MEETING OF THE PARLIAMENT

Wednesday 8 September 1999
(*Afternoon*)

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Scottish Parliament

Wednesday 8 September 1999

(*Afternoon*)

[THE PRESIDING OFFICER *opened the meeting at 14:30*]

The Presiding Officer (Sir David Steel): Before we begin this afternoon's proceedings, I would like to say that the Procedures Committee agreed yesterday on the form of address to be used for the occupants of the chair. It suggested that each of us may be addressed simply as Presiding Officer—without the use of Mr, Madam or Deputy in front of it—or by using our names. All three of us warmly endorse that recommendation. As it involves no change in the standing orders, I suggest that we adopt the practice immediately and that we rule out of order the use of speaker, deputy speaker or more exotic epithets.

David McLetchie (Lothians) (Con): I am happy to accept that, but I wish to raise a point of order that relates to your conduct as Presiding Officer of the Parliament. As you are aware, I have given you prior notice to that effect. My point concerns the complaint that you made on behalf of the Parliament to the Press Complaints Commission, in relation to the coverage of the proceedings of the Parliament in the *Daily Record*. The fact that you took that action on our behalf came to light in your speech on Monday to the Church and Nation committee of the Church of Scotland. You circulated copies of the speech to members of the Parliament, the text of which makes it clear that your referral was made not in a personal capacity but on behalf of the Parliament.

As you will appreciate, Presiding Officer, complaints about coverage in the *Daily Record* come as second nature to the Scottish Conservatives, as we have been on the receiving end for years. However, irrespective of the merits of your complaint, there is an important point of principle. Where is your authority to submit such a complaint, given that, to the best of my knowledge, you did not seek the approval of the Parliament, the corporate body or the Parliamentary Bureau for the course of action that you have followed? In the words of the relevant section, have "proper procedures" been followed in relation to this aspect of the business of the Parliament?

Secondly, having initiated this complaint without consultation or approval, which procedures do you now intend to follow in relation to the progress of the complaint? Will you publish the text of your letter to the Press Complaints Commission? What guidance do you intend to take from the Parliament in relation to the reply that you eventually receive, and any further correspondence or proceedings that may follow?

The Presiding Officer: First, thank you for your courtesy in giving me notice of your point of order—that is an important precedent. Secondly, if your point had not involved me, I would have ruled that it was not a point of order, as it does not relate to proceedings in the chamber. The substantive answer is that I will write to you and, with your agreement, I will release the text of my reply on electronic mail so that every member has access to it tomorrow.

Mental Health (Public Safety and Appeals) (Scotland) Bill

The Presiding Officer (Sir David Steel): We now proceed to the first item of business this afternoon, which is motion S1M-118, in the name of Mr Jack McConnell, on a financial resolution for the Mental Health (Public Safety and Appeals) (Scotland) Bill. The motion will be taken without debate. Before I call Mr McConnell to move the motion, I remind members that, after he does, we will move immediately to a decision. Looking ahead, I inform members that there are likely to be a number of decisions during the debate on stage 2 of the Mental Health (Public Safety and Appeals) (Scotland) Bill, and I intend to explain the procedure that is to be followed immediately before the start of that debate.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Mental Health (Public Safety and Appeals) (Scotland) Bill, agrees to the following expenditure payable out of the Scottish Consolidated Fund—

(a) expenditure by the Scottish Ministers in consequence of the Act; and

(b) increases attributable to the Act in sums payable out of that Fund by or under any other Act.—[*Mr McConnell.*]

The Presiding Officer: The question is, that motion S1M-118 be agreed to.

Motion agreed to.

The Presiding Officer: The next item of business is Parliamentary Bureau motion S1M-130, in the name of Mr Tom McCabe, on the timetabling of debates in stages 2 and 3 of the mental health bill. Again, this motion will be taken without debate and will be followed immediately by a decision.

Motion moved,

That the Parliament agrees that the time for consideration of Stages 2 and 3 of the Mental Health (Public Safety and Appeals) (Scotland) Bill be allotted as follows, so that debate on each part of the proceedings, if not previously brought to a conclusion, shall be brought to a conclusion on the expiry of the specified period (calculated from the time when Stage 2 begins)—

Stage 2—Committee of the Parliament

Section 1 up to and including line 40 on page 2 of the Bill - 1 hour 20 minutes

Sections 1 and 2 up to and including line 23 on page 3 of the Bill - 1 hour 40 minutes

Sections 2 and 3 up to and including line 4 on page 4 of the Bill - 1 hour 50 minutes

Section 3 - 2 hours 30 minutes

Proposed new section – “Meaning of medical treatment” - 2 hours 40 minutes

Remaining Stage 2 proceedings - 2 hours 50 minutes

Stage 3—Meeting of the Parliament

All of Stage 3 - 3 hours 20 minutes—[*Mr McCabe.*]

The Presiding Officer: The question is, that motion S1M-130 be agreed to.

Motion agreed to.

Meeting closed at 14:34.

Committee of the Whole Parliament

[THE CONVENER *opened the meeting at 14:34*]

Mental Health (Public Safety and Appeals) (Scotland) Bill: Stage 2

The Convener (Sir David Steel): We move to consider stage 2 of the bill in the Committee of the Whole Parliament. As the bill procedure is new to us all, I want to explain how we will proceed.

The debate on stage 2 is programmed to last for two hours 50 minutes in total. I remind members that electronic voting will be used for any divisions and that the voting time will be 30 seconds.

Copies of the marshalled list of amendments to be considered were delivered to members with their copies of the business bulletin. They are also available now from the clerks at the back of the chamber. As well as the 36 amendments lodged on Monday and printed in yesterday's bulletin, the marshalled list includes three amendments lodged by the Minister for Justice, Mr Wallace, after the normal deadline. I took the view that the merits of those amendments outweighed the disadvantages of lack of notice, and so intend to exercise my power under standing order 9.10.6 to allow them to be moved. These manuscript amendments, together with another amendment that has been changed slightly, are indicated by asterisks on the marshalled list.

Copies of the grouping list have been placed on members' desks. Amendments have been grouped to allow a single debate to take place on related amendments. That should avoid undue repetition and allow the committee to concentrate on the important issues. Nevertheless, I remind members that all the amendments must be called in turn from the marshalled list and will be disposed of in that order. Whoever is chairing will be strict in ensuring that the committee observes that rule. In particular, we shall not permit the committee to move backwards in the list.

There will, therefore, be one debate on each of the six groups of amendments set out in the marshalled list. We will call first the proposer of the first amendment in the group, who should end his or her speech by moving the amendment. We will then call other speakers, including—if time permits—the proposers of all amendments in the group. Other speakers should not move their amendments at that stage. The minister will be called to speak on each group.

At the end of the debate on each group, we will put the question on the first amendment in the group and the committee shall decide whether to agree to the amendment. We will then call the next amendment on the marshalled list. The member who has proposed it will have the opportunity to move it, but should not make a speech. There will be no further debate and we will immediately put the question.

To assist members in interpreting the groupings, the grouping list indicates sub-groups of amendments that either stand or fall together, or are clear alternatives. For example, group 1 on the list has amendments 1 and 10 as the first sub-group. Those amendments propose the same adjustment to two different subsections, and they stand or fall together. In the second sub-group, amendments 2 and 11 propose alternative amendments to the same subsection: they are clear alternatives and cannot both be accepted.

In relation to such amendments, I expect the committee to respect the decision that is taken on the amendment that is disposed of first. For example, amendments 1 and 10 make exactly comparable changes in two places in the bill. If amendment 1 is agreed to, I expect the committee to agree without dissent to amendment 10 when it is reached. If amendment 1 is disagreed to, I expect amendment 10 not to be moved.

Some amendments pre-empt others. For example, if amendment 11 is accepted, that pre-empts amendment 12, which seeks to delete a word that would no longer be part of the bill if amendment 11 were to be agreed to.

Finally, I remind members that, as well as disposing of amendments, the committee is required to decide whether to agree to each section of the bill. I will put the question on each section when it is reached. The only way in which it is permitted to oppose agreement to a section is by lodging an amendment to leave out the section. No such amendments have been lodged so far and, given the time limits within which we are working, I do not propose to allow any last-minute manuscript amendments to leave out sections to be taken.

We are operating the committee system with the electronics for the first time, and I ask members to press the button to speak only on the group that is under discussion. The screens will be cleared at the end of each group. We in the chair will not be setting any time limit on speeches, because at a committee stage, by definition, all speeches should be short and there should be free interchange.

I am sure that all that I have said has been clearly understood, but in case it has not, copies of this guidance will now be circulated by the attendants, so that members can have it by their side. We have already agreed a strict timetable for this afternoon's debate, and the clock starts ticking once I invite the first member to move the first

amendment. If anyone has any questions about this long complicated procedure, they should ask them now, before the debate begins.

There are no questions; I am delighted that everyone has understood the procedure clearly. We now begin the debate in committee on stage 2 of the bill. I call Mr David McLetchie to move amendment 1, with which we will take amendments 2 to 9.

Section 1

CONTINUED DETENTION OF MENTALLY DISORDERED PATIENTS ON GROUNDS OF PUBLIC SAFETY

David McLetchie (Lothians) (Con): The purpose of this amendment and the consequential amendment 10 is to clarify the standard of proof that is to be applied by the sheriff in consideration of appeals presented under sections 64 and 66 of the Mental Health (Scotland) Act 1984.

Section 1 covers the burden of proof, but the standard of proof requires separate consideration. Does the minister consider that, in weighing the evidence, the sheriff need only be satisfied in accordance with the civil law test—that is, on the balance of probabilities—or does he require to satisfy himself in accordance with the criminal law test of beyond reasonable doubt?

If the minister takes the view, as I trust he does, that the balance of probabilities test is the appropriate standard of proof, is he satisfied that that does not require to be expressly stated in the bill as being the appropriate test in relation to the prior issue of protection of the public from serious harm that the sheriff will now be required to consider in proceedings under this section and section 66 as amended?

Those are my comments on amendment 1. I am down to speak on a number of other amendments and, before I move amendment 1, I want to comment on amendment 6, which has also been lodged in my name. Phil Gallie will, if he is invited to, speak to the other amendments that are in my name in this group on the order paper.

On amendment 6, I wish to highlight some concerns about the bill that have been raised by the Scottish Association for Mental Health, based on the sheriff's findings in the Ruddle case. The sheriff commented that there was not simply a therapeutic delay in the receipt by Mr Ruddle of specific focus psychological treatment, but that, in fact, treatment was never made available to him, nor was it available.

In his judgment, the sheriff also expressed disappointment that the board or management committee of the state hospital was unable to make necessary arrangements to provide the treatment that was considered clinically necessary by the responsible medical officer.

The new provisions, which we support, require the sheriff to give prior consideration to the issue of public safety. If the sheriff is not satisfied that it would be safe to order the discharge of the patient, that is the end of the matter and the other issues that are covered by section 64 do not require to be decided.

Given the failures to provide treatment and to protect the interests of the patient that were identified by the sheriff in the Ruddle case, we believe that it would be desirable to empower the sheriff to make recommendations in his judgment as to the suitability of the health care that is being provided to the patient in the hospital in which he is to continue to be detained in the interests of public safety. In our view, that strikes an important balance.

Roseanna Cunningham has raised a similar point in amendment 7 and she will wish to expand on that line of reasoning when she addresses the committee. The difference between her approach and ours is that her amendment would empower the sheriff to make a mandatory order in relation to treatment, whereas our view is that a less prescriptive approach is required.

The recommendations that my amendment would empower the sheriff to make would carry considerable weight and authority, while giving the minister, hospital officials and expert medical staff the necessary flexibility to determine how such recommendations were implemented in the interests of the patient.

I move amendment 1.

Dennis Canavan (Falkirk West): I wish to speak briefly to the amendments that are on the marshalled list in my name.

Amendments 2, 11, 17 and 21 are very similarly worded; they propose to replace the words

"protect the public from serious harm"

in various parts of the bill with

"to prevent the patient constituting a danger to himself or to the public".

14:45

Will the minister tell us whether there is any precedent in mental health legislation—or in any other legislation—for the use of the words

"protecting the public from serious harm"?

What is meant by serious harm? Does it mean presenting a danger, or potential danger, to members of the public? If that is the intention of the terminology, I respectfully suggest that the terminology in my amendment is better.

I refer briefly to a letter that was handed to me shortly before the start of the debate. The letter is from Bruce Millan to Jim Wallace, the Minister for Justice and Deputy First Minister; Bruce Millan is writing in his capacity as chairman of the review committee of the Mental Health (Scotland) Act 1984.

Along with other members, I have known Bruce Millan, the former Secretary of State for Scotland, for many years. There is a great deal of respect for him throughout the country, so members should listen carefully to what he has to say. In some respects he might have been able to write the speech that I gave last week in which I criticised the way in which this legislation—on a complex matter—was being dealt with in a rush, without the serious consideration that it requires.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I am sure that Dennis Canavan will acknowledge that the letter was given to him as a member who has lodged amendments. It has been published, along with a written answer from me, because Mr Millan wanted the contents to be made available to the Parliament. Indeed, copies of the correspondence are available at the information point at the back of the chamber.

Dennis Canavan: I am grateful to the Deputy First Minister for that intervention and I strongly recommend that members read Bruce Millan's letter before voting on the amendments. Writing on behalf of his committee, Bruce Millan says that the committee has asked him

"to express serious concern about the effect of the Scottish Executive's response to the Sheriff's decision in the case of Noel Ruddle".

He goes on to say that

"it is a matter of great regret to us that a complex and difficult area is being dealt with by emergency legislation, in a timescale which has made it impossible for us to consider the terms of the Bill with the care that it requires."

He also says—and this has relevance to my group of amendments—that the committee

"feels that the scope of the legislation seems to us to go beyond a limited response to the Ruddle case, and elevates a necessary regard for public safety above matters of treatment and appropriate care, in a manner which is damaging to the way in which we deal with mental health problems generally."

He states:

"We would add that mental health legislation is intended to deal with many people with differing needs, not only the tiny number who pose a serious danger to the public."

In the words of the chairman of the review committee, the bill attempts to deal with the "tiny number" of the people in Scotland who are suffering from mental ill health and who are dangerous or potentially dangerous. We should target that group of people in a precise way. I am not convinced that the wording of the legislation does that, which is why I lodged the amendments. They would ensure not only that there was still adequate protection for public safety, but that people who presented a threat to public safety were precisely targeted by the emergency legislation.

Amendments 4, 13, 19 and 23 are similarly worded, as are 5, 14, 20 and 24. If someone has a condition which cannot be treated and the sheriff, in hearing an appeal, comes to the conclusion that, on the evidence given to him, the person's condition cannot be treated, why should that person be detained in a hospital? If the person constitutes such a danger or potential danger to the public that he or she ought to be detained, the question arises whether a hospital is the best place for that person to be detained. Would not a high-security prison be a more appropriate place for someone who has a condition that cannot be treated in hospital? What is the point of sending someone back to hospital if that person cannot be given adequate, required treatment?

Under the Scotland Act 1998, we have a responsibility to ensure that all the legislation passed by this Parliament is in accordance with the European convention on human rights. However, doubts have been expressed about whether the bill conforms to it. The Law Society of Scotland wrote to me—I assume that it wrote a similar letter to all members—saying:

"The Parliament in enacting such legislation will need to be satisfied that the Bill is consistent with provisions of Section 29 of the Scotland Act 1998, especially in relation to compliance with the European Convention on Human Rights. This is particularly pertinent due to the creation of the new ground of detention in section 1".

It refers to that ground of detention as

"a form of preventative detention",

and says that it is

"important to know what rights will attach to those affected by this bill and what resources will be applied."

Roseanna Cunningham may deal with this matter when she speaks to her amendment—the principles behind which I also support—but I would like the Minister for Justice or Lord Advocate or whoever is replying in this debate to tell us what study they have given to possible conflict with the European convention on human rights and how they can justify saying that this legislation is consistent with the terms of the convention.

The Convener: Will you move amendment 2?

Dennis Canavan: I move amendment 2.

The Convener: Before I call Mr Gallie to speak to amendment 3, I would say that you were in danger of straying out of order, Dennis. I allowed

it, because it is important that the correspondence which the Minister for Justice has released in a written answer should be known, but I would not want members to go beyond the strict terms of the amendments that we are debating.

Phil Gallie (South of Scotland) (Con): Amendment 3 follows in part the amendments lodged by Mr Canavan, but it is slightly different. I would like the word "serious" to be removed from the definition of serious harm because I feel that confusion could arise in the minds of the public, if not in that of the sheriff. What does it mean when we use "serious" as an adjective for "harm"? Does it cover physical or psychological harm, or does it cover harm as far as individuals' property interests are concerned? Does the bill consider that sexual interference is serious—or that physical violence that results in the hospitalisation of an individual is not so serious? I would appreciate it if the minister would clarify the intent behind the use of the word "serious".

Amendment 8 refers to the burden of proof on Scottish ministers in judging the public risk if an individual were to be released or allowed to leave the institution. Who will the ministers take advice from? Is it intended that they should have medical back-up? If so, would that medical expertise come from within the hospital? If it comes from within the hospital, will the familiarity with the individual perhaps mean that some aspects of that individual's suitability are missed? Should there be an independent element to the medical advice offered to the ministers? Will the ministers seek guidance from the police and from others about the public risk? Will they have regard to what has happened in the past, to the reasons why that individual was taken into the institution and to that individual's criminal track record? Those questions must be answered; again, I seek clarification from the minister.

Amendment 9 is a probing amendment. It seeks to remove proposed subsection (C1) in section 1, which states:

"Nothing in section 102 (State Hospitals) of the National Health Service (Scotland) Act 1978 prevents or restricts the detention of a patient".

I am sure that a range of acts and sections do not affect that action, so why did the minister feel it necessary to insert subsection (C1) in the bill?

The Convener: Thank you. I call Roseanna Cunningham—

Phil Gallie: I am sorry, convener. I move—

The Convener: No, Mr Gallie. I made a mistake earlier, as I should not have asked Dennis Canavan to move his amendment; you do not have to move your amendment, either. The debate hinges on Mr McLetchie moving amendment 1, and that is what we are discussing, but other members wish to speak to their amendments.

I call Roseanna Cunningham to speak to amendment 7.

Roseanna Cunningham (Perth) (SNP): The SNP amendments are designed to focus on those areas over which we consider there to be question marks and to which we consider significant improvements can be made while retaining the core point of the legislation.

In that spirit, amendment 7, which stands in my name and in the name of my colleague, Michael Matheson, has been designed to deal with a situation that arose in the Ruddle case. It relates not to the question of his release, but to the debate about his treatment while he was in Carstairs. We have dubbed this question the "treatability question". I will not refer at length to Bruce Millan's letter, but I note that he refers to his concern about the bill's involvement in

"matters of treatment and appropriate care".

The amendment was lodged in that context.

Last week, I argued that, rather than being untreatable, Noel Ruddle was, in fact, treatable but that the state hospital at Carstairs did not have the means by which to treat him. To support that comment, I refer to the sheriff's judgment in the Ruddle case. Under the general heading "Progress in the State Hospital", the sheriff makes a number of findings. I make no apology for quoting him at some length, as what he says is extremely important in the context of our discussion.

15:00

Paragraph 7.4 of the sheriff's judgment says:

"The applicant was referred for psychological treatment interventions or therapy packages in October 1994 and April 1995 but, apart from being assessed for psychological treatment, none was made available to the applicant and, in January 1997, his Responsible Medical Officer was informed that the psychology department in the hospital had no-one then providing a service to patients with addiction problems."

Paragraph 7.15 says:

"By the time the Medical Sub-Committee came to review the applicant's case in 1998, it was known that none of the psychological treatment planned since 1994, and expected at the State Hospital up to 1997, had taken place".

We should not be hugely surprised that, after that catalogue of non-treatment, Mr Ruddle was reclassified as "untreatable". That is to use the word untreatable in a rather different context from the one in which most people in this debate apprehend it. The suspicion looms large that "untreatable" in the context of the above meant "untreatable at Carstairs", given the resources that were available at the time. Nothing that was said

in last Thursday's debate or anywhere else removes that suspicion.

The suspicion that such circumstances could arise again could be removed if we built into the legislation what is proposed in this amendment. The sheriff could make an order on the delivery of treatment to an individual—not on the treatment itself, which is not the sheriff's responsibility—and ensure that the authorities complied with it within a reasonable time scale. The provision would be discretionary. I heard what Mr McLetchie said, but we are not for making it mandatory. If Mr McLetchie reads the amendment carefully, he will realise that the order would be made only if the sheriff considered it appropriate in all the circumstances that he has heard in a case.

I do not think that that is an outrageous imposition. In any civilised society, if people are detained in such circumstances the utmost must be done to ensure that treatment is made available to them. The bill's total lack of any such assurance is causing much of the concern that is being expressed by many external commentators, including some who have already been mentioned.

The Scottish Association for Mental Health has flagged up the failure to treat Ruddle over a period of five years as a major issue in the provision of mental health services. Things should never have come to that. If the treatment that was deemed appropriate had been delivered to Mr Ruddle, we would not be here now. However, there is no mention in the bill of any measures that would ensure that patients will have the right to access treatment where that treatment exists. Without this amendment, we are in danger of defining a small category of individuals who can be dumped, apparently with impunity. We should not do that and we should not allow the suspicion that we are doing it to arise.

This is not the place for a full-scale debate on the provision of mental health services, although I hope that such a debate will have been triggered as a result of our deliberations over the past few weeks. We can at least ensure that this bill, which covers only a small number of people, contains a safeguard that no one will be left, as Noel Ruddle was for years, without the treatment that his doctors at the time thought appropriate.

Mr Jim Wallace: Now that all the amendments have been spoken to, it might be helpful if I were to give some indication of the Executive's response to them. There will be an opportunity for other members to intervene in the debate and I shall be happy to respond to their points.

The amendments seek to amend section 1, which deals with the continued detention of mentally disordered patients on grounds of public safety. It is not surprising that there are so many amendments to the section, as public safety is at the heart of our proposals to close the gap that has been identified in the Ruddle case. We seek to close that gap by ensuring that mentally disordered patients are not discharged from hospital if they are still considered to present a risk of serious harm to the public. I hope that I can give reassurance through my response to the amendments that we have closed the loophole that was highlighted in the recent case.

Mr McLetchie moved amendment 1, which seeks to ensure that the sheriff, in considering an appeal, is satisfied that,

"on the balance of probabilities,"

the patient is suffering from a mental disorder and that it is necessary for reasons of public safety to continue to detain him in hospital. Amendment 10, which is linked to that, raises the same point.

I can assure Mr McLetchie and other members that the sheriff, when hearing such appeals, sits in a civil capacity and is, therefore, required to consider evidence on the basis of the balance of probabilities—not beyond reasonable doubt. The presumption in all such civil cases is that the sheriff proceeds on the basis of the balance of probability, as is reflected in current practice. Therefore, while I understand where Mr McLetchie's amendment is coming from, there is no need for that to be put in the bill.

I shall take the amendments in the order in which they appear on the marshalled list, rather than in the order in which they were spoken to. Amendment 2, lodged by Mr Canavan, seeks to replace our public safety test with one that would

"prevent the patient constituting a danger to himself or to the public".

That provides for a far less stringent public safety test than the bill envisages for appeals to the sheriff. Mr Canavan asked whether there were precedents for the test. Section 68 of the Mental Health (Scotland) Act 1984 applies the same test and some criminal legislation refers to a similar one. If the bill is passed as I propose, section 64(1)(a) of the 1984 act will state that if the sheriff is satisfied that the patient is suffering from a mental disorder and that continuing detention in hospital is necessary to protect the public from serious harm, he must refuse the appeal.

Mr Canavan's amendment proposes a test that would be easier to meet and that would offer less protection to the patient. We need to try to get a balance—as Mr Canavan urged us to do—between the rights of the patient and the important matter of protecting the public from serious harm. That is what we have sought to do by applying a test that is already in our statutes and that is considered by sheriffs in their proceedings.

Amendment 2 also proposes an additional consideration, that of

"the patient constituting a danger to himself".

We do not believe that that consideration fits well with the public safety test proposed by the bill. As I have indicated, it is a test with which the sheriffs are familiar.

Mr Canavan mentioned Mr Bruce Millan's letter, which I have made available to members. Sir David, I hope that as Mr Canavan was allowed some latitude to refer to the letter, I may give some indication of our response to Mr Millan.

We welcome the fact that Bruce Millan is chairing the committee that is taking an overall view of mental health. I have indicated to Mr Millan that we understand his concern about the emergency nature of the bill, but

"remain firmly of the view that the legislation is required, and required quickly, to protect the interests of public safety".

I think that it is fair to say that that view is shared by the Parliament as a whole, given the way in which stage 1 was approved by the Parliament last week.

The decision of the sheriff at Lanark did expose a loophole, which the bill has no wider purpose than to close. The Executive obviously wants to emphasise the importance of the work that Bruce Millan's committee is doing. One of the things that we were concerned about and about which we took great care when drafting the legislation was the need to restrict the scope of the bill to that which was necessary to cope with the situation that we faced. We also wanted to put it on record that the legislation was an interim measure, pending the result of a more wide-ranging review of the 1984 act.

In my letter to Mr Millan, I have sought to reassure him and his committee that

"the Executive fully recognises the important place of care and treatment for people with mental disorder."

I also told him—and this is relevant to some of the other points raised by Mr McLetchie, Ms Cunningham and Mr Canavan—that

"That is why we asked the Mental Welfare Commission for Scotland to inquire into the care and treatment of Mr Ruddle and other patients with similar conditions in the State Hospital."

That responds directly to some of the points made by the sheriff, which Ms Cunningham read out. In limited emergency legislation, it would have been wrong of us to deal with those wider issues. It would have cut across the work not only of Bruce Millan's committee, but of the committee that Lord MacLean is chairing, which deals with serious and violent offenders.

Roseanna Cunningham: Does not the minister consider that, if the bill is not more explicit, precisely the same set of circumstances that led to Ruddle's release might recur? If we put something specific in the bill along the lines that I suggested, we will ensure that such a recurrence is, if not impossible, at least guarded against. Currently, there is no safeguard.

Mr Wallace: When I come to deal specifically with Ms Cunningham's amendments, I will try to give her some reassurances about the provision for patients in the state hospital.

I hope that Mr Canavan will appreciate that amendment 2 falls short of what we are trying to achieve in the bill, and that he will not press it.

Amendment 3 was spoken to by Mr Gallie. It seeks to amend the test of "serious harm" to the public to the lesser test of simply "harm". Some of the points that I addressed to Mr Canavan are relevant. When considering the crucial provision, we chose the term "serious harm" with care. It is a term that is used in criminal law and in mental health legislation. Its meaning is well understood, and is applied by sheriffs and judges. It achieves our aim of detaining only patients who present a serious risk to the public. It is not the intention of this Parliament that any person with a mental disorder who has committed an offence should be detained in hospital for ever and a day. That would be well beyond what we feel is required to protect the public. Indeed, it is questionable whether that would comply with our obligations under the European convention on human rights. I repeat our view that the bill as drafted achieves the correct balance between the safety of the public and the rights of those with mental disorders. In doing so, it uses a legislative term that is already familiar.

Amendment 4 seeks to leave out "hospital" as a place where a patient can be detained to protect the public from serious harm. The fact is that a patient on a hospital order and a restriction order who loses his appeal must continue to be detained in hospital. If that is the sentence of the court, there is no power that allows for that person to be transferred to a prison. The European convention on human rights makes it absolutely clear that a patient must continue to be detained in a hospital; there is not an alternative. Where a patient is on a transfer direction and a restriction direction, and the sheriff is satisfied that the patient has a mental disorder that meets the public safety test, the patient will remain detained in hospital. He will not be transferred to prison; there is no power that allows him to be transferred to prison. That relates to the Ruddle case.

A provision that was introduced in more recent legislation did not apply in Ruddle's case, because the case came up before the provision was

introduced. There is now a provision whereby a court may impose a hospital direction that allows a person convicted of an offence to go first to hospital and then, if he recovers, to prison. However, that can happen only in cases where a hospital direction has been imposed by the courts. That was not the case with Ruddle; nor is it the case with others whose cases came to court before the introduction of that order, which came into force on, I think, 1 January 1998.

Getting the balance right between hospital and prison for people who commit crimes and have personality disorders is an issue that the MacLean committee is considering.

Dennis Canavan: If, in a particular case, the sheriff comes to the conclusion that the patient cannot be treated, what is the point of sending the patient back to hospital? Is not that just reducing the role of hospital staff and nurses to that of prison warders?

Mr Wallace: The sheriff has to decide whether the patient is suffering from a mental disorder, and then decide—and this is the loophole that we are trying to close with the legislation—whether the person poses a threat of serious harm to the public. The person must continue to be detained if the sheriff believes that the First Minister has discharged his burden of proof in establishing that the person could cause serious harm to the public. The purpose is to ensure continuous detention in the interests of public safety.

That goes to the heart of what we are trying to do with the bill—to close a loophole. Under the law as it stands—and as it was applied to cases before the introduction of hospital directions—there is no power to transfer to prison a person who has been committed to a hospital by the court. It might be contrary to the European convention on human rights to do so. We are saying that a person who has a mental disorder must remain in hospital.

15:15

Mr Gallie spoke to amendment 9. Our concern is that if it is accepted, it could cast doubt on the ability of the state hospital to hold patients who might be regarded as untreatable. That could well undermine the bill. One can imagine a clever lawyer using the argument that the state hospital could not hold a patient deemed untreatable by the sheriff. I am not saying that would succeed, but it is an argument that could be used. That might be another loophole; this is an effort to close it. We want to ensure that that argument is not available to a future case.

Mr Canavan spoke to amendment 5. He wants to leave out from section 1:

"whether for medical treatment or not".

That raises many similar arguments. Mr Ruddle was successful in his appeal as he was deemed to be untreatable. To remove those words from the section would mean that someone who was deemed to be untreatable could not be detained in hospital, irrespective of the fact that he continued to be a serious risk to the public. That would strike at the heart of what the bill is trying to achieve.

Mr McLetchie and Ms Cunningham mentioned the availability of treatment. Amendments 6 and 7 would allow sheriffs to make recommendations on the suitability of keeping a patient in hospital and on the facilities and services that could be made available to the patient. Amendment 7 would further give a permissive power to sheriffs to make an order requiring the provision of particular treatment services, with which Scottish ministers would have to comply.

This bill asserts the primacy of public safety when a sheriff considers an appeal. The Government is concerned that linking public safety and service issues in the way that such amendments tend to do would run counter to the aim of the bill. The bill singles out public safety as the principal test to which sheriffs must have regard.

I accept that it is right that no hospital should be just a place to which patients are sent, with the key then thrown away without attention being paid to what is necessary for the patients' welfare and well-being.

It is important that hospital management and ministers have regard to those considerations, and we do. The aim of the inquiry that we requested of the Mental Welfare Commission for Scotland was to give us guidance in relation to the services and facilities that could be provided for patients who are untreatable.

I am pleased to give the assurance that the state hospital will be allocated the resources that it needs to provide the care and treatment that are determined by clinicians as being appropriate to their patients. It is important that clinicians, not sheriffs, determine the treatment.

Mr Gallie also referred to amendment 8. The burden of proof in relation to the new public safety provision falls on Scottish ministers. We take it seriously, and we will make sure that the best possible advice is taken in reaching a view on any case and in presenting a case to a sheriff.

It follows that the maximum flexibility must be available to us, so that we are not constrained in our access to sources of advice and information in discharging the responsibilities that the bill confers.

The views of medical personnel in the hospitals

concerned will be important. A report from the responsible medical officer will be essential. As has been recognised, we might want to commission independent medical advice—as the secretary of state did in the case of Noel Ruddle.

Although important, medical advice will not be the only input required. We might want to take into account the views of the police and might wish to seek information from security personnel at the state hospital. Social work might have an input.

I hope that Mr Gallie appreciates and that the Parliament recognises that the way in which ministers discharge their responsibilities will inevitably vary from case to case; it would be wrong for the statute to constrain us in any way. We should draw upon the advice that is mentioned in the amendment, but it is essential to maintain maximum flexibility to draw upon any relevant source of advice in the given circumstances of an individual case.

I appreciate that the issues are complex and important. I have tried to provide some explanations. Members will have further opportunity for comment and I will try—if I can—to provide further explanation.

Christine Grahame (South of Scotland) (SNP): In the legislation that is proposed by Mr Wallace, the point is that the patient will continue to be detained in hospital, whether or not for medical treatment. That sounds as if a hospital will become a mental dustbin for people and, as such, takes away society's obligations to treat people who are so detained while at the same time taking away their liberty. It has been said time and again that Mr Ruddle was treatable; he simply did not receive the treatment.

Amendment 7 strikes a balance between the rights of society—

Dr Richard Simpson (Ochil) (Lab): I realise that what I am about to say goes to the heart of the SNP's amendment, but Mr Ruddle was deemed to be untreatable by the sheriff. Mr Ruddle had two different conditions, one of which was a personality disorder that was deemed to be untreatable. It is not true to say that the patient was capable of being treated but was released nevertheless. That would not have been possible under the act, because the sheriff would still have acted wrongly. He did not do so.

Christine Grahame: I have read the sheriff's report carefully. Treatment for Mr Ruddle's personality disorder was available at Broadmoor hospital and he was on the verge of being sent there when he realised that, because he was not receiving any treatment, there was a loophole in the law.

Our amendment makes the point that society's right to be protected needs to be balanced against the detainee's right to treatment. Mr McLetchie knows that the point about our amendment is that it will be mandatory for the sheriff to

"take account of the suitability for the patient of the facilities in which continued detention would take place"—

that is, his historic treatment—

"and may, if he considers it appropriate, make an order in connection with the delivery of treatment to the patient."

The treatment does not have to take place at the patient's unit. For instance, Carstairs might not have the appropriate facilities and the sheriff would be able to take a different course of action.

The state is thus obliged to provide the sheriff with sufficient evidence about the patient's historic treatment and about treatment prevailing generally when he considers an appeal. Such evidence was not available to the sheriff in the Ruddle case. He says in his report that the treatments

"have not been made available and the evidence is unsatisfactory as to whether they would now be likely to alleviate or prevent a deterioration in the applicant's condition."

The sheriff does not say that the treatment was not there, but says that the quality of the Crown's evidence in the case was not good. The state is obliged to provide evidence for the sheriff, to make sure that the right action is being taken for an individual. I think that that raises the issue of the European convention on human rights, which Mr Canavan mentioned. We need to strike a balance between the state's duty to the public and its duty to the individual.

If the state takes away an individual's liberty by detaining him or her in a mental hospital, that should place a duty on the state to exhibit on appeal the availability of treatment for that individual. That information should not come out in later evidence, but should be one of the first considerations in a case. It also means that, if such evidence is not exhibited during the first appeal, there should be a further appeal should the sheriff find that such evidence has not been brought.

In those circumstances, I suggest that our sensible amendment strengthens the bill and will provide a fair balance between the rights of society and the rights of the detainee.

Dr Simpson: I do not propose to deal with amendment 1 because I think that it has already been dealt with. The Mental Health (Scotland) Act 1984 is a civil law and, although I am a psychiatrist, not a lawyer, I believe that the "beyond reasonable doubt" issue does not apply as the matter concerns a balance of probability. Therefore, I hope that the amendment will fall.

The question of harm versus serious harm is

difficult. Those in psychiatry are debating the issue at considerable length, for example in reference to confidentiality. One of the problems currently facing psychiatrists is the duty of the psychiatrist when a patient reveals information during a clinical discussion about harm or possible harm that they intend towards the public. It is emerging from the discussions—and it is relevant to the debate—that psychiatrists are suggesting, as are some of the judgments in other countries, that the harm intended by the patient should be quite specific. It should not be a generality of harm, but should be specific to one individual. In other words, it should be focused and serious in its nature. To leave out the word "serious" could lead to the detention of many people in the state hospital who would, as a result of a personality disorder, cause some harm to the public. I think that that would be wrong and is against the general tenor of Mr Canavan's speech. The balance that Mr Wallace referred to is crucial and we must not affect it by removing the word "serious".

I shall deal with the question of detention in a hospital as opposed to detention in prison. I worked in Cornton Vale prison for 23 years. We saw inmates who were transferred to the state hospital at Carstairs and back during that time. In my view, those who suffered from a serious personality disorder were much better managed—not treated, but managed—in the state system. The difference between treatment and management lies at the heart of the problem that the Parliament faces. As I said last week, we would not have had to deal with the Ruddle loophole if the treatability test had been met. In the past 15 years since the 1984 act was introduced, there has been movement in psychiatrists' views about what is and is not treatable, which has caused the loophole in the act.

Our colleagues in England and Wales have been lucky because so far there has not been a successful appeal under a similar act in England and Wales. I understand that, like us, they are considering the act under similar reviews to that of MacLean and Millan. I hope that they are not faced with a similar difficulty to this one. I suggest that treatment in the state hospital is to the advantage of the patient, because their welfare and well-being can be better managed there than in the prison service.

In the Ruddle case, there is confusion over the management of his alcohol problem and the management of his personality. That has become confused in amendment 7, proposed by Roseanna Cunningham. Alcohol problems are not grounds on which people can detain a patient. That is illegal and cannot be done. In addition, there is considerable debate as to whether alcohol problems are treatable. The consequences of alcohol addiction are treatable, but alcohol addiction is probably not treatable. It can be managed—people can be given help with its management—but it is not treatable. The gap between management and treatment lies at the heart of our problem.

The act as it stands—and I suggest that all the amendments be rejected—provides for the main thing that must be done, which is to protect the public from the small group of prisoners who predated the introduction of the hospital direction order in 1998. That is the group that we are dealing with.

Phil Gallie: Will Dr Simpson, with his expertise, expand upon the serious harm element? The minister suggests that there is a definition of "serious" in the eyes of the law that is well recognised, and I accept that. Dr Simpson suggested that there is some doubt in the mind of those in the medical profession about the interpretation of "serious"; perhaps he will expand on that.

Dr Simpson: What I was trying to say in that regard was that when they decide what should remain confidential, psychiatrists must make a judgment of the risk to the public of not disclosing information about a particular patient. The debate at the moment—it is not resolved and is on-going—seems to revolve round the harm being fairly specific.

If, for example, the patient says that they propose to go out and kill a specific individual, that is clearly a serious matter. If, on the other hand, they express a general threat that the public at large will be harmed, that might not be serious. That is a medical definition. I accept that it might be somewhat different from a court's definition of serious harm, but it is appropriate to keep the word "serious"—it should not be removed.

15:30

Phil Gallie: If the minister approaches the medical practitioners who are dealing with that individual, what problems of confidentiality do they face in advising the minister?

Dr Simpson: As I understand it, a doctor is allowed to make a report on a patient who is detained. That would not change. I hope that that has answered Mr Gallie's point.

I will conclude my recommendation that the committee reject the amendments. It is imperative—it has been given to us by the minister and the Parliament will continue to review it—that where treatment for a condition exists in the state hospital system, it should be made available to patients. Roseanna Cunningham's amendment 7 makes a valid point, but it does not need to be incorporated in the act. It should be a general

matter, not specific to section 64. It should apply to all detained prisoners, no matter their situation.

Roseanna Cunningham: Does Dr Simpson accept that a great deal of alarm—this is not on my behalf or on the SNP's behalf—is expressed by the Law Society of Scotland and by the Scottish Association of Mental Health? They feel that a real problem has been shown by the Ruddle case and are concerned that it could arise again. In order to safeguard against that, does he not accept that, although from his point of view incorporating my amendment would be, at worst, irrelevant, at best it might fix a problem that might recur?

Dr Simpson: The amendment does not need to go into the act. I will tell the member why.

Roseanna Cunningham *rose—*

Dr Simpson: I am sorry. I know that Ms Cunningham is not happy with that. This is a matter for clinical judgment. I am not happy that under the act the sheriff should make observations about what is or what is not good treatment. The question of treatment and what constitutes it is changing. The question of treatability and what is treatable is changing. I think that we should, rightly, hold the clinicians and the Executive to account for providing adequate treatment, but the law does not need an amendment to do that.

Roseanna Cunningham: My amendment contains a specific reference to the delivery of treatment, not to the treatment itself. It addresses the possibility that there will be cases in which treatments might be available but cannot be delivered at that time. It is the delivery of treatment that is the concern. We all accept, I believe, that it is entirely possible—otherwise, we would not be debating the bill—that there will be occasions when people are genuinely untreatable. The amendment gets round the concern that we might be defining treatability as including occasions when it is not convenient to provide treatment, for whatever reason. We should not do that.

Dr Simpson: I fully understand where Ms Cunningham is coming from, but it is not the appropriate way to deal with the issue. Section 1 deals with public safety, not treatment, and it should be left at that. If the amendment is agreed to, it will confuse the issue. Circumstances change. There will continue to be arguments among psychiatrists as to what constitutes appropriate treatment. Therefore, the amendment should be disagreed to.

Mr Duncan Hamilton (Highlands and Islands) (SNP): The SNP amendment should be seen in the context of the stage 1 debate on this bill; the most frustrating thing about that debate was the Executive's inability or unwillingness to answer the questions that were put to it. One of those questions was about the role of the responsible medical officer; the other was about treatability and the provision of services at Carstairs. Because of the lack of answers, amendment 7 tries to enshrine the rights of the individual within the context of public safety.

Given that we have established the difference in the Ruddle case between the existence of treatment and the fact that it was not actually provided, I am now a little confused. What the sheriff said in court, and Roseanna Cunningham quoted at great length, is a damning indictment of the inability to provide the treatment required. I do not think that the answers given so far have reassured anybody.

We have had two strands of thought. Mr Wallace said we should not worry about it; it will not happen again. I am afraid that if we are to trust him he will have to have a bit more of a track record than he has displayed so far. Then he said we should not worry because the matter has gone to the Mental Welfare Commission. That means that he is not confident that the facilities existed. I welcome that move, but if what is being considered is a one-off assessment of needs and services to find out whether they are adequate, why not extend that logic and enable the court to do exactly the same as is being suggested in this case? If it is worth examining the facilities this time to find out if they are adequate, why not do that in each case, as is suggested by the SNP amendment?

The Deputy Minister for Community Care (Iain Gray): We must get beyond the confusion about this. Is Mr Hamilton aware that until 9 March this year the RMO was convinced of the treatability of Mr Ruddle? On that date he changed his view on the basis of discussions with his colleagues and decided that Mr Ruddle was not treatable. On 10 March, the appeal began. The basis of Mr Ruddle's appeal and release is that he was considered to be untreatable, not the lack of treatment, as Mr Hamilton says. Criticisms were made in the sheriff's report and that is why the Mental Welfare Commission report has been asked for. Let us be clear that the decision was that Mr Ruddle was not treatable.

Mr Hamilton: Yes, but the sting in the tail was at the end. For four years the reports were very clear, as the sheriff said in his judgment—that the treatment was not being provided. As has been said, that is why the commission was set up. How can a guarantee be given that it will not happen again? It all comes back to what Richard Simpson said: that there is a lot of agreement with what we are saying but you do not want to put it into legislation. That is an odd view of legislation.

The purpose of legislation is to safeguard the rights and interests of society as a whole and of the individual. If you believe in the amendment in

principle it seems odd not to take that principle forward in legislation. The amendment directs the sheriff to look not only at the nature of the treatment that is being given in the institution but at the delivery of treatment. That was another area of confusion—it is a question not of the sheriff directing treatment but of the sheriff directing the delivery of treatment and, if treatment is not available, ensuring that it is, whether by its being brought in or by moving the patient. We must be clear about the difference between treatment and the delivery of treatment.

It is fair enough to talk about public safety and the public interest, but it is also in the public interest that people who are treatable should be given treatment. It is not in anyone's interest to say that they are not treatable, so we will lock them up on a technicality and throw away the key. We must guard against that in the bill and that is what the amendment tries to do.

Patients' rights are being paid no more than lip service. It is not enough to assume that, in the public interest and for reasons of public safety, society has an absolute right to ride roughshod over every other right—that is not acceptable in a modern, democratic society. The Government is obsessed with the phrase, "rights and responsibilities"—if you take on yourself the right to remove somebody's liberty, you have the responsibility to ensure that they receive treatment.

The Convener: Order. I do not have that responsibility.

Euan Robson (Roxburgh and Berwickshire) (LD): I will confine my remarks to amendment 7, and in particular the process that is described therein, as I do not understand it well. It appears from the amendment that the appeal and the sheriff's order can happen only once, and that ministers must then apply the sheriff's order.

Does the facility exist to repeat the process if circumstances change? The way the amendment is phrased means that it is a one-off process. There is no mechanism in the amendment to allow the situation to be revisited if circumstances change after the order has been made and the timetable has been set. My difficulty with the amendment may be obscure, but it is serious, because if the amendment is agreed to and the process can operate only once and with no amending facility, in my view it is defective.

Kay Ullrich (West of Scotland) (SNP): One of the major issues thrown up by the Ruddle case—despite what some members have said—was Ruddle's treatability. It was claimed that Ruddle was untreatable, but we now know that that was not the case: treatment for his condition was available—just not at Carstairs. Whether some people like it or not, Ruddle was entitled to treatment. He was not sent to Carstairs to be detained: he was made the subject of a restriction order so that he could receive treatment for his condition in a hospital.

Our problem with the bill's proposed amendment of the Mental Health (Scotland) Act 1984 is that section 1 states that a person can

"continue to be detained in a hospital, whether for medical treatment or not."

That seems to imply that public safety would be better served by keeping a person untreated and in hospital, rather than in prison. Is that an admission that the security in our state hospital is superior to that in our prisons? I hope not.

We consider that our amendment clarifies the issue of treatability.

Phil Gallie *rose—*

Kay Ullrich: I will not give way. We are pushed for time, so I will continue.

As I said, we know that treatment was available for Ruddle's condition. If we enable a sheriff to consider the availability of treatment for a specific condition, he will be able to place the applicant in a facility where the appropriate treatment is available or, as Roseanna said, ensure the delivery of the treatment to the patient. It is not good enough to propose to use national health service resources as an extension of the prison service.

At Carstairs we have a state hospital. The significant word there is hospital. Although it is a secure hospital, it should be in the business of providing treatment, not just containment.

Our amendment is designed to ensure that at the time of appeal, the sheriff takes into account the availability of treatment and makes an order to ensure that it is delivered.

Mr Kenny MacAskill (Lothians) (SNP): The tragedy with legislation that is introduced in haste is that things are left out. I was appalled by the letter from the Mental Welfare Commission for Scotland to the Deputy First Minister, dated 6 September. Twenty years of being a lawyer taught me that if you do not know the answer yourself, you know where to find the answer, or you know a man or woman who might know the answer. If someone had asked me about mental welfare, I would have said that the Mental Welfare Commission for Scotland should be approached. After all, it is charged with a responsibility and a public duty.

15:45

Accordingly, when I read the letter of 6 September from Dr Jim Dyer, the director of the

Mental Welfare Commission for Scotland, I was appalled by the first paragraph:

"The commission has had to consider the above Bill very quickly, since its Director was invited to a briefing by civil servants on Friday 27 August. The commission was not consulted about the proposed Bill."

That seems to me to compound the errors the Administration made over the previous months. It is now introducing legislation that it has failed to discuss properly with one of the principal organisations that should have been consulted. That may come back to haunt us.

The difficulty is dealing with various amendments at this juncture. We are dealing with matters only for a limited period of time. The number of people involved is limited. I will refer to information provided to me by other organisations. The people we are discussing are referred to in a Home Office paper on England and Wales, "Managing Dangerous People with Severe Personality Disorder", which has just been issued. It estimates that there are about 300 to 600 such men. It suggests that if the numbers are in proportion there are about 30 to 60 in Scotland.

The paper says:

"personality disorders are common. People with personality disorders fall on a continuum from near normal behaviour to extreme disruption in personal and social functioning. The overwhelming majority do not pose a risk to the public and live reasonably ordered, crime-free lives. The small proportion of such people who do pose a risk often suffer from the type of personality disorder that manifests in serious anti-social behaviour. It is a minority even of this sub group who pose a very high risk to society."

In the bill, we are dealing with some people who remain in the state system in Carstairs who are not subject to a section 74 hospital order and who are not free on the public streets or free to be released from prison in due course. That is a small number of people so we must bear in mind two key factors.

First, steps must be taken to deal with the issue of treatability. Secondly, we must deal with the issue of personality disorders. We will debate later whether the definition requires to be tighter. It seems insufficient to leave it as a matter of personality disorder. We must be tight in our definition and clear about what we are discussing, otherwise there is a danger that individuals will suffer injustice because they suffer from a personality disorder as a result of which they are no danger to other members of the public. That issue must be addressed.

Mr Jim Wallace: I will try to be brief. Mrs Grahame is right about balancing the interests and rights of detainees with the right of the public to safety. We have sought to achieve that balance in framing this bill. We recognise the rights of detainees, but we also recognise the rights of the public and our duty as a Parliament to secure public safety. That is why I gave an undertaking that the bill would comply with the European convention on human rights—which, independently, the Presiding Officer has also done. We are trying to strike the right balance between those rights.

Richard Simpson mentioned the use of the term "serious". Serious harm is a well-known term and it is one that those practised in psychiatry are able to identify. In each case, it will be a matter for the evidence that is brought before the sheriff. Some of the evidence will come from those who have treated the patient. It may come from independent people—some of whom have been mentioned in the amendments. It may also come from police, security personnel and at Carstairs there may have been social work involvement in some cases. The sheriff will have to decide on the balance of all that evidence whether ministers have discharged the burden of proof on them that, on a balance of probabilities, to protect the public from serious harm, the appeal should not be granted.

Mr Gallie asked, "What kind of behaviour?" Again, it depends on the circumstances of the case. He asked, for example, whether opportuning would be sufficiently alarming and damaging to be covered by serious harm. If it were of a dimension that could give rise to evidence that it was likely to cause serious harm, that would be the kind of evidence that would be placed before the sheriff, and the sheriff would have to make a determination on that basis.

Much of the debate has hinged on the question of treatability. It should be remembered that in paragraph 10.6 of his judgment, the sheriff said that

"since the medical treatment that the applicant has received and is at present receiving has not alleviated or prevented and is not likely to alleviate or prevent a deterioration of his condition, he does not meet the 'treatability test' and it is not appropriate for him to be liable to be detained in a hospital for medical treatment, nor to remain liable to be recalled to hospital for further treatment."

Roseanna Cunningham: To help this part of the debate, will the minister consider setting aside the issue of Noel Ruddle? Is the minister saying that he can envisage no circumstances in which someone who was deemed to be untreatable by one institution might be treatable elsewhere?

Mr Wallace: As Mr Galbraith said, such a person would be considered treatable. Kay Ullrich and others suggested that untreatable people could be sent to prison. I made it clear earlier that if the original disposal of a case resulted in a hospital order with no imprisonment—it is possible to get a hospital order in conjunction with a sentence of imprisonment—it would not be permissible for the patient to be sent to prison. It

would be against the European convention on human rights to do so.

Perhaps Roseanna Cunningham is suggesting a third way. We are moving into the territory of the MacLean and Millan committees and we should not trespass. We already know what Bruce Millan has said and we will consider those issues in the light of the reports of those committees.

Having spent 16 years at Westminster hearing ministers give technical reasons why amendments that I supported are not proper, I do not wish to do that now, but it is important that I do so as there is a technical problem with Roseanna Cunningham's amendment. It says that

"the sheriff considering an appeal under subsection (A1)"—

which relates to the prevention of serious harm—

"shall take account of the suitability for the patient of the facilities in which continued detention would take place".

That raises the interesting question of what the sheriff should do when, on taking account of the facilities, as he would be obliged to do, he finds them to be unsuitable. Would we be creating another loophole? We are trying to remain focused on what we are trying to do with this bill.

Roseanna Cunningham: With respect, I think that Mr Wallace's criticism might apply to Mr McLetchie's amendment but it does not apply to mine. It is because of the point that Mr Wallace raises that my amendment suggests what the sheriff might do if there are concerns about the suitability of the facility.

Mr Wallace: The amendment says that the sheriff can

"make an order in connection with the delivery of treatment to the patient"

if he considers it appropriate, but there is a possibility that he would consider such action inappropriate or unfeasible. We have had a narrow focus on what we want the bill to achieve and I am concerned that an amendment such as Roseanna Cunningham's could, unwittingly, open another loophole as it seeks to close one.

Mr MacAskill said that the Mental Welfare Commission for Scotland is the appropriate place to turn to when considering questions of treatability. That is what has happened in relation not only to Mr Ruddle but to patients in similar circumstances. The Millan committee is reviewing care and treatment. Bruce Millan has told us that he does not want legislation on those areas at this stage.

As Euan Robson mentioned, another problem that we would have with this amendment is the inflexibility that it would create. One often finds, in cases such as the ones we are discussing, that conditions can change. If ministers are directed by a sheriff to comply with an order, an inflexibility might be built in that might not be in the patient's best interests.

I repeat—someone picked it up—that it is not our intention that patients should be sent to the state hospital, or to any other hospital, and that the key should be thrown away. It is important that patients' welfare and well-being are kept to the fore. Hospital managers and, indeed, ministers must always have regard to those considerations.

I repeat my assurance that the state hospital will be allocated the resources that are needed to provide the care and treatment that are determined by clinicians to be appropriate for the patient. That is a practical response to the points that have been raised. My concern is that the legislative route that has been suggested could create further loopholes. I therefore invite the committee to resist the amendments in this group.

The Convener: We will now come to a decision on the 24 amendments in this group.

The lead amendment was moved by Mr David McLetchie—members should follow the marshalled list. The question is, that amendment 1 be agreed to. Are we all agreed?

David McLetchie: On a point of order. With the permission of the Parliament, am I allowed to withdraw the amendment in light of the assurances that were given by the minister?

The Convener: You have already moved the amendment, but you need not shout when I put the question.

David McLetchie: Fine.

The Convener: Are we all agreed to that amendment?

Minister, it is no good shaking your head; you must shout no.

Members: No.

Amendment 1 disagreed to.

The Convener: It will be enormously helpful if those who lodged the other amendments—Dennis Canavan, David McLetchie and Roseanna Cunningham—will indicate as I reach their amendments whether they are moving them. If they are not moving them, it saves time.

Mr Canavan, are you moving amendment 2?

Dennis Canavan: No.

The Convener: Mr McLetchie, are you moving amendment 3?

David McLetchie: No.

The Convener: Mr Canavan, are you moving amendment 4?

Dennis Canavan: No.

The Convener: Mr Canavan, are you moving amendment 5?

Dennis Canavan: No.

The Convener: Mr McLetchie, are you moving amendment 6?

David McLetchie: I move amendment 6.

The Convener: The question is, that amendment 6 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

Members should vote yes to agree to the amendment, and no to disagree.

FOR

Aitken, Bill (Glasgow) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Johnston, Mr Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Dewar, Donald (Glasgow Anniesland) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Ms Patricia (Glasgow Maryhill) (Lab)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harper, Robin (Lothians) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, Mr John (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Ms Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Sheridan, Tommy (Glasgow) (SSP)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Ian (Ayr) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Mr Alex (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)

White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

The Convener: The result of the division is as follows: For 15, Against 66, Abstentions 30.

Amendment 6 disagreed to.

The Convener: Ms Cunningham, are you moving amendment 7?

Roseanna Cunningham: I move amendment 7.

The Convener: The question is, that amendment 7 be agreed to. Are we all agreed?

Members: No.

Mr Alex Salmond (Banff and Buchan) (SNP): Yes. Yes.

The Convener: One yes is enough, Mr Salmond.

There will now be a division.

Members should vote yes to agree to the amendment and no to disagree.

FOR

Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Mr Alex (Banff and Buchan) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Dewar, Donald (Glasgow Anniesland) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ferguson, Ms Patricia (Glasgow Maryhill) (Lab)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Harper, Robin (Lothians) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnston, Mr Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, Mr John (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Ms Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)

Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Ian (Ayr) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Young, John (West of Scotland) (Con)

The Convener: The results of the division are as follows: For 32, Against 79, Abstentions 0.

Amendment 7 disagreed to.

The Convener: Mr McLetchie, are you moving amendment 8?

David McLetchie: No.

The Convener: Are you moving amendment 9, Mr McLetchie?

David McLetchie: No.

The Convener: Are you moving amendment 10, Mr McLetchie?

David McLetchie: No.

The Convener: Are you moving amendment 11, Mr Canavan?

Dennis Canavan: No.

The Convener: Are you moving amendment 12, Mr McLetchie?

David McLetchie: No.

The Convener: Are you moving amendment 13, Mr Canavan?

Dennis Canavan: Would it save time if I said that I do not want to move any of my amendments? [*Laughter.*] We could then get on to the next debate.

The Convener: You have suddenly become very popular, Mr Canavan. [*Laughter.*]

Amendment 14 is not moved.

Number 15, Mr McLetchie?

16:00

David McLetchie: I would like to share Mr Canavan's popularity by not moving my amendments either. [*Laughter.*]

The Convener: You will both be popular. Technically, I must allow any member the chance to move the amendments, so I shall run through the list. Does any member wish to move the following amendments: 16, 17, 18, 19, 20, 21, 22, 23 and 24? It seems not.

We move now to group 2, which deals with retrospectivity. I call Mr Gallie to move amendment 25, with which we will discuss amendment 31.

Phil Gallie: I will not detain members for too long in moving this amendment. This probing amendment has serious implications. It refers to subsection 1(5), and to the inclusion of the date of 1 September 1999 as a starting point.

I query that date. Our reason for suggesting a date of 2 September is that we agree in principle with what we believe the aim of the legislation to be. As such, this amendment would have no effect on the bill.

Retrospection does not sit easily with the law. The bill itself was not approved for progression by Parliament until 2 September. I am concerned that the date of 1 September was set. Why was that date selected by the minister? What is the effect of that date and can it be challenged in the future?

I move amendment 25.

The Convener (Ms Patricia Ferguson): Thank you, Mr Gallie.

Dennis Canavan: I would like to speak briefly to amendment 31 in my name. It proposes to delete section 3(2) of the bill.

Like Mr Gallie, I am concerned about the retrospective nature of this legislation. Any legislator in a democracy must be very wary indeed about retrospective legislation, and I am not alone in expressing that concern.

I have received representations from the Law Society of Scotland. The society is concerned about the possibility of aspects of this legislation being retrospective. There should be no disjunction between the coming into force of sections 1 and 3 and section 2. That includes, for example, the application of the prior test, the definition of personality disorder and the appeal provisions. All provisions of the bill should come into force at the same time.

Section 3(2), however, states:

"The amendment made by subsection (1) above has effect . . . as from 1 September 1999."

That date has already passed. That part of the bill, under the bill's proposals, would therefore be retrospective.

The European convention on human rights also has something to say about retrospective legislation. I reiterate what I said earlier about the fact that all the legislation passed by this Parliament must be consistent with the European convention on human rights. Under article 7, it says:

"No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."

I can almost guess what the Deputy First

Minister is going to say in his reply. He will say that, in debating this bill, we are considering civil law rather than criminal law. Unlike the minister, I am not a lawyer. It appears to me, however, that this is a hazy area that impinges on both criminal and civil law.

As I said, the convention clearly prohibits the imposition of a heavier penalty than was applicable at the time that the criminal offence was committed. The question is whether detention in a state hospital is a penalty or enforced detention for treatment. In certain cases, detention in a state hospital is a consequence of being found guilty of a crime. In the case that gave rise to the introduction of the emergency legislation, I think that I am right in saying that Mr Ruddle was found guilty of a criminal offence. We must consider whether in legal terms his detention in Carstairs was a punishment, a penalty, or simply a compulsory form of detention for treatment.

If this bill is passed as proposed, there appears to be an element of retrospection—or retrospectivity as the clerks have put it—that touches on both criminal law and civil law. Therefore, there might be conflict with the European convention on human rights. It would be better to delete section 3(2) and have all the legislation under the bill coming into force at one time, rather than certain aspects of it coming into force retrospectively.

Mr Jim Wallace: The amendments both deal with the issue of the retrospective application of the provisions and I will deal with them together. Our objective, and the purpose underlying the bill as it stands, is to ensure that the hearing of any appeal to the sheriff by a restricted patient, subsequent to the Ruddle case, should be caught by the public safety test that is set out in the bill.

That is why we have proceeded by way of emergency procedures in the Parliament. To ensure that every appeal hearing is brought within the scope of section 1 of the bill, section 1(5) provides that any appeals proceedings under section 64, 65 or 66 of the 1984 Act, in which a hearing takes place on or after 1 September, will be considered in the light of the new public safety test. In the same way, cases of patients considered for discharge by Scottish ministers on or after that date will also be subject to that new test.

On Mr Gallie's point, 1 September is the date on which the bill was published. In other words, it is the date on which public notice of the detailed intentions was given. It is fair to say that a general indication had already been flagged up, but that was the date on which the bill was in the public domain. The amendment seeks to change the operative date. I accept it as a probing amendment, and I hope that Mr Gallie is satisfied that that is why that date was chosen. I am satisfied that it will catch the hearing of all appeals currently in train, and that there is no argument for letting the date slip by a day.

I am also satisfied to address Mr Canavan's point on whether what we are doing is compatible with the requirements of the European convention on human rights. Mr Canavan's amendment seeks to delete section 3(2), which ensures that the meaning of mental disorder is clarified. There will be a section of amendments dealing with that issue later, Ms Ferguson.

The effect of Mr Canavan's amendment would be that that definition section would not come into effect on 1 September. In short, section 3(2) is required to ensure consistency in the operation of the public safety provisions and the definition of mental disorder. Without section 3(2) there is the possibility of undermining the operation of the new public safety test, as there would be a disjuncture between that and the rest of the bill.

Mr Canavan specifically referred to article 7 of the European convention on human rights. As he indicated, that article prevents the imposition of a heavier penalty than that applicable at the time of the relevant criminal offence. In the case of Mr Ruddle, he was guilty of culpable homicide. Patients who can appeal have been before a court of law, and detention under the 1984 Act—now to be amended—is for the purpose of treatment or for protection of the public, both of which will have to have been satisfied on the patient's admission with a restriction order or equivalent. The admission criteria in section 17 of the 1984 act have to be met, and the bill does not provide anything that could be categorised as a penalty under the European convention on human rights.

There is, in fact, no general prohibition on retrospective legislation in the ECHR. We have considered this matter and I am confident that the measure that has been put forward complies with our obligations. As I have already indicated, the Presiding Officer had, on separate advice, equally to be satisfied. Mr Gallie asked whether the legislation could be challenged. It can, of course, but we are confident that we can successfully resist any such challenge.

Dennis Canavan: Will the minister clarify one point? If the date of 1 September in section 3(2) were replaced by a later date, so that all the provisions of this bill came into effect at the same time—at a later date than today—how many, if any, appeals would be affected?

Mr Wallace: That would depend on at what later date the bill came into effect. The date of 1 September—the date of publication of the bill—covers any appeal that is currently outstanding and still to have a hearing. The date of the hearing

is critical, as that is when the sheriff has to weigh up the evidence that is put before him regarding both public safety and the treatability of the patient.

Dennis Canavan: But today is 8 September. Why does the bill have to stipulate 1 September? I could understand the minister's point if some appeals that were pending might result in the release of people who would constitute a danger to the public, but it seems from his reply that that is not the case. Why has this date of 1 September, a retrospective date, been picked? Supposing that the bill were passed by this Parliament today, the Queen could presumably signify her assent tomorrow. Why not, therefore, insert tomorrow's date?

Mr Wallace: As I have indicated, 1 September is the date when the bill was published. We were trying to be careful. While it was our expectation from our discussions with the Parliamentary Bureau that we could deal with stage 1 on 2 September and with stage 2 tomorrow—that was the initial suggestion—we could not take this Parliament for granted and assume that that timetable would be met.

On the question of royal assent, as Mr Canavan knows, the Scotland Act 1998 allows a period of four weeks after the completion of stage 3 for the UK law officers and the Secretary of State for Scotland to consider whether the bill complies with the ECHR. I do not wish to prejudge that process, but we hope that it can be carried out much more quickly than that. However, the choice of 1 September 1999 was made on the basis that we could not take for granted some matters, including the period of time before royal assent.

The Convener: The question is, that amendment 25 be agreed to. Is that agreed to?

Members: No.

The Convener: There will be a division.

Phil Gallie: Nobody has requested it.

The Convener: I have just checked with the clerk, and my understanding is that when no one agrees to a question that has been put we must move automatically to a division. There will, therefore, be a division.

Phil Gallie: On a point of order. It seems to me that a precedent was set in this chamber just 10 minutes or so ago, when no vote was taken on amendment 1. Because it is clear that we do not wish to pursue this amendment, it seems a waste of time to have a vote.

16:15

The Convener: If members agree, we will not move to a division, but we will pass this anomaly to the Procedures Committee. Are we agreed?

Members: Yes.

Amendment 25 disagreed to.

Dennis Canavan: I would like a division on amendment 31.

The Convener: We have not come to amendment 31 yet; we will do so in a few moments.

The question is, that section 1 be agreed to.

Section 1 agreed to.

Section 2

APPEAL FROM DECISIONS ETC. OF SHERIFF UNDER SECTIONS 64, 65 AND 66 OF 1984 ACT

The Convener: Mr McLetchie will now move amendment 26, with which we are discussing amendment 27.

David McLetchie: The purpose of amendment 26 is to explore the scope of the appeal that can be taken to the Court of Session under the new section 66A(1).

Is the appeal intended to involve a rehearing of the case, thereby inviting the Court of Session to consider the matter anew? Or is the scope of the appeal to the Court of Session to be limited to a review of the sheriff's exercise of the judicial discretion vested in him at first instance? If the scope of the appeal is limited, it would not be open to the Court of Session to interfere with the sheriff's decision merely on the ground that it would have exercised its discretion in a different manner. This could give rise to a situation in which the Court of Session is satisfied that there is evidence to justify a finding that a patient should be kept in custody in the interests of public safety, and would have made such a finding itself, but is not prepared to interfere with the sheriff's finding to the contrary because there are no legal grounds for doing so.

I wish it to be made explicit in the bill that the court may review the evidence anew and may come, if necessary, to a different decision based on the facts and not simply on the sheriff's application of the law to the facts or on points of law alone. If the minister is not prepared to accept the amendment, I seek an assurance from him that the scope of re-appeal is sufficiently wide, in the bill as drafted, to cover the points that I have raised in the amendment and that there is no need for the matter to be clarified in the legislation.

Mr Gallie will move the other amendment in my name in this group.

I move amendment 26.

Phil Gallie: I will be fairly brief. This

amendment, which has been drawn to our attention by the Law Society, expresses some concern over timetables. The amendment seeks to ensure that a fixed timetable will be applied to any appeal. It must surely be the view that appeals under section 2 are of such public importance that they should be dealt with promptly. The timetable that has been suggested seems to comply with that and to be fair. I ask the minister to take that on board.

Roseanna Cunningham: I wish to make one or two brief comments. As Mr Gallie said, this amendment emanates from the Law Society in recognition of the serious steps that we are taking, which will affect the liberties of a certain category of individuals. We are doing so rightly but we should nevertheless recognise that what we are doing is extremely important and that we must ensure safeguards where possible.

This amendment is one possible safeguard. In effect, by building in a prearranged time scale for hearing the appeals, we will guard against people continuing to be detained over what may become an almost indefinite period pending an appeal hearing. Such a hearing may take a very long time to arrange, or—heaven forfend—proceedings may be deliberately stalled at the convenience of ministers, who would rather that matters did not come to a conclusion too quickly. This amendment seeks to build in a time scale for the appeals to be heard within an expedited period.

Mr Jim Wallace: Amendment 26, which was moved by Mr McLetchie, seeks to clarify that an appeal under section 66A of the bill may be on the grounds of fact or law. I can assure Mr McLetchie that that is the case—the appeal is not limited and can be taken on either ground. That means that the Court of Session would be able to consider the whole case. It is not envisaged that there would be a complete rehearing, but transcripts of the evidence, for example, would be made available to the court. In the circumstances surrounding that kind of appeal, the Court of Session cannot take a view on the credibility of witnesses, but it can examine the evidence and have regard to its sufficiency, as well as to points of law. Indeed, the court could come to a view that is different from that of the sheriff. The intention is that an appeal can be lodged on the grounds of both fact and law.

On the question of the timetable under the bill, within which appeals to the Court of Session should be completed, I recognise the desire that such appeals be conducted with due speed. Mr Gallie referred to issues surrounding the fact that such cases will inevitably be of public importance and Ms Cunningham referred to issues surrounding questions of individual liberty. However, I do not believe that setting a rigid time scale is the answer.

It is accepted that the issues raised by Mr Gallie and Ms Cunningham are important. Parties to an appeal involving a restricted patient will undoubtedly be anxious to have the appeal heard quickly. The Court of Session has to balance competing claims for the allocation of time to consider appeals, which, by their nature, require to be dealt with as quickly as possible; disputes involving children are often given some priority.

New procedures have been introduced which provide that either party may enrol for an early disposal of the appeal. Those procedures would apply to appeals under the new act and I am assured that, in practice, they have been found to work satisfactorily. It seems preferable to apply the existing procedures, which allow for flexibility in disposing of such appeals, rather than trying to provide a fixed timetable. A fixed timetable may well be found to be unworkable for reasons outwith the control of the court or the parties involved. In some cases, such a timetable could inhibit early resolution of appeals.

I am satisfied that the present arrangements are flexible enough to ensure that appeals can be dealt with without undue delay. I recognise the importance of doing so, and a specific power of the kind proposed in the amendment would not be required. I therefore invite the Parliament to reject amendment 26.

The Convener: The question is, that amendment 26 be agreed to. Are we agreed?

Members: No.

The Convener: We will move to a division and members will have 30 seconds in which to vote.

I apologise. We are in the same position as before. If the chamber is so minded, we will act similarly. I take it that that amendment has not been agreed to.

Amendment 26 disagreed to.

The Convener: Does Mr Gallie want to move amendment 27?

Phil Gallie: Not moved.

The Convener: The question is, that section 2 be agreed to.

Section 2 agreed to.

Section 3

MEANING OF "MENTAL DISORDER" IN THE 1984 ACT

The Convener: We now come to amendment 37, with which we are discussing amendments 28 and 29.

Iain Gray: In debating stage 1 of the bill last week, we made it clear that this was emergency legislation and that it was about one thing and one

thing only. It was and is about public safety. It was and is about ensuring that there are no further releases from detention of those patients whose diagnosis and condition is similar to that of Noel Ruddle. It is about closing that door—that is all. The bill is certainly not about reforming or modernising mental health legislation. That is why the insertion of "personality disorder" as a mental illness, which was always implicit in the Mental Health (Scotland) Act 1984, is made express in the bill. The amendments which we move, 37, 38 and 39, make it plainer still that "personality disorder" was included under mental illness—and it still is. It has been the aim not to change that, but to clarify it.

This is not the time or place to change that; this is about closing the door—that is all. It is not about, as some have implied, opening the doors of the state hospital to a cohort of new people with mental illnesses, whether they are currently in the community or in prison. The bill will not do that because hospital admission will still require section 17 of the 1984 act to be satisfied: it will still need to be shown that, if the mental disorder from which a patient suffers is persistent, manifested only by abnormally aggressive or seriously irresponsible conduct, treatment in hospital is likely to alleviate the condition or prevent it from deteriorating, and that it is necessary for the health or safety of the person, or for the protection of others, for him to receive such treatment in hospital. That is a very important sentence, although a particularly difficult one to read.

It is clearly for doctors to reach that view; in our view, the bill imposes no new responsibilities on doctors or psychiatrists in that respect. The bill affects those seeking to leave detention in hospital; it does not change the process of admission. I gave this assurance yesterday to the Royal College of Psychiatrists and I am happy to give it again in this chamber. We are closing a door; that is all. We are not opening new ones.

The Executive is in no doubt about the importance of mental health and the issues surrounding it. We well understand the complexity and difficulty of the definitions of mental disorder, and are conscious of the differing and deeply held convictions regarding such matters, even within the mental health community. That is why we will not open the door to that debate today. Involved in that debate is the MacLean committee, which is examining how to deal with serious offenders, including those with personality disorders. Also involved is the Millan committee, which is, as we asked, reviewing mental health legislation—a difficult job. We will not and must not burst in on those deliberations—they are too important. I acknowledge that even to think about such matters without beginning to stray into MacLean's and Millan's territory is extremely difficult, but to start tinkering with the definition of mental disorder now—which it may be tempting to do—would be irresponsible. Mr Millan's letter, which has been referred to and has been made available, made it very clear that he wishes us to stay out of his room for the moment.

The Minister for Health and Community Care and I will throw open the doors to the debate on modernising mental health when the time is right. We will examine all the issues fully in the light of all the experience and expertise available, but we will not do it today because this bill should do as little as possible, commensurate with its aim of improving public safety. As drafted, with the clarifying amendments, improving public safety is what the bill does, and it goes no further.

I say again: the bill does not seek to allow anyone to be admitted to hospital who could not be detained under the existing law. For those few—and it is a few—whom the bill affects, we give the assurance, as the Deputy First Minister has already done, that resources will be available for treatment which is considered to be appropriate by clinicians in the state hospital. However, we will not try to define that today, which is why Susan Deacon has asked the Mental Welfare Commission for Scotland to report on this matter properly and separately from the consideration of public safety, with which we are involved today. All around us are interesting and important doors that we need to open, but not today. Today, we have one door to close and these amendments will help us to do that. We all know what we have to do—let us close that door now.

I move amendment 37.

16:30

Michael Matheson (Central Scotland) (SNP): Section 3 of the bill seeks to widen the definition of mental disorder in the Mental Health (Scotland) Act 1984 to include personality disorder. The 1984 act states that

"'mental disorder' means mental illness or mental handicap, however caused or manifested".

I believe that the definition in the bill is too wide-ranging and could have unacceptable consequences. In the Parliament's debate last week, members throughout the chamber raised the issue of how to define personality disorder; they were concerned that the bill would classify personality disorder as a mental illness. Unfortunately, ministers failed adequately to deal with those concerns. Amendment 28 would address some of those issues by providing greater clarity in defining personality disorder.

In recent years, psychiatric thinking on personality disorders has changed; as a result of

that change, the 1984 act is now clearly inadequate. However, the bill fails to take account of the new thinking. That was a concern for Richard Simpson in last week's debate. He stated:

"I have no difficulty with the definition of personality disorder as a mental disorder, but psychiatrists have great difficulty with it being placed in the category of mental illness, as is proposed in the bill."—[*Official Report*, 2 September 1999; Vol 1, c 117.]

I see that Dr Simpson—who is, I understand, a psychiatrist—is here today and can stand by his remarks. The purpose of amendment 28 is to bring the bill into line with the psychiatric thinking that Dr Simpson highlighted last week. I hope that, in the light of his statement, he will join us in agreeing to the amendment.

Dr Jim Dyer, for whom I have considerable respect, having been a student in acute psychiatry under him at the Royal Edinburgh hospital, is the director of the Mental Welfare Commission for Scotland. He echoes the concerns about the wide definition of personality disorder in the bill; he, too, wants the bill to be brought into line with current medical thinking. He has gone on record and has written to all members of the Scottish Parliament to indicate his concern on this issue. Given his public statement and his statutory responsibility to highlight such issues to the Scottish Executive and the responsible ministers, I hope that the Executive will recognise that this amendment seeks to address the same concerns as those highlighted by the Mental Welfare Commission for Scotland.

Amendment 28 also seeks to focus the bill on those individuals with a particular type of personality disorder who are a marked risk to society. In last week's debate, several members expressed the concern that the bill fails to take account of the fact that the majority of those with such a personality disorder pose no risk to society. Dennis Canavan remarked that if we did not tighten up the bill's definition of personality disorder, this chamber could be rather empty. In my view, it is likely that the press benches will be even emptier. [*Laughter.*] I am sure that I will get good copy for that tomorrow.

Even the Government agrees that many individuals with a personality disorder pose no risk to society. The Government paper, "Managing Dangerous People With Severe Personality Disorder", which was published in July, states that

"the overwhelming majority do not pose a risk to the public and live reasonably ordered, crime free, lives".

The Mental Welfare Commission for Scotland and the Law Society of Scotland have highlighted that point, but the bill fails to make the matter clear. I understand that the commission has written to ministers to inform them of its concerns.

The amendment would enhance the bill in three ways. First, it would bring the bill into line with current psychiatric thinking and clarify the view that personality disorder is not a mental illness. Secondly, it would ensure that the bill is precisely focused on those individuals with a personality disorder who pose most risk to society. Thirdly, when an organisation such as the Mental Welfare Commission for Scotland raises concerns about the bill, it should be listened to—the amendment goes some way to addressing those concerns.

Jim Wallace made it clear that he had given the Mental Welfare Commission the responsibility to review service provision in the state hospital at Carstairs because it was the appropriate body. The commission, which Iain Gray said knew most about this issue, has expressed its concerns, which is why this amendment has been lodged.

I, therefore move amendment 28.

David McLetchie: The purpose of amendment 29 is similar to the one that Mr Matheson indicated in speaking to amendment 28. I do not think that I need take up the committee's time in replicating many of the points that he made in his substantial contribution to the debate.

It is a great pity that the Parliament was unable to give fuller consideration to the definition of mental disorder when it discussed stage 1 of the bill. I was advised by the clerk that, because mental disorder is mentioned in the long title of the bill, the amendment of its definition is one of the bill's general principles and that an amendment to delete section 3 in its entirety, as recommended by the Mental Welfare Commission for Scotland, would not be competent. I assure members that that was the ruling that was given to me. Whether it is correct, I do not know. The matter might be investigated.

The memorandum from the Mental Welfare Commission to the minister on 6 September arrived too late for the matter to be considered at stage 1 of the bill. That is not a criticism of the commission, but it does give rise to the concern flagged up by Kenny MacAskill that, in preparing the bill and presenting it to Parliament for approval, the Executive was remiss in not consulting the commission.

I was interested to hear Jim Wallace talking about the need to maintain the narrow focus of the bill so as to concentrate on the specific problem that the bill is designed to remedy, which arose as a result of the decision in Mr Ruddle's case. In essence, Mr Gray made the same point, although he did so in a more colourful way and, being a master of metaphor, introduced more windows and doors into the debate than C R Smith could. His point was that we should not be opening doors or closing windows—or whatever the case may

be—in a way that might prejudice the outcome of the Millan committee review.

That throws into focus the point made by the Mental Welfare Commission—it is not necessary, for the purposes of remedying the deficiency in the law highlighted by the Ruddle case, to go as far as to amend the definition of mental disorder or mental illness to include persons affected by a generality of personality disorders. That is why in amendment 29 we have sought, like Mr Matheson in amendment 28, to narrow the definition so that it applies to a smaller category of people.

It cannot be right—given that the amendment relates to a definition in the principal act—that all forms of personality disorder be treated as mental disorders or mental illnesses for the purposes of the act. So wide a definition could extend the scope of the whole act so that many individuals who have never come within the scope of the criminal justice system could now be subject to civil detention.

I invite the minister to explain more fully why he considers the amended definition to be absolutely necessary to fulfil the purpose of the bill, which—as the Minister for Justice acknowledged in the debate on earlier amendments—is limited.

In that context, I also ask the minister whether the expansion of the definition of mental disorder and mental illness to encompass personality disorders has implications for criminal law in Scotland and for the plea of diminished responsibility. As he will be aware, one line of defence open to an accused charged with murder is to establish that he was suffering from diminished responsibility at the time of the killing. A finding to that effect would enable the jury to reduce the conviction from murder to culpable homicide so that the accused received a determinate sentence instead of the mandatory life sentence.

Criminal case law indicates that a judge will allow the plea of diminished responsibility to go to the jury for decision only if there is evidence of mental disorder, mental illness or disease. Evidence of severe personality disorder may not in itself be sufficient. If a personality disorder is now treated as a mental illness for the purposes of the act, that may impact on the plea of diminished responsibility under criminal law. It cannot be right that persons who are simply wicked by nature may be able to exploit such a change in the law to reduce the charge on which they are convicted in the criminal courts.

16:45

Dennis Canavan: The aim of amendment 30 is very similar to the aims of the amendments supported by Michael Matheson and David McLetchie. In view of their remarks—most of which I support—I shall keep my comments to a minimum.

Section 3(1) will insert the phrase "(including personality disorder)" into the 1984 act. I think that it would be in the general interest if the words "personality disorder" were more focused. A considerable proportion of the people of Scotland suffer from personality disorders, but I hope that they will never come within the scope of this bill, and I hope that it is not the Executive's intention that they should ever do so. So why on earth should they be included by the use of such a wide phrase as "personality disorder"? That is what is proposed in the wording of the bill as it stands.

Last week, I lodged some parliamentary questions about the issue—I do not know whether the minister knows about that, but I hope that I will get a reply in due course. I did not really expect to get a reply before today's debate, but perhaps the minister will give some indication of the official estimate of the number of people in Scotland who suffer from a personality disorder. How many people in Carstairs state hospital or other state hospitals suffer from personality disorders? How many of those people have personality disorders that can be classified as presenting some danger to the public?

As Bruce Millan said in his letter to the Deputy First Minister, it is very important that we do not imagine, or put across to the general public, that people who suffer from mental illness are all going to pose some threat to the general public, because that is untrue. Unlike Dr Simpson, I am not a psychiatrist, but I imagine that the overwhelming majority of people with personality disorders do not present any threat to the general public at all. I do not see why they should be included within the scope of this bill.

From my reading in preparation for this debate, I understand that some people use the term "psychopath" similarly, if not synonymously, to the way in which they use the phrase "someone with an anti-social personality disorder". Is that correct? Is that an accurate definition in the eyes of psychiatrists, the law or both? I would welcome an explanation from the minister.

As members can see, I have proposed that, instead of the phrase "(including personality disorder)", we should have "(including dangerous anti-social personality disorder)". As Michael Matheson said, that would help to focus this emergency legislation on the small minority of people on whom it is meant to be focused.

Kay Ullrich: In proposing amendment 28, the Scottish National party is seeking to do two things: to clarify the definition of personality disorder, and to ensure that personality disorder is classified as

a mental disorder as opposed to a mental illness. As drafted, the bill makes no distinction between people who exhibit dangerous, aggressive, anti-social behaviour, and people who are neither dangerous nor anti-social, but who may suffer from a non-aggressive personality disorder. Surely we cannot allow personality disorder to become a blanket term that covers a range of conditions, most of which would not normally attract the description of mental illness.

Personality disorders are not uncommon. As Michael Matheson pointed out, it is fair to say that many members in the chamber today have a personality disorder of one kind or another. If one believes what has been written in some of the newspapers, our disorders range from having a somewhat suspect personality to being deemed to have had a complete personality bypass.

If the description is not amended it will include people who may have an obsession with washing their hands and cleanliness, or those who suffer from agoraphobia or claustrophobia.

We must realise the importance of ensuring that the definition does not become a catch-all, which could have serious implications that go far beyond closing the loophole that emerged as a result of the Ruddle case.

Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab): The comments that Kay Ullrich has just made seem to imply that the legislation would somehow affect people whose personality disorders did not make them a risk to the public.

As I said during a presentation that I made last week, the legislation is designed to close a loophole. The reference that Kay Ullrich made is unhelpful. Such references have been made consistently and they paint a false picture of what the legislation is intended to do. Will she comment on that?

Kay Ullrich: I am glad that Cathy Jamieson thinks that she knows better than the Mental Welfare Commission for Scotland.

Let us not lose sight of the fact that the vast majority of people who have a personality disorder live what are by popular definition normal lives. They do not commit crimes and they do not pose a threat to public safety. Let us be precise in the group that we target. We are targeting the Ruddles of this world—those with a personality disorder that makes them seriously anti-social, violent and a danger to society.

I therefore ask the committee to support amendment 28.

Gordon Jackson (Glasgow Govan) (Lab): I have some sympathy for the amendments—in particular amendment 28, which was spoken to by Mr Matheson. I observed last week and I repeat that I am not persuaded that the bill is the best long-term solution to the problem. I have reservations about including personality disorder in the category of mental illness.

I have heard the minister say that this is simply a clarification of the existing law. We may or may not agree about that, but it will certainly have legal consequences. David McLetchie spoke of the possibility of it being used in a plea of diminished responsibility. Undoubtedly that will happen. I would like to say two things to David about that. First, one cannot have it both ways. People cannot be defined as bad and wicked for the purposes of conviction, but be defined as ill for some other purpose. Secondly, it will still be for the courts to decide how a person is disposed of. If a jail sentence or life imprisonment is appropriate, that is what will happen. That is not a serious consequence.

Despite my reservations about the bill, I firmly believe that amendment 28 does not help. It is not a better way forward. It involves a detailed definition of a particular kind of personality disorder, which may or may not turn out to be helpful. It puts a particular kind of personality disorder in a class of its own in the overall category of mental disorder. Without boring members to death, I will say that that will also have problems of application and interpretation. Whichever way we approach the problem is not without difficulty.

The bottom line is that we urgently need to review the subject, which is what will happen when the Millan committee and the MacLean committee report. I hope that any changes that we make will be in the round, not in isolation, because anything less than that is not ideal. However, for the moment, we need to close the loophole in the interests of public safety. The simplest, most direct and most effective short-term way of doing that is to create a stated sub-category of personality disorder within the broad category of mental disorder and mental illness.

We should not be scaremongering. The legislation does not mean that anyone with a personality disorder will somehow be whipped off to Carstairs, any more than it means that any person with a degree of mental illness will be taken into custody. There will always be other safeguards and other important criteria to take into account. We must recognise that the legislation means that people—not those with personality disorders such as ourselves, but those who have killed other human beings or who are seriously violent and are a continuing danger because of their mental state—can be kept in a secure environment. That must be our priority.

For now, the bill is a simple, direct and effective

way of achieving that, and for that reason we should simply leave it alone.

Mr MacAskill: One of the drawbacks of being called towards the end of a debate is that everyone has said what you were going to say. However, the benefit is that you can work out the terms of the debate.

I listened to the minister, to Mr McLetchie and to Mr Jackson, and there appears to be much unanimity and consensus on many areas—and on two areas in particular. First, everyone accepts that we are focusing on a narrow area of law. Secondly, we are not undertaking a fundamental review. I will not canvass how we arrived at that position, but it is accepted that a fundamental review will have to be considered by the MacLean committee and the Millan committee. At some stage—either next year or the year after—the Parliament will doubtless have to revisit and reconsider the matter, because we are debating and discussing an area of law and psychiatry that has proved to be fundamental over the past 20 to 40 years.

We need to be clear about what we are trying to achieve in the interim. I have a great deal of sympathy with Dr Dyer, who was mentioned earlier. I appreciate his point of view, because the number of people we seek to address in the legislation is relatively few. Everyone accepts that there are a significant number of people in Carstairs, but the number who will be affected by the legislation can be counted, if not on the fingers on one hand, on not many more. The number of those who will be affected will also be reduced on the recommendations of the Millan committee and MacLean committee.

I can understand why Dr Dyer says that we should seek to amend section 3; I can appreciate his position. However, I think that the public would view the Parliament as being derelict in its duty if it failed to address the possibility that the people affected, who may be counted on the fingers of one hand, might be released without conditions or without any element of treatability being addressed.

On page 3 of his briefing, Dr Dyer says that we should not do that. He says that should Parliament wish to add the term "personality disorder" to the category of mental disorder, it should do so in addition to the terms "mental illness" and "mental handicap", as that is in keeping with current psychiatric thinking, which views the concept of personality disorder as different from the concept of mental illness. That point was canvassed by other MSPs, in particular Mr Jackson.

We must recognise that the issue will be dealt with by the MacLean committee, not by a fundamental review. The failure to address section 17 of the Mental Health (Scotland) Act 1984 is a glaring anomaly that has occurred because we are trying to deal with a narrowly focused area that affects a limited number of people over a short period. If we are to do that, we must try to achieve a balance.

17:00

As my colleague Mr Matheson commented, the difficulty is that the term "personality disorder" affects many people and is wide-ranging. Numerous people in Carstairs, the state hospital institution, might be affected by the proposal and, although they might not be the most sympathetic of those we choose to associate with, we have a duty to look after their interest and to take cognisance of their rights. That means that the definition of "personality disorder" must be tight. We are talking not about someone who is slightly eccentric, but about people who are a danger. That is what the public wish us to address and where I differ from Dr Dyer.

In considering personality disorder, we have a duty to ensure that the remit is as tight as possible, which means that we must specify those with whom we are dealing. I believe that amendment 28 deals with that. It shows that we are dealing not with personality disorder per se, but with

"personality disorder manifested principally by abnormally aggressive or seriously irresponsible conduct".

The public have charged us as parliamentarians with dealing with those people. We have to be quite strict and tight in our definition, so that in the general rush to introduce the emergency legislation, we do not catch the innocent among those whose position needs to be addressed seriously and which we have a duty to investigate.

Dr Simpson: I, too, have some sympathy with amendment 28 moved by Mr Matheson, but our problem is that we are trying to do something specific and limited. The members who support the SNP amendment and others are trying to move everything forward to 1999 from 1984 instead of considering the parts that we need to amend to achieve our focused objective.

I have a dilemma. When the Millan committee considers the issue, it will need to investigate this aspect in detail and with extreme care, but it is not necessary for us to amend the bill in the way suggested by the amendment. I am unhappy with the terms that are used in the amendment. It is unnecessary and goes beyond the scope of the change that is needed. As I understand it, section 17 still applies—I hope that the minister will confirm that, because I am not a lawyer—and that is the test that must be passed before one comes to the tests that we are now talking about. If that is

the case, the situation is already covered adequately and there is no need for the amendment.

Mr Hamilton: I will be brief—that is a compliment to those who have gone before me.

I share Mr McLetchie's concerns about the speed with which the legislation is being dealt with. I think that everyone has a great deal of sympathy with the fact that it has to be rushed through, but that excuse cannot be used to justify a slap-dash approach, which is evident in this wide definition.

One of the things that has been forgotten is that in the Parliament's infancy members decided that it would listen a lot more to expert evidence and that it would be a fully inclusive Parliament. If that is so, and we have agreement across the board—including that of the Law Society of Scotland, the Mental Welfare Commission for Scotland and, from its own publications, the Government—on the differentiation between personality disorder and mental illness, it seems odd that we are deliberately turning away from that. If we are turning away from that, I need more of an explanation of why it is an advantageous move. It is not good enough to say, "We want to focus on today and that is the only reason why we are turning away from it."

If the Government wants to focus, it needs to really focus and to get down to the nuts and bolts of the people it is trying to affect. That is why amendment 28 was lodged. It tries to specify the group of people who are targeted by the amendment and, in that way, tries to protect the rights of others.

I listened to what Mr Jackson said with some interest; he made some excellent points. I noted his reservations about the Government's position against the background of his long and distinguished legal career.

We are left with one of two positions. Either we can get it wrong and choose the wide and unfocused definition that is before us, in the interest of a catch-all, or we can opt for a more thoughtful and focused definition in the short term and look forward to the committees dealing with the issue in the longer term.

As Mr MacAskill said, this is an interim measure. That is the point, so let us make it absolutely focused. If that is the driving force behind the Government, I cannot see its logic in refusing to accept the amendment. We are trying to close loopholes—the Parliament and the Government owe it to the public to ensure that those loopholes are shut—and we must do it together and cleverly. The bill does not meet those criteria. What is the advantage in being deliberately out of date? I cannot see how that moves the process forward one iota. I should have thought that current legislation required current thinking.

Iain Gray: I will endeavour to be brief, as a number of the points that have been raised have been debated fully. For Mr McLetchie's benefit, I will try to respond without a safety metaphor. [*Laughter.*] I want to return to the purpose of what we are doing. A number of members—and they are right—have said that we must focus on our narrow purpose, which is to close the loophole. The question then was why we need to make this clarification—for that is what we believe it is—in the definition of mental disorder.

We must be open: this is a belt and braces measure. We believe that personality disorder is included in mental disorder, and has been for many years. We want to make that absolutely clear so that there is no possibility of opening up a slightly different loophole. We do not intend to widen the definition of personality disorder.

All these amendments seek to qualify the reference to personality disorder and, in different ways, to limit its scope. We have studied them very carefully and I am grateful—particularly to Mr Matheson, Mr McLetchie and Mr Canavan—for setting out so clearly the reasoning behind their amendments. We have listened to them very carefully. We have also listened to the concerns of the mental health community. I reiterate, however, that this is a topic on which psychiatrists hold very different views, as do the various bodies in the mental health community.

Several members have mentioned the Mental Welfare Commission for Scotland, the important views of which have been considered. Reference has also been made to the Scottish Association for Mental Health, which thinks that the clarification that we have made is useful, correct and does not broaden the definition of mental disorder at all.

Amendment 28 seeks to reduce the scope of the definition by including the words:

"including a persistent personality disorder manifested principally by abnormally aggressive or seriously irresponsible conduct".

It is our belief that the amendment is not necessary. The tests from section 17 will apply. The reaction of the chamber to Mrs Ullrich's suggestion that those who have obsessive handwashing syndrome would be brought into the ambit of the act showed how far behind the terms of the debate that kind of suggestion is.

Roseanna Cunningham *rose—*

Iain Gray: I have only two minutes, Ms Cunningham, and I am summing up, so I should move on.

Amendment 29 would add "anti-social" to the

definition, and amendment 30 suggests the addition of “dangerous anti-social”. Both fail on two counts the test that we have tried to set. First, personality disorder is the term that has been used for many years and with which we are familiar. By tinkering with it, both proposals run the risk of opening a new gap in the definition.

The more serious concern is that the amendments stray far into the territory of MacLean and Millan. Mr Canavan’s question about clarification of the term psychopath is a good indication of how complex that territory is. It is not a term favoured by psychiatrists, but many psychologists use it. To make changes such as “anti-social” or “dangerously anti-social” is to go down a road that we do not have time to explore properly today. For those reasons we cannot accept the amendments.

The Convener: Mr Wallace has already moved amendment 37. The question is, that amendment 37 be agreed to.

Amendment 37 agreed to.

The Convener: I ask Mr Wallace or Mr Gray to move amendment 38.

Mr Jim Wallace: I move amendment 38.

The Convener: The question is, that amendment 38 be agreed to.

Amendment 38 agreed to.

The Convener: Mr Matheson moved amendment 28 earlier. The question is, that amendment 28 be agreed to.

Members: No.

The Convener: There will be a division. Members have 30 seconds in which to cast their votes.

FOR

Aitken, Bill (Glasgow) (Con)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnston, Mr Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Mr Alex (Banff and Buchan) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Dewar, Donald (Glasgow Anniesland) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harper, Robin (Lothians) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)

Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, Mr John (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Ms Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Ian (Ayr) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Paterson, Mr Gil (Central Scotland) (SNP)

The Convener: The result of the division is as follows: For 46, Against 63, Abstentions 1.

Amendment 28 disagreed to.

The Convener: Does Mr McLetchie wish to move amendment 29?

David McLetchie: No.

The Convener: Does Mr Canavan wish to move amendment 30?

Dennis Canavan: I move amendment 30.

The Convener: The question is, that amendment 30 be agreed to.

Members: No.

Dennis Canavan: Yes.

The Convener: There will be a division. Members have 30 seconds in which to cast their votes.

FOR

Aitken, Bill (Glasgow) (Con)
Canavan, Dennis (Falkirk West)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Johnston, Mr Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Tosh, Mr Murray (South of Scotland) (Con)
Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Dewar, Donald (Glasgow Anniesland) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harper, Robin (Lothians) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, Mr John (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Ms Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)

Welsh, Ian (Ayr) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Mr Alex (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

The Convener: The result of the division is as follows: For 18, Against 65, Abstentions 29.

Amendment 30 disagreed to.

The Convener: Does Mr Canavan wish to move amendment 31?

Dennis Canavan: I move amendment 31.

The Convener: The question is, that amendment 31 be agreed to.

Members: No.

The Convener: There will be a division. Members wishing to vote should do so now.

FOR

Canavan, Dennis (Falkirk West)
Sheridan, Tommy (Glasgow) (SSP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Dewar, Donald (Glasgow Anniesland) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Harper, Robin (Lothians) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnston, Mr Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, Mr John (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Ms Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Ian (Ayr) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Young, John (West of Scotland) (Con)

ABSTENTIONS

Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Russell, Michael (South of Scotland) (SNP)
Salmond, Mr Alex (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

The Convener: The result of the division is as follows: For 2, Against 79, Abstentions 25.

Amendment 31 disagreed to.

The Convener: Mr Wallace will move amendment 39.

Mr Jim Wallace: I move amendment 39.

The Convener: The question is, that the amendment be agreed to.

Amendment 39 agreed to.

The Convener: The question is, that section 3, as amended, be agreed to.

Section 3, as amended, agreed to.

Section 4

SHORT TITLE AND COMMENCEMENT

17:15

The Convener: I call Mr David McLetchie to move amendment 32.

David McLetchie: There is no definition of medical treatment in the Mental Health (Scotland) Act 1984. As the issue of treatability lies at the heart of the decisions in the Reid and Ruddle cases, the purpose of this amendment is to explore why the Executive does not consider it desirable to incorporate such a definition in the bill when, as we now know from the response to the previous group of amendments, it did consider it necessary to amend the definition of mental disorder.

Dr Richard Simpson made a particularly authoritative contribution to this debate. I was fascinated to hear his description of the boundaries between the treatment and management of patients and the way in which in many respects—if I understood him correctly—the boundaries merge.

The purpose of this amendment is to seek to make it clear that medical treatment should be held to include

"the provision of support and counselling aimed at preventing any deterioration or relapse in the patient's mental disorder".

It is arguable that had the sheriff been required to consider the issue of treatability in those terms he might have arrived at a different decision in the Ruddle case. If so, it would be desirable for medical treatment to be considered in that wider context in future cases that come before the courts.

I move amendment 32.

Mr Jim Wallace: Mr McLetchie has explained why he wishes a definition of medical treatment to be included in the bill. I can assure him that medical treatment is already defined in section 125 of the Mental Health (Scotland) Act 1984. It

"includes nursing, and also includes care and training under medical supervision".

With regard to the Reid case, which may not have been referred to today but was referred to in our debates last week, the House of Lords gave medical treatment a wide definition. For example, Lord Hope held that

"Medication or other psychiatric treatment which is designed to alleviate or prevent a deterioration of the mental disorder plainly falls within the scope of the expression".

He then went on to say:

"But I think that its scope is wide enough to include other things which are done for either of those two purposes under medical supervision in the State Hospital. It is also wide enough to include treatment which alleviates or prevents a deterioration of the symptoms of the mental disorder, not the disorder itself which gives rise to them."

That definition encompasses the treatment referred to in the amendment and it is current law. The Millan committee will consider that issue during its review of the 1984 act, and it would be wrong to pre-empt its conclusions in this emergency bill. This amendment is unnecessary, and it could pre-empt some of the Millan committee's work. I hope that given my explanation, Mr McLetchie will feel able to withdraw his amendment.

The Convener: We shall proceed to a decision on amendment 32. Mr McLetchie, do you wish to press your amendment?

David McLetchie: I am more than happy to accept the minister's explanation, so I withdraw my amendment.

Amendment 32, by leave, withdrawn.

The Convener: We now move on to amendment 33, with which we shall debate amendments 34 to 36.

Dennis Canavan: Amendment 33 places a statutory obligation on the Scottish Executive to review this legislation after the Millan and MacLean committees have completed their work. The Millan committee is the one examining the Mental Health (Scotland) Act 1984 and the MacLean committee is examining the sentencing and treatment of serious violent and sexual offenders.

In its declarations, the Executive has said that it must take into account the workings of those committees, so this emergency legislation will almost certainly have to be repealed or amended months from now. I am proposing that we put into statute an obligation on the Scottish Executive to do what it has said it will do. Similarly, in amendment 36, I have said that after a six-month period, a statutory instrument should be placed before this Parliament for approval—or otherwise. That would give Parliament the opportunity to repeal this emergency legislation or decide if it should continue for another period.

During my many years at the Westminster Parliament, ministers have laid various emergency provisions before the House saying that it will be only for a period of six months or a year. Some of those so-called temporary, emergency provisions have lasted for more than 20 years. This is the first bill to come before our Scottish Parliament. There are many people—including Bruce Millan and me—who do not like the emergency nature of this legislation.

It would be a great pity and might bring our Parliament into disrepute if this bill, which is being passed in too much haste today, became permanent rather than temporary legislation. It is therefore important that amendment 36 is passed to give the Scottish Parliament the opportunity, in six months' time, to decide whether this legislation is still necessary or should be repealed or amended in the light of the work of Bruce Millan and Lord MacLean.

Amendment 35 was intended to ensure that all of the sections of the act came into force on the same day. I dealt with that point during the debate on retrospectivity, so members know my views on that matter. I do not like retrospective legislation, but I do not want to bore the Parliament by going over the same old ground. I ask the minister to look sympathetically at amendments 33 and 36.

I move amendment 33.

Phil Gallie: I will perhaps surprise Mr Canavan when I say that we agree with him on deleting "Section 2 of". In amendment 34, we go further by asking that the whole of subsections (2) and (3) be deleted, in the belief that by so doing this bill will come in as a oner. There is no need to space out the dates when parts of it come into effect. What we propose would be the quickest way to get it on the statute book. We do not agree with Mr Canavan's comments about his other amendments. We look to the minister to explain why he feels subsections (2) and (3) are necessary.

Roseanna Cunningham: I rise to speak to amendment 34, which I think is straightforward. It deals with the disjunction involved in bringing in parts of the act. I raised this issue last Thursday, and listened carefully to the reply of the Deputy Minister for Community Care. He referred to the disjunction being necessary to allow the Court of Session procedures to be put in place. While that might be an argument for delay, it is not an argument for disjunction. If this Parliament can move speedily—and, after all, we could have moved and dealt with this emergency legislation in one day—we should also demand that the Court of Session move immediately. That is why the amendment is being proposed. I hope that the minister accepts that it is not unreasonable to demand of the Court of Session what we demand of ourselves.

Mr Jim Wallace: I am grateful to those who have moved the amendments.

In moving amendment 33, Mr Canavan has quite rightly drawn to the attention of the committee the importance of the committees that are chaired by Bruce Millan and Lord MacLean. Lord MacLean's committee is dealing with the sentencing and treatment of serious violent and sexual offenders, including those with personality disorders, and the Millan committee is dealing with the Mental Health (Scotland) Act 1984. Quite clearly—judging by the amount of references to those committees during our debates on this subject—all members are aware of the importance and the relevance of the committees. They are moving ahead with speed but they are examining serious issues seriously. They are aware of the importance that the Executive attaches to their work, and the case that has resulted in this bill provides confirmation of the rightness of establishing the committees.

We anticipate that the MacLean committee will report in March 2000 and that the Millan committee, which will take into account MacLean's recommendations, should report in summer 2000. I assure Parliament that we will consider the reports with all possible speed and will give

members full opportunity to debate the reports and the Executive's response to them. In those circumstances, it would be premature to have the six-month time limit that Mr Canavan suggests. Almost certainly, the Millan committee will not have reported by then and the Parliament will not have had a chance to make a considered response to the report of the MacLean committee. We are all agreed that those reports will require careful consideration. It would be unwise to deal with the reports in a piecemeal or premature fashion.

With regard to amendment 36, I repeat that the bill is an interim measure until Parliament can enact legislation based on the Millan and MacLean reports. That should reassure Mr Canavan that this legislation will not continue for ever and a day, as he said sometimes happens at Westminster. The fact that the Parliament will have to address the issues in the context of the MacLean and Millan committees means that there will be an opportunity for the emergency legislation to be considered. Indeed, committees in this Parliament could take the initiative if they felt that the issue was being swept under the carpet, although I do not suggest for one moment that that would happen. I repeat my earlier assurance that it would be the Executive's intention that the Parliament should debate the reports shortly after they are published.

With regard to amendment 34, I can understand why concerns have been expressed. In recent days, there has been discussion with the Lord President of the Court of Session to ensure that new appeal procedures can be put in place quickly so that appeals to the sheriff that are conducted under the provisions of the bill can attract a new right of appeal to the Court of Session. The Lord President has confirmed that there is no bar to the appeal provisions coming into operation and—as a final gesture in committee—I am pleased to accept amendment 34.

The Convener: The question is, that amendment 33, in the name of Dennis Canavan, be agreed to.

Amendment 33 disagreed to.

The Convener: Are you moving amendment 34, Mr McLetchie?

David McLetchie: In view of the encouragement that I have been given, it would be churlish of me not to move amendment 34.

The Convener: The question is, that amendment 34 be agreed to.

Amendment 34 agreed to.

The Convener: Are you moving amendment 35, Mr Canavan?

Dennis Canavan: No.

The Convener: I am sorry. As amendment 34 has been agreed to, amendments 35 and 36 fall.

The question is, that section 4, as amended, be agreed to.

Section 4, as amended, agreed to.

The Convener: The question is, that the long title of the bill be agreed to.

Long title agreed to.

Meeting closed at 17:30.

Scottish Parliament

[THE PRESIDING OFFICER *opened the meeting at 17:30*]

Mental Health (Public Safety and Appeals) (Scotland) Bill: Stage 3

The Presiding Officer (Sir David Steel): We move immediately to a consideration of stage 3 of the bill in a meeting of the full Parliament. This debate will be on motion S1M-121, in the name of Mr Jim Wallace, which seeks the Parliament's agreement that the bill be passed, and will be followed after 30 minutes by a decision.

17:31

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I will not dwell on this, as we have had a proper and full discussion of these matters. This is the first time that Parliament has discussed a bill at stage 3. As we are moving toward passing the first bill in this Parliament, I acknowledge the help that the other parties, and Mr Canavan, have given, and the constructive way in which they have approached this emergency legislation, while at the same time highlighting important matters and allowing us to have proper debate and consideration of the legislation. I also put on record thanks to the officials and to the draftsmen, who have worked exceptionally hard in the aftermath of the Ruddle judgment to allow us to bring in legislation today.

Voting for the bill does not mean that everybody has to agree on how the Ruddle case was handled or how mental health legislation should be framed for the next century. We are rightly responding as a Parliament to an urgent call to protect the public with a short, considered and targeted bill. This is an important measure for Scotland. We can and should complete it today.

I move,

That the Parliament agrees that the Mental Health (Public Safety and Appeals) (Scotland) Bill be passed.

Phil Gallie (South of Scotland) (Con): On a point of order. I draw attention to the fact that the motion should now read that the bill "as amended" be passed, as amendments were accepted.

The Presiding Officer: That is technically correct.

Mr Wallace: I move,

That the Parliament agrees that the Mental Health (Public Safety and Appeals) (Scotland) Bill, as amended, be passed.

I am grateful to Mr Gallie.

17:33

Roseanna Cunningham (Perth) (SNP): This has been an arduous, although not very long, procedure. I hope that we will not have to do this too often.

It needs to be said again that it is a matter of regret that we found ourselves in this position. The tone of the letters on the legislation that we have received from the Mental Welfare Commission for Scotland, and from Bruce Millan, is also a matter for regret. It is obvious that they are grievously concerned about aspects of the legislation. Notwithstanding their concerns, we all feel that we must push ahead.

We are not here as lawyers or medical professionals. Although we may take the advice of such people, we are here to express our concerns about public safety—that has been paramount. The concern that we on the SNP seats—I was going to say benches—have had throughout these proceedings has focused principally on compliance with the European convention on human rights. We have been assured, both earlier and again today, that compliance has been achieved. I would have wished to receive greater specification, but I accept the assurances that have been given. I serve notice that we will hold the minister to all the assurances that have been given in all the debates, both last Thursday and this afternoon. Nevertheless, we accept those assurances in the spirit in which I sincerely hope they were given.

None of us can be happy about the procedure being forced through. In the interests of public safety, however, it has been necessary to legislate. We can only hope and pray that the assurances that have been made throughout the debates, last Thursday and today, will be adhered to, and that none of what we now pass into legislation will come back to haunt us.

17:35

Mrs Lyndsay McIntosh (Central Scotland) (Con): It falls to me to seek a moment of time for reflection—although I am not pre-empting tomorrow's debate—on the whole matter of the legislation that is before us today.

There can be no doubt that the Noel Ruddle affair has become the hot potato of the summer. No one wanted it to be so, but the Executive's action, or lack thereof, has forced us to the unfortunate point at which legislation of such a complex and sensitive nature has had to be rushed through as an emergency, with little time for thorough debate and measured consideration.

The Conservatives regard the bill as, at best, a temporary expediency, born out of necessity. It is, in other words, a sticking-plaster, and will have to

be reviewed once the conclusions of the MacLean and Millan committees are known. It is regrettable that we did not have their detailed input but, unlike our own, their deliberations cannot be rushed.

Some areas of the bill are perplexing, but the principal concern is one of public safety. It is with relief that we have heard the justice minister's assurances that public safety concerns were at the forefront of his consideration. With that in mind, we served notice that we were broadly in support of the legislation and reserved the right to move amendments when we had had more time to consider the matter.

There have been amendments from all sides of the chamber. Many of the amendments were probing and sought to clarify what was in the minds of the minister and his team of civil servants when they were framing the bill. If ever there was a time when the phrase, "You can't please all of the people all of the time" was appropriate, this was it.

There were outbursts of unanimity, agreement and, although I hate to use the "c" word, consensus, notably among David McLetchie, Gordon Jackson and Kenny MacAskill. I particularly welcomed Richard Simpson's contribution. The distinctions that he drew were illuminating and helpful.

The Conservatives offer cautious support to the bill. As we have indicated, we support the enactment of the emergency legislation. We reiterate our concerns, however, about the rush that has accompanied the bill, and hope that it will not have been prejudicial to its content.

17:38

Dennis Canavan (Falkirk West): I want to place on record the fact that

"it is a matter of great regret to us that a complex and difficult area is being dealt with by emergency legislation, in a timescale which has made it impossible for us to consider the terms of the Bill with the care that it requires."

Those are Bruce Millan's words, not mine, but I agree with them entirely. I am only sorry that the Scottish Executive has not shown more respect for Bruce Millan, who is chairing the important committee that is reviewing the Mental Health (Scotland) Act 1984.

I take some consolation, however, from the minister's having reiterated his commitment to ensuring that this legislation will be reviewed and that Parliament will have the opportunity to review the legislation in the light of the findings of the MacLean and Millan committees. I look forward to being able to give those important reports the consideration that they deserve.

What will eventually emerge from the Parliament will not be hastily passed legislation such as this, but something that will ensure public safety, as well as ensuring the rights of people in Scotland who suffer from mental illness, only a small minority of whom pose a danger to the public.

The Presiding Officer: The minister is not seeking to wind up, so I put the question, that motion S1M-121 be agreed to.

Motion agreed to.

The Presiding Officer: As there is no decision time, that brings us to the end of the meeting. On behalf of Patricia Ferguson and myself, I would like to thank members warmly for their co-operation. We have had a most workmanlike session and the Scottish Parliament has just passed its first bill.

Meeting closed at 17:40.

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