

MEETING OF THE PARLIAMENT

Thursday 9 December 1999

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Scottish Parliament

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[THE PRESIDING OFFICER *opened the meeting at 09:30*]

Alex Fergusson (South of Scotland) (Con): On a point of order.

The Presiding Officer (Sir David Steel): So early in the morning.

Alex Fergusson: In view of the continuing French ban on British and Scottish beef, will the Presiding Officer ask the Minister for Rural Affairs to give an emergency statement in the chamber this afternoon to outline what further action he proposes to take?

The Presiding Officer: I have had no requests for an emergency statement, but we have open questions this afternoon, and I would be surprised if the subject were not raised then.

Mr Kenny MacAskill (Lothians) (SNP): On a point of order.

The Presiding Officer: Is it the same one?

Mr MacAskill: No, it is a different one. My point of order relates to draft ministerial statements. There is a convention that ministerial statements are provided timeously to Opposition spokesmen. I was advised yesterday that Sarah Boyack's statement was not available, but that it would be delivered at 8.30 this morning. I duly arrived at 8.30 and awaited a copy of the statement, which was eventually delivered at 10 to nine. I understand that a copy was delivered to my friend Robin Harper at the same time.

I appreciate that we had 40 minutes before the minister made her statement but, as the outside of the statement says, it contains approximately 1,600 words. If ministerial statements and the questions that follow are not to be simply a game of charades in which spokesmen and others have to pre-guess what the minister will say, there should be a ruling as to how much time should be provided prior to statements being made.

The Presiding Officer: That is not a point of order. How ministerial statements are distributed is not a matter for the chair; it is a matter of agreement between the parties. You will have to pursue the issue outside the chamber.

We have two ministerial statements this morning and an important debate, so I am anxious that we get started.

National Waste Strategy

The Presiding Officer (Sir David Steel): The first item of business is a statement by Sarah Boyack on a national waste strategy. There will be 20 minutes of questions after the statement, so the statement should be heard without interruption.

09:32

The Minister for Transport and the Environment (Sarah Boyack): I am glad that members have made it to the chamber this morning. I know that waste is not as high up the agenda as housing, education, health and transport, but we must face up to its links with all those issues. Over the years to come, we must address the issue effectively, as a political priority. This statement is intended to start off that process.

In our everyday lives, all of us produce waste—a staggering amount of it. In Scotland alone, we produce around 3 million tonnes of household waste a year. That is more than half a tonne for every person. Put another way, every one of us puts something like 10 times our weight in our dustbins every year. Shops and offices produce another 2 million tonnes, and industries another 7 million tonnes per year. The cost of dealing with waste is huge—much greater than it needs to be. If we can cut down the amount of waste we create, we can save money and, at the same time—which is hugely important—reduce the harm we do to the environment.

Waste means that we are using natural resources that we could have saved. Everything we throw away represents a waste of resources. Waste going to landfill also means risks for the environment. As waste disintegrates, it produces polluted water, which can pollute watercourses if it is not controlled. Waste also produces gases, mainly methane, which contributes to air pollution and climate change. In addition, the transportation of waste when it is collected and disposed of uses significant amounts of energy and produces carbon dioxide.

We cannot go on wasting resources as we do now. Our programme for government commits us to working for the efficient use of waste and resources. A radical approach to waste is a central component of our emerging strategy for sustainable development. A raft of legislation that has already been agreed to, or is in process in Europe, will require us to change. I cannot pretend that Scotland is leading the field on this matter. We are a long way behind our counterparts in Europe.

We need a systematic approach to tackle the problem. The Scottish Environment Protection

Agency has produced a national waste strategy for Scotland, which gives us that. I hope that members will have the time to read it and consider its local implications.

When the Executive published "Making it work together" in September, we promised to adopt a national waste strategy by the end of the year. I am pleased that my statement today effectively means that we are adopting SEPA's national strategy for waste. It has given us a framework for action and a document against which we can measure our progress. It sets out a number of key principles, which we must follow.

We should minimise our waste. If we cannot minimise it, we should re-use things rather than throw them away. If we are forced to dispose of things, we should seek to recover value from them through recycling, composting or energy recovery. Disposal of waste to landfill should be an option only if none of the other options is possible.

At the heart of the strategy is the proposal that area waste plans should be prepared by groups of local authorities working with enterprise agencies and consulting waste producers and the waste industry. Eleven areas are proposed, most of which cover several local authority areas. The groups will plan how waste should be dealt with in their areas, and SEPA will facilitate that work. Grouping local authorities should help to create economies of scale and enable the planning of joint waste facilities when that is the best way to proceed.

Participation in the waste area strategy will be voluntary, but I hope that all local authorities will participate in a positive spirit. They may want to group themselves in combinations different from those suggested by SEPA. That is their choice, but I want early progress. I am inviting local authorities to complete their first area waste plans by the end of next year. If satisfactory progress is not made by then, we may have to consider imposing statutory requirements for the plans to be produced. Planning authorities will also be expected to adopt structure and local plans that are in line with the agreed waste plans.

This strategy will set out targets that we are under a legal obligation to meet. They include targets for recycling packaging and restrictions on landfill. The strategy also suggests several voluntary targets, for example reduction of industrial and municipal waste. Further targets for recycling of household waste and construction and demolition waste will be developed following research.

In Scotland, we currently rely almost exclusively on landfill sites to dispose of waste. Many of our sites are old-fashioned and in need of modernisation. We are currently consulting about

how we should implement the EC landfill directive, which sets out targets for the amount of biodegradable municipal waste sent to landfill. The first of those targets is that by 2006 we must reduce the amount of biodegradable municipal waste going to landfill to three quarters of what went to landfill in 1995.

We all know that none of the ways of disposing of waste is particularly popular. My postbag and, I suspect, those of other members is testament to that. People who live near landfill sites often complain about the problems that they can cause, although they should be minimised through proper management and effective regulation. Other people are concerned about incinerators.

Our strategy makes it clear that, on present trends, several major treatment facilities or a larger number of smaller facilities will need to be developed in Scotland. The strategy does not specify what sort of facilities should be provided—that will be a decision for local authorities.

We must be clear that if the targets that we have to meet under the landfill directive cannot be achieved through waste minimisation, the development of composting, recycling and recovery facilities, we will not have any option but to pursue the development of some large incineration plants. That is what we face. If we produce waste, we must deal with it. The more we can minimise waste, or re-use and recycle it, the less we will have to deal with it through landfill or incineration.

We must move away from our existing practices. A move away from our reliance on landfill will cost money. The Scottish Executive has had discussions with the Convention of Scottish Local Authorities and agreed that, in the first instance, additional local authority expenditure will be required from next year for preparatory and planning work on implementing the strategy. I am pleased to announce that £2.5 million per annum will be available for this, starting next April. I have also announced plans for extra funding for SEPA in future years, to allow it to increase its work on implementation of the national waste strategy.

We are working in partnership with SEPA, COSLA and others to identify the full implications of the strategy, in which SEPA proposes a number of changes that might require primary legislation. I will consider those carefully before deciding whether to recommend them to my colleagues and Parliament.

We are looking for change from local authorities and commercial and industrial waste producers, but we need to change our attitudes as private individuals. We are probably all guilty of throwing things away without a thought: a complaint that I frequently hear is that the dustbins that local

authorities provide are not big enough.

We have to change our attitude. Education has a role to play in letting our children grow up with better habits than we have. However, we have to change everyone's awareness of the waste that they produce. We cannot wait until the next generation. Our landfill directive targets must be reached.

One of the commonest complaints in my postbag is about the lack of recycling facilities. There is not enough recycling in Scotland. Many local authorities have tried to get schemes off the ground but given up when they have been unable to find markets for the materials they have collected. We are trying to do something about that.

In the summer, I was delighted to launch a new initiative, the recycling market development project, which is aimed at demonstrating the value of materials produced from recycled waste in Scotland.

We cannot make much progress on recycling unless we have the facilities to separate out waste. Last month, I was pleased to be at the opening of Glasgow's new materials recycling facility at Polmadie, which is the first facility in Scotland that deals with separated household waste so that it can be recycled. It is part of Glasgow City Council's integrated recycling programme. I hope that the scheme will be the first of many in Scotland.

It is clear that SEPA's national waste strategy is only the framework for major change that requires action from a large number of actors. We are only at the beginning of delivering that national waste strategy and we need to do a great deal of work before we can reach our targets.

The Executive is committed to playing its part, but change can be achieved only through partnership. I want to work with SEPA, local authorities, the waste management industry, waste producers, members of the public and the voluntary sector to tackle waste in a radical way that will not leave a harmful legacy for the future.

The Presiding Officer: As many members want to speak, I will give priority to those who were present for the whole of the statement.

Mr Kenny MacAskill (Lothians) (SNP): Very wise, Presiding Officer.

The only mention of funding in the statement was of the £2.5 million that local authorities will be given to help them to prepare and plan. Extra funding for SEPA was mentioned, although it is noted that that organisation has had a 6 per cent cut in funding.

It might be better for the £40 million a year that

goes to the Exchequer from landfill tax—80 per cent of which is ring-fenced for a reduction in employers' national insurance contributions—to be used to expand recycling and an alternative waste strategy in Scotland. Would it not be better if the minister kept her £2.5 million and allowed local authorities and the operators to use the £40 million that they currently send south to promote recycling and a new strategy in Scotland?

Sarah Boyack: Members will not be surprised to hear that I do not agree with Mr MacAskill. He has raised the fact that the landfill tax is a reserved matter. While I am happy for him to do so, I think that the landfill tax is hugely important. One of the key points about our waste strategy is that people who produce waste must account for it and include the real costs of it in their operations. Landfill tax lets us do that. By allowing employers to reduce their national insurance contributions, we give them a practical benefit for focusing on reducing their waste.

Extra money is going to SEPA and to local authorities. In addition to the resources that SEPA will have, it will increase its fees for monitoring and dealing with waste management applications. That will allow costs to be met and it is important. Local authorities need some extra resources to let them get on with their task, which is huge. I have no doubt that, in future years, we will examine further how local authorities can deal with their task.

We need the economic instrument represented by the landfill tax to ensure that we can deliver practical reductions in waste creation. To give the example of construction and aggregates, a landfill tax pushes developers towards recycling materials. The benefits of that are a cut in the pressure on new aggregates quarrying and the re-use of materials in building. We need a critical mass so that the elements reinforce one another: economic instruments; the use of our national agency, SEPA; the positive actions that local authorities can bring to bear. That is the right approach.

Mr Murray Tosh (South of Scotland) (Con): I welcome the thrust of the minister's statement and wish to ask her about the substantial differences between paragraph 3.32 in the draft and the parallel section in the final report, on lack of investment.

I welcome the £2.5 million for preparatory work, but where does the minister suggest councils should find the resources for new infrastructure to allow a switch from mixed waste collection to separate collections systems, which are not specifically mentioned in the new text? How will the Executive enable councils to afford the higher waste charges that the draft made clear they will face if they do not move towards separate collection systems and meet their recycling

targets?

Will the Executive confirm that today's statement drops SEPA's original proposal for ring-fencing local authority waste budgets? Has the minister diluted the draft SEPA strategy to the point of stultifying it, or is she simply passing enormous burdens to councils without resourcing them to carry those burdens?

Sarah Boyack: Local area waste strategies are the key place to decide the most cost-effective way in which to manage waste disposal and recycling.

One of the key points that I made, which is accepted by everybody in the waste industry, is that there are insufficient incentives for recycling. Many local authorities have gone down the recycling route only to find that they cannot sell the products of recycling. That is the point of the REMADE project; we have to change the economics of the collection and use of waste. The idea of area waste plans is that they will allow local authorities to get together. The £2.5 million that I am allocating from April next year is intended to let them get on with that process.

I do not want anyone to be under any illusion. The production of the waste strategy today is not an instant solution to the problem of waste. It will be a long-term process; this is the start of our tackling the legacy of the waste we produce. In terms of local authority expenditure in future, the work that is done in local authority waste strategies will inform our future resourcing to local authorities. That has to be looked at now.

I refute the suggestion that the draft strategy has been diluted. Implementing SEPA's strategy will require radical change on the part of local authorities, developers and society as a whole. We have not really got to grips with the fact that the waste that we produce is an inheritance for the future. The people who live around existing landfill sites know the issues that exist; the question is what we do with our future landfill targets.

Tavish Scott (Shetland) (LD): From the Liberal Democrat benches, I welcome the strategy that has been announced this morning, particularly the move towards Liberal Democrat targets for recycling and waste minimisation. Does the minister accept that Scotland's record on recycling is pretty woeful: 5.48 per cent in Scotland compared with 34 per cent in Norway and 58 per cent in Switzerland? How will the minister ensure that the plans that emerge from the strategy will be implemented and benchmarked against the performance of other comparable European nations?

Will the minister consider the strategy when she assesses the varying performance of local government throughout Scotland, the need to

develop integrated waste management strategies and the setting of a timetable for the finalisation of those strategies?

Sarah Boyack: I agree with Mr Scott about targets. We are looking for further advice from SEPA about what would be realistic. We could have an aspirational target of 25 per cent, as has been mentioned in the past, but we are nowhere near meeting that. It comes back to the points made by Mr Tosh about local authorities being able to get to grips with recycling. This strategy is hugely ambitious and we are way behind our European counterparts. The challenge is to learn from what they and other countries have been able to do. The REMADE project, which involves recycling facilities, is informed by the experience of Seattle, where recycled waste provides economic benefit, as other products can be made from it.

There are many key issues that need to be addressed in implementing this strategy. A more integrated approach, in which local authorities work with SEPA and waste producers, will allow us to deal with, dispose of and recycle waste intelligently—in an environmentally friendly and cost-effective way. We are not there yet, but I hope that the national waste strategy will begin that process. This is an issue that we must all address urgently.

Robin Harper (Lothians) (Green): I broadly welcome the thrust of the strategy—I do not disagree with any of it—particularly the acknowledgement of waste minimisation and the value of recyclable materials, but hard-pressed local authorities may take the cheapest option and still end up setting fire to most of the waste.

Does the minister agree that we need greater input from Government, in terms of funding, if local authorities are to be able to make the best choice—for waste minimisation and recycling as opposed to incineration?

Sarah Boyack: I thank Mr Harper for his overall support. Creating incentives for the move towards waste minimisation is critical and must be addressed. It is possible to re-use waste through incineration and waste energy schemes, but such schemes are expensive. That is why we want to bring local authorities together to work out deliverable strategies.

Investment in new plant is hugely expensive. Before this morning's meeting, I was talking to my colleague, Mr Scott, about the Shetland issue. The capital expenditure required is considerable, although the money comes back if waste is re-used as an economic resource. That is why we need collective strategies between local authorities. It is the Executive's job to encourage that and to give a realistic time scale—the end of

next year—to get the discussions going. Local authorities will have to review their positions.

Des McNulty (Clydebank and Milngavie) (Lab): I welcome the minister's statement and her refreshing honesty. Everyone recognises that there is a lot to do to implement the national waste strategy.

What efforts has Ms Boyack made to ensure that companies—particularly in the construction and demolition sector—dispose of their waste properly, rather than dump it or transfer it for collection by local authorities? Is she satisfied with the environmental projects that commercial operators sponsor with landfill tax rebates, given that few of them are geared towards recycling and that the commercial interests of many such companies lie in maintaining waste volumes for disposal rather than reducing them?

Sarah Boyack: That is where several different Government mechanisms must come into play. The landfill tax provides incentives for local authorities and waste producers in the commercial sector to reduce the amount of waste. If they do so, it also provides a benefit in the form of reduced national insurance contributions.

There is a particular issue about construction and demolition, as I said earlier. Through our planning guidelines, we are encouraging the re-use of existing buildings—something with which most of us agree—and the recycling of construction materials. Landfill tax provides an economic imperative, planning guidelines give encouragement and the monitoring of landfill sites is an important part of the strategy.

People must have permission to put material into landfill sites and it must be monitored by SEPA. We have to ensure that monitoring is rigorous, open and transparent so that people who live near landfill sites are confident about the process. SEPA is currently considering that. It is a question of using all the different mechanisms at our disposal. At the end of the day, it is about common sense, particularly in relation to construction and demolition materials. We need economic instruments, planning persuasion and appropriate facilities to deal with the issue.

Linda Fabiani (Central Scotland) (SNP): I agree with the minister that waste going into landfill sites means risks for the environment. Will the minister therefore consider using some of the £40 million that is taken from Scotland and sent to London to compensate local authorities that pull out of any landfill operation and move towards recycling? The Cathkin Brae landfill site in the East Kilbride constituency was approved by Mr Dewar earlier this year and is only at site preparation stage.

Sarah Boyack: The problem of waste creation

does not stop at the border. The whole point of the landfill tax is that it provides an incentive across the United Kingdom. If a firm operates in Scotland and in England, should it pay a different tax for its use of different landfill sites? There is a strong argument for us to take responsibility at a UK level.

The national waste strategy that SEPA has produced for Scotland, and that I am commending to Parliament, states that there are particular things that the Scottish Parliament can do to encourage local authorities and to allow SEPA to address the issue properly. Pretending that this issue stops at the border, or that there should be a different landfill tax north and south of the border, is ridiculous.

Alex Fergusson (South of Scotland) (Con): Like everyone else, I broadly welcome the strategy that has been outlined in today's statement. I draw the minister's attention to the paragraph that highlights the proximity principle for waste disposal. It rules out lengthy transport of waste across the country, and states that wastes should be managed as close as possible to their point of origin. Will the minister look into the planning application that Dumfries and Galloway Council has received in relation to a waste-burning plant at Newton Stewart, with a view to calling it in and ensuring that any decision on it is taken in the light of her statement today?

Sarah Boyack: I will note the comments that have been made about that planning application, but—as Mr Fergusson will understand—I will not comment on it directly as it will have to be considered by Scottish ministers.

Mr Fergusson has raised an important question about the proximity principle. How does that principle apply in rural areas? If in urban areas waste has to be disposed of because we have not managed to recycle it or to minimise the amount being created, it may be possible to carry it over relatively short distances. In rural areas, however, there is a particular problem of economies of scale. There are no easy solutions to that: that is why we need to emphasise the importance of waste minimisation and recycling and why I want local authorities to get together to find the most cost-effective way of tackling waste management. In rural areas, the proximity principle is more difficult to apply and must be weighed up against landscape and environmental issues.

Mr Fergusson can rest assured that, if there was a simple fix, I would be recommending it. This is an issue that every local authority will have to wrestle with, unless we begin to tackle waste minimisation, re-use and recycling.

Mr Andy Kerr (East Kilbride) (Lab): I thank the minister for her statement. I would like to ask a

question on the more local issues of dealing with landfill sites with perceived problems. Landfill technology has moved on over a number of years and it is arguable that modern sites provide a more reliable environmental service to the community. However, older sites present a problem. We must consider how retrospective we can be in taking action on existing sites with waste management problems. I would like to hear the minister's views on that.

I have personal experience of the economics of recycling, from my time at Glasgow City Council. I put a plan to the council to introduce a recycling project for waste newspaper. The plan was accepted, but by the time I got the leaflets back from the printers, a selling price of £100 per tonne had changed to minus £15—a charge for the waste to be taken away. How do we deal with such variations in the market for recycled products?

Sarah Boyack: SEPA acknowledges the problem with landfill sites that have been in existence for some time. I have received parliamentary questions and letters from several members on that issue. In addition to recovering an appropriate amount of money from waste operators to enable it to monitor effectively, SEPA is considering prioritising the monitoring of individual sites. Some sites—the older ones—clearly require more monitoring. Our standards are now higher than they were when those sites were created. Monitoring, its regularity and its prioritisation are important issues. SEPA has to make those judgments, taking into account local concerns. There must be dialogue and communication with local residents; SEPA is keen to improve that.

As for the economics of recycling, I was hugely impressed this summer by the work of Scottish Conservation Projects in the east of Scotland, which it is managing to carry out because the deal was negotiated several years ago. The challenge is that the price of recycled materials goes up and down. By getting local authorities to work together, and with the fruits of the REMADE project, we hope to be able to stabilise the market and provide a much stronger economic incentive for recycling materials.

Dorothy-Grace Elder (Glasgow) (SNP): I am sure that the minister accepts that, although the landfill tax is a reserved matter, the suffering of Scots living near some dumps is not. Many people are living in absolute misery, unable to enjoy their homes freely.

Although the minister has referred to the 3 million tonnes of household waste that is produced annually in Scotland, is she aware that, in Glasgow, 500,000 tonnes, including industrial waste containing asbestos, cyanide and so on,

goes into just one dump—Paterson's tip at Mount Vernon and Baillieston? That grotesque intake has been criticised by Glasgow's public health department, which also criticised smells that it found to be "literally breathtaking".

Is the minister also aware that local people have given written testimony about being unable to sit in their gardens or to hang out their washing on days when those appalling odours are at their worst? Furthermore, is she aware that Paterson's tip is the only high-level toxic dump that is licensed to take up to 27 poisons and still operating inside an urban boundary anywhere in Scotland after 40 years? Finally, is she aware that local people have no confidence in SEPA, which they find to be a very secretive quango?

The Presiding Officer: Order. Questions and answers have been far too long this morning. I call Sarah Boyack.

Sarah Boyack: I take your point, Presiding Officer, and I will be brief. The question raises two issues. The first concerns existing landfill sites. I acknowledge what Dorothy-Grace Elder says about local people's concerns about the sites that are being operated. SEPA should consult people and ensure that waste operators are carrying out operations to the right standards. Any such exercise should be done transparently.

The second issue touches on the future of landfill sites. We already have landfill sites; the question is what we can do now to prevent future landfill problems. Although that is partly an issue for SEPA, it raises the wider issue of the waste that society produces, which is a problem with no easy solutions.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): My question concerns the rail movement of waste. The minister will remember last week's spurious story about the closure of the line north of Inverness. Will she make representations to all agencies that waste should be moved by rail, as that will be an important part of any strategic approach?

Sarah Boyack: We can investigate that possibility. We need to consider whether to have landfill or waste disposal sites dispersed around the country, which makes it more difficult to get economies of scale to use rail, or whether to concentrate facilities. There is no short answer to that pertinent question.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I welcome the minister's statement and merely seek clarification on targets. Is the initial 75 per cent reduction in landfill a hard-and-fast European target that must be delivered UK-wide? Where does Scotland stand in relation to that figure, which is for 1995 to 2006? Finally, how many recycling targets are there and are they

simply a matter for this Parliament rather than Europe?

Sarah Boyack: Mr Chisholm is absolutely right. The target that he mentioned is a European requirement that will have to be met under the landfill directive. However, that is not such a challenging figure; the 50 per cent reduction that will be brought in after 2006 will be very challenging. That long-term issue concentrates my mind and the challenge now is to put in place a robust strategy to meet those long-term objectives.

Although I said that we did not have current targets, we have had aspirational targets and many people are aware that local authorities have fallen behind in dealing with recycling targets. We need to change the economics of this issue and I look to SEPA to give us realistic targets to concentrate everyone's mind. It is hoped that the combination of local authorities working together in groups and SEPA's work will inform the discussion. More work has to be done to identify not only realistic targets, but targets that will persuade us to take difficult decisions.

Mr George Reid (Mid Scotland and Fife) (SNP): The end of dumping human waste at sea has led to an increase in the spreading of such waste on land. Is the minister aware of the problems that that causes for villages such as Blairingone, which suffer not only the smell, but—as SEPA has said—the risk of pathogens being present? The regulations are widely unenforceable and, if spreading reaches maximum levels, waste can be spread up to 6 in high.

The minister will know that Richard Simpson has had a question down on the subject for some time, which she has said she will answer as soon as possible. In view of her statement that she wants early progress, can the minister give some indication this morning that she will introduce measures to ensure that spreading is safe and regulated by controls that are enforceable?

Sarah Boyack: I am grateful to the member for that question. The issue is how we tackle untreated sewage waste, which we are committed to phasing out by the end of 2001. The agriculture industry is examining the issue very carefully.

Another issue is the need to treat sewage waste. The member is right: waste was previously dumped elsewhere without further thought. Higher environmental standards are having an impact in ways that were not initially intended. We will need to consider the application of sewage on agricultural land.

Research is being done into the matter and I look forward to the results. Sewage sludge can also be burned, which is what happens in some countries. There are a variety of choices and the problems need to be addressed.

The Presiding Officer: Despite the fact that I have allowed questions to overrun, five members were not called. I apologise to them.

Housing

10:07

The Minister for Communities (Ms Wendy Alexander): Three months ago, I confirmed the Executive's intention to publish a draft housing bill next year. I am pleased now to be able to outline some of the key elements of the bill.

Today's statement sets out the future foundations for Scotland's social housing. The statement and the discussion papers that we published earlier this week will provide the basis for a full parliamentary debate early in the new year.

Our housing proposals provide the foundations for a Scotland where everyone matters and where every community offers a range of warm, secure housing options—public and private, rented and owned, starter and sheltered homes. We have opted for a fundamental rethink of Scottish housing, because it is only by a new approach that we can end the situation whereby some Scottish children are born, their parents live and their grandparents die in damp houses. In earlier generations, it was Labour politicians in urban Scotland and Liberal politicians in rural Scotland who argued for a new and better way. That is how it should be in our time also.

In a week in which we have seen shock health statistics about Glasgow, we should remember that it was the first ever Labour health minister, John Wheatley, who set out the legislative framework that led to the building of more than 100,000 new homes. We should be no less bold in finding new solutions for our time.

The choices that we have are not only public versus private housing and security for tenants versus insecurity. The real choices are new investment versus no investment, tenant control versus municipal control and community renewal versus stagnation.

This statement lays the groundwork for new solutions, which start with tenants. Scotland should no longer tolerate second-class social tenancies, rights or landlords. Earlier this week, we laid out in a discussion document our plans for a single social tenancy. We are offering Scottish tenants the best tenants' rights package ever. It offers new rights to succession, particularly for carers, new rights of consultation for tenants about decisions that affect their homes and discussion of new rights to exchange. By creating one common tenancy, we remove at a stroke the anxieties of all those who fear that community ownership might affect their tenancy rights. The right to buy will continue to be part of that new single social

tenancy, but we know that changes are needed, and we shall make them.

The starting point is to understand and accept what most Scots want. In 1965, less than 20 per cent of Scottish households were looking to buy their own home. Now, well over 80 per cent of households aspire to own their own home. We will reform the right to buy to make it right for the next century. We will introduce a factoring scheme for former right-to-buy tenants, we will protect more special needs housing from sale and we will cap discounts at £30,000.

The discussion paper sets out our proposals in detail, but I would like to dwell on one important point that has come out of our work. Some commentators have expressed concern at the loss of socially rented houses in some rural areas through the right to buy. It is clear, however, that the underlying problem is the differences in availability of socially rented housing across Scotland: just 14 per cent of houses are available for social rent in Orkney, whereas 50 per cent are available in Glasgow.

The shortage of socially rented housing in some areas, including rural areas, reflects the historic lack of investment in those areas, rather than the effect of the right to buy itself. I have asked Scottish Homes to review its expenditure in rural areas and to make proposals to help redress the imbalance. In the short term, I have also asked Scottish Homes to increase the resources available for investment in rural areas when it draws up its programme for next year. Over the longer term, a reordering of development priorities is required.

Let me make clear to the chamber the opportunity that lies before us. What would it take to ensure that one in four homes in Orkney, the Western Isles, Aberdeenshire, Dumfries and Galloway, Perth and Kinross, Argyll and Bute, Moray, Highland and Scottish Borders was for rent? The answer is that it would take only 14,000 new rented homes. We have pledged to build 18,000 new homes over the next three years. Of course, not all those homes will be in rural areas—there are other priorities in urban areas, such as community care and homelessness—but the aspiration of a vibrant socially rented sector in all parts of Scotland is achievable.

All social tenants deserve consistently high standards from housing management, so we will legislate for a single system of statutory regulation for all social landlords. The landlord functions of local authorities will also be subject to the same performance standards as apply to registered housing associations, and they will be regulated by the same body.

We are committed to a more strategic role for

local authorities. We will put local authorities in the lead in developing single housing plans for their areas. Local authorities should also have a greater say in the allocation of resources to other housing providers in their areas. Once the existing housing stock has been transferred—if that is what tenants choose—and there is no question of an in-built bias towards expenditure on their own stock, we believe that local authorities should be responsible for determining the priorities for all funding of housing in their areas.

Local authorities will therefore have a much more direct involvement than at present in decisions on the £200 million of development funding resources currently made available through Scottish Homes. Those resources will be part of a transparent and identified budget for housing purposes, which will be designed to achieve the housing policy objectives of the Executive and of local authorities. Obviously, there will have to be a process of adjustment. We plan a range of checks and balances, and Scottish Homes has a vital monitoring role in that.

That brings me to the future of Scottish Homes. Over the past 10 years, Scottish Homes has achieved a great deal, developing the housing association movement in Scotland, attracting around £1.3 billion of new private investment into social housing and empowering its own tenants by successfully transferring most of its stock to new social landlords. I pay tribute to the commitment, skills and expertise of its board members and staff over the past decade. They have nurtured community ownership, and their leadership has demonstrated that non-profit-making community-controlled local landlords across Scotland can both build homes for rent and access new investment.

Scottish Homes has done pioneering work by demonstrating that housing is about more than bricks and mortar. It has supported the development of roles for local housing associations, which place them at the heart of their communities, whether through credit unions and services to older tenants or by providing workspaces.

The new agenda for Scottish housing means a new organisational structure for Scottish Homes. We have concluded that Scottish Homes should cease to be a quango and should be converted into an executive agency of the Scottish Executive. In future, the chief executive will have a direct reporting line to ministers and, through that, accountability to this Parliament. The work of Scottish Homes will be steered by a management board, including two or three non-executive directors. The board will be led by the chief executive and will operate within a framework set by ministers.

In that new challenging role, Scottish Homes will assume responsibility for the regulation and monitoring of all registered social landlords—whose number will be much swollen by community ownership—and also of the landlord functions of local authorities.

There is a clear opportunity to broaden further the community regeneration role of Scottish Homes as a housing and communities agency, liaising with social inclusion partnerships and other local regeneration initiatives. The real expertise in using housing as an enabler of community regeneration lies within the existing regional structure of Scottish Homes.

Scottish Homes will continue to be responsible for development funding until such time as local authorities cease to be major landlords in their own right and take over that budget.

We want to implement those changes in a way that builds on the valuable work that has been done by Scottish Homes and which enables its staff to prosper in the new structure. I anticipate that the vast majority of Scottish Homes staff who transfer to the Scottish Executive will work in the new executive agency. However, some staff who undertake policy and related work in the headquarters of Scottish Homes could move directly into other parts of the Scottish Executive, to help to strengthen its policy capabilities.

I want to make it clear that the decision has been taken for good housing and social inclusion policy reasons. It is not part of a broadside at quangos in general and, in practice, the vast majority of the staff of Scottish Homes will continue to do much the same type of work as at present, but in a different governance framework. I am today writing personally to all Scottish Homes staff to reassure them about that.

We have had a number of debates in the chamber on other areas, notably on the scourge of homelessness and the policy and new resources required to tackle it. I have asked the homelessness task force to recommend its legislative priorities early in the new year and I will make a further announcement on those elements of the proposed housing bill in due course.

Our ambition is to create strong and supportive communities across Scotland. We will deliver a radical housing bill, which will lay the firm foundations for creating a Scotland where everyone matters, whether they are tenants, owner-occupiers or people sleeping rough. Our vision for Scottish housing is one that any modern nation could be proud of.

I commend the statement to members.

Fiona Hyslop (Lothians) (SNP): I thank the minister for her statement and for the prospect of a

full debate in the new year.

The abolition of the board of Scottish Homes was in the Scottish National party's manifesto—interestingly, it was not in the Labour party's manifesