



OFFICIAL REPORT
AITHISG OIFIGEIL

Meeting of the Parliament

Thursday 26 April 2018

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 26 April 2018

CONTENTS

| | Col. |
|---|-------------|
| GENERAL QUESTION TIME | 1 |
| Children's Food Environment | 1 |
| Taxis (Diesel to LPG Conversion) | 2 |
| Universal Credit (Impact on Services) | 3 |
| Drumchapel Station (Stop-skipping)..... | 4 |
| Fife Health and Social Care Partnership (Primary Care Recruitment)..... | 6 |
| Unpaid Work Trials | 7 |
| Attainment Gap..... | 8 |
| Glasgow City Council (Early Learning and Childcare) | 9 |
| FIRST MINISTER'S QUESTION TIME | 11 |
| Post-Brexit Powers | 11 |
| Emergency Ambulance Response Times | 14 |
| Fatal Accident Inquiries (2012 Tornado Crash)..... | 16 |
| Fire Appliance Cover (North East Scotland) | 17 |
| Creamery Closures (First Milk)..... | 18 |
| Scottish Enterprise (Support for Raytheon)..... | 18 |
| Maternity Services (Caithness)..... | 20 |
| Breast Cancer Drugs (Perjeta) | 22 |
| Gypsy Travellers..... | 23 |
| General Practitioners | 23 |
| Rosyth to Zeebrugge Ferry Service..... | 24 |
| European Union (Withdrawal) Bill..... | 25 |
| Children (Parental Substance Misuse) | 26 |
| BUSINESS MOTION | 29 |
| <i>Motion moved—[Joe FitzPatrick]—and agreed to.</i> | |
| CIVIL LITIGATION (EXPENSES AND GROUP PROCEEDINGS) (SCOTLAND) BILL: STAGE 3 | 30 |
| STANDARDS COMMISSION FOR SCOTLAND (APPOINTMENT OF MEMBER) | 91 |
| <i>Motion moved—[Kezia Dugdale].</i> | |
| Kezia Dugdale (Lothian) (Lab)..... | 91 |
| MOTION WITHOUT NOTICE | 93 |
| <i>Motion moved—[Joe FitzPatrick]—and agreed to.</i> | |
| DECISION TIME | 94 |

Scottish Parliament

Thursday 26 April 2018

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

General Question Time

The Deputy Presiding Officer (Christine Grahame): Good morning. The first item of business is general question time. As usual, I ask for nice succinct questions and nice succinct answers to match—I live in hope.

Children's Food Environment

1. **Clare Haughey (Rutherglen) (SNP):** To ask the Scottish Government what action it can take to improve the food environment for children. (S5O-02017)

The Minister for Public Health and Sport (Aileen Campbell): We have to make it easier for all of us to make positive dietary choices, including by changing the environments that influence what we buy and eat. We are all susceptible, but children are especially impressionable.

I will set out in the summer how we will do that in our new strategy for healthy weight, which will include world-leading measures to restrict promotions of food that is high in fat, sugar or salt.

The Scottish Government has already taken other actions, including extending, from August 2020, free school lunches for all young children attending funded early learning and childcare.

As part of the recently published child poverty delivery plan, we have committed to investing £1 million over the next two years to provide additional practical support to children experiencing food insecurity during school holidays.

Clare Haughey: Last year, research commissioned by the obesity health alliance found that children can see up to 12 adverts per hour for high-fat, high-sugar foods while watching prime-time family television programmes.

Does the minister agree that if the United Kingdom Government fails to restrict junk food advertising before 9pm, which would improve the wider food environment for children, the power to do so should be devolved to this Parliament, so that we can act?

The Deputy Presiding Officer: I call Michelle Ballantyne. I am sorry—I meant to call the minister, but I am alert to the fact that Michelle Ballantyne wants to come in.

Aileen Campbell: Thanks for the heads-up, Presiding Officer. I absolutely agree with my colleague Clare Haughey. Children do not restrict themselves to watching just the children's channels. Increasingly, shows such as "The X Factor", "Britain's Got Talent" and a host of others are watched by whole families. We are all susceptible to advertising, but I reiterate that children are particularly impressionable. That is why we will continue to urge the UK Government to take action to restrict all such advertising until after the 9pm watershed. We have argued that if it does not make headway on that issue, it should provide us with the power to take such action.

I point the member to the recent letter that was issued to the Prime Minister by a range of supporters on this issue, including Jeremy Corbyn, Nicola Sturgeon, Vince Cable, Caroline Lucas and Jonathan Bartley, who are pressing the UK Government to take action in this area.

The Deputy Presiding Officer: Strangely enough, I call Michelle Ballantyne.

Michelle Ballantyne (South Scotland) (Con): The Royal College of Paediatrics and Child Health has urged ministers to introduce measures to make it easier for councils to keep junk food away from schools to reduce the temptation for pupils. Is the Scottish Government inclined to support that proposal?

Aileen Campbell: We got a range of responses to our recent consultation. Of course we will take on board all the views, particularly those from bodies that have expertise in this field. We have looked at things that are within our gift, given the powers that we have. It is not just about pushing the UK Government to do something; it is also about looking at the powers that we have to make sure that we can create the right environment for children to have healthy lives.

The Deputy Presiding Officer: Question 2 has been withdrawn.

Taxis (Diesel to LPG Conversion)

3. **Miles Briggs (Lothian) (Con):** To ask the Scottish Government what action it takes to encourage more diesel taxi owners to convert to liquefied petroleum gas. (S5O-02019)

The Minister for Transport and the Islands (Humza Yousaf): Although no specific support is currently available for LPG taxi conversions, the Scottish Government provides loans to replace older hackney cabs with new, efficient Euro 6 diesel or electric models to reduce harmful emissions.

Miles Briggs: The City of Edinburgh Council has acted positively in relation to LPG conversions by introducing the incentive of a four-year licence

extension for those who convert their taxis and private hire vehicles to LPG. However, other council areas, including Glasgow, which the minister represents, are taking a different approach.

The Deputy Presiding Officer: I would like to hear a question.

Miles Briggs: Will the minister look at how conversions can be mandated through the national low emission framework?

Humza Yousaf: I am interested in a range of technologies. I will certainly reflect on what Miles Briggs said—I also saw his press release from a couple of weeks ago. There are some caveats to set out. Although LPG conversion will often see a reduction in NOx—nitrogen oxide—and particulate matter, there is evidence, particularly from the Birmingham study, that it does not have the same reduction effect on carbon oxide and greenhouse gas emissions; the effect can be marginal and, in fact, there can be an increase in levels of carbon monoxide in LPG-converted taxis.

We have to make sure that we take an evidence-based approach, but the points that Miles Briggs made are good and I will reflect on them.

Liam McArthur (Orkney Islands) (LD): The minister may be aware of taxi firms in Dundee and London that have only electric vehicles now. Will he consider speaking to local authorities about the idea of having EV-only taxi ranks, charging facilities, and so on, to try to deliver the climate change ambitions in the climate change plan?

Humza Yousaf: Yes, I certainly will. Dundee is streets ahead of any other local authority when it comes to having an EV taxi fleet. The member knows that I am up in Orkney tomorrow and I am more than happy to have that conversation with the local authority area, which is of course ploughing ahead with its own ambitions on electric vehicles.

Universal Credit (Impact on Services)

4. Clare Adamson (Motherwell and Wishaw) (SNP): To ask the Scottish Government what assessment it has made of the impact on local services in areas where universal credit has been rolled out. (S5O-02020)

The Minister for Social Security (Jeane Freeman): Evidence provided by the Convention of Scottish Local Authorities shows that average rent arrears for those in receipt of universal credit are more than 2.5 times higher than for those on housing benefit. Local authorities also report that administering discretionary housing payments and council tax reduction is more onerous both for the

local authority and for those in receipt of universal credit compared with housing benefit cases.

This week, the Trussell Trust analysis demonstrated an average 52 per cent rise in food bank use where full service universal credit has been rolled out.

From all of that and from the additional demands on advice services, it could not be clearer that the Department for Work and Pensions universal credit system is not only failing those it is there to support, but making it harder for our public and third sector services to deliver the support that they wish to deliver.

Clare Adamson: The Scottish Government will be aware that universal credit is about to be rolled out in my constituency of Motherwell and Wishaw and I have concerns, as do my constituents, for all the reasons that the minister has just explained.

Although we know that this is a reserved benefit, can the Government set out what work it has undertaken and will undertake to provide more flexibility for claimants to help them better manage their money?

Jeane Freeman: As Ms Adamson and members in the chamber will know, in the devolution of social security powers, universal credit was not devolved to the Scottish Government—more's the pity—but we have the opportunity, in the delivery, for three specific flexibilities, as they are described.

The first of those flexibilities relates to the direct payment of rent to both private and social landlords and the second relates to the choice for individuals in receipt of universal credit to receive the funds fortnightly.

In October last year, we introduced those two choices for new claims for universal credit in full service areas and from January this year, those choices were rolled out to everyone in full service credit areas. As the member and, I hope, other members know, as the roll-out progresses, I am writing to all MSPs to make sure that they understand what those choices are.

The third flexibility is split payments, which we discussed yesterday. As I hope members in the chamber understand, we are fully committed to that and we are working with the DWP to try to ensure that we can now offer that third choice.

Drumchapel Station (Stop-skipping)

5. Bill Kidd (Glasgow Anniesland) (SNP): To ask the Scottish Government what its response is to concerns raised by commuters regarding the level of stop-skipping by services that are scheduled to call at Drumchapel station. (S5O-02021)

The Minister for Transport and the Islands (Humza Yousaf): One of the recommendations from the recent Donovan review of performance was a specific initiative detailing a series of steps to recover performance following disruption to services, and changes in operating policy to reduce the skipping of stops.

I am pleased to advise the member that since the start of the year, the percentage of services running across the rail network that have been affected by the practice of stop-skipping has reduced from 1.1 per cent to 0.5 per cent, and we expect that figure to reduce further in the coming months.

In terms of Drumchapel station specifically, the extent of skipping stops has fallen from 50 reported incidences in the four weeks ending Saturday 30 December to 10 reported incidences in the four weeks ending Saturday 14 April. That works out as approximately 0.3 per cent of the services planned to stop at Drumchapel over the latter four-week period. I would hope to see that figure being reduced even further.

Bill Kidd: I asked that question to emphasise the damage that Abellio is doing to its own reputation and, by extension, to the ScotRail franchise, due to this practice.

The Deputy Presiding Officer: I do not think that that was really a question, minister, but you can comment.

Humza Yousaf: I think that it is important, and I agree with the member that there is nothing more frustrating to the passenger or commuter than being on a train and seeing it whiz by its stop. It does reputational damage, and that is why the Donovan review is important. That is why we have seen a reduction in stop-skipping, and that is why we will continue to press to see further reduction in this practice. The anecdotal evidence from the past four to six weeks since the Donovan review has been very positive and shows that it is working.

Jamie Greene (West Scotland) (Con): The minister is aware that ending this practice was one of the key recommendations in the Donovan report. Can the minister tell me whether the number of incidents of missing stops is included in ScotRail's monthly performance statistics and, if it is not, why not? Will he commit to asking ScotRail to publish those statistics on a monthly basis, so that we can monitor whether the practice has truly ended?

Humza Yousaf: The statistics are incredibly easy to find. If the member wishes to see specific statistics, he can ask ScotRail for them. *[Interruption.]* I can hear some chuntering in the chamber about stopping the practice altogether. If one speaks to those running the franchise, train

drivers, conductors and others—as I know that Jamie Greene has done—they will say that they minimise skip-stopping. In some instances, it might have to be done to recover services, because otherwise there would be a knock-on effect on the rest of the rail network.

Clearly, passengers and commuters should be informed of skip-stopping before they get on the train, as opposed to when they are on the train. That is one of the key Donovan recommendations.

In terms of statistics, I will certainly reflect on what the member has said. If there are specific statistics that he wishes, we will make sure that he is provided with them.

Fife Health and Social Care Partnership (Primary Care Recruitment)

6. Alex Rowley (Mid Scotland and Fife) (Lab): To ask the Scottish Government what support it is providing Fife health and social care partnership to recruit general practitioners and primary care staff in order to alleviate pressure on service delivery. (S5O-02022)

The Cabinet Secretary for Health and Sport (Shona Robison): The new GP contract, backed by investment of £110 million in 2018-19 and jointly developed with the British Medical Association, will help to cut doctors' workloads and make general practice an even more attractive career.

Our ambition is to increase the number of GPs by at least 800 over 10 years to ensure a sustainable 24/7 service that meets increasing demand. There will also be significant new investment in the wider multidisciplinary teams to support GPs. Details of how we will achieve this will be set out in our primary care workforce plan, to be published next week.

NHS Fife has benefited from Scottish Government investment to train advanced nurse practitioners. Investing in ANPs is an example of our commitment to provide the range of skills needed to meet the changing and complex needs of communities, both in and out of hours.

Alex Rowley: The cabinet secretary will be aware that Fife health and social care partnership has closed the overnight out-of-hours emergency services at Dunfermline Queen Margaret hospital, Glenrothes hospital and St Andrews hospital. It says:

"As with most areas in Scotland, there are growing difficulties ensuring clinical, medical and nursing cover in GP Out of Hours Services."

Will the cabinet secretary agree to instruct her officials to bring the partners in Fife together to work with NHS Scotland to find a solution to what is an unacceptable situation?

Shona Robison: Recent changes to the out-of-hours primary care services in Fife have occurred to ensure that appropriate levels of patient safety are maintained. NHS Fife is reviewing its longer-term arrangements for out-of-hours care and has undertaken an option appraisal exercise. A public consultation will commence in June, prior to any permanent decisions being made. I encourage Alex Rowley and others to input into that.

Overnight primary care emergency services will still be available at the Victoria hospital in Kirkcaldy, and we will continue to liaise with NHS Fife and the local partnership throughout the review process. We expect full consultation and engagement with the local communities affected.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Will the cabinet secretary request that the director of Fife's health and social care partnership meet me and other Fife MSPs as a matter of urgency to discuss how and when Glenrothes's out-of-hours service will be reinstated?

Shona Robison: I understand that a regular liaison meeting is taking place tomorrow between NHS Fife, Fife health and social care partnership and the local MP and MSP group, at which the issue will be discussed. I encourage local members to attend.

In addition, my officials have been in touch with the director of health and social care in Fife, who has advised that he is happy to meet Jenny Gilruth and indeed other Fife MSPs separately to provide an update on the contingency measures that are in place in the primary care emergency service. I hope that that is something that Jenny Gilruth will take up.

Unpaid Work Trials

7. Rona Mackay (Strathkelvin and Bearsden) (SNP): To ask the Scottish Government what its position is on the practice of unpaid work trials. (S5O-02023)

The Minister for Employability and Training (Jamie Hepburn): I wrote to the former Secretary of State for Work and Pensions, David Gauke, in November last year to express broad support for the terms of the Unpaid Trial Work Periods (Prohibition) Bill. It was disappointing that the bill, which was aimed at protecting the rights of vulnerable workers, was talked out by United Kingdom Government MPs at its second reading.

In that correspondence, I also sought assurances that the voluntary work trial scheme operated by the Department for Work and Pensions is based on the principles of fair work and that participants are given the best possible chance of gaining permanent paid employment. I look forward to receiving at some stage a reply to

my letter of last November from David Gauke's successor, Esther McVey.

Rona Mackay: Does the minister agree that, if the UK Government is not willing to take action against unpaid work trials, it should agree to devolve employment law to the Scottish Parliament so that we can finally take action to end that unfair and disgraceful practice?

Jamie Hepburn: Yes, I agree with that. The fact that Mr McDonald's bill was talked out on 16 March, along with the UK Government's pernicious Trade Union Act 2016 and its failure to promote the living wage, demonstrates that we cannot rely on the UK Government to protect workers' rights or deliver fair and progressive labour market policies. That is why employment law must be devolved to the Scottish Parliament.

Attainment Gap

8. Rachael Hamilton (Ettrick, Roxburgh and Berwickshire) (Con): To ask the Scottish Government what action it is taking to close the attainment gap. (S5O-02024)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): The Scottish Government has committed £750 million during the course of this Parliament through the attainment Scotland fund to provide targeted support for children, schools and communities to close the poverty-related attainment gap. In 2018-19, we will invest a total of £179 million, which will be an increase of £9 million from last year. That funding includes £120 million of pupil equity funding that has been allocated directly to schools on the basis of the numbers of pupils in primary 1 to secondary 3 known to be eligible and registered for free school meals; it also includes £59 million that will continue to provide targeted support to authorities and schools in the communities with the highest levels of deprivation.

Through the national improvement framework and improvement plan, we are providing, for the first time, a complete picture of how children are progressing with their learning and of the actions that we are taking to close the poverty-related attainment gap.

Rachael Hamilton: As the cabinet secretary will know, in the most deprived areas of the Scottish Borders, only 25 per cent of pupils went on to achieve five or more national 5 qualifications between 2014 and 2017. That is significantly worse than the figures in other deprived areas in Scotland. Will the cabinet secretary look to explore the reasons why pupils in deprived areas in the Scottish Borders are not performing as well as those in other deprived areas in Scotland and look

to provide additional support to help Scottish Borders pupils reach their potential?

John Swinney: With the greatest of respect, that is precisely what I have done, because the issues that Rachael Hamilton cites are long-standing issues in Scottish education. The poverty-related attainment gap has been present in Scottish education for a very long time; it was present when I was at school, which was most definitely not yesterday. This Government has attached the greatest priority to resolving that issue by closing the poverty-related attainment gap.

With regard to the data that Rachael Hamilton cited, the Government has allocated £1.8 million in pupil equity funding directly to head teachers in the Scottish Borders on top of specific financial support to Burnfoot community school, St Margaret's primary school and Hawick high school to ensure that, in addressing the implications of poverty, pupils who require specific assistance to support them are able to receive that support as a consequence of the direct, targeted interventions that the Government is making to close the poverty-related attainment gap.

Glasgow City Council (Early Learning and Childcare)

9. **Johann Lamont (Glasgow) (Lab):** To ask the Scottish Government whether it has received any representations from Glasgow City Council seeking additional resources to avoid increasing charges for early learning and childcare. (S5O-02025)

The Deputy First Minister and Cabinet Secretary for Education and Skills (John Swinney): Glasgow City Council, like all councils, makes representations every year in relation to the local government settlement. The current statutory entitlement of 600 hours is fully funded by the Scottish Government and free to families at the point of access, and the Scottish Government is committed to fully funding the expansion of that entitlement to 1,140 hours. The issue underlying Johann Lamont's question is in relation to charges set by the council for wraparound hours over and above the funded statutory entitlement. Where a local authority offers wraparound hours in its own settings in addition to the funded hours—and parents' need for those additional hours will reduce with the expansion to 1,140 hours—it is for the council to choose how it funds those particular commitments.

