outdated and frankly astonishing comments of some judges over the years. Members might be aware of a recent appeal court ruling that overturned a lenient sentence which described the sentencing judge's comments as "controversial". Comments such as "essentially non-violent relationship rapes" and

"condoning or acquiescing in rapes"

certainly are "controversial".

Responding to questioning in committee, Lord Carloway told us in relation to sexual offences:

"the law is progressing. It is moving from a certain position, where it was 20, 30 or 40 years ago, into the modern era."—[*Official Report, Justice Committee*, 8 December 2015; c 44.]

The movement is glacial, and it is time for change.

The Deputy Presiding Officer: You should draw to a close, please.

Alison McInnes: There are worryingly prevalent views, and if that is the picture across Scotland, it will be in jurors' minds in the courtroom as they hear evidence and will go with them into the jury room as they deliberate.

Jury direction is a sensible safeguard to introduce. The Liberal Democrats will support the bill this evening.

16:20

Christian Allard (North East Scotland) (SNP): I add my thanks to the Justice Committee team—the clerks and members of the committee—for putting together the stage 1 report, and I thank the Scottish Government for its response. We are all going in the same direction when it comes to tackling revenge porn.

I said "revenge porn" because "abusive behaviour and sexual harm" will not do. Revenge porn is really what it is all about.

We heard a lot of evidence on cases of revenge porn, which we are calling abusive behaviour and sexual harm. We took some of that evidence in private. It was heart-rending and very difficult to

take. The cabinet secretary used some of the words that were used in his opening remarks.

The bill's policy memorandum says:

"Concern has been expressed that certain ill-founded preconceptions held by members of the public, who make up juries, about the nature of sexual violence make understanding victims' responses to such crimes more difficult."

However, to me and many others that is where the problem is. Members of the public—us—have ill-founded preconceptions about the nature of sexual violence. We need to admit that. We do not understand how a victim can feel after such an attack; we do not get it unless we have been a victim, as Christina McKelvie said.

That is why I agree with the majority of the committee on supporting jury direction. We received plenty of evidence on it and how it should be set out in the bill. It should be regarded as part of judicial knowledge.

On 24 November last year, the legal officer for the Scottish Human Rights Commission, Eleanor Deeming, said:

"Article 6 of the ECHR ... protects the right to a fair trial. Article 6.1 sets out a number of general aspects for a fair trial and articles 6.2 and 6.3 set out the minimum rights to be afforded to a person accused of a criminal offence.

The commission understands that the proposal is being introduced to address a particular issue."—[*Official Report, Justice Committee*, 24 November 2015; c 26.]

We know that the perception is that people hold misconceptions about the conduct of victims of sexual offences. I agree with the Scottish Human Rights Commission. Jury direction, as the bill proposes, will not prejudice an accused person's article 6 rights as long as directions are essentially factual and uncontroversial statements. That is very important. They need to be exactly that.

I was very much concerned about the impact that the bill could have on young people, but I did not need to be, as the convener of the committee stated. The Children and Young People's Commissioner Scotland, Tam Baillie, put my mind at rest when he gave evidence. He agreed that we do not need to have concern about judicial direction being given. He also agreed that calling expert witnesses to give context is not the most efficient way to proceed.

I want to emphasise one particular point. As the Children and Young People's Commissioner Scotland put it:

"In the fullness of time, as a result of public education and greater awareness, judicial direction may not be needed."—[*Official Report, Justice Committee*, 24 November 2015; c 28.]

That is a very important point to repeat.

I am short of time, so I will not be able to develop what I wanted to say about another part of the bill.

One in four women will experience domestic abuse in her lifetime. One in 10 women in Scotland has been raped. Some 21 per cent of girls and 11 per cent of boys in the UK have experienced child sexual abuse. That is why Parliament needs to back the stage 1 report and to agree with the majority of the committee that jury direction is an important part of the bill. Attitudes need to change before we can consider dealing with that.

The Deputy Presiding Officer: You must close, please.

Christian Allard: I remind members that organisations such as Zero Tolerance, Rape Crisis Scotland, the Women's Support Project, Scottish Women's Aid, White Ribbon Scotland, Engender and many more want Parliament to reconsider removing the absolute requirement for corroboration in Scots law.

16:25

Margaret McDougall (West Scotland) (Lab): The Abusive Behaviour and Sexual Harm (Scotland) Bill is vital legislation that has been introduced to improve how the justice system responds to abusive behaviour, including domestic abuse and sexual harm, following the publication of the "Equally Safe" report.

The bill has six parts and in the very short time that I have been allocated to speak I will concentrate on the part that deals with the non-consensual sharing of private consensual images, which is often referred to as revenge porn. As it stands, that aspect of the bill covers only disclosing or threatening to disclose without prior consent a photograph or film that shows or appears to show another person in an intimate situation. I support the creation of the new offence, as the law desperately needs to be updated to provide for the new digital age. However, it is far too narrow.

These days, everyone who owns a smartphone, tablet, or even a computer knows how to take a screenshot, and that presents a glaring loophole in the legislation, which is the sharing of text. Louise Johnson of Scottish Women's Aid stated in evidence that specifying photographs and films

"excludes the sharing of private and intimate written and audio communications".

The exposure or threat of sharing such communications has the same outcome: it is designed to humiliate and control the victim. Sometimes text and images are sent at the same time. Would we criminalise the image but not the

abusive and threatening text? Those views were supported by many others, including Police Scotland, which believed that the offence

"should take cognisance of all forms of communication and distribution".

I acknowledge that it was pointed out in evidence that the sending of abusive or threatening messages is already against the law. However, the sharing of intimate text is not. For example, the sharing of an intimate image on Facebook without consent would, under the bill, be a prosecutable offence. However, if someone shared an intimate conversation or a screenshot of an intimate conversation it would not be covered.

I argue that sharing that type of communication could have the same effect as sharing intimate images without consent. It could cause just as much fear, alarm or distress to the victim and, arguably, that would be the intention. To be clear, I am not advocating that we make the process of sexting between consenting adults illegal, nor am I suggesting that we criminalise those who are 16 or under who have engaged in the process consensually. In fact, in evidence the children's commissioner Tam Baillie stated:

"I am not looking for any exemption for children or young people."—[*Official Report*, *Justice Committee*, 24 November 2015; c 21.]

He emphasised the importance of education and said that it would be more effective in changing behaviours than criminalisation in non-malicious cases. He also said that the financial memorandum makes no provision for what could be a substantial education programme.

I am proposing that the sharing of sexts or any intimate communications non-consensually should be included in the definition of the offence in the bill, which would extend its present narrow definition. The bill does not go far enough to tackle the issue and I raised concerns about that during stage 1. I am considering submitting amendments at stage 2, so I would appreciate it if, when closing, the minister indicated his views on the points that I have raised.

16:29

Roderick Campbell (North East Fife) (SNP): I refer members to my entry in the register of interests, which says that I am a member of the Faculty of Advocates.

The bill contains six distinct elements. On revenge porn, it is worth stressing that, as members have mentioned, it is currently possible to bring criminal proceedings for offences broadly of that nature, as recent newspaper reports have indicated. I share the Government's view, however, that for the purposes of clarity and to discourage the offence generally, the creation of a new offence has clear merit.

I was interested in the legal debate on the nature of the offence in section 2(1)(b), in particular. Although I think that the concerns of Mr Meehan of the Faculty of Advocates about what might be described as the flatmate-in-boxer-shorts situation are overstated, I am sympathetic to the view of Catherine Dyer, from the Crown Office, who said that the focus of the offence should be on the impact on the victim, and I am heartened by Professor Chalmers's comment that the offence goes somewhat further than the equivalent offence in England and Wales, by incorporating a situation in which

"A is reckless as to whether B will be caused fear, alarm or distress".

Professor Chalmers thinks that the Government's extension is a reasonable one, and he has changed his opinion on that.

However, I agree with people who have concerns about any extension beyond photographs to include texts, for example. That would open up the matter too far, and the approach would be particularly difficult for children and young people to understand and accept. If we are to have the education campaign that the committee recommended and which is referred to briefly in the Government's response to the committee's report, the campaign must have clear and simple messages. I cannot but think that a reference to text messages would make that more problematic.

On the public place defence, I share the caution of the Scottish Human Rights Commission that what is determinative is not the place where the photograph is taken but whether the photograph infringes a person's private sphere.

On incorporating the definition of "consent" in the Sexual Offences (Scotland) Act 2009, to which some submissions referred, I note the Government's comments, but we need to be as clear as we can be about what constitutes consent.

There is clearly a divergence of opinion on jury direction. I recognise that the bill breaks new ground in that regard and that the proposal does not have the whole-hearted support of the legal establishment, but I take comfort from Lord Carloway's comment that such directions have been introduced in other Commonwealth jurisdictions and could be introduced here—although to be fair to Lord Carloway I should say that his view is that such an approach is not the best one.

Let us remember that such directions have been discussed for some while. They were in the

Scottish National Party manifesto for the 2011 election and were subject to consultation in the Government's "Equally Safe" consultation. I agree that they set a precedent, but that is in the context of widespread agreement that many juries have preconceptions about what a delay in reporting an offence of rape and sexual assault means and about what the absence of physical resistance implies.

It is true that to date there has been no jury research in Scotland, but that is for the obvious reason that such research would require amendment to the Contempt of Court Act 1981. We are entitled to draw comfort from the research of professors Ellison and Munro. Let us remember what Catherine Dyer, from the Crown Office, said in evidence:

"directions would be given only if questioning from the Crown or the defence elicited information that there had been a delay."—[*Official Report*, *Justice Committee*, 17 November 2015; c 22.]

Only if such matters—another example would be an issue about the absence of physical resistance—are an issue in a particular case will directions need to be given.

On sexual acts elsewhere in the United Kingdom, I think that some of Professor Chalmers's comments might be described as academic, but I am glad that the Government has noted them.

On the statutory aggravation, there was consensus, with the notable exception of the Law Society, that it is a good idea. The Law Society evidence seemed to highlight the acknowledged prominence that courts give to domestic abuse and suggested that the aggravation is not necessary. I agree with the society about the current position in the courts, but I am not persuaded that that somehow means that a statutory aggravation is not necessary. As a society we are becoming well used to the concept and I have no doubt that it will be used effectively.

I am glad that the Government will seek to put beyond doubt the question of oral representation in relation to sexual harm prevention orders and sexual risk orders.

I commend the bill.

16:33

Hanzala Malik (Glasgow) (Lab): It is with interest that I speak about the Abusive Behaviour and Sexual Harm (Scotland) Bill, which aims to bring Scottish law up to date with changes in society's view of domestic abuse and with technological changes, to reflect our improved understanding of the issues.

Members talked about non-consensual sharing of images. I add my voice to the calls for the bill to cover the sharing of intimate images that are not necessarily sexual. Images can be shared in an instant, and a great deal of damage can be caused by the reckless sharing of images. That should be provided for in legislation.

I do not think that young people should be exempt from being charged under the proposed new laws. Dealing with offenders would provide support for victims, who would often themselves be young people. I am sure that the court would take the person's age into consideration.

I want to add to the debate the view that it is important to consider the various aspects of domestic abuse and not focus only on partner abuse or abuse of a physical nature. In order to get gender equality, we should consider the practicalities of placing in the bill a broader definition of abuse that includes emotional abuse, control of money and control of movement. In addition, people in some minority communities live in extended families. Therefore, the abuse might be carried out by someone other than a partner. Sadly, I have observed cases in which several family members were involved in exerting extreme levels of control over another family member.

Another development in our understanding concerns the fact that domestic abuse need not always involve men abusing women. There can be abusive same-sex relationships, for example, and I heard a story about a mother-in-law beating her new daughter-in-law for burning a roti, which is a chapatti in English. There is also violence towards and coercion of male family members. For example, around 20 per cent of people asking for help from the forced marriage unit are male.

I support the principles of the bill, but we need to widen the definition of abuse in the bill, particularly with regard to domestic abuse. We need to ensure that we are talking about not only partners and photography, but families and how family members can be affected by each other.

16:37

John Finnie (Highlands and Islands) (Ind): I, too, thank the witnesses for their thought-provoking written and oral evidence. I hope that they are reassured by the stage 1 report that their comments were taken on board. I also thank the officials for their compilation of the report and the Scottish Government for its response.

Like others, I want to talk about jury directions. I have changed my mind on the issue. Initially, I was persuaded that the availability of expert evidence that could be put forward by the prosecution or the defence was an even-handed way of addressing the issues of delay in reporting

and resistance, but I have changed my position and will explain why.

The committee has agreed that the proposed statutory directions would provide relevant factual information for juries—I do not think that that is in dispute—and would lead to directions being delivered more consistently than is currently the case.

Partly, I have been persuaded to change my position by headlines such as "Campaigners' fury as appeal judges clear bottom groper of sex attack in nightclub". That story involves a gentleman who was initially found guilty of sexual assault and placed on the sex offenders register—properly, in my opinion—and who appealed the sentence. In his judgment, the judge who heard the appeal said that it seemed that the sheriff who passed the original sentence

"has not given sufficient attention to the fact that the appellant had consumed a considerable amount of drink beforehand, with the result that the assault can be regarded as drink-fuelled rather than overtly sexual."

That is deeply damaging to a lot of work that has gone on.

Alison McInnes referred to another case, which is one that prompted me to lodge a parliamentary motion. It involved repeated rapes of an adult and the sexual abuse of children. The trial judge referred to the matter as minor, criticised the adult victim for a delay in reporting the assaults, claimed that the victim was "condoning" or "acquiescing" in being raped, pointed out that the person continued to live with the accused and talked about the parties' "benefit-grubbing existence".

My motion welcomed

"both the Appeal Court's comments that the trial judge 'had no basis for his theories' and the increased sentence that it handed down".

However, my motion talked about the damage that the case has done to

"the good and difficult work carried out by the police, prosecuting authorities, statutory and third-sector organisations to build victims' confidence in coming forward to report sexual crime"

and called on

"the judicial authorities to examine selection procedures and training, including offering remedial training if required"—

a need that I felt that case graphically illustrated.

Lord Carloway addressed the matter head on when he attended the committee. He said:

"It is important that a judge should feel free to state exactly why he has selected a particular sentence and be given free rein to explain his reasoning. If in the course of that reasoning he says something that the appeal court determines is wrong, we will say that, as we did in that particular case, and we will expect the judge to take into account the appeal court's view and to act accordingly."—[*Official Report*, *Justice Committee*, 8 December 2015; c 44.]

That is one reason for the bill. Christian Allard also touched on the compelling evidence that we have received from the Scottish Human Rights Commission. It is about striking a balance between rights and, in terms of jury directions, I believe that we have got the balance right.

Beyond that, there are other issues that we need to deal with, such as judicial training. The cabinet secretary talked about unenlightened views, and it is apparent that they exist not just among the public. If, as someone whose views I admire says, the judiciary have had their chance and it is time to legislate, and if this is appropriate and balanced legislation, the Green/Independent group will support it.

16:41

Annabel Goldie (West Scotland) (Con): I welcome today's stage 1 debate on the Abusive Behaviour and Sexual Harm (Scotland) Bill and echo the thanks that have already been expressed to the Justice Committee, for a substantial and thorough report, and to the witnesses and stakeholders who assiduously helped to inform its findings.

From the tenor of the speeches in the debate, it seems that there is a consensus that the bill will have a positive impact, not least because it adjusts the criminal justice system to the challenges that have been created by modern communications technology. During the debate, there has also emerged recognition of the need for some reflection on and refinement of the bill at stage 2.

Members have already covered many areas of the bill but, in the time that is available, I will focus my remarks on the new statutory aggravator and the controversial introduction of jury directions in sexual offence cases, which I know has exercised the judiciary and legal practitioners alike.

The new domestic abuse aggravator is a welcome acknowledgement that the justice system should treat cases of partner abuse with the seriousness that they demand. I have little doubt that the Crown Office and Procurator Fiscal Service and the courts are already robust in their handling of such cases and that special measures are in place to prosecute them expeditiously and with sensitivity. Nevertheless, the tougher sentencing that is intended to result from the aggravation will provide reassurance to victims that the disposal fully reflects the reality of repeated psychological and physical abuse perpetrated by someone in a position of trust.

However, I note the concern that the flexibility for the aggravation to be used in relation to first-time offences may have unintended consequences, including the possibility that it will be applied in isolated domestic dispute cases. I therefore urge the Scottish Government to look again at that aspect at stage 2 to ensure that the provision does not inadvertently dilute the seriousness of sustained partner abuse and that it is applied proportionately.

Section 6 introduces two jury directions in sexual offence cases in the context of, first, a delay in the complainer telling someone about the offence or reporting the offence to an investigating agency and, secondly, evidence being given to suggest that sexual activity took place without physical resistance by the complainer. I am sympathetic to the intention behind section 6, which seeks to dispel the public's preconceptions surrounding some key aspects of sexual violence. However, I strongly believe that statutory jury directions are not the way to achieve that desired outcome, and I urge caution. Stakeholders were clear that such measures would erode the judiciary's discretion and that there is no empirical evidence that the jury directions are required. Worse than that, such directions could have the unintended consequence of the defence leading expert evidence that it might not otherwise have proposed simply to mitigate a possible anticipated forensic disadvantage.

Lord Carloway, for example, suggested that a better way to do it would be to declare that the measures are within judicial knowledge—I am slightly paraphrasing him. Sheriff Liddle argued that

"the place for such suggestions would be the jury manual".—[*Official Report*, *Justice Committee*, 8 December 2015; c 37.]

Those are authoritative views and, to me, they are persuasive. As Christina McKelvie observed, the last thing that we want to do is to make conviction more difficult simply because there might be confusion in the judge's charge to the jury.

That said, and subject to those comments, the bill is a welcome and positive piece of proposed legislation. I look forward to the Government's response at stage 2, but my party will support the bill at decision time.

16:45

Graeme Pearson (South Scotland) (Lab): On behalf of Scottish Labour, I support the general principles of the bill. I have found the debate to be most edifying and educational. Much has been said about what the bill seeks to achieve. It is fair to say that, in many minds, there is confusion about exactly what we are trying to deal with. The prejudices that are brought to this environment often confuse the notion of love and sexual intent. In fact, the bill seeks to deal with human beings who seek to control others, who exhibit anger in the way that they demonstrate that control and who are happy to use violence and/or threats, either actual or implied, to obtain their own outcomes. In that context, I welcome the bill's aim of preventing abuse, harassment or sexual harm, using either criminal or civil law.

The domestic abuse aggravator is to be welcomed and is well worthy of further development. I ask the cabinet secretary to bear in mind an issue that was raised with me only this week at the conclusion of a trial that resulted in a conviction. The victim in that case is now left with a duty to return to the civil courts to seek an interdict in connection with future harassment. There might well be a gap in how we deal with long-term domestic abuse and the impacts on victims.

The bill introduces a specific offence of non-consensual sharing of private and intimate images. That issue demands a response in legislation. I believe that further analysis of the impact of sharing texts and sound files is important. We should consider the foreseeable impact on an individual of the sharing of such files with the general public. Sound files and texts can probably do as much damage to a vulnerable individual as images when shared in the public domain.

There is a provision allowing courts to directly protect victims when the court is satisfied that a person has harassed another person but a conviction does not take place. As was alluded to earlier, that is another important aspect. Some victims feel abandoned by the system when the full process of law is unable or unwilling to deliver.

I am persuaded that the requirement for specific directions from the court is necessary. Christine Grahame, I think, commented on the prejudices that ordinary members of the public bring to the process and John Finnie gave a great deal of evidence that that prejudice extends beyond ordinary members of the public. We should be able to rely on a judge setting the context with a comment to the jury about how evidence might be weighed in its decisions.

Christine Grahame: I am concerned about the comment that the judge should tell the jury how it weighs the evidence, because that is a matter for the jury alone.

Graeme Pearson: I misspoke or Christine Grahame misheard. I do not imagine that a judge would tell the jury how to weigh the evidence but that they would at least explain the context so that

the jurors could make that appraisal for themselves.

It is to be welcomed that sexual offences that are committed in England will be able to be prosecuted in Scotland. That removes the legislative barriers in relation to that.

I also welcome the reform of the system of civil orders that are available to protect communities from people who may commit sexual offences. I look forward to the committee examining the implications that arise from that.

The Scottish Government consultation "Equally Safe: Reforming the criminal law to address domestic abuse and sexual offences" said much about the levels of support for each of the elements that are proposed in the bill. Although I am not a great one for supporting an "X Factor" approach to percentage support for various proposals, there is no doubt that there is a general acceptance among the public that legislation is necessary and should have an impact.

Over the years that I was a police officer, nothing was more soul destroying than seeing families suffer from domestic abuse and the impacts of sexual assault. I am glad that the Government is taking the approach in the bill.

16:51

Michael Matheson: I thank members for their thoughtful speeches in what has been a considered debate. That reflects the Justice Committee's stage 1 report, which gives due consideration to various areas.

I confirm that the convener is correct that I am "chewing over"—as she put it—the recommendations and the points that the committee made in its report. I have tried to provide as helpful as possible a response to the report in the limited time between receiving it and this debate and to set out the Government's views on a number of matters.

In their speeches, members took views on a range of different proposals in the bill. I will pick up on a few of those in the time that is available to me.

Some members of the committee had an issue with the provision on mandatory jury directions. In saying that, I am referring to two members of the committee; a clear majority of committee members support the provision for the reasons that the Government and a range of stakeholders have set out. On that point, I correct Ms Goldie, who said that stakeholders have raised concerns: some stakeholders have raised concerns, but a range of other stakeholders are supportive of the provision.

I also take up the point that was made by Margaret Mitchell and echoed by Christine Grahame, who said that they would prefer to wait for research to be conducted into jury directions before we agree to the provision. As I set out in my opening speech, the reason for introducing the provision on jury directions is that we already have evidence on the ill-conceived ideas that jury members may have, which can have a bearing on their judgment of evidence that is led in a trial. Evidence has been gathered on that and there has been some research into it in England, so we already have a body of research on it. However, the jury research that we are undertaking in Scotland is about the measures that will be required post the abolition of the requirement for corroboration and is specific to the Scottish system.

The Criminal Justice (Scotland) Bill is the last piece of legislation that I dealt with in the chamber. Margaret Mitchell lodged an amendment to that bill to introduce a new provision to deal with medical evidence being led in particular trials and the right to legal representation. At the time, I set out that we did not support the amendment because we were researching the matter to identify how effectively the provisions in sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 were operating. She has chosen to ignore that point, although the provision on jury directions is supported by the very organisations that she said we should have been listening to on the Criminal Justice (Scotland) Bill. Organisations such as Rape Crisis Scotland are very supportive of it. There is an issue with the consistency of the Conservative Party's approach to some of these matters.

I am very grateful for the broad support that has been provided by others on the provision on jury directions, the purpose of which is to tackle preconceived and ill-founded attitudes to sexual offences and how victims should react, which can cloud a jury's consideration of such issues.

I turn to the sharing of intimate images, or revenge porn, as some members have referred to it. I have no doubt that, with the advances in technology that all members are aware of, the issue is one that is increasingly finding its way into our criminal justice system. By providing for a very specific offence, the bill will help to support the police, our law enforcement agencies and victims by making sure that the issue can be effectively addressed.

Some stakeholders have expressed the view that we should consider extending the proposed offence to include the sharing of audio files and the written word. Margaret McDougall raised that issue, as did Malcolm Chisholm. However, as I set out in my evidence to the committee, there would

be some challenges if the proposed offence were extended too far. In particular, there could be a lack of clarity that would affect our prosecutors' ability to bring such matters to court, as Alison McInnes identified. As I said to the committee, I will consider whether there is a way in which the highly specific offence that the bill creates could be extended without compromising the intention behind it or the clarity that is necessary to deliver it.

A number of members discussed the potential unintended consequences—especially for young people—of extending the provision to cover sexting. Doing so could end up criminalising many young people, bringing them into our criminal justice system in a way that the bill did not intend. That is why the provision of education and information on the matter is something that we will give further consideration to. Guidance has already been issued to local authorities to provide direction to schools and education authorities on how they should educate young people on the risks associated with such behaviour. We will of course give further consideration to those matters as we move forward with the bill.

A number of points were made about the use of non-harassment orders. I thought that Malcolm Chisholm made a very well-articulated argument regarding some specific cases in which there has been a lack of protection for victims from harassment by certain individuals because of the present deficiency in our criminal justice system. The specific intention behind the provisions that we have put in the bill is to address the situation that he set out clearly. I understand the concerns that members of the committee have about the practicality of the provisions' application, but I am in absolutely no doubt that the additional measures on non-harassment orders will provide greater clarity to the police in particular on when they should intervene and in which cases they have the authority to intervene, and that that clarity on the police's ability to intervene will reassure victims.

I am very grateful to members for all their contributions to the debate, and I am grateful for the support that the committee and the other parties have offered at stage 1 of the bill's consideration. I will of course seek to work constructively with all members in considering what further improvements can be made to the bill between now and stage 2.

Abusive Behaviour and Sexual Harm (Scotland) Bill: Financial Resolution

16:59

The Presiding Officer (Tricia Marwick): The next item of business is consideration of motion S4M-14926, in the name of John Swinney, on the financial resolution on the Abusive Behaviour and Sexual Harm (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Abusive Behaviour and Sexual Harm (Scotland) Bill, agrees to 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.—[*John Swinney*.]

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

Decision Time

17:00

The Presiding Officer (Tricia Marwick): There are three questions to be put as a result of today's business. The first question is, that motion S4M-15440, in the name of Paul Wheelhouse, on the Succession (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees that the Succession (Scotland) Bill be passed.

The Presiding Officer: The Succession (Scotland) Bill is passed. [*Applause*.]

The next question is, that motion S4M-15441, in the name of Michael Matheson, on the Abusive Behaviour and Sexual Harm (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament agrees to the general principles of the Abusive Behaviour and Sexual Harm (Scotland) Bill.

The Presiding Officer: The next question is, that motion S4M-14926, in the name of John Swinney, on the financial resolution on the Abusive Behaviour and Sexual Harm (Scotland) Bill, be agreed to.

Motion agreed to,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Abusive Behaviour and Sexual Harm (Scotland) Bill, agrees to 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.

Meeting closed at 17:00.

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