Johann Lamont: I accept that the cabinet secretary is saying that Glasgow City Council has made an active choice to put a burden on hard-pressed families in Glasgow.

I have had representations from a constituent who is in a panic because she will have to pay £180 more a month. She faces the choice of reducing her child's nursery hours or reducing her working hours and, as a consequence, she is fearful of losing her home. This is not an academic discussion; the issue is having a direct impact on hard-working families across Glasgow. I urge the cabinet secretary to use his influence and ask Glasgow City Council to reverse its unacceptable, unfair and unjust decision.

John Swinney: I say, with the greatest respect to Johann Lamont, that I do not treat such matters as academic issues. I address them directly with members of Parliament.

My second point is that Glasgow City Council has a choice to make. If the Parliament believes in local democratic accountability, local authorities must be held accountable for the decisions that they take.

Thirdly, the current Scottish Government is investing in the expansion of early learning and childcare in a way that no other Government has ever done, and the Labour Party should welcome that.

The Presiding Officer (Ken Macintosh): Before we turn to First Minister's question time, I am sure that members will wish to join me in welcoming to our gallery His Excellency Professor Arthur Peter Mutharika, the President of the Republic of Malawi. [*Applause.*]

First Minister's Question Time

12:01

Post-Brexit Powers

1. Ruth Davidson (Edinburgh Central) (Con):

Earlier this week, three of our leading business groups in Scotland said that they are not that concerned about where the powers that will come back to the United Kingdom after Brexit ultimately reside; they just want the UK and Scottish Governments to work together on a shared approach that maintains the UK single market. Can the First Minister really say that her actions this week have achieved that goal?

The First Minister (Nicola Sturgeon): I am and always have been prepared to work with the UK Government on a shared basis and on the basis of mutual respect. That is not what is happening.

I have said all along that the consent of the Scottish Parliament to any removal of its powers, even for a temporary period, must be a matter of fundamental principle. I want to spell out to the chamber what it is that the Parliament is being asked to sign up to. We are being asked to sign up to an agreement that would allow the Parliament's powers, in areas that really matter, such as agriculture, fishing, the environment, state aid and public procurement, to be removed for a period of up to seven years without the Parliament's consent. I think that every member of this Parliament must consider that.

Instead of the nonsense from Ruth Davidson about the fact—according to her—that the Scottish Government is somehow being unreasonable, surely there is a duty on all those MSPs who think that we should sign up to the agreement to set out clearly and in substance why they think that it is reasonable. I give Ruth Davidson such an opportunity. If she thinks that the agreement that we are being asked to sign up to is reasonable, will she read out the sections of the UK Government's amendments that deal with the consent of this Parliament? I challenge her to do that. Let us see whether she is confident enough.

Ruth Davidson: The powers in dispute are powers in areas that the First Minister wants to send directly back to Brussels. If she thinks that she has helped to provide certainty this week, why has she blocked a deal that would have done exactly that? Why is she putting her own political goals first?

The UK Government did not get everything that it wanted this week, nor did the Welsh Government. Yesterday, the Welsh finance secretary, Mark Drakeford, said:

"It has meant compromise on both sides."

That, he said, is the

"art of negotiation ... and I believe the outcome is a mature agreement between governments which is respectful of each other's interests."

It sounds reasonable to everyone else. Why is it that the First Minister alone does not get that?

The First Minister: Ruth Davidson asks why this matters, so let me give a few examples of the real implications of us agreeing to what has been put before us. If we were to agree to this, it would allow the UK Government to dictate new arrangements for farm support in Scotland for a period of up to seven years; it would allow the UK Government to force us, perhaps, to lift our ban on genetically modified crops, which is so important to our environment and the reputation of our food and drink; it could restrict our ability during that period to properly tackle obesity and alcohol misuse—[*Interruption.*] The Conservatives do not like hearing this. It could force us to relax food standards regulations and perhaps open the door to US chlorinated chicken and anything else that was demanded in a trade deal. Those are just some examples of the real implications.

I note that Ruth Davidson did not accept the opportunity to read out the sections of the UK amendments. Let me do that. It is important, because this is what this Parliament is being asked to agree to. The amendments say that the UK Government cannot lay regulations to take away the powers of this Parliament unless the Scottish Parliament has made a "consent decision". So far, so fair, perhaps, but they go on to define what a "consent decision" is. That would be

"a decision"

of the Scottish Parliament

"to agree a motion consenting to the laying of the"

regulations;

"a decision not to agree a motion consenting to the laying of the"

regulations; or

"a decision to agree a motion refusing to consent to the"

regulations. If we say yes, UK ministers will take that as consent; if we say no, they will take that as consent; and if we say nothing at all, they can take that as consent. It is heads they win and tails we lose.

I do not think that any self-respecting member of this Parliament should give those proposals the time of day, and this Government will not do that. Presiding Officer, if that means that we are the only party that is prepared to stand up for the

rights and powers of this Scottish Parliament, so be it.

Ruth Davidson: I am not sure that the First Minister did herself or her argument any favours in saying that this would stop her tackling obesity in Scotland. She is the only First Minister in history who wants to talk about the powers that she does not have.

The bizarre thing is that the Scottish National Party could have claimed victory this week. It asked for powers to be devolved to Holyrood and not all held in Westminster and it got it. It asked for a sunset clause in regulations on devolved powers and it got it. It asked and demanded that any deal be by agreement and it got it.

All of us in this chamber expressed concerns about the original proposals that were put forward but, as Lord Hope—one of Scotland's foremost judges—said this morning, those are now being addressed in the amendments. Is it not the case that it does not suit the First Minister's political purposes to make a deal so she is dancing on the head of a pin in order to find reasons not to?

The First Minister: Ruth Davidson said that what we have been offered is an agreement where our consent would be needed. That is manifestly not true. I point her again to the amendments that have now been lodged, which would allow the UK Government, whether we agreed or not, to go ahead and restrict the powers of this Parliament in vital areas for a period of up to seven years.

It is for every member of this Parliament to decide whether they think that it is reasonable for the powers of this Parliament to be removed for a period of seven years without our consent. That is the question that each and every one of us is going to have to answer. I think that, as we do that, we are going to see what every party in this chamber is made of and where its priorities lie.

The fact of the matter is that I have said that consent is fundamental at every stage of this process, and I stick to that. I will not sign up to the restriction of the powers of this Parliament for a period of seven years without our consent.

We have also, of course, offered solutions. There are two of them. Clause 11 could be removed, and the effect of that would be that we would agree to sign a voluntary agreement, which is what the UK Government is saying it will do, so there would be equity and respect on both sides; or clause 11 could be amended to give this Parliament the proper right to consent. If the UK Government does either of those things, we have a deal. That is perfectly reasonable.

Let us see whether Ruth Davidson has any influence whatsoever on her UK colleagues, or

whether—as usual—she is simply going to do whatever she is told.

Ruth Davidson: The First Minister has talked multiple times about claiming to be reasonable, but the reality that we have seen this week is nationalist MPs on the floor of the House of Commons turning on their erstwhile friends in Wales and accusing them of capitulating. Does that sound reasonable to her? We have seen the SNP revert to type this week, with the same tired old lines from a party that is not even trying any more to reach out to people across Scotland. There is a deal to be done here. The Welsh have backed it, other parties in this chamber back it, and business wants her to back it, so will the First Minister for once do a deal in the national interest and not in her nationalist interest?

The First Minister: This deal is not in the national interest. That is why I will not sign up to it, and that is the difference between me and Ruth Davidson. I do not agree with the decision that Wales has arrived at, but I respect the right of Welsh politicians to take that decision. That is the nature of devolution. Surely Ruth Davidson is not suggesting that the policy of this Parliament should be decided by the Welsh Labour Party, for goodness' sake.

Ruth Davidson appears to be oblivious to the current constitutional settlement. Right now, before a section 30 order can be passed, changing the nature of the powers of this Parliament, this Parliament has to agree to it. It cannot be done without our consent. All that we are reasonably proposing is that the same rule should apply to any regulations restricting the powers of our Parliament because of Brexit.

I know that Ruth Davidson's view is that we should simply let Westminster do what it wants. That is why Ruth Davidson is so shamefully silent while her party deports British citizens and while her party imposes the rape clause on women and forces more people to food banks. It is bad enough to put up with grotesque Tory policies in areas that are outwith our responsibility, but we should never open the door to that in areas that are our responsibility, and this Government will not do that. As I said, if that makes us the only or the last party prepared to stand up for the rights and powers of this Scottish Parliament, that is exactly what we will do.

Emergency Ambulance Response Times

2. Richard Leonard (Central Scotland) (Lab): Last year in Scotland, on how many occasions did an emergency 999 ambulance take longer than one hour to arrive on the scene?

The First Minister (Nicola Sturgeon): I do not have that precise information to hand, but I will write to Richard Leonard with it.

What I do know is that our Scottish Ambulance Service does an excellent job for patients across the country, and that in doing so it is joined by all those who work in our national health service. This Government is supporting our national health service with additional resources and there are more staff working in our national health service. We will continue to support our NHS, including those who work so hard in our Scottish Ambulance Service.

Richard Leonard: The answer to the question that I asked is 16,865: more than 16,000 people waited more than an hour for an emergency ambulance. They were people who were in serious need of urgent care.

They are people such as Margaret Goodman, from Sauchie in Clackmannanshire. Margaret is receiving palliative care for brain cancer. She has told me that just before midnight on Saturday 9 April, her husband Gavin found her curled up in excruciating pain. Her palliative care nurses came, declared an emergency and phoned for an ambulance. Three times they phoned, and two hours they waited, so with no ambulance in sight, Gavin got in his car and drove Margaret to Forth Valley hospital in Larbert himself. Because they turned up on their own, rather than in an ambulance, Margaret was not automatically admitted. She had to wait in a packed accident and emergency department late on a Saturday night, so she was not treated with morphine until 3 o'clock in the morning, and did not see a doctor until 7 o'clock. That is simply unacceptable, is it not?

The First Minister: Yes—the circumstances that Richard Leonard has outlined are unacceptable. Clearly, I do not know all the circumstances, although Richard Leonard shared a great deal of information. I undertake personally to look into the case, and the Cabinet Secretary for Health and Sport will do likewise.

We expect the highest standards of care for patients throughout the country. On occasions when that does not happen, it is very important that lessons are learned and applied for the future. As Richard Leonard will no doubt be aware, the Scottish Ambulance Service has recently implemented a new response model that is designed to ensure that ambulances get to the more serious cases as quickly as possible. The second phase of that model was implemented in October last year.

The issues that Richard Leonard has raised are, of course, hugely important. As I said, I will look into the matter personally and will be happy to

correspond with him once I have had the opportunity to do so.

Richard Leonard: I say to the First Minister that Margaret Goodman is in the gallery. The debate about our NHS is not just about statistics; in the end, it is about real lives and real people like Margaret.

In the real world, Scotland's health service staff—the district nurses, our hospital doctors and the ambulance crews—are all being failed by the First Minister's Government. Scotland's patients, including people like Margaret Goodman, are being failed as well. How much more failure must people endure before the First Minister finally realises that we need a change in our national health service, starting with a change of Cabinet Secretary for Health and Sport?

The First Minister: I acknowledge Mrs Goodman's attendance. If the care that she received was not of the standard that she expected—from what Richard Leonard has outlined, that certainly appears to be the case—of course she deserves an apology, so I offer that to her. I will arrange for the health secretary to meet Mrs Goodman personally this afternoon, if she wishes to take up that offer.

More generally, however, I do not accept Richard Leonard's characterisation. Of course I accept that the people who work in our NHS are working under extreme pressure. That has always been and continues to be the case, but we are putting record sums of money into the health service and record numbers of people are working in it.

As demand on the health service increases, we need not only to invest in it, but to reform how it works. I understand that, next week, the third part of our national workforce plan will be published. It focuses particularly on primary care and the wider primary care team, which includes district nurses, whom Richard Leonard mentioned.

A great deal of work is under way to ensure that our NHS is able to meet the challenges. The Government will continue to support it every step of the way.

The Presiding Officer (Ken Macintosh): We have three constituency questions.

Fatal Accident Inquiries (2012 Tornado Crash)

Richard Lochhead (Moray) (SNP): The First Minister will recall that, in 2016, we passed legislation making fatal accident inquiries mandatory for military deaths. As a result, my constituent Jimmy Jones and I are meeting the Crown Office and Procurator Fiscal Service on Tuesday to put to it the case that there should now be an FAI into the Royal Air Force Tornado crash

in the Moray Firth in 2012, which tragically claimed the lives of three aircrew. We will present new evidence to make the case for the issues to be examined properly in a Scottish court in a fully transparent manner, following the internal inquiry that the Military Aviation Authority conducted.

Although I appreciate that decisions on FAIs are solely a matter for the Lord Advocate, will the First Minister acknowledge, and join me in paying tribute to, the tenacious and determined campaign by Mr Jones, who has the support of the bereaved families?

The First Minister (Nicola Sturgeon): My thoughts—and, I am sure, the thoughts of us all—remain primarily and firmly with the families of the victims of the Tornado crash. Such tragedies are a reminder of the risks that our armed services personnel undertake even away from the front line. We should all have that in mind at all times.

As Richard Lochhead noted, decisions regarding fatal accident inquiries are for the Lord Advocate, as is right. However, I hope that the meeting to which he referred is productive. I am very happy to recognise publicly in Parliament the contribution that Jimmy Jones made to the framing of the legislation that was passed in 2016.

Fire Appliance Cover (North East Scotland)

Liam Kerr (North East Scotland) (Con): As reported in today's *Press and Journal*, in my region there is serious public concern about the shortage of fire engine cover in Aberdeen, with appliances routinely being stood down due to crew shortages. Today's joint statement from the Fire Brigades Union and the Scottish Fire and Rescue Service states that processes will be improved. Will the First Minister tell the public what those processes are and what the improvements will be? Does she agree with Assistant Chief Officer Ramsay that action should be taken to strengthen local decision making, because more centralisation is not the answer?

The First Minister (Nicola Sturgeon): I believe in the importance of local decision making. Deployment decisions, including on provision of fire appliances, are an operational matter for the Scottish Fire and Rescue Service. The service has described the situation in Aberdeen as a short-term issue, and has confirmed—this is very important—that there has been no situation in which crews have not arrived as quickly as possible to incidents. I understand that the fire service has met the Fire Brigades Union to discuss the issue in Aberdeen, and that the north divisional organiser of the union has said:

“following our meetings, and the assurances we have been given, we think things are now moving in the right direction.”

I hope that Liam Kerr will welcome that. As I said in relation to national health service staff in previous answers, we all have a duty to support our firefighters in the vital work that they do.

Creamery Closures (First Milk)

Kenneth Gibson (Cunninghame North) (SNP): First Milk has announced that it will sell Torrylinn creamery on the Isle of Arran—which was opened by King George VI in 1946—and Mull of Kintyre creamery, which has left workers and suppliers “shell-shocked”, in the words of the NFU Scotland. Torrylinn produces high-quality traditionally made cheeses, and won a best cheddar in the world award in 2013. What is the Scottish Government's response to those successful creameries and premium brands being sold and their operations moved to Wales and Cumbria? What can be done to minimise the impact on the people who work at the creameries and in the local supply chain, including Arran and Kintyre farms?

The First Minister (Nicola Sturgeon): The announcement by First Milk to sell Campbeltown and Arran creameries is very disappointing. By its admission, the iconic products that are produced by those creameries do not fit in its longer-term strategy.

However, the sale of the sites offers an opportunity for the right approach to be taken by future owners to achieve a sustainable future for the creameries, farmers and local communities. The Cabinet Secretary for the Rural Economy and Connectivity is already working with officials to explore all possible options to save the creameries. That involves engaging fully with local agencies, partners and—which is important—the farmers, on work with potential investors, so that we can try to find a sustainable and viable way forward. I know that the cabinet secretary would be happy to meet with Kenneth Gibson to discuss the matter further.

Scottish Enterprise (Support for Raytheon)

3. **Patrick Harvie (Glasgow) (Green):** People everywhere have been shocked and disturbed at the scale of the humanitarian crisis in Yemen, which is regarded as the world's most severe humanitarian crisis at present with tens of millions of people in need of help. It is directly caused by Saudi Arabia's blockade and bombing campaign. The Scottish Government has contributed public money to the Disasters Emergency Committee's appeal in response to that humanitarian crisis and members of the First Minister's party have joined Greens and others to oppose the United Kingdom Government's arms deal with Saudi Arabia, which will continue to make the situation worse.

Why is Scottish Enterprise giving public money to the world's largest guided missile manufacturer, Raytheon, which supplies Saudi Arabia? Is there not an immense contradiction between showing legitimate and urgent concern for the victims of a humanitarian crisis caused by the brutality of the arms industry and still funding the arms industry?

The First Minister (Nicola Sturgeon): I agree with Patrick Harvie's comments about the humanitarian crisis in Yemen and its causes; I do not think that there is any disagreement between us there.

I turn to Patrick Harvie's specific question about Scottish Enterprise and the Scottish Government's responsibilities. I will be very clear about this. We have to recognise the importance to the Scottish economy of the aerospace and shipbuilding sectors, which employed 16,000 people in 2016. However—this is an important point—the Scottish Government and its enterprise agencies do not provide funding for the manufacture of munitions. Our agencies' support is focused on helping firms to diversify and to develop non-military applications for their technology.

We have been very clear in our expectation that the UK Government should properly police the export of arms and investigate whenever concerns are raised. I am always happy to discuss these issues with individual members of Parliament and would be happy to discuss the matter further with Patrick Harvie. I hope that that is of some reassurance to him.

Patrick Harvie: There must be a great many businesses, of all shapes and sizes, throughout Scotland that could benefit from that public investment in non-military activity, thereby generating jobs and economic activity without the consequences of funding the arms industry. Raytheon is not the only example. There is still a lack of clarity in the detail that the Scottish Government publishes, but a significant amount of money—£6 million, reportedly—was received by Leonardo, which was previously known as Selex. Again, that money came from Scottish Enterprise. That company is involved in supplying the weapons that Turkey is using against the Kurds in Afrin and elsewhere.

There is an immense contradiction, surely, between what we say about the world stage, humanitarian crises and the need to move away from military interventions that make situations worse, not better, and continuing to fund the self-same businesses that profit from such activity. Apparently, Glasgow City Council is also promoting an arms fair, which includes undersea weapons technology, yet the Scottish Government and many of the rest of us continue to oppose those in the form of Trident. Surely it is time for an ethical investment policy that moves away from

the arms trade wholesale and invests instead in sustainable and ethical businesses.

The First Minister: First, it is important to focus on what the investment of the Scottish Government and, in particular, Scottish Enterprise, does. As I have said, the Scottish Government and our enterprise agencies do not provide funding for the manufacture of munitions. We have been very clear that our support is focused on helping firms to diversify and to develop non-military applications for the technology that they use.

Patrick Harvie mentioned Leonardo, which featured in the media at the weekend. Scottish Enterprise has supported that Edinburgh-based company to diversify into non-military markets. The investment included supporting the company to target opportunities in blue light and civilian markets. Through that funding, Leonardo developed a radar system for launch by the Norwegian search and rescue service. It also helped the company to secure a contract with the Royal Canadian Air Force for a system that protects aircraft from heat-seeking missiles—a defensive and not offensive use of technology.

I absolutely recognise that Patrick Harvie raises important issues, but if we are to have a proper debate—one that recognises our ethical responsibilities, which I take very seriously, and our responsibilities towards economic development—it is important to be clear about what Scottish Enterprise investment does. I hope that Patrick Harvie will reflect on what I have said today, but I am, of course, willing to continue to discuss the issues, as Scottish Enterprise will be, with members of Parliament who are interested in them.

Maternity Services (Caithness)

4. Willie Rennie (North East Fife) (LD): When Caithness maternity unit was downgraded, local mothers were promised that there would be enough capacity at Raigmore hospital in Inverness. However, last week we heard that Emma Moffat was forced to endure a 260-mile journey to the central belt to give birth because Raigmore was full. I have raised this issue before and was told by the First Minister that safety was the priority, but how can a six-hour journey down the A9 be safe for an expectant mother? Can the First Minister answer that?

The First Minister (Nicola Sturgeon): It is important to recognise—I know that Willie Rennie will accept this point; I think that he accepted it the last time—that the decision to change the status of Caithness maternity unit was made not by ministers, but by NHS Highland, and that it did so on safety grounds. That decision was informed by a review that NHS Highland had commissioned

after the death of a child in September 2015. It is important to stress that mothers who are deemed to be at low risk will be able to give birth locally, but mothers who are at higher risk will give birth at Raigmore. As I said, that decision was taken on safety grounds. Any mother who is required to travel any distance will be advised by midwifery staff about transportation, and advice is available in other formats.

Again, the issues that are being raised are important, but it is important that we understand the safety imperative that lies behind the decision. NHS Highland is cognisant of the needs and the concerns of those who have to travel to Inverness when, understandably, they would prefer to give birth locally.

Willie Rennie: Ministers promised people in Caithness that Raigmore would be strengthened. Little did people know that that meant them being sent to Livingston. Campaigners say that parents are now thinking twice about whether to have a family. What a devastating failure of Government health policy that is.

At the weekend, the chair of the British Medical Association said that services across Scotland are deteriorating and patients are suffering. Ninety-nine general practitioner practices are closed to new patients. Last week, I raised the tragic failures in mental health services and others raised failures in primary care and emergency care—even Scottish National Party back benchers spoke out—and today we have heard of the case of Margaret Goodman. Then, of course, there is the closure of the children's ward at Paisley.

How bad does it have to get for the national health service before the First Minister accepts that change is needed at the top? The health secretary has got to go.

The First Minister: Willie Rennie quoted the BMA. The views of clinicians are hugely important, and I think that his quoting of the BMA suggests that he thinks so, too. He also mentioned the closure of the children's ward at Paisley, which was a decision that was informed by the views of the clinicians who work with sick children. Willie Rennie cannot have it both ways.

At the weekend, the BMA also said that it recognised the record resources in staffing in our national health service. Yes, there are pressures in our national health service. Demand is rising on health services not only in Scotland but across the developed world. That is why we are investing record sums, and it is also why we are doing the hard work to ensure that our health service delivers. The last part of our workforce plan, which I mentioned earlier and which will be published next week, is concerned with the multidisciplinary

teams that are needed, particularly in primary care.

To return to the important issue of maternity services in Caithness, I hope that all of us agree that what is most important is that pregnant women receive safe and high-quality care. When women and babies are required to travel to ensure that they receive that best possible care, we have a network of special baby care units. The specialist transport and retrieval—SCOTSTAR—service, which is operated by the Scottish Ambulance Service, provides a safe and effective service for patients who require support from an augmented clinical team.

These are important issues, but safety and the views of clinicians have to be given priority. I, the health secretary and the whole Government will focus on supporting our NHS through the investment and reform that it needs in order to provide the high-quality services that it does—services that continue to attract record levels of high patient satisfaction.

Breast Cancer Drugs (Perjeta)

Miles Briggs (Lothian) (Con): This week, breast cancer patients, including my constituents in Lothian, stepped up their campaign to make the secondary breast cancer drug Perjeta available on the national health service. Women in England have access to that drug, but Scottish patients still do not.

More than a year ago, the Scottish Government committed to introducing a better system of negotiation with regard to the costs of the new medicine. When will that new system be put in place? What can the Scottish Government do right now to bring about a deal that will make Perjeta available to Scottish women?

The First Minister (Nicola Sturgeon): To make a point that I have made several times in this chamber before, decisions on access to medicines are taken not by ministers, but through the independent processes that are in place, and through the Scottish Medicines Consortium in particular. The member mentions that the drug that he is talking about is available in England but not in Scotland, and there will be other drugs in relation to which the situation is reversed. The processes are independent, and all of us should respect that independence.

Of course, it is the responsibility of Government to provide proper funding. Since 2014, we have invested nearly £200 million in our new medicines fund. That has seen access to new medicines increase in recent years, and we continue to work with the NHS and the pharmaceutical industry to build on that as we implement the recommendations of the Montgomery review.

I absolutely understand the views of cancer patients who want access to this particular drug. Officials are undertaking discussions with the pharmaceutical company to try to achieve a solution. The company needs to continue the dialogue with national procurement in order to bring forward a submission at a fair and transparent price that is no worse than the price that it has offered in England and Wales.

As I said earlier, these decisions are independent, and rightly so. However, through its funding and the reforms of the Montgomery process, this Government will continue to do everything that we can to ensure that patients have access to the medicines that they need.

Gypsy Travellers

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): Members of a brand new Young Gypsy Travellers Assembly are watching from the public gallery today. I welcome them to the Parliament and say that the Equalities and Human Rights Committee is looking forward to meeting them in the future. I know that they will also meet the Cabinet Secretary for Communities, Social Security and Equalities this afternoon. Does the First Minister agree that it is time that we ensure that, in Scotland, the well-used phrase that “discrimination against Gypsy Travellers is the last acceptable form of racism” should become a phrase of the past?

The First Minister (Nicola Sturgeon): Let me offer a warm welcome to the young Gypsy Travellers who are with us in the public gallery. The Gypsy Traveller community continues to face prejudice and discrimination. I hope that, across this chamber, we can all agree that that is absolutely unacceptable and has no place whatsoever in a modern and inclusive Scotland.

As Christina McKelvie knows, we have set up a new ministerial working group to drive improvements for that community at a faster pace. I am delighted that the Young Gypsy Travellers Assembly has been invited to speak at the meeting of that group next week. The cabinet secretary will meet our visitors this afternoon, and I hope that members of the young Gypsy Traveller community will be regular visitors to the Parliament in the future, because they are most welcome.

General Practitioners

Neil Findlay (Lothian) (Lab): At the Breich Valley medical practice in my region, all the general practitioners have resigned and there are zero applicants to take over from them. Patients from Stoneyburn will no longer have a GP in their local health centre. If they do not have a car, they will be forced to travel on the bus—at a cost of

£4.50 a time—to another health centre that is already under pressure. Across Lothian, 40 per cent of GPs have closed their waiting lists, training places go unfilled and the system would collapse without locums. The Cabinet Secretary for Health and Sport has overseen a disaster in general practice in our communities. For the sake of patients in places like Stoneyburn, will the First Minister ask her to stand aside and bring in someone who will get a grip of that disaster?

The First Minister (Nicola Sturgeon): While the Opposition might want to continue to play politics with us, we will continue to focus on the hard work of supporting our national health service and delivering for patients. The health secretary is taking a range of actions to boost recruitment in general practice. We are also working to build the multidisciplinary teams that support GPs. Of course, the new GP contract will go a considerable way towards addressing some of the concerns that they have been expressing. Neil Findlay mentioned training places: I do not have the exact figures in front of me but, if memory serves me correctly, the fill rate for training places for this year is higher than it was last year, which suggests that those actions are starting to have effect.

There are challenges facing health services all over the United Kingdom and, indeed, all over Europe and the world. However, we will continue to focus on providing the investment and taking the action that allows us to address such challenges and to ensure that patients continue to have record high levels of satisfaction with the services on which they depend.

Rosyth to Zeebrugge Ferry Service

Murdo Fraser (Mid Scotland and Fife) (Con): On Monday, it was announced that the Rosyth to Zeebrugge ferry service is to be scrapped, following a fire on the current vessel. The ferry service has operated since 2002—first, as a passenger and freight service and, latterly, purely for freight. Its loss will be a significant blow to the Fife economy and the wider economy of the east of Scotland and will reduce connectivity between Scotland and the export markets in Europe. What discussions has the Scottish Government had, either with the current operator of the service, DFDS, or, indeed, with any other operator, about the possibility of reinstating this important link?

The First Minister (Nicola Sturgeon): First, the Minister for Transport and the Islands spoke to DFDS, the ferry’s current operator, earlier this week. His officials have had discussions with Forth Ports to look at the range of options that might be available. It is deeply disappointing and regrettable that the service has been withdrawn by the current operator. Not long after I became First Minister, I

was involved in discussions with that company to secure its future. The fire was obviously an unforeseen circumstance. We want to make sure that we explore all options to get a service running again. I give an undertaking that the transport minister will keep members updated on the progress of his discussions. However, I can say that there is an absolute determination to see a service run again if that is at all possible.

European Union (Withdrawal) Bill

5. Ash Denham (Edinburgh Eastern) (SNP): To ask the First Minister whether the United Kingdom Government's European Union (Withdrawal) Bill has been adequately amended to meet the approval of the Scottish Government. (S5F-02282)

The First Minister (Nicola Sturgeon): No. We are today lodging in the Parliament a legislative consent memorandum that will set out in detail our remaining concerns about the UK Government's proposals. Crucially, it will also offer solutions that would protect devolution, be consistent with the current devolution settlement and enable us to reach agreement.

The bill has so far not been adequately amended. As I said earlier on, the latest changes allow Westminster to override the Scottish Parliament and constrain its powers for up to seven years. Even if the Scottish Parliament voted not to give consent, the UK Government could turn that refusal into what it calls a "consent decision" in order to overrule the will of Parliament. The Scottish Government could not recommend approval of a measure that would undermine devolution in such a fundamental way, but we will continue to work to see whether agreement can be reached. Even now, I hope that we can reach an agreement.

Ash Denham: If I understand it correctly, according to the amendments that were published yesterday, even if the Scottish Parliament expressly refused consent—let us say that every single MSP voted against having the Parliament's hands tied by Westminster on matters to do with fishing, the environment or genetically modified crops—the UK Government could take that express refusal as the green light that it needed to go ahead and impose restrictions anyway. Surely no party that has any respect for the Scottish Parliament or the devolution settlement could sign up to that.

The First Minister: Ash Denham is right in her interpretation. *[Interruption.]* Well, the amendments are public and I hope that, before there is any vote on the matter, every member will pay close attention to them. Under the amendments, it is not a requirement for the UK Government to obtain our consent; there is simply

a requirement for the UK Government to allow us to make a "consent decision". However, a "consent decision" could include a decision by the Parliament to refuse consent. So if we say no, the UK Government can go ahead and do it anyway. That is a pretty strange definition of consent, and not one that I have previously been familiar with.

We have put forward two potential solutions. When I put them forward before, I think that I heard Jackson Carlaw say that we want a veto. Actually, under one of those proposals, if clause 11 were amended to allow for the consent of the Scottish Parliament, that would simply reflect what is already the arrangement for other orders, such as section 30 orders. Therefore, that is not something that is unprecedented and does not exist. If clause 11 were simply removed, we would enter into a voluntary agreement, which is what the UK Government is offering to do for us. Therefore, we would both trust each other. However, the UK Government wants it to have a voluntary agreement and us to have our powers restricted by law for seven years. No self-respecting MSP could sign up to that.

If we were to come together and make clear to the UK Government the basis on which a deal could be done, we would get a deal. I can understand why the Tories are not bothered about this, as they want Westminster to be in charge. However, I cannot for the life of me understand why Labour would agree to what has been proposed.

We hear a lot about the supposed influence of Ruth Davidson. We have an opportunity to put that to the test. If Ruth Davidson has an ounce of influence, we will get a deal, but I suspect that she will just roll over and do whatever her Westminster bosses tell her—as usual.

Children (Parental Substance Misuse)

6. Brian Whittle (South Scotland) (Con): To ask the First Minister what the Scottish Government is doing to support children from families with a parent who has an alcohol or drug addiction. (S5F-02274)

The First Minister (Nicola Sturgeon): We are currently providing £600,000 a year to the Corra Foundation, which supports Scottish voluntary organisations to deliver vital on-the-ground support to children and families across Scotland who are affected by substance and alcohol use. The investment that we are making in strengthening child and adolescent mental health services will further improve the support that is available.

It is, of course, better to seek to prevent the damage from occurring in the first place than to treat it, which is why any response to alcohol harm

needs to include preventative measures such as minimum unit pricing, which will, I am pleased to say, be in force in Scotland from Tuesday next week.

Brian Whittle: We have to accept that Scotland has a poor relationship with alcohol and drugs. We know that dependency is often a contributing factor where families are experiencing domestic abuse and neglect. The National Society for the Prevention of Cruelty to Children says that, in the past year, there has been a 30 per cent increase in calls to its helpline over the welfare of a child due to a parent misusing alcohol. The Secretary of State for Health and Social Care, Jeremy Hunt, supported by the shadow health secretary, Jon Ashworth, recently announced a £6 million package of funding to help children with alcoholic parents to get support and advice. Will the First Minister consider doing likewise for children in Scotland and will she perhaps go even further and include children whose parents have other similarly destructive addictions?

The First Minister: As I said in my original answer, we already provide funding to organisations working in the field. I mentioned the Corra Foundation, which receives £600,000 a year to support children and families facing such issues. We are also providing £280,000 in this year to Scottish Families Affected by Alcohol & Drugs to support families across Scotland that are affected by a loved one's substance misuse. That includes signposting children and families to services and contacts in their local area. We already fund a range of organisations to do that work and we will continue to look at ways in which we can support them.

It is absolutely right to raise the impact of drug and alcohol misuse, and I absolutely recognise the Government's responsibility to take action in that regard but, as I said, prevention is better than cure, which is why the comprehensive nature of our strategy to tackle alcohol misuse is so important and why the introduction of minimum pricing next week, after a delay of so many years as a result of it being caught up in the courts, is such a positive step forward. In years to come, that will be something that the Parliament is really proud of.

John Mason (Glasgow Shettleston) (SNP): Does the First Minister agree that third sector organisations such as Safe Families for Children, which operates in the east end of Glasgow, have an important role to play, as families are often more willing to engage with the third sector?

The First Minister: Yes, I agree strongly with that. I appreciate all that our third sector and voluntary organisations do and the support that they provide, and I see evidence of that in my constituency. As I have said, alongside important

local partnerships, the Scottish Government provides funding for a number of organisations at national level, including Scottish Families Affected by Alcohol & Drugs, which supports families across Scotland who are dealing with these issues. They are important organisations, and those working at local level are just as important as the national organisations that I have referred to.

The Presiding Officer: That concludes First Minister's question time. Parliament will be suspended and business will resume at 2.30, but I invite all members to gather again in the chamber for 1 o'clock, when we will hear from President Mutharika.

12:47

Meeting suspended.

14:30

*On resuming—***Business Motion**

The Deputy Presiding Officer (Christine Grahame): The next item of business is consideration of business motion S5M-11847, in the name of Joe FitzPatrick, on behalf of the Parliamentary Bureau, setting out a timetable for the stage 3 consideration of amendments to the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

Motion moved,

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

Groups 1 to 4: 1 hour 5 minutes

Groups 5 to 7: 1 hour 55 minutes

Groups 8 to 9: 2 hours 30 minutes.—[*Joe FitzPatrick.*]

Motion agreed to.

Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill: Stage 3

14:31

The Deputy Presiding Officer (Christine Grahame): The next item of business is consideration of stage 3 amendments to the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill. In dealing with amendments, members should have with them the bill as amended at stage 2, the marshalled list and the groupings.

The division bell will sound and proceedings will be suspended for five minutes for the first division of the afternoon and the period of voting for that first division will be 30 seconds. Thereafter, I will allow a voting period of one minute for the first division after a debate.

Members who wish to speak in the debate on any group of amendments should press their request-to-speak buttons as soon as possible after I call that group.

Members should now refer to the marshalled list of amendments.

Section 2—Enforceability

The Deputy Presiding Officer: I call group 1. Amendment 34, in the name of Margaret Mitchell, is the only amendment in the group.

Margaret Mitchell (Central Scotland) (Con): For an ordinary member of the public, understanding civil litigation can be a complex and confusing process. The Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill seeks to increase access to justice. By means of success fee agreements, it introduces provision whereby a lawyer who uses a damages-based agreement can take a share of their client's injury compensation, which can include compensation for both past and future loss.

Amendment 34 seeks to ensure that the bill will protect the consumer by ensuring that the injured pursuer has the relevant information with which to make an informed choice about whether to accept the terms of the success fee agreement that is on offer where the damages are awarded not by a court but through a negotiated settlement. The amendment ensures that before the success fee is agreed—which can be by means of a damages-based agreement—the solicitor or provider has explained in writing to the client

“how the terms of the success fee agreement would determine the fee payable in respect of the different elements of damages that may be obtained”.

The onus is on the lawyer to state, in writing, that the amount that is being taken as part of the lawyer's fee is fair and reasonable. Amendment 34 also ensures that the client has confirmed, in writing, that they have understood and agreed to the terms of the agreement. In addition, it ensures that, after an offer of damages is received, but before it is accepted, the recipient fully understands how much of the damages amount is being paid to their lawyer and, in particular, to what extent the part of the offer that relates to damages for future loss is being claimed as part of the lawyer's fee.

It is important to recognise that compensation for future loss is awarded to an injured pursuer to cover their future care, which can include lost earnings while an injured person is off work and recovering, or travel expenses for expected future hospital appointments. In more serious personal injury cases, it could cover loss of all future earnings as well as the costs of future care and specialist equipment that may be needed. Therefore it is crucial that an injured pursuer fully understands how much of their future loss entitlement—which can vary, depending on very complex care needs—will instead go towards their solicitor's fee if their case should be successful.

In addition, the amendment will ensure that the lawyer must provide

“a certificate that the fee payable is fair and reasonable in the circumstances of the case, and ... that no conflict of interest or undue influence has arisen”.

That will also provide protection for the lawyer.

In conclusion, in the minister's remarks at stage 2, she indicated, in essence, that she thought that the Law Society of Scotland should be responsible for providing that client protection. However, as the Law Society lobbies in the best interests of its members, it is not best placed to set out what form that protection would take after the bill has been passed. By contrast, amendment 34 would set out provisions in the bill to ensure transparency and openness in a success fee agreement, and that an injured pursuer has the necessary information to enable them to make an informed choice as to whether to accept the agreement. As such, the amendment will provide checks and balances that will serve to protect solicitors and clients from any underlying potential conflict of interest.

I move amendment 34.

Daniel Johnson (Edinburgh Southern) (Lab): I share many of Margaret Mitchell's concerns, and it is important to note her comment on the proposals in the bill being about increasing access to justice. It is important that individuals who bring forward cases do so with the fullest possible knowledge and that their interests are protected. However, we do not support amendment 34, first

and foremost because it would introduce an unnecessary layer of bureaucracy. Requiring the arguments and reasons to be set out in writing would not necessarily protect clients' interests in the way that Margaret Mitchell has set out. Critically, some in the legal profession have argued that the approach would prevent so-called at-the-court-door settlements, which are often in the client's best interests in preventing court action and arriving at an agreement that ensures that their interests are looked after.

On Margaret Mitchell's comments on the Law Society and who is best placed to look at the matter, in the final analysis lawyers are in a highly regulated profession. Solicitors undergo a great deal of scrutiny and are required by law to uphold their clients' best interests. If there is an issue, it is a much wider issue relating to the profession that would be best looked at from a regulatory point of view, rather than through the specifics of the bill.

For those reasons, we will not agree to amendment 34.

Liam McArthur (Orkney Islands) (LD): Like Daniel Johnson, I think that Margaret Mitchell very fairly identified an issue. Access to justice is predicated on there being a level of transparency and predictability about what any litigant might expect from the process. However, I share Daniel Johnson's concerns about the amendment putting in place something that would, in practice, come to be seen as fairly cumbersome and not necessarily in the best interests of the individual.

As Margaret Mitchell rightly said, the Law Society is developing proposals. With a five-year review provision built into the bill, there will be an opportunity to keep under review whether the processes that the Law Society has undertaken are fit for purpose. On that basis, and for the reasons that Daniel Johnson has identified, we will not support amendment 34.

The Minister for Community Safety and Legal Affairs (Annabelle Ewing): I refer members to my entry in the register of interests. Members will note that I am a member of the Law Society of Scotland and that I hold a current practising certificate, albeit that I am not currently practising.

Amendment 34, in the name of Margaret Mitchell, would include in the bill certain requirements for a success fee agreement to be enforceable. I ask members not to agree to the amendment, as it would undermine the principle of an independently regulated legal profession. The provisions in the amendment are also unnecessary—I will deal with that in a moment.

Turning to the first point, the amendment would mean that substantial provisions about solicitors' professional obligations would be fixed in primary

legislation rather than in Law Society rules, which, aside from any other consideration, are much more flexible when it comes to updating and so forth. The amendment therefore appears to strike at the heart of an independent Law Society and does not take account of the principle that professional rules are best made by a professional body.

Sheriff Principal Taylor has commented that he believes that the second part of the amendment in particular is impractical. As Daniel Johnson mentioned, a number of cases still settle at the eleventh hour and at the door of the court. Sheriff Principal Taylor believes that paragraphs (b)(i) and (b)(ii) of the amendment would be difficult to comply with, and points out that a solicitor is already under an obligation to comply with the provisions in paragraphs (b)(iii) and (b)(iv), which the amendment would require to be certified. If the provisions are inserted into primary legislation, there is also a question of who will be responsible for regulating them. As it stands, it is not clear from the amendment that the Law Society would have that responsibility, so that is a matter of uncertainty.

It is a fundamental principle of maintaining an independent legal profession that no state interference or influence is exerted. The Scottish Government is committed to the principle of an independent profession, and I ask the Parliament to support that principle. It is well known that, as I said, Scottish solicitors are already required to act in the best interests of their clients at all times and must ensure that their clients understand fee arrangements and give informed consent.

Success fee agreements are not new; indeed, they have been in place in some form since the 1990s, and any theoretical conflicts and other issues have not prevented speculative fee agreements from being rolled out since that time. Where the provider of relevant services is a claims management company, it will of course fall under the regulation of the Financial Conduct Authority.

The Law Society has set up a working party that is considering success fee agreements, what provision should be made in Law Society rules and guidance to govern their terms and any other relevant issues. I understand the motivation behind Margaret Mitchell's amendment 43, and I undertake to write to the Law Society to draw its attention to the points that the amendment raises. The Scottish Government will of course work with the Law Society as the bill is implemented to seek to ensure that the provisions relating to success fees are implemented in a way that best gives effect to the principles of the bill.

In summary, amendment 34 provides for matters that should not be set out in primary legislation, that risk undermining the principle of an

independently regulated legal profession and that are more appropriately handled in rules and guidance that are provided by the Law Society of Scotland in its capacity as regulator of solicitors. Hence, I ask Margaret Mitchell to consider withdrawing amendment 34.

Margaret Mitchell: A number of points have been raised. Daniel Johnson said that the amendment might prohibit settlements at the court door, but there is nothing to prevent a pro forma being available for the client to use. That would be against a strengthened background should the amendment be agreed to.

The need to ensure that the pursuer has made a fully informed choice outweighs anything that might be seen to be cumbersome. Let us not forget that, as was argued during stages 1 and 2, these cases often involve complex needs and essential care. It is not as if lawyers do not have another way of being remunerated. If such agreements are being written in, that could have adverse effects on the pursuer in an injury claim. Although all lawyers have a duty to act in good faith and in the objective interests of their clients, sadly, that does not always happen.

I believe that, rather than wait until some time in the future to see what the Law Society may or may not come up with on success fee agreements, it is important to include in the bill the protection that amendment 34 would provide.

The Deputy Presiding Officer: The question is, that amendment 34 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. As this is the first division of the stage, the Parliament is suspended for five minutes.

14:44

Meeting suspended.

14:49

On resuming—

The Deputy Presiding Officer: We will proceed with the division on amendment 34.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)

Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)

Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Deputy Presiding Officer: The result of the division is: For 29, Against 84, Abstentions 0.

Amendment 34 disagreed to.

Section 4—Power to cap success fees

The Deputy Presiding Officer: We come to group 2. Amendment 5, in the name of the minister, is grouped with amendments 6 to 8, 13 and 14.

Annabelle Ewing: Amendments 5 to 8 are technical in nature. We have been working with Her Majesty's Treasury on the United Kingdom Financial Guidance and Claims Bill, which will now regulate claims management companies in Scotland. The Treasury envisages success fee caps being imposed by professional rules. Those will be rules of the Financial Conduct Authority in the case of claims management companies, or rules of a legal services regulator in the case of solicitors.

It is thought at present that there is little likelihood that success fee caps in professional rules and success fee caps under section 4 of the bill will interact. Success fee caps in professional rules could, however, interact with success fee caps under section 4 if the Westminster secondary legislation on claims management companies changes at some point in the future.

In addition, the current legal services review that the Scottish Government has instructed could lead to changes in legal profession regulation that change the extent or nature of professional rules applied to solicitors.

Therefore, in effect we are seeking to provide future proofing. Specifically, the Financial Services and Markets Act 2000, which is to be amended by the UK Financial Guidance and Claims Bill in order to regulate claims management companies, will allow the Treasury to make regulations to give power to the FCA to make professional rules. Such rules would be tertiary legislation.

Amendments 5 to 8 will amend section 4(3)(b) and section 4(4) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill to ensure that success fee caps made in professional rules in accordance with an enactment will be treated the same as success fee caps made in an enactment. The policy in section 4 has always been that where there are two sets of fee caps, the lower one has effect.

The amendments reflect that a fee cap in professional rules might not count as a fee cap in an enactment and, therefore, the relevant text will become

“by, or in accordance with, an enactment”.

I reiterate that we do not expect the Westminster fee caps as currently proposed by the Treasury to interact with those to be provided further to this bill.

Amendments 13 and 14 are also technical drafting amendments. Amendment 13 combines section 10(2B) and section 10(3A) into one subsection that indicates the circumstances in which subsection (2A) does not apply. Thus, there will be a single subsection providing that the providers of success fee agreements and trade unions and staff associations will not be at risk of an award of expenses. Amendment 14 is a technical drafting amendment that ensures that the first reference to the Lord President of the Court of Session in section 13A uses the Lord President’s full title, which is already used in section 9(3). Given that both amendments are minor and technical, they do not make any substantive changes to section 10 and section 13A.

I move amendment 5.

Amendment 5 agreed to.

Amendments 6 to 8 moved—[Annabelle Ewing]—and agreed to.

Section 6—Personal injury claims

The Deputy Presiding Officer: We move to group 3. Amendment 1, in the name of Daniel

Johnson, is grouped with amendments 2, 2A, 3 and 4.

Daniel Johnson: I will speak to amendments 1 to 4 in my name and against Margaret Mitchell’s amendment 2A.

I apologise in advance, Presiding Officer, as these are complex amendments and it may take some time to rehearse the arguments and issues. I also declare an interest, as a proud trade unionist and a member of the Community trade union and the Union of Shop, Distributive and Allied Workers. I have worked on the amendments with the Scottish Trades Union Congress and the lawyers who work with it on personal injury cases.

Ultimately, the decisions that the Parliament makes on the bill are around access to justice. For each amendment, we should set ourselves one clear test as we vote—will voting for the amendment increase access to justice or reduce it? That is precisely what lies at the heart of Sheriff Principal Taylor’s proposals and at the heart of the bill. Furthermore, we must ask ourselves whether the amendment makes it more or less likely that a claimant who has been wronged will get the justice that they deserve. Importantly, we must also ask whether, when damages are awarded, that makes it more or less likely that a claimant will get the true value of their claim.

At stage 2, the Justice Committee decided to agree to amendments from Margaret Mitchell. My amendments today seek to reverse that decision and I would like to explain why. The issue at hand is whether success fee agreements, which are also known as damages-based agreements and best known as no-win, no-fee agreements, are allowed to include any proportion of future losses in the fee for the lawyer.

On the face of it, as I am sure that Margaret Mitchell will argue, that seems unfair. The argument goes that lawyers should not receive a single penny of the damages that are awarded for the costs of a catastrophic injury. However, we must return to that test—does that increase access to justice? Sheriff Principal Taylor, the architect of the legislation as the author of the report that led to the bill, wrote to the committee—in a surprising and extraordinary move in many ways—and set out in the starkest possible terms his view of the bill as it was amended at stage 2. He wrote that the bill, as amended, posed

“an existential threat”

to damages-based agreements

“being offered in higher value cases in Scotland”.

In other words, if we ring fence future losses, lawyers are simply not incentivised to offer no-win, no-fee agreements for those higher-value cases.

Sheriff Principal Taylor's report had to strike a carefully constructed balance to ensure that lawyers would actually offer no-win, no-fee agreements to those who have suffered catastrophic injuries. To do that, he allowed lawyers to include a small—and, importantly, capped—percentage of damages. That means that lawyers will be incentivised not just to pursue catastrophic cases but to ensure that they are settled for the maximum possible value—in other words, the interests of the client and the lawyer are perfectly aligned.

What if we do not reverse the stage 2 amendments? What would the impact be? Sheriff Principal Taylor was very clear:

“The likely outcome is that cases will either not be raised at all or will settle for considerably less than the true value of the claim.”

That is a direct quotation. Furthermore, the Law Society of Scotland agrees. It stated:

“To ring-fence future losses from the calculation of a success fee may mean that success fee agreements will not be offered in the higher value cases, as it is simply not economic to do so and the public at large will be the poorer.”

The reason that we can be so sure about this is that a recent change along these lines in England and Wales has led to exactly the situation that Sheriff Principal Taylor and the Law Society outlined. No-win, no-fee agreements are simply not being used to fund personal injury actions and thus access to justice has been greatly diminished.

Furthermore, ring fencing future losses could lead to past losses and future losses being treated differently in the courts, leading to two unintended consequences. Those with existing losses—losses already incurred—would have more opportunity to bring forward litigation than those with future losses, due to the greater availability of success fee agreements. That feels inconsistent and unfair. It could also incentivise the delaying of action so that past losses are incurred rather than being future losses at the point that court action takes place.

I turn to Margaret Mitchell's amendment 2A. Firstly, and fundamentally, it is based on an assumption that the court fees that are awarded to lawyers are sufficient. At present, the fees that lawyers receive for cases are simply not enough to cover their costs. If they were, no one would be going down the current damages-based agreement route. However, they are doing so in large numbers, on the basis of taking 20 to 35 per cent cuts of the total damages amount.

15:00

The bill gives ministers the ability to regulate the allowable deductions that lawyers can make as part of their agreements. Sheriff Principal Taylor recommended a sliding scale—from 20 per cent on the first £100,000, down to 2.5 per cent on damages over £500,000. That represents a reduction on the current situation. Crucially, ministers can alter that scale by regulation, so that if it comes to pass that there are unintended consequences or that lawyers are taking disproportionate sums from awards, it can be modified.

Most critically, I believe that Margaret Mitchell's amendment 2A makes a crucial error in its drafting, in that it does not allow for that flexibility. Instead, it hard-codes figures on proportion and value into the bill, removing the flexibility and the ability for different decisions to be made in the future.

Unfortunately, the figures that Margaret Mitchell has chosen come not from Taylor's carefully balanced proposals but from the insurance industry's briefing papers. While I perfectly understand the insurance industry's right to pursue its interests, we must take a much broader view on the interests of the legislation. Clearly, it is in the insurance industry's interest to reduce the number of cases brought and the value of the final claims settled, rather than to increase those things. It thus fails the critical test that I set out at the beginning.

This group of amendments does not represent a minor point in the bill. Taylor—the architect of the legislation—said that, if we do not reverse the amendments that were made at stage 2 by agreeing to amendments 1 to 4, the bill will

“make access to justice less accessible to the man in the street than if I had not reported”.

That is a stark warning indeed. I urge members to vote for amendments 1 to 4 in my name, and to vote against amendment 2A.

I move amendment 1.

Margaret Mitchell: Amendment 2A would amend amendment 2, in the name of Daniel Johnson, the effect of which would be to remove the ring fencing of future loss that was agreed to by the Justice Committee at stage 2. I have therefore lodged amendment 2A in an attempt to mitigate the potential adverse consequences of the future care costs that would be lost to lawyers' fees.

Under the terms of the bill as introduced, a success fee agreement could include a damages-based award as part of the solicitor's fee. That could include past and future loss. In recognition of the importance of protecting future loss and the associated care and support for injured pursuers,

the Justice Committee amended the bill at stage 2 and ring fenced future loss. That was supported by the European Court of Human Rights and representatives of the insurance industry.

However, Sheriff Principal Taylor subsequently wrote to the committee to express his opposition to that decision and set out the reasons why; Daniel Johnson accepted those reasons in lodging his amendments. In support of his view, Sheriff Principal Taylor stated that, in England and Wales, the effect of ring fencing future loss on DBAs was that lawyers will not enter into a DBA. In doing so, however, he has not taken into account the fact that in Scotland, unlike in England and Wales, lawyers entering into DBAs can, in addition to those agreements, claim judicial expenses and potentially an additional fee that recognises the complex nature of cases that can take many years to conclude. The additional fee or uplift can amount to three or four times the original award for judicial expenses.

Daniel Johnson: Does the member recognise that the awarding of additional fees, as she has set out and which she is setting a great deal of store by, is done in only 5 per cent of cases? Is that really a sufficient ground for the member to rest her argument on?

Margaret Mitchell: We are looking at legislation in which it is clearly set out that those cases are very complex, and the award amounts that we are talking about refer specifically to those cases. I rather think that the percentages that the member quoted do not reflect the amount of judicial expenses that recognise the complexity of the case.

The point of amendment 2A is to mitigate the amount that a solicitor can claim from their client's award as part of their fee. To recap: if future loss remains ring fenced, there is no question of an injured pursuer's future loss being eroded as part of a solicitor's fee. However, if Daniel Johnson's amendment 2 is agreed to, only awards of over £1 million will be subject to the conditions that are set out in the bill.

There is no provision in the bill for the amount of damages that lawyers can claim, because the Scottish Government has left the determination of those amounts to regulations. Amendment 2A therefore seeks to cap the amount of success fee that can be claimed in damages-based agreements to 1 per cent of any amount awarded over £500,000; those are the sums that tend to be involved in complex personal injury cases.

One of the least persuasive arguments that Sheriff Principal Taylor and Daniel Johnson have deployed in opposing the ring fencing of future loss is that it might lead to unscrupulous lawyers delaying cases in order to increase the past loss

amount from which they can take their fee. Surely we should not be regulating to look at a small minority of people who do not reflect the practice of the Law Society of Scotland's members; and surely the whole point of the bill is that it seeks to increase access to justice for an injured pursuer and ensure that they receive the support for a care package that they need for future loss.

Liam McArthur: It is difficult to admit that we got it wrong, but I think that that is exactly what all of us on the committee did at stage 2. There are mitigating circumstances to be considered for the bill, and undoubtedly the issue that we are discussing, as Daniel Johnson intimated in his opening remarks, was one of the most sensitive that we had to wrestle with during our scrutiny of the bill. The bill is, after all, about increasing access to justice, and doing so for those who have been most grievously harmed or wronged carries particular significance. However, I am now convinced that ring fencing future losses, as happens in England and Wales and as we voted to support at stage 2—motivated by the best of intentions—would have the perverse consequences that were graphically set out by Sheriff Principal Taylor in his letter to the committee post stage 2.

Sheriff Principal Taylor recommended that damages for future loss be included in success fees if, and only if, the

"future element ... is to be paid in a lump sum".

If the future element is to be paid by periodical payment, those damages are not to be included. Going over the account in the *Official Report* of the stage 2 proceedings, I was struck by what the minister said when she pointed to the change to the discount interest rate and the provisions in the forthcoming damages bill. She said that

"it seems to be much more likely that, in the future, the element of damages payment relating to future loss will be made by means of a periodical payment order."—[*Official Report, Justice Committee, 27 February 2018; c 32.*]

It is also worth bearing in mind that, if the future element is more than £1 million, the court will have to agree that it is in the client's best interests for that to be paid in a lump sum; and if it is agreed by settlement, an actuary would be involved in that decision. There is no getting away from the fact that damages-based agreements have proven to be popular even where success fees of anything up to 60 per cent are being charged. As Sheriff Principal Taylor pointed out, without Daniel Johnson's proposed amendments, the bill as amended at stage 2 could pose an "existential threat to DBAs". Surely it would be better to cap those fees at 2.5 per cent, as is proposed.

As I said, it is not easy to admit that we got it wrong. I have had the experience of speaking

against an amendment that I had lodged, so there are degrees of discomfort. However, I believe that ring fencing future losses might indeed work against the interests of the very people whom we are seeking to protect and provide access to justice for, so for that reason the Liberal Democrats will support Daniel Johnson's amendments 1 to 3.

John Finnie (Highlands and Islands) (Green): I associate myself with the comments of my colleagues Daniel Johnson and Liam McArthur. I am prepared to say that it is important that we constantly reflect on what we are seeking to do. Sheriff Principal Taylor's letter caused me to reflect on our proposed approach, and he is the architect of the bill. "Access to justice" will undoubtedly be a recurring phrase in today's proceedings and the stage 3 debate, and the issue that we are discussing lies at the core of that. It might well seem entirely counterintuitive to hear phrases such as "loss to lawyers' fees" being used in the context of hard-fought-for awards.

Daniel Johnson talked about "mutual interest". It is important that the client and the lawyer have a joint interest in working together. He also talked about the role of regulation in relation to allowable deductions, which is important, too. However, if the purpose of the bill is to increase access to justice, what is most important is that we avoid the possibility that Sheriff Principal Taylor raised that such cases will

"not be raised at all".

Therefore, I encourage members to support Daniel Johnson's amendments and to oppose Margaret Mitchell's amendment 2A.

Liam Kerr (North East Scotland) (Con): I will speak against amendments 1 and 2. If amendment 2 is agreed to, we will support amendment 2A. I confirm that we will vote for amendments 3 and 4.

At the outset, I declare that I am a practising solicitor—I hold practising certificates with the Law Society of England and Wales and the Law Society of Scotland.

Amendments 1 and 2, in the name of Daniel Johnson, seek to allow pursuers' solicitors to take an element of the claimant's damages for future loss when calculating their success fee. At stage 2, the amendment to ring fence damages for future loss and to exclude them when success fees are calculated was unopposed. I believe that the ring fencing of damages for future loss is the right thing to do. When someone has been injured, damages for future loss are paid to put them back in the financial position that they would have been in if they had not been injured and, crucially, to fund the costs of care and support. In such circumstances, a need will have been identified

and a sum awarded to cover it. I cannot see that it is right to reduce any element of that and thus potentially prejudice the amount available to the pursuer for their future care and support in order to reward and incentivise pursuers' solicitors.

Daniel Johnson: Would Mr Kerr not recognise that the proportions that are charged under success fee agreements at the moment can be as high as 60 per cent, as Liam McArthur pointed out?

Mr Kerr's argument would ring true only if judges' awards were 100 per cent accurate, but I do not believe that any judge's assessment of future losses is accurate to within 2.5 per cent, unless he can correct me on that.

Liam Kerr: I will come back to that point, but I want to deal with a point that Daniel Johnson made earlier. He criticised the insurance industry for allegedly wishing to reduce the number of claims, but in the same breath, he lionised, without caveat, the words of those lawyers who wish to ensure that their fees are enhanced. Perhaps he could address that in his winding-up remarks.

With regard to the level of the award, I put it to various witnesses who appeared before the Justice Committee that it is difficult to believe that, over time, a court would not—as I believe has happened elsewhere—gently and perhaps understandably increase the award to ensure that the full costs of care would be recovered after the solicitors had taken their fee, thereby leading to damages inflation or even overcompensation.

Annabelle Ewing: What evidence can the member cite to support that claim? He will be aware that it has been refuted by, for example, the Association of Personal Injury Lawyers.

Liam Kerr: That is quite so but, in committee, we received a variety of evidence that suggested that there was a possibility of that happening and that it had happened in other jurisdictions. I accept that there is differing evidence, but as I said in exchanges with various witnesses in committee, I think that it is possible that that would happen—that would be a logical progression, given what Daniel Johnson said earlier.

I think that the committee was right to ring fence future losses at stage 2. We will oppose Daniel Johnson's amendments 1 and 2 to ensure that people are not undercompensated for their future care. That said, if Parliament is not with me on that, I urge members to support Margaret Mitchell's amendment 2A, which seeks to cap success fees that are applied to future losses at 1 per cent, so that those who receive future losses to provide for their care retain as much of their award as possible.

15:15

Annabelle Ewing: I rise to support Daniel Johnson's amendments 1 to 4. The bill as introduced followed Sheriff Principal Taylor's recommendation that an award for future loss in personal injury success fee agreements should not be ring fenced—in other words, future loss should not be excluded from the calculation of a success fee—in cases that are taken forward under a success fee agreement in circumstances where the future loss element is to be paid as a lump sum. That is not the position, of course, where the future loss element is to be paid by way of a periodical payment order. As we have heard, in such circumstances, ring fencing will indeed apply.

Considerable concern was expressed in the Justice Committee's stage 1 report that those unfortunate claimants with catastrophic injuries would not receive the full amount that was awarded by the court if the part of their damages that was attributable to future loss was included in the calculation of the success fee to be paid to their legal representatives. That point has already been made this afternoon.

Margaret Mitchell's stage 2 amendments provided that the future element in any award for personal injury would be excluded from any uplift by a legal services provider in a success fee agreement irrespective of whether it was to be paid by way of a lump sum or by way of a periodical payment order. I supported the amendments at that time on the basis that we believed that they would, as matter of practice, affect very few cases and that they would mainly involve claims relating to catastrophic injuries and no other particular cases. Since stage 2, however, the Scottish Government has been in discussions with Sheriff Principal Taylor, the Law Society of Scotland and the Association of Personal Injury Lawyers—and we have received submissions from other bodies—and two important considerations have come to light.

First, we now believe that the stage 2 amendments relating to the ring fencing of future loss in all circumstances might have the unintended effect of restricting access to justice. The Scottish Government believed that awards for future loss affected only a few very high-value cases, but we are now informed that that is not the case. The Law Society has indicated that even low-value cases of, for example, £3,000 may contain a future element to the award or settlement. The future loss element of a claim is often complicated and involves a solicitor in a considerable amount of work. As the Law Society put it in its letter to the Justice Committee of 14 March,

"The calculation of future loss is often the most complex and time consuming aspect of a personal injury claim".

If the solicitor is unable to be remunerated for that work through a success fee agreement, he or she might not be able to offer damages-based agreements for personal injury cases. Sheriff Principal Taylor confirmed that that was a possibility in his letter to me of 8 March, which was copied to the Justice Committee. In that letter, he defended his decision not to exclude all future loss from the calculation of a success fee, but rather to impose such an exclusion where the settlement for future loss is to be paid by way of periodical payment order.

Sheriff Principal Taylor stated:

"If I did not permit a sufficient percentage deduction, solicitors would not offer DBAs as a funding mechanism. They would not recover sufficient in the successful cases to compensate for the unsuccessful cases. One has to remember that should a case be unsuccessful not only does the solicitor not get paid for his or her own time but must also meet court dues, expert witness fees, medical reports etc out of the solicitor's own pocket. I had to create an environment in which DBAs were sufficiently attractive to solicitors but still fair to the injured pursuer."

The amended provisions on future loss may therefore represent a severe restriction of access to justice and negate some of the principles on which the bill was founded. It is thought that the failure of damages-based agreements to take off in England and Wales is in fact a result of future loss being completely ring fenced south of the border and thus unattractive to legal practitioners. We should not make the same mistake here.

I heard Margaret Mitchell's comments about the issue of judicial expenses and the differing approaches to that north and south of the border, but we heard in evidence—indeed, from Sheriff Principal Taylor himself—that although Lord Justice Jackson, who conducted a similar review south of the border, promoted the position that Margaret Mitchell is supporting today, he now has cold feet, because it has led to solicitors south of the border and in Wales not offering damages-based agreements for personal injury actions.

The other point that I want to make is that, as an unintentional consequence of the approach of ring fencing all future loss that was proposed at stage 2, those with catastrophic injuries could paradoxically receive lower awards and settlements. In other words, stage 2 amendments that were intended to maximise pursuer compensation could, in practice, have the opposite effect.

As I stated earlier, the future loss element of a claim is often complicated and involves a solicitor in a considerable amount of work. I am informed that it is not uncommon for solicitor outlays to be in the region of £100,000 over a three-year period in

such cases. Sheriff Principal Taylor recommended in his report that lump-sum damages for future loss should be included in the calculation of the success fee under a success fee agreement, because solicitors need to be incentivised.

As Liam McArthur said, Sheriff Principal Taylor recommended in his report the safeguards that were set forth in the bill as introduced, and he also recommended that future loss damages would not be included if they were to be paid by periodical payment orders. Only a small number of personal injury cases end up before a court and the vast majority are settled out of court. Discussions with personal injury solicitors have revealed that solicitor-led cases result in higher settlements, as defenders try to avoid the expense of a court hearing. In other words, having a solicitor is likely to result in the claimant receiving greater damages—possibly much greater damages.

Liam Kerr: In those conversations with solicitors firms, did many of them report back that, if the future loss was ring fenced, they would cease to act in personal injury claims?

Annabelle Ewing: We have to look at the facts that are before us and listen to the evidence that has been submitted to me as the minister and to the committee. People are telling us that there is a significant risk. We should look at what has already happened south of the border, in light of the similar approach that is being pursued there. That approach was promoted by Lord Justice Jackson, and Sheriff Principal Taylor has said that he had a conversation with him in which Lord Justice Jackson admitted that he now has cold feet, because solicitors operating damages-based agreements in England and Wales find themselves in a position that is the opposite of what he had hoped it would be.

Margaret Mitchell: Does the minister acknowledge that the situation in England and Wales is not analogous with the situation in Scotland, and that we are not comparing apples with apples?

Annabelle Ewing: I have already dealt with that point. Notwithstanding the issue about judicial expenses, the architect of the policy south of the border has effectively recanted in his conversation with Sheriff Principal Taylor, because the policy has had the opposite effect, such that solicitors in England and Wales are not offering damages-based agreements. As mentioned by Daniel Johnson, John Finnie and Liam McArthur, the bill is designed to do the very opposite of that. It is designed to improve access to justice as far as litigation in Scotland is concerned.

In the letter to which I have alluded, Sheriff Principal Taylor said:

“My concern is that the recent amendment to the Bill will have the same consequence in higher value cases in Scotland as has happened in England & Wales; DBAs will not be offered to pursuers who have sustained catastrophic injury. The recent amendment thus poses an existential threat to DBAs being offered in higher value cases in Scotland. What will be the consequence of the amendment? The likely outcome is that cases will either not be raised at all or will settle for considerably less than the true value of the claim.”

Perhaps that helps to deal with Mr Kerr’s point.

Finally, the Law Society letter to the Justice Committee reiterates two practical issues that Sheriff Principal Taylor raised in his report. The first relates to settlement offers. At present, most of those are put forward by insurers without there being any breakdown for the different heads of claim, meaning that past loss and future loss are not broken down and separated when an offer is made. The second practical interest is that, as the legal services provider will be paid for past loss work and not for future loss, an obvious conflict of interests will be created between the solicitor and the client.

Margaret Mitchell: In relation to establishing what the future loss element is, does the minister accept that insurance companies do that every day and that they have confirmed that it would not be a difficulty if it was required?

Annabelle Ewing: With respect, I saw a submission from a representative of the insurance industry, and it is really a matter for the pursuer acting on the advice of his or her legal adviser to decide what is best. It is not really for the insurance company, which has an entirely different, and conflicting, interest in the matter, to have a role in that important client-legal adviser relationship.

Without Daniel Johnson’s amendments, the solicitor could have a financial interest in apportioning as much as possible to the past loss element rather than to the future loss element. Even a solicitor acting in good faith—which we hope is the case for all solicitors—would have to deal with that important conflict.

I have considered the matters long and hard since stage 2, as have Daniel Johnson, John Finnie and Liam McArthur. For the reasons that I have stated, I am now persuaded that it is right to reintroduce into the bill the measures that are in Daniel Johnson’s amendments.

I am unable to support Margaret Mitchell’s amendment 2A. I mean no criticism of Margaret Mitchell, as I know that her amendments are motivated by the aim of maximising pursuer compensation, as I said in our debate on the first grouping. However, the balance of evidence on the matter that has been submitted following stage 2 is compelling. The bill has the objective of

increasing access to justice and civil litigation. Its goal is to make the costs of litigating more affordable and more predictable to Scotland's citizens. I am now convinced that the bill as introduced would better serve those objectives and goals and that Margaret Mitchell's amendment 2A, although well intentioned, will not result in enhanced access to justice. Rather, it will result in the reverse.

At stage 2, for understandable reasons, we focused on people who have suffered catastrophic injury receiving all the moneys that are awarded to them by the court. I am now persuaded that we should allow the solicitor to take a small percentage. It is important to point out that that would be 2.5 per cent of damages over £500,000. At present, a claims management company could receive a success fee of, say, £330,000 for an award of damages of £1 million. Under the sliding cap that the bill is proposing—a carefully crafted package of interlinking provisions—the success fee for the same award of damages of £1 million will be £72,500.

Ring fencing all future loss may result in few personal injury claims of any value being pursued under success fee agreements, which would restrict access to justice. To put it plainly, it is surely better to have 97.5 per cent of something than 100 per cent of nothing. Therefore, I support Daniel Johnson's amendments 1 to 4. I have explained why Margaret Mitchell's amendment 2A would not maximise the amount that is available to the pursuer, particularly in cases of catastrophic loss. Also, as has been mentioned, there is provision in the bill to ensure that any regulations proposing changes to the sliding cap on fees would be dealt with by the affirmative procedure.

I support Daniel Johnson's amendments 1 to 4 and do not support Margaret Mitchell's amendment 2A.

Daniel Johnson: The fundamental points regarding amendments 1 to 4 were best made by John Finnie and Liam McArthur. John Finnie said that it is about ensuring that the interests of solicitors and of the people on whose behalf they make claims are aligned; ensuring that there are no caps or limitations will mean that their interests are perfectly aligned. Otherwise, there will be a clear incentive for solicitors to settle early.

Likewise, Liam McArthur is absolutely right that we must recognise current practice. DBAs are popular. What is more, the people who represent claimants are claiming not 2.5 per cent of awards, but as much as 60 per cent, with a typical amount being 30 per cent. The bill will reduce that; it will introduce a sliding scale from 20 per cent to 2.5 per cent. There will be more cases and more of the damages will go to clients.

Therefore, although I understand the motivations behind Margaret Mitchell's amendment 2A—the desire to give the greatest possible amount to clients—the reality is that, were the amendment to be agreed to, clients would have fewer opportunities to pursue their cases, which would limit access to justice.

Liam Kerr suggested that I was criticising the insurance industry. I was doing no such thing. I was saying that we must recognise that, although the arguments that the insurance industry makes are legitimate—the industry is right to pursue its interests—they run contrary to the interests of clients, as the minister said. It is in the insurance industry's interests to reduce the number of claims that are made and the amounts that are settled on.

15:30

My criticism is not of the insurance industry, but of people who copy and repeat its arguments without qualification or criticism, because they ignore the wider public interest in favour of corporate interest. That is not acceptable. Ultimately, we must return to the clear test: will the proposal and the amendments increase access to justice? Will the amendments allow more people to make claims and achieve the highest possible value? My amendments will do exactly that. Unfortunately, I feel that Margaret Mitchell's amendment fails that test.

Sheriff Principal James Taylor has made a balanced and well thought-through set of proposals, to which we should stick. The amendments that were lodged at stage 2, in his words,

“make ... access to justice less accessible”.

My amendments are required to save the bill effectively from misguided attempts to qualify and put safeguards in it. I urge Parliament to support my amendments and to reject Margaret Mitchell's amendment 2A. I will press my amendments.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)

Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)

Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 86, Against 29, Abstentions 0.

Amendment 1 agreed to.

Amendment 2 moved—[Daniel Johnson].

Amendment 2A moved—[Margaret Mitchell].

The Deputy Presiding Officer: The question is, that amendment 2A be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire)

(Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)

Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Deputy Presiding Officer: The result of the division is: For 29, Against 86, Abstentions 0.

Amendment 2A disagreed to.

The Deputy Presiding Officer: The question is, that amendment 2 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)

Fabiani, Linda (East Kilbride) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Leonard, Richard (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)

Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 86, Against 29, Abstentions 0.

Amendment 2 agreed to.

Amendments 3 and 4 moved—[Daniel Johnson]—and agreed to.

Section 7—Form, content etc

The Deputy Presiding Officer: Group 4 is on the power to modify section 7. Amendment 35, in the name of Daniel Johnson, is the only amendment in the group.

Daniel Johnson: Amendment 35 was suggested by the Delegated Powers and Law Reform Committee. At stage 2, the Government amended the bill to reduce the power of ministers so that they cannot, by regulations, modify part 1 on success fee agreements. That was changed to limit it to allow ministers just to change, by regulations, anything in section 7. That has the odd effect of making it possible to add, by regulations, the kind of things that ministers could regulate on, which is circular. In the words of the DPLR Committee, that is an “unusual power” and “very wide in scope.” The committee does not recommend it as being necessary.

In order to give effect to the DPLR Committee’s recommendation, and in the hope that Parliament will agree with it, I move amendment 35.

The Presiding Officer (Ken Macintosh): I call the minister to speak to amendment 35.

Annabelle Ewing: The Delegated Powers and Law Reform Committee report on the bill at stage 1 expressed concern about the breadth of the power given to the Scottish Ministers by section

7(4) to modify part 1 of the bill. The Government lodged an amendment at stage 2 that responded to those concerns by restricting the power so that it would apply just to section 7, rather than to part 1 as a whole. The amendment also restricted the power so that regulations could be added to section 7, or modified text could be added by the regulations, but they could not otherwise alter it. In other words, none of the text of section 7 that the Parliament agrees to at stage 3 may be removed by regulations. Furthermore, the delegated power that is proposed cannot, as has been suggested, be used to modify itself. That would go against the basic principles of administrative law.

As the Government explained in its response to the DPLR Committee, the purpose of sections 7(3) and 7(4) is to augment the bill's provisions on success fee agreements, where it is considered to be desirable to have future provision about the mandatory terms of success fee agreements or their enforcement. Such provision could be introduced only after consultation on the regulation of success fee agreements with stakeholders, and thus cannot be included in the bill.

The regulations would mean that any new provisions could be set out in section 7, rather than in free-standing regulations, which would mean that all the mandatory terms relating to success fee agreements would be found in the primary legislation.

The DPLR Committee in its following report stated that it continues to be concerned that section 7(4), as amended at stage 2, is "wide in scope". However, the Government continues to consider that the power in section 7(4) will be beneficial and will permit, as I have said, all the relevant provisions on success fee agreements to sit together in primary legislation, rather than have them sitting separately in regulations. Therefore, I ask Daniel Johnson to consider seeking to withdraw amendment 35.

The Presiding Officer: As no one else wants to speak, I call Daniel Johnson to wind up, and to press or seek to withdraw amendment 35.

Daniel Johnson: As the minister has said herself, the DPLR Committee said that section 7(4) is "very wide in scope." The very purpose of that committee is to act as a safeguard and a check on the power of the Executive. Therefore, it would be odd—indeed, it would be outrageous—for the Government not to heed those warnings. The committee is there to prevent such overreaches of power, so we should listen to it. I will press amendment 35.

The Presiding Officer: The question is, that amendment 35 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Corry, Maurice (West Scotland) (Con)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Griffin, Mark (Central Scotland) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Mason, Tom (North East Scotland) (Con)
 McArthur, Liam (Orkney Islands) (LD)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Rennie, Willie (North East Fife) (LD)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)
 Whittle, Brian (South Scotland) (Con)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinrossshire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)

Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greer, Ross (West Scotland) (Green)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

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

Amendment 35 disagreed to.

The Presiding Officer: That brings us to the end of group 4. Members might have noted that we have passed the agreed time limit for the debate on the group. I exercised my power under rule 9.8.4A(c) to allow the debate on the group to continue beyond the time limit, in order to avoid the debate being unreasonably curtailed.

Section 8—Restriction on pursuer's liability for expenses in personal injury claims

The Presiding Officer: Amendment 9, in the name of John Finnie, is grouped with amendment 9A and amendments 10 to 12. If amendment 9 is agreed to, I cannot call amendments 10 and 11, as they will be pre-empted.

John Finnie: Sheriff Taylor's report was long awaited, and concerns significant changes in law. The purpose was to bring about a level playing field in respect of personal injury litigation. That is because Sheriff Taylor recognised something very important, which is that the balance of power had gone too far in favour of the insurance companies. The solution involved qualified one-way cost shifting—QOCS. We have not heard much about that today, but I think that we shall hear more of it. It involves a restriction on the pursuer's liability for expenses in personal injury claims.

If the test for when people benefit from QOCS and, most importantly, lose the benefit of QOCS is flawed, the intention of the bill will be frustrated. Amendment 9 seeks to address that problem. For QOCS to be effective, legislation must ensure two things: certainty; and the setting of a sufficiently high bar. Claimants, and those who financially support claimants, such as trade unions and staff associations, must be able to bring difficult but meritorious cases without fear of financial ruin if the case is lost. If there is not a high degree of certainty about the cases that will benefit from QOCS and those that will not, the fear that currently serves as a barrier to justice, which we all want to be removed, will remain. The current barriers will be raised only with certainty. Accordingly, if the statutory test for removing the benefits of QOCS is vague, that will serve as an open invitation to insurers to challenge a claimant's right to QOCS in a large number of cases, and the purpose of the bill will be lost.

It will also lead to satellite litigation. That is a phenomenon that is seen in England and Wales and is a result of the vague language in legislation there and a desire to push back against advances in the rights of personal injury claimants. That has led to large, long and expensive litigation not about the subject matter but, instead, about the legal costs. Satellite litigation is expensive and time consuming and, in England, it has clogged up the legal system. We want to avoid that happening at all costs. Vague and uncertain language in relation to the test will undoubtedly result in satellite litigation as the courts grapple with what Parliament intended. That would be a disappointing consequence of the legislation.

With regard to the high bar that we have talked about, Sheriff Taylor was clear in his report and in the evidence that he gave to the Justice

Committee that the bar for removing QOCS must be set at a high level—the benefit of QOCS must not be lost lightly or easily. The wording

“has acted fraudulently in connection with the claim or proceedings”

is vague and will lead to satellite litigation.

As a matter of proportionality, which is at the heart of everything, the loss of QOCS would be an extremely harsh and significant sanction, particularly as claimants and the staff of the trade union or staff association that is financially supporting the claimant will have begun the process believing that QOCS will apply. This significant sanction must be imposed only when it is proportionate to the wrong that has been committed by the claimant. There could be occasions when the claimant’s conduct is inappropriate but it would not be proportionate to remove the benefit of QOCS. The fundamental position is that, for the claimant to lose the benefit of QOCS, their conduct must be materially wrong, and must have the potential to have a material impact on the litigation.

I would not introduce amendment 9 if I did not believe in the highest standards of conduct and integrity in our legal process, including with regard to this aspect. As things stand, the court has the power—which, of course, it might not use—to remove the benefit of QOCS in situations in which the claimant does little more than overegg the pudding—that is to say, the court could remove the benefit of QOCS when the claimant does no more than exaggerate, to a fairly small extent, an issue that is fairly peripheral to the case.

It may be entirely reasonable to assume that that would not happen, but it is what the courts could do, based on the current wording. The point is not whether the court would use its powers in those circumstances but that it is an open invitation to insurers to challenge claims, which will lead to higher levels of the satellite litigation that none of us wants.

15:45

Insurers would move to have claims withdrawn that have been overegged but which are 100 per cent correct and accurate on everything else. No one—least of all me—supports fraud: we must have a fraud test. Currently, the phrase “makes a fraudulent representation” is open to be used to defeat the spirit and intention of the bill. Our rules of court are robust and unambiguous, and I am proposing robust wording, which is that QOCS would not be available

“where the claim is found to be fraudulent or dishonest”.

There is absolute clarity about that, and I hope that members will lend their support to it.

I move amendment 9.

Daniel Johnson: I am very mindful of the length at which I spoke on the previous grouping, so I will be brief on this one. I will shortly move amendment 9A, in my name, and will now speak in support of amendment 9, in John Finnie’s name.

As John Finnie has summed up very well, QOCS, which is one of the key features of the legislation, is about improving and increasing access to justice. It cannot be abused and we must have safeguards against that. However, there is some concern about the terminology—“a fraudulent representation”—that was introduced at stage 2. Amendment 9 is fundamentally about making sure that that is qualified and clarified so that people who simply overegg their cases and exaggerate but do not make fraudulent representations as such are not caught up in the safeguards that are introduced here. With that in mind, we support amendment 9.

We note that many of those problems would persist if the Government’s amendments 10 and 11 were to be agreed to. However, if amendments 9 and 9A were to fall, we would support them.

I move amendment 9A.

Annabelle Ewing: The proposal for QOCS in section 8 has been the subject of much of the scrutiny at stages 1 and 2. Section 8(4)(a) was amended at stage 2 by two amendments in the name of Liam Kerr. At that time, I stated that I was willing to support Liam Kerr’s amendments but that I might come back at stage 3 with some tidying-up drafting changes. As a result of that consideration, I have lodged amendments 10 and 11. They are technical drafting amendments, and there is no intention to change the effect of the provision as amended at stage 2. The policy is that a pursuer who has acted fraudulently—whether by fraudulent representation or by another fraudulent act—should lose the protection of QOCS.

The legal test for fraud is a high one to satisfy and, because it is a high bar, even a single fraudulent act in civil litigation should lead to QOCS protection being lost. Sheriff Principal Taylor has been clear that a court finding a pursuer to be incredible should not, by itself, mean that there has been fraud. Just as Sheriff Principal Taylor has been, the Government is of the view that the relevant meaning of “fraud” is the time-honoured definition from Erskine’s “An Institute of the Law of Scotland” from the 18th century:

“a machination or contrivance to deceive”.

Therefore, an innocent or isolated example of minor exaggeration is not ever going to be fraud. Amendment 10 puts the reference to fraudulent acts in the present tense, which is consistent with the rest of subsection (4). Together with

amendment 11, it makes it clear that making a fraudulent representation is an example of acting fraudulently.

Amendment 12 amends section 8(4)(b) by including a reference to the claim as well as to the proceedings. Although we considered that a reference to behaviour in connection with the proceedings would cover pre-litigation conduct, we think that paragraph (b) ought to be consistent with paragraph (a), because they are both intended to cover pre-litigation conduct.

I turn to amendment 9, in the name of John Finnie. In light of his position throughout the passage of the bill, he seeks to make sure that the benefit of QOCS is not lost if there is a single fraudulent or dishonest act in relation to a claim. I have already pointed out that, under the Government's preferred wording, a pursuer would not lose the benefit of QOCS for an isolated instance of exaggeration—that does not come close to fraud as it is defined in Scots law.

The Government and, I hope, members cannot support the proposition that pursuers or their lawyers—we should not forget them—should be able to act fraudulently in civil litigation without consequence.

I consider that amendment 9 would have a number of particular consequences. First, it attaches the fraud and the dishonesty to the claim rather than to the behaviour in the pursuit of the claim. Sheriff Principal Taylor considered that fraudulent behaviour by pursuers or lawyers in connection with a claim should result in loss of QOCS. It should also be noted that the approach in amendment 9 does not technically work in the context of section 8 as drafted.

Secondly, the introduction of the word "dishonest", which was not discussed in relation to section 8 at stage 1 or at stage 2, lowers rather than raises the bar required for the loss of the benefit of QOCS. I suspect that that is not John Finnie's intention. Introducing the concept of dishonesty, which is not founded in Sheriff Principal Taylor's report, would introduce new uncertainty to the QOCS provisions and, indeed, would be very likely to invite the satellite litigation that Mr Finnie is rightly concerned about. Therefore, I cannot support amendment 9.

Daniel Johnson's amendment 9A seeks to improve amendment 9 by seeking to remove the word "dishonest". The Government will support amendment 9A in order that amendment 9, if it is passed, will not introduce the concept of dishonesty. However, my amendments achieve what Sheriff Principal Taylor recommended, so my vote for amendment 9A should not be taken to suggest that the Government supports amendment 9.

I consider that the wording in section 8(4)(a), as amended by Liam Kerr at stage 2 and my amendments 10 and 11 at stage 3, will achieve the desired result, and I ask Mr Finnie to consider seeking to withdraw his amendment and Mr Johnson not to move his amendment, having regard to my strong reassurance that an isolated incident of exaggeration will not be deemed to amount to fraud as far as Scots law is concerned.

Liam Kerr: I rise to speak against amendments 9 and 9A. For the avoidance of doubt, I say that I will vote in favour of amendments 10 to 12, in the name of Annabelle Ewing, which seem sensible for the reasons that were set out in the purpose and effect notes and in the minister's remarks.

We believe that, if amendment 9, in the name of John Finnie, and amendment 9A, in the name of Daniel Johnson, were to be agreed to, that could encourage unmeritorious claims. John Finnie talks about his robust wording. I respectfully point out to him that I am not convinced that the wording as drafted makes sense with the section that it relates to. I think that the minister pointed that out, too.

As we shall hear on Tuesday, we believe that the bill is a good one and that the end game of access to justice is good. However, there is a delicate balancing act in which Parliament must seek to increase access to justice but not go so far as to create a compensation culture, with pursuers seeking inflated and unjustified awards. By limiting the fraud or dishonesty to "the claim", Mr Finnie's amendment risks exactly that. To lower the bar and simply say that protection is lost where the claim is fraudulent means that a genuine claim that is perhaps bolstered by overestimates of vehicle repairs, care costs, lost wages or suchlike would maintain protection with no sanction. Under Mr Finnie's amendment, it would be open to a claimant to perhaps lie repeatedly about a claim or to act fraudulently but, as long as the fundamental claim was not fraudulent, still retain the benefit.

Mr Finnie quite rightly talks about Sheriff Principal Taylor. Sheriff Principal Taylor was explicit that the benefit of QOCS should be lost where a pursuer

"has acted fraudulently in connection with the claim or proceedings, or makes a fraudulent representation".

He was right. Let us be clear: acting fraudulently or dishonestly is not the same as making a mistake. I think that the minister made that point, too. As the bill is drafted, there is no risk to a pursuer who mistakenly claims for something to which they are not entitled. On the contrary, fraud is a deliberate act that is designed to cheat the system and the defender.

The committee heard that overegging the claim was not considered to be a concern by some witnesses. It seems that some closer to home

think that too. However, it very much should be if we are to avoid award inflation and an increase in claims.

For those reasons, amendments 9 and 9A should not be agreed to.

John Finnie: I want to make remarks about Mr Kerr's contribution in particular. I certainly would not be party to encouraging unmeritorious or fraudulent claims. I know that he is not suggesting that, but language is important, and I find phrases such as "compensation culture" unhelpful in the context of a debate in which we are talking about access to justice. It is irrefutable that there will be a challenge from insurance companies, which are trying to row back against the culture. However, I have far greater confidence in our existing rules of court than perhaps Mr Kerr does, and I think that some of the conduct that he alluded to would be picked up in court and responded to accordingly.

I have taken reassurance from what I heard from the minister. We all want the highest standards of integrity, and we do not want a situation in which an element of misunderstanding or someone being carried away by events results in significant financial consequences for them. In the light of what I have heard from the minister, I seek permission to withdraw amendment 9.

Amendment 9, by agreement, withdrawn.

The Presiding Officer: Amendment 9A therefore falls.

Amendment 10 moved—[Annabelle Ewing].

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

Members: No.

The Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Campbell, Aileen (Clydesdale) (SNP)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Corry, Maurice (West Scotland) (Con)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)

Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 Fabiani, Linda (East Kilbride) (SNP)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Golden, Maurice (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greene, Jamie (West Scotland) (Con)
 Greer, Ross (West Scotland) (Green)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnstone, Alison (Lothian) (Green)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lindhurst, Gordon (Lothian) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mason, Tom (North East Scotland) (Con)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)

Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Griffin, Mark (Central Scotland) (Lab)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, David (Highlands and Islands) (Lab)

The Presiding Officer: The result of the division is: For 96, Against 19, Abstentions 0.

Amendment 10 agreed to.

Amendments 11 and 12 moved—[Annabelle Ewing]—and agreed to.

After section 8

The Presiding Officer: We turn to group 6. Amendment 36, in the name of John Finnie, is grouped with amendments 37 to 39.

John Finnie: Amendment 36 is about the ever-important issue of finance. Members will perhaps have seen the Scottish Trades Union Congress briefing paper on the issue, which refers to the Scottish Government's response to the three-yearly review of court fees on 26 February this year, in which the Government stated that paying court fees on behalf of litigants

"is not an unreasonable burden to place on ... trade unions".

There is a question about whether the bill is the vehicle to address the issue of who should bear the cash-flow burden of running the Scottish court service while cases progress through the court system. Members will know that the successful party in a court action recovers the legal costs from the unsuccessful party. That is all at the conclusion of the case but, at various points throughout the case, fees are required to be paid. There is a view that successful litigants, in effect, lend the Scottish Government money while their claim progresses. Repeat players such as trade unions and staff associations, which support hundreds of personal injury claims each year

through the Scottish courts, therefore lend the Scottish Government significant sums of money each year.

16:00

A freedom of information request revealed that the court fees related to personal injury cases in 2015-16 totalled £3.8 million, which was 14 per cent of all court fees. The court fees paid by claimants totalled £1.9 million, and in trade union-supported cases the figure was roughly £1 million. That is a significant outlay, and people might well ask whether it is reasonable that the Scottish Government receives those moneys from the trade unions when there is an opportunity to take a different tack. The sum of £1 million is not a lot of money to the Scottish Government, but it is a significant sum of money to those who represent front-line and other workers. The proposal to move away from that model would have some implications for the Scottish Government but, within a two-year or three-year period, the costs of transition to deferred payment of court fees would be eradicated, including any cash-flow problems.

The Scottish Government talks about two of the issues that that gives rise to: the fact that it encourages pre-litigation, and the possibility of bad debt. The people who are involved in the process are not people whom one would consider as being likely to be bad debtors and, as has been mentioned on a number of occasions, this is an opportunity to look at that important issue. I encourage members to support amendment 36.

I move amendment 36.

Daniel Johnson: I speak in favour of amendment 37, in my name, and in favour of the similar and not contradictory amendments 36 and 38. I urge colleagues to support all three amendments. I thank the STUC for the briefing paper that it circulated.

This group of amendments focuses on when payments to a court should be made. At present, court fees are paid on a pay-as-you-go basis, which means that the pursuer must pay up front for each individual court action, the fees for which are, for example, £219 for an initial writ in a personal injury court and £55 for the lodging of a motion.

Amendment 37 would change the law so that payments were no longer paid on that basis but were paid at the conclusion of a case. The effect of that would be to shift the burden of debt while the case was on-going from the pursuer and potentially, by extension, their trade union, professional body or other funder to the courts. As John Finnie pointed out, following a freedom of information request, the STUC assessed the impact as being around £1 million. As John Finnie

also said, that amounts to, in essence, a short-term loan from trade unions and other bodies to the Scottish Courts and Tribunals Service.

Agreeing to amendment 37 would be a positive step, because the cash-flow implications of personal injury cases for trade unions and other bodies have become an issue. Although much of the money is ultimately returned to the pursuer or their funder at the conclusion of the case, money is tied up in the court system, which could prevent cases from being taken forward and could act as a barrier to justice. There is also an opportunity cost with regard to the things that we expect trade unions to do, such as organising, education and industrial relations.

In effect, the money works out as a £1 million loan from trade unions to the Government. The question boils down to who should bear the burden of running the Scottish Courts and Tribunals Service while cases progress. Should it be trade unions, who could spend that money on supporting their members and pursuing their interests, or should it be the state? I suggest that it should be the latter.

Annabelle Ewing: The main intention of amendment 36, in John Finnie's name, and amendment 37, in Daniel Johnson's name, is to make court fees payable at the end of a personal injury case rather than, as is the case under the present system, as an action proceeds through the courts. In the case of amendment 36, that would happen only in cases in which financial assistance was provided by a trade union or a similar body. In the case of amendment 37, that would apply in all cases to which qualified one-way costs shifting applied, irrespective of which body, if any, was providing financial assistance.

Similar amendments were debated at stage 2 and were not supported. It is worth reiterating, for the benefit of members who were not present for that debate, the reasons why the pay-as-you-go system is the current system for court fees. Their objectives include the following: encouraging people to resolve their disputes outside the courts, encouraging settlement and ensuring that people value the resources of the court and use those resources wisely.

John Finnie: The issue of early settlement has come up previously. Does the minister agree that personal injury cases are subject to a compulsory pre-action protocol, which is an important aspect in shaping when a case is concluded?

Annabelle Ewing: I agree with the member regarding cases up to a value of £25,000, which are subject to a compulsory pre-action protocol. That is the current threshold—cases of above that value are not subject to such a protocol. There is, therefore, the important issue that the member

raises of encouraging frivolous claimants to settle and not use public resources unwisely.

The pay-as-you-go model actively supports the courts system. It supports the objectives of reasonable management of the courts and of non-frivolous claims being pursued, and it allows the fees to be paid in small increments as cases progress through each step of the process. The effect is to make parties stop and consider whether they will proceed to the next stage. That important element of the negotiation process is inherent in personal injury proceedings.

Part 1 of the bill will make it much less likely in personal injury proceedings that, in respect of damages-based agreements offered by solicitors, any up-front fees will be paid by pursuers. It is worth pointing out again that, under section 6, the pursuer's solicitor will be required to meet all outlays for personal injury actions. We should also note that Sheriff Principal Taylor made no recommendations in his report on changing the position regarding fees. The solicitor will pay the outlays and will recover the court fees as part of the expenses recovered from the opponent at the conclusion of the case, assuming that it is successful. Under the provisions on qualified one-way costs shifting for personal injury actions, the pursuer will not be liable for the opponent's court fees even if they lose their case, assuming that the benefit of QOCS is not lost.

It is important to bear all those points in mind in the context of these amendments. All other expenses, including court fees, will be the responsibility of the solicitor. It is, therefore, not clear to me why a substantial benefit should be provided to those providers when that benefit will come with a substantial cost to the Scottish Courts and Tribunals Service and, ultimately, the taxpayer.

I know that Justice Committee members are aware that there was a recent consultation on court fees. We sought to widen the circumstances in which people would be exempt from court fees. I understand that those regulations went through the committee without any particular note being taken. The exemptions in relation to widening those circumstances include increasing the income threshold below which fees will not be paid, and there will be an extended exemption regime to include recipients of Scottish welfare funds and those seeking civil protective orders, as was suggested by Scottish Women's Aid.

Billing for court fees at the end of the case will place an immense burden on the Scottish Courts and Tribunals Service, which is ultimately a cost for the taxpayer. The figure referred to in the letter from the STUC, which I hope to meet further to its letter, was a cost of £1 million to the trade unions. It is not entirely clear how that figure was arrived

at, but it is suggested that it was somehow a loan to the Scottish Government. It cannot really be characterised as a loan to the Scottish Government; it is an amount of money that pays for the service that the SCTS provides.

There will be a cost that will have to come from somewhere. The £1 million—if that figure is correct—will have to come from somewhere else in the justice budget. Members of the committee will be aware that the SCTS wrote to the committee on 22 February, expressing concerns about any move away from the pay-as-you-go model for court fees and specifically advising against any proposals to introduce a system whereby court fees are paid at the end of the process, given the unintended impact on the SCTS budget. It also recommended secondary legislation for the management of fees to retain the current flexibility and accessibility to a wider audience.

I therefore have problems with amendments 36 and 37. As I said at the outset of my remarks, there is a slight difference in scope between the two; however, the end result is the same.

It is also instructive to recall the Supreme Court's recent ruling on employment tribunal fees. The Supreme Court took the view that they were exorbitant and presented a barrier to justice but, in striking them down, it also said:

"Fees paid by litigants can, in principle, reasonably be considered to be a justifiable way of making resources available for the justice system and so securing access to justice."

I think that that explains the position very well, and I ask members not to support amendments 36 and 37 or the consequential amendment 38.

Amendment 39, in my name, simply removes wording that would result in regulations under amendment 37 being subject to the affirmative procedure. That amendment was agreed at stage 2 notwithstanding the fact that it was consequent on a substantive amendment that had fallen at stage 2—I hope that you are still following me, Presiding Officer. I ask members to support amendment 39.

The Deputy Presiding Officer (Linda Fabiani): It is at times like this that I am glad I have a script.

There has been quite a lot of background noise at times, so I ask members to please have some care to that.

Liam Kerr: The Scottish Conservatives will vote against amendments 36 and 37. The minister makes some important points on the pay-as-you-go system, and there is no need to reiterate those. In brief, we see no reason to provide a special category of exemption in relation to amendment

36 and, for both amendments, we do not think that the impact of the change has been fully assessed or understood.

Mr Finnie is right to say that the proposal is about finance, and Mr Johnson is right to say that it shifts the burden on to the courts. However, I am not persuaded that the ramifications—particularly in relation to the public purse—have been sufficiently thought through or that the case has been adequately made. Accordingly, we shall vote against the amendments.

John Finnie: I thank members for their contributions to the debate. I do not know whether Mr Kerr availed himself of the STUC briefing, but it mentions some figures and talks about a transition from the current system. The figures were arrived at through a freedom of information request, so it is an informed position. Mr Kerr does not see that there is a requirement for a particular approach to be adopted in respect of trade unions; of course, we did that at stage 2, when my amendment to exclude them from some of the elements of the bill got support and was agreed to.

The issue is not going to go away—that is the important point. It has significant implications for trade unions and staff associations, and it is not going to go away. It is a simple cash-flow problem in some respects, and, in the scheme of things, I do not think that what we are asking for is unreasonable. There is talk of a three-year transition but, as the minister confirmed, there is provision for early settlement. I also understand that one of the arguments against the proposal that was put forward by the Scottish Government in the past was about inheriting bad debt. However, that is not the nature of the people we are dealing with here, so I would encourage people to support my amendment and, indeed, Daniel Johnson's amendment. I press amendment 36.

The Deputy Presiding Officer: The question is, that amendment 36 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a one-minute division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)

Kelly, James (Glasgow) (Lab)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Wightman, Andy (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Campbell, Aileen (Clydesdale) (SNP)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Corry, Maurice (West Scotland) (Con)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Golden, Maurice (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harper, Emma (South Scotland) (SNP)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lindhurst, Gordon (Lothian) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)

Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mason, Tom (North East Scotland) (Con)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Deputy Presiding Officer: The result of the division is: For 25, Against 90, Abstentions 0.

Amendment 36 disagreed to.

16:15

Amendment 37 moved—[Daniel Johnson].

The Deputy Presiding Officer: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Bibby, Neil (West Scotland) (Lab)
 Dugdale, Kezia (Lothian) (Lab)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harvie, Patrick (Glasgow) (Green)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Lamont, Johann (Glasgow) (Lab)

Lennon, Monica (Central Scotland) (Lab)
 Macdonald, Lewis (North East Scotland) (Lab)
 Marra, Jenny (North East Scotland) (Lab)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Sarwar, Anas (Glasgow) (Lab)
 Smyth, Colin (South Scotland) (Lab)
 Stewart, David (Highlands and Islands) (Lab)
 Wightman, Andy (Lothian) (Green)

Against

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Campbell, Aileen (Clydesdale) (SNP)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Cole-Hamilton, Alex (Edinburgh Western) (LD)
 Constance, Angela (Almond Valley) (SNP)
 Corry, Maurice (West Scotland) (Con)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Ewing, Fergus (Inverness and Nairn) (SNP)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Golden, Maurice (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harper, Emma (South Scotland) (SNP)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lindhurst, Gordon (Lothian) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)

Mason, Tom (North East Scotland) (Con)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rumbles, Mike (North East Scotland) (LD)
 Russell, Michael (Argyll and Bute) (SNP)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Yousaf, Humza (Glasgow Pollok) (SNP)

The Deputy Presiding Officer: The result of the division is: For 25, Against 90, Abstentions 0.

Amendment 37 disagreed to.

Section 10—Third party funding of civil litigation

Amendment 13 moved—[Annabelle Ewing]—and agreed to.

Section 13A—Temporary Auditor of the Court of Session

Amendment 14 moved—[Annabelle Ewing]—and agreed to.

After section 14

The Deputy Presiding Officer: We come to group 7. Amendment 15, in the name of the minister, is grouped with amendments 16 and 33.

Annabelle Ewing: Part 3 of the bill has been the subject of less discussion in the parliamentary proceedings on the bill, but it contains important legal reforms to refresh and codify the arrangements for auditors of court. The key policy proposal is that there will be a transition from self-employed auditors to the position where all auditors of court are employed by the Scottish Courts and Tribunals Service.

There will be occasions when an employed auditor of court is not in a position to tax an account. This might be because that auditor has a conflict of interest or does not have the capacity to undertake the taxation. In those circumstances, the Scottish Courts and Tribunals Service will allocate the taxation to another auditor in its employ. The proposal is that there will be a pool of employed auditors, just as there is a pool of employed sheriff clerks in the sheriff courts.

There may, however, be rare occasions when the pool cannot deal with a particular account. This might be because, exceptionally, none of the auditors employed by the SCTS has the capacity to take on the taxation. Amendment 15 therefore inserts a new section into the bill that provides for circumstances in which no auditor employed by the SCTS is able to undertake a taxation for whatever reason. I should emphasise that I see this circumstance arising only exceptionally, and there should not be frequent recourse to the provision, given the pool of employed auditors referred to. We will of course continue to monitor the situation, as the new arrangements bed in.

Subsection (1) of the amendment provides that:

“the account must be returned to the court or tribunal”

involved and that the court or tribunal must allocate it to another suitable person for it to be taxed. The suitable person might be, say, a law accountant, solicitor or a retired auditor of court.

Subsection (2)(a) of the amendment provides that the person taxing the account must be treated as though they were an auditor of court. Thus, the person would have to comply with the statutory guidance under section 15, as if they were an employed auditor.

Subsection (2)(b) of the amendment provides that the remuneration and expenses of a person appointed to act as auditor are to be determined by the SCTS.

Amendment 16 is consequential on amendment 15. Section 16 requires the SCTS to publish an annual report on taxations. This amendment provides that the report must include details of any accounts taxed by a person who is not an auditor of court. This is restricted to information in relation to the account remitted under the new section, to avoid catching any other work carried out by that person.

Amendment 33 relates to section 3 of the Courts of Law Fees (Scotland) Act 1895, which provides for certain accounts of expenses to be remitted to the Auditor of the Court of Session. The accounts concerned are those found due in the High Court of Justiciary, or in any inferior court whose judgment has been brought under the review of the High Court, unless the amount of the

expenses is determined or modified (that is, reduced) by the High Court.

The Auditor of the Court of Session has to examine and tax these accounts of expenses in the same way, and subject to the same rules, as accounts of expenses in civil actions in the Court of Session.

There are, in fact, only limited cases in which taxation of accounts can arise as regards criminal proceedings; for example, as regards failed bail appeals by the prosecutor. Those cases are quite exceptional and are provided for in the Criminal Procedure (Scotland) Act 1995. The usual practice is for the criminal court to fix or modify the amount of any award of expenses itself, but it is still competent for the matter to be remitted to taxation. The 1995 act does not state who is to carry out the taxation, so the 1895 act applies. Section 3 of the 1895 act therefore continues to have relevance to the exceptional cases where a taxation of accounts arises out of criminal proceedings in the High Court.

Amendment 33 modifies and modernises section 3 of the 1895 act to make it relevant to the new auditing regime. It replaces the reference to “regulations” with a reference to “rules of court”, since the regulations meant were acts of sederunt under section 32 of the Court of Session Act 1821, which is to be repealed by paragraph 1 of the bill’s schedule. The amendment preserves the requirement that the Auditor of the Court of Session should tax accounts arising in the High Court in the same way as accounts of expenses in relevant civil proceedings in the Court of Session. It extends that requirement to accounts of expenses in criminal proceedings in the Sheriff Appeal Court, which will be taxed by the auditor of that court under the rules applicable to civil proceedings in that court. The same rules of court and common law principles will apply as in civil taxations in the Sheriff Appeal Court, as will the statutory guidance to auditors of court now required by section 15 of the bill. The Lord President’s Private Office and the Scottish Courts and Tribunals Service have approved the amendments in group 7, which emphasises that, although technical, they are important refinements to the new statutory regime for auditors of court.

I move amendment 15.

The Deputy Presiding Officer: As no one else has requested to speak, does the minister wish to wind up?

Annabelle Ewing: I think that I have probably comprehensively set out the position.

Amendment 15 agreed to.

Section 16—Reports

*Amendment 16 moved—[Annabelle Ewing]—
and agreed to.*

Section 17—Group proceedings

The Deputy Presiding Officer: We move to group 8. Amendment 17, in the name of the minister, is grouped with amendments 18 to 23 and 40. I call the minister to speak to and move amendment 17, and to speak to the other amendments in the group.

Annabelle Ewing: At stage 2, the Justice Committee voted by majority to support amendments to section 17 that were lodged by Liam McArthur, which had the bill specify that group proceedings should be either opt-in or opt-out proceedings. The intention was that the type of proceedings that would be used in each particular case would be specified by the court.

As I have previously said, the Scottish Government has no financial or political objections to opt-out proceedings. Rather, we wish to flag up concerns arising from the obligation implied by Liam McArthur's amendments at stage 2, on the Scottish Civil Justice Council to draft and consult on rules for opt-in and opt-out procedures simultaneously, which risks delaying the introduction of group proceedings in Scotland, per se.

Lord Gill's Scottish civil courts review drew attention to the fact that opt-out procedure might be appropriate in a consumer case in which a large number of consumers are affected, but it also noted that where the potential class membership might be small and easily identifiable, opt-in procedure is likely to be much more appropriate, in order that only those who make a positive choice to opt-in are bound by the outcome.

During stage 1, the Justice Committee heard, from a number of those who submitted evidence, about the possible benefits of opt-in procedure for community groups. We would not wish small groups to be denied the advantages of opt-in group proceedings while opt-out rules are drawn up that might be more appropriate for larger-scale consumer actions.

Our concerns are shared by the Lord President, who wrote to the Justice Committee prior to stage 2 to ensure that members were aware of the complexities of the opt-out procedure. He noted that the practical and legal challenges that could be presented by an opt-out model are significantly greater than those that could be presented by an opt-in model.

My amendments in group 8 would permit the Scottish Civil Justice Council to develop

separately the rules for the opt-in and opt-out procedures, while not preventing it from developing those rules concurrently. In other words, the Scottish Civil Justice Council will decide how best to timetable drafting of the rules. Indeed, it would be open to the SCJC, as the independent rule-making body, to decide to proceed with opt-out rules first. However, the key issue is that it is the Scottish Civil Justice Council that will determine its own programme of work. It is clear, therefore, that there will be a duty on it to provide rules for both procedures.

The Scottish civil courts review noted that it would be necessary to amend the legislation relating to prescription and limitation in order to take account of a group litigation procedure that permits opt-out. It also pointed out that it would be necessary to confer powers on the court to make an aggregate, or global, award of damages, and for the disposal of any undistributed residue of an aggregate award.

Opt-out would also give rise to new issues of general principle in that, for the first time in Scots law, individuals could become party to litigation without their consent, and possibly without their knowledge.

In the face of all those issues, if the Scottish Civil Justice Council is obliged to produce rules on opt-out at the same time as it produces rules on opt-in, because of the extra complexities that are involved with opt-out, that will risk delaying the introduction of any kind of group proceedings.

The SCJC is an independent body that is headed by the Lord President of the Court of Session. Although the Scottish Government cannot dictate its work programme or the timing of production of its rules, it has already made the public commitment that implementation of the bill will be one of its priorities for 2018-19.

We expect that the SCJC will set up a working group to consider rules on group procedure, as it did on fatal accident inquiries, and that representatives of consumer bodies will be represented on that body.

It is worth noting that the Scottish Law Commission has previously produced a draft act of sederunt on opt-in proceedings, so it is to be hoped that the SCJC will be able to produce rules on opt-in relatively quickly, thereby enabling it to move on without delay to the more complex issue of opt-out proceedings.

I have spoken to Liam McArthur about the need for expeditious progress to be made on group procedure, and I can give him the assurance that the Scottish Government will use all levers of influence to support the most expeditious introduction of group procedure.

I turn to the detail of the amendments. Proposed replacement section 17(7A), which amendment 21 seeks to introduce, will allow the Court of Session to make rules that provide for group proceedings to be brought as opt-in proceedings, opt-out proceedings or either. The intention is to give the court the flexibility to provide for all proceedings to be opt-in proceedings, or for there to be a choice, but also for the court to be able to make different provision for different purposes.

Proposed replacement section 17(7B) seeks to define “opt-in proceedings” and “opt-out proceedings”. Opt-out proceedings are defined as group proceedings in which all persons within the group description who are domiciled in Scotland are automatically opted in and therefore must opt out to leave the group. However, persons who are domiciled outside Scotland must opt in. That is because one of the difficulties that the Lord President identified in relation to opt-out is the potential extraterritorial effect of orders that are granted in opt-out proceedings, particularly when a deemed member of a group would otherwise have had the option of raising proceedings in a different legal jurisdiction.

The Government’s amendments seek to address that concern. In doing so, they draw on the UK Competition Appeal Tribunal provisions in the Competition Act 1998. The consumer organisation Which? has been highly supportive of the group proceedings provisions and has helpfully noted that that is a relevant precedent.

Proposed new section 17(7B) is a replacement for sections 17(3), 17(3A), and 17(3B) in the bill as amended at stage 2, which will be removed by consequential amendment 17, but care has been taken in the drafting of the replacement provisions to carry across the relevant wording that was introduced by Liam McArthur at stage 2.

Proposed new subsection 17(7B)(b) provides for the court to specify a description of the claims that are eligible to be brought in opt-out proceedings, and because that is not relevant to opt-in proceedings, amendment 18 seeks to remove section 17(6A). That does not alter the effect of that subsection, other than to restrict its application to opt-out proceedings.

Section 17(7)(aa), which was inserted at stage 2, places a duty on members of the group as a whole to identify and notify all potential group members. We consider it inappropriate that that duty would be placed on all members of the group, with the possible cost and delay that would be involved, so amendment 19 will place the duty to identify group members on the representative party only. In practice, the Government expects that the law firm supporting the representative party would carry out the necessary administrative work.

Amendment 20 will simply add some words of clarification to the end of section 17(7)(aa). Amendment 22 will add to the illustrative list in section 18(2) of things that the Court of Session may include in group procedure rules. The additions are rules about how a person may give consent for their claim to be brought in opt-in group proceedings, and how a person may give notice that they do not consent to their claim being brought in opt-out group proceedings. In other words, they deal with how people are to opt in or opt out, as appropriate.

16:30

Amendment 23, which will insert a new section after section 18, enables Scottish ministers to make further provision about group proceedings in regulations. Among other things, it will permit Scottish ministers to make necessary amendments to the substantive law, as envisaged by the Scottish civil courts review, which will facilitate the introduction of opt-out group proceedings.

Amendment 23 also gives examples of how that power might be used. For example, it will allow for the provision of aggregate or global damages, including potentially the involvement of an assessor or actuary, and the distribution of any surplus damages. That would largely be done through modification of common-law rules, whereas in the case of prescription and limitation, primary legislation would require to be modified.

Picking up on an earlier conversation, I point out that I have been mindful of the fact that the Delegated Powers and Law Reform Committee discourages the introduction of new delegated powers at stage 3. In that regard, the Minister for Parliamentary Business wrote to the committee on 16 April, making it aware of the need for the new power, which has arisen specifically as a result of amendments that the Justice Committee agreed to at stage 2.

Amendment 40 will make the new power in amendment 18 subject to affirmative procedure, thereby ensuring that there will, appropriately, be full debate on and scrutiny of regulations that are proposed by the Scottish Government.

Presiding Officer, having dealt with all the key amendments in the group, I move amendment 24.

The Deputy Presiding Officer: It is amendment 17.

Annabelle Ewing: I am ahead of myself. I am sure that many members wish that we were at that point, but we have not reached it yet.

I move amendment 17.

Gordon Lindhurst (Lothian) (Con): I opt in to the debate at this point by mentioning my entry in the register of members' interests as a practising advocate. [*Interruption.*]

The Deputy Presiding Officer: Excuse me, Mr Lindhurst. There is an awful lot of chatter going on. Can we have some quiet, please? Please listen very carefully—he will say this only once. [*Laughter.*]

Gordon Lindhurst: As we say in court, Presiding Officer, I am much obliged for that plaudit for the comments that I am about to make, which will be very brief.

Members: Hooray. [*Laughter.*]

Gordon Lindhurst: The Scottish Conservatives will vote for all the amendments in the group with the exception of amendment 23. Section 18(1) already provides that the Court of Session

“may make provision by act of sederunt about group procedure”,

and that would seem sufficient.

I would hesitate to use the words “power grab” in speaking of the Scottish ministers in this context, or indeed in a debate such as this. However, Conservative members are not persuaded that the powers that amendment 23 will give to Scottish ministers are appropriate to be dealt with in this way. The amendment will give Scottish ministers the power to make regulations that define substantive matters that are more appropriate for primary legislation. Examples include the domicile of a person in Scotland and the prescriptive and limitation periods in relation to claims. For those reasons, we will vote against amendment 23.

Liam McArthur: I somehow feel a bit responsible for this group of amendments. The minister's speech started to sound a bit like the hokey cokey.

I am sure that the Parliament is desperate for me to elucidate the justification behind the opt-out approach, and it is probably worth while for me to do so. I will be as brief as I can be. I thank the minister for the constructive way in which she has engaged with me in addressing the legitimate concerns on the back of the committee's decision at stage 2 to back an opt-out approach. The amendments in the group address those concerns while also respecting the committee's decision.

As I said at stage 2, enabling group proceedings under Scots law is a big step forward in expanding consumer protection. However, to limit ourselves to an opt-in model would have represented a missed opportunity. As Which? pointed out to the committee, breaches of consumer law often have a relatively small impact on a large number of

people, so the cumulative impact is high but the incentive for any one individual to participate in court proceedings is low. To properly widen access to justice in that area, therefore, the availability of an opt-out procedure is essential. It should and will be left to the discretion of the court, taking into consideration the nature and circumstances of the case.

I fully accept that there will be instances when it will be problematic and inappropriate for an opt-out to proceed. That is why it should only ever be an option. However, as experience south of the border shows, although an opt-in model was introduced in the Competition Act 1998, it was not until the opt-out became available under the Consumer Rights Act 2015 that real advances were made. It is clear that we cannot afford to wait a further 17 years for that to happen in Scotland. I am confident that having a reference in the bill to opt-out proceedings will ensure that that does not happen, and I look forward to significant progress being made ahead of the review in five years' time.

I thank the minister again for her constructive approach. I also thank my committee colleagues who supported the amendment at stage 2, and particularly the team at Which? for their perseverance on the issue and on behalf of consumer rights.

Annabelle Ewing: I would like to make a brief comment on the point that Mr Lindhurst raised. Although the position for opt-in proceedings is such that those cases can proceed fairly straightforwardly, it is not quite the same for opt-out proceedings, because there are a number of issues that must be sorted out—for example, provisions on aggregate and global damages, and what we do with the residue, to name but two. The mechanism that is proposed in amendment 23 is to do that by affirmative regulation, so that the Parliament is duly involved. The Minister for Parliamentary Business raised the issue directly with the Delegated Powers and Law Reform Committee and, as far as I am aware, including the meeting of that committee this week, no issue was raised about what we were proposing to do.

Finally, it may interest the member to note that a broadly similar approach has been proposed by the UK Government in its Data Protection Bill, under the terms of which the Secretary of State may make provision for opt-out collective proceedings for England and Wales by regulations.

Amendment 17 agreed to.

Amendments 18 to 21 moved—[Annabelle Ewing]—and agreed to.

Section 18—Group procedure: rules

*Amendment 22 moved—[Annabelle Ewing]—
and agreed to.*

After section 18

Amendment 23 moved—[Annabelle Ewing].

The Deputy Presiding Officer: The question is, that amendment 23 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Campbell, Aileen (Clydesdale) (SNP)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Crawford, Bruce (Stirling) (SNP)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 Finnie, John (Highlands and Islands) (Green)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greer, Ross (West Scotland) (Green)
 Griffin, Mark (Central Scotland) (Lab)
 Harper, Emma (South Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Johnstone, Alison (Lothian) (Green)
 Kelly, James (Glasgow) (Lab)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lochhead, Richard (Moray) (SNP)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)

Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)
 Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, Tavish (Shetland Islands) (LD)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wheelhouse, Paul (South Scotland) (SNP)
 Wightman, Andy (Lothian) (Green)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Corry, Maurice (West Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Golden, Maurice (West Scotland) (Con)
 Greene, Jamie (West Scotland) (Con)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Kerr, Liam (North East Scotland) (Con)
 Lindhurst, Gordon (Lothian) (Con)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Mason, Tom (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Tomkins, Adam (Glasgow) (Con)
 Wells, Annie (Glasgow) (Con)

The Deputy Presiding Officer: The result of the division is: For 85, Against 28, Abstentions 0.

Amendment 23 agreed to.

Section 18A—Review of operation of Act

The Deputy Presiding Officer: We move to group 9. Amendment 24, in the name of the minister, is grouped with amendments 25 to 31.

Annabelle Ewing: Section 18A was inserted into the bill at stage 2 as a result of an amendment lodged by Margaret Mitchell. It requires the whole act to be reviewed as soon as practicable following a period of five years that starts on the day of royal assent. Amendments 24 to 31 form a group of amendments that make only one substantive change to section 18A. Although there are eight amendments in this group, I emphasise that there is no intention to interfere with the main thrust of Margaret Mitchell's stage 2 amendment.

However, the Scottish Government does not believe that there is any point in triggering the five-year period for post-legislative scrutiny of part 4 of the bill on group proceedings until rules are in place allowing group proceedings to take place and have had a chance to bed in over the proposed five-year period. Different arrangements are required because the detail of the procedures for group proceedings will be provided in rules of court to be introduced by the Scottish Civil Justice Council, which will draft and consult on them. Group proceedings cannot take place until such rules are in force. It will take some time for the council to develop group procedure rules.

In the previous group, the chamber agreed that it will be for the council to decide whether opt-in and opt-out proceedings are introduced at the same time or if one type is to come first. In any event, the principle remains that some time will be needed for there to be due deliberation and consultation on the detailed rules. That, in turn, means that, if the five-year period is to run from royal assent, the review report that is envisaged may be able to consider only a relatively short period of group procedure operation.

I am not convinced that that is what members intended. Rather, I believe that they seek meaningful post-legislative scrutiny on group proceedings. Therefore, the Government considers that, as far as post-legislative scrutiny is concerned, part 4 needs to be dealt with separately from parts 1 to 3, so amendment 24 separates the requirement to review and report on the operation of the act into two separate reviews and reports.

Amendments 25 and 26 apply section 18A(2) to the review of parts 1 to 3 and adjust it so that the report on that review does not need to consider section 17 on group procedure. Amendments 28 and 29 are minor consequential amendments.

Amendment 27 replicates subsection (2), but only for the review of part 4, which includes section 17 on group proceedings. Amendment 30

starts the review period for parts 1 to 3 running from the day of royal assent. Amendment 31 starts the review period for part 4 running from the day on which the first rules of court about group procedure come into force.

I move amendment 24.

Daniel Johnson: I reassure members that my contribution will be measured in seconds rather than minutes. [*Interruption.*] The more they heckle, the longer I will take.

I welcome the proposal for a five-year review. It is a welcome innovation. We will support the amendments in the minister's name. However I make a small plea that some of the proposals that fell at stages 2 and 3—namely, the inclusion of environmental cases in group actions and the pay-as-you-go fees that were discussed—be included in the review if that is possible.

Annabelle Ewing: I welcome Daniel Johnson's support for what is really a pragmatic reflection of what happened at stage 2. It will be for the people who conduct the post-legislative scrutiny to set its parameters. I imagine that they will wish to pick up on a number of issues that have been discussed in the passage of the bill.

Amendment 24 agreed to.

Amendments 25 to 31 moved—[Annabelle Ewing]—and agreed to.

Section 19—Regulations

Amendment 38 not moved.

Amendment 39 moved—[Annabelle Ewing].

16:45

The Deputy Presiding Officer: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Crawford, Bruce (Stirling) (SNP)
 Adam, George (Paisley) (SNP)
 Adamson, Clare (Motherwell and Wishaw) (SNP)
 Allan, Alasdair (Na h-Eileanan an Iar) (SNP)
 Arthur, Tom (Renfrewshire South) (SNP)
 Baker, Claire (Mid Scotland and Fife) (Lab)
 Balfour, Jeremy (Lothian) (Con)
 Ballantyne, Michelle (South Scotland) (Con)
 Beamish, Claudia (South Scotland) (Lab)
 Beattie, Colin (Midlothian North and Musselburgh) (SNP)
 Bibby, Neil (West Scotland) (Lab)
 Bowman, Bill (North East Scotland) (Con)
 Briggs, Miles (Lothian) (Con)
 Brown, Keith (Clackmannanshire and Dunblane) (SNP)
 Burnett, Alexander (Aberdeenshire West) (Con)
 Cameron, Donald (Highlands and Islands) (Con)
 Campbell, Aileen (Clydesdale) (SNP)

Carlaw, Jackson (Eastwood) (Con)
 Carson, Finlay (Galloway and West Dumfries) (Con)
 Chapman, Peter (North East Scotland) (Con)
 Coffey, Willie (Kilmarnock and Irvine Valley) (SNP)
 Constance, Angela (Almond Valley) (SNP)
 Corry, Maurice (West Scotland) (Con)
 Cunningham, Roseanna (Perthshire South and Kinross-shire) (SNP)
 Denham, Ash (Edinburgh Eastern) (SNP)
 Dey, Graeme (Angus South) (SNP)
 Doris, Bob (Glasgow Maryhill and Springburn) (SNP)
 Dornan, James (Glasgow Cathcart) (SNP)
 Dugdale, Kezia (Lothian) (Lab)
 Ewing, Annabelle (Cowdenbeath) (SNP)
 Fee, Mary (West Scotland) (Lab)
 Findlay, Neil (Lothian) (Lab)
 FitzPatrick, Joe (Dundee City West) (SNP)
 Forbes, Kate (Skye, Lochaber and Badenoch) (SNP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Freeman, Jeane (Carrick, Cumnock and Doon Valley) (SNP)
 Gibson, Kenneth (Cunninghame North) (SNP)
 Gilruth, Jenny (Mid Fife and Glenrothes) (SNP)
 Golden, Maurice (West Scotland) (Con)
 Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (East Lothian) (Lab)
 Greene, Jamie (West Scotland) (Con)
 Griffin, Mark (Central Scotland) (Lab)
 Halcro Johnston, Jamie (Highlands and Islands) (Con)
 Hamilton, Rachael (Ettrick, Roxburgh and Berwickshire) (Con)
 Harper, Emma (South Scotland) (SNP)
 Haughey, Clare (Rutherglen) (SNP)
 Hepburn, Jamie (Cumbernauld and Kilsyth) (SNP)
 Hyslop, Fiona (Linlithgow) (SNP)
 Johnson, Daniel (Edinburgh Southern) (Lab)
 Kelly, James (Glasgow) (Lab)
 Kerr, Liam (North East Scotland) (Con)
 Kidd, Bill (Glasgow Anniesland) (SNP)
 Lamont, Johann (Glasgow) (Lab)
 Lennon, Monica (Central Scotland) (Lab)
 Lindhurst, Gordon (Lothian) (Con)
 Lochhead, Richard (Moray) (SNP)
 Lockhart, Dean (Mid Scotland and Fife) (Con)
 Lyle, Richard (Uddingston and Bellshill) (SNP)
 MacDonald, Angus (Falkirk East) (SNP)
 Macdonald, Lewis (North East Scotland) (Lab)
 MacGregor, Fulton (Coatbridge and Chryston) (SNP)
 Mackay, Derek (Renfrewshire North and West) (SNP)
 Mackay, Rona (Strathkelvin and Bearsden) (SNP)
 Macpherson, Ben (Edinburgh Northern and Leith) (SNP)
 Maguire, Ruth (Cunninghame South) (SNP)
 Marra, Jenny (North East Scotland) (Lab)
 Martin, Gillian (Aberdeenshire East) (SNP)
 Mason, John (Glasgow Shettleston) (SNP)
 Mason, Tom (North East Scotland) (Con)
 Matheson, Michael (Falkirk West) (SNP)
 McAlpine, Joan (South Scotland) (SNP)
 McArthur, Liam (Orkney Islands) (LD)
 McDonald, Mark (Aberdeen Donside) (Ind)
 McKee, Ivan (Glasgow Provan) (SNP)
 McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
 McMillan, Stuart (Greenock and Inverclyde) (SNP)
 Mitchell, Margaret (Central Scotland) (Con)
 Mountain, Edward (Highlands and Islands) (Con)
 Mundell, Oliver (Dumfriesshire) (Con)
 Neil, Alex (Airdrie and Shotts) (SNP)
 Paterson, Gil (Clydebank and Milngavie) (SNP)
 Rennie, Willie (North East Fife) (LD)

Robison, Shona (Dundee City East) (SNP)
 Ross, Gail (Caithness, Sutherland and Ross) (SNP)
 Rowley, Alex (Mid Scotland and Fife) (Lab)
 Rumbles, Mike (North East Scotland) (LD)
 Russell, Michael (Argyll and Bute) (SNP)
 Sarwar, Anas (Glasgow) (Lab)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland Islands) (LD)
 Simpson, Graham (Central Scotland) (Con)
 Smith, Liz (Mid Scotland and Fife) (Con)
 Smyth, Colin (South Scotland) (Lab)
 Somerville, Shirley-Anne (Dunfermline) (SNP)
 Stevenson, Stewart (Banffshire and Buchan Coast) (SNP)
 Stewart, Alexander (Mid Scotland and Fife) (Con)
 Stewart, David (Highlands and Islands) (Lab)
 Stewart, Kevin (Aberdeen Central) (SNP)
 Todd, Maree (Highlands and Islands) (SNP)
 Tomkins, Adam (Glasgow) (Con)
 Torrance, David (Kirkcaldy) (SNP)
 Watt, Maureen (Aberdeen South and North Kincardine) (SNP)
 Wells, Annie (Glasgow) (Con)
 Wheelhouse, Paul (South Scotland) (SNP)
 Whittle, Brian (South Scotland) (Con)
 Yousaf, Humza (Glasgow Pollok) (SNP)

Against

Finnie, John (Highlands and Islands) (Green)
 Greer, Ross (West Scotland) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Ruskell, Mark (Mid Scotland and Fife) (Green)
 Wightman, Andy (Lothian) (Green)

The Deputy Presiding Officer: The result of the division is: For 108, Against 5, Abstentions 0.

Amendment 39 agreed to.

Amendment 40 moved—[Annabelle Ewing]—and agreed to.

Schedule

Amendment 33 moved—[Annabelle Ewing]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments. As members will be aware, at this point in the proceedings, the Presiding Officer is required under standing orders to decide whether, in his view, any provision of the bill relates to a protected subject matter—that is, whether it modifies the electoral system and franchise for Scottish parliamentary elections. The Presiding Officer has decided that, in his view, no provision of this bill relates to a protected subject matter. Therefore, the bill does not require a super-majority to be passed at stage 3.

As agreed by Parliament yesterday, the stage 3 debate on the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill will take place on Tuesday 1 May.

Standards Commission for Scotland (Appointment of Member)

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

The Deputy Presiding Officer (Linda Fabiani): The next item of business is consideration of motion S5M-11787, in the name of Kezia Dugdale, on the appointment of a member of the Standards Commission for Scotland. I call Kezia Dugdale to move the motion on behalf of the Scottish Parliamentary Corporate Body.

16:48

Kezia Dugdale (Lothian) (Lab): With the permission of members, I will try to get through this matter as quickly as possible. I speak as a member of the Scottish Parliamentary Corporate Body appointment panel and I invite colleagues to agree to the appointment of Paul Walker as a member of the Standards Commission for Scotland.

The Standards Commission was established by the Ethical Standards in Public Life etc (Scotland) Act 2000, and its role is to encourage high ethical standards in public life by promoting and enforcing the codes of conduct for councillors and members of devolved public bodies. It issues guidance to councils and public bodies and adjudicates on alleged contraventions of the codes that are referred to it by the ethical standards commissioner.

Under the act, the members of the commission are appointed by the corporate body, with the agreement of Parliament. The corporate body sat as a selection panel on 26 March, and the panel members were the Presiding Officer, Liam McArthur and me.

On behalf of the corporate body, I thank Louise Rose, the independent assessor who oversaw the process and who has confirmed, by way of a validation certificate, that the appointment process conformed to good practice.

We are seeking the agreement of Parliament to appoint, from a very strong field of candidates, Paul Walker as a member of the Standards Commission for Scotland. We consider that he would bring to the post a strong commitment to promoting and encouraging high ethical standards in public life. I am sure that the Parliament will want to wish him every success in his new role, if his appointment is agreed to.

I move,

That the Parliament agrees, under section 8 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, to appoint Paul Walker as a Member of the Standards Commission for Scotland.

Motion without Notice

16:50

The Deputy Presiding Officer (Linda Fabiani): I invite the Minister for Parliamentary Business to move a motion without notice to bring forward decision time to now.

Motion moved,

That, under Rule 11.2.4, Decision Time be brought forward to 16:50.—[*Joe FitzPatrick.*]

Motion agreed to.

Decision Time

16:50

The Deputy Presiding Officer (Linda Fabiani): There is one question to be put as a result of today's business. The question is, that motion S5M-11787, in the name of Kezia Dugdale, on behalf of the Scottish Parliamentary Corporate Body, on the appointment of a member of the Standards Commission for Scotland, be agreed to.

Motion agreed to,

That the Parliament agrees, under section 8 of the Ethical Standards in Public Life etc. (Scotland) Act 2000, to appoint Paul Walker as a Member of the Standards Commission for Scotland.

Meeting closed at 16:51.

This is the final edition of the *Official Report* for this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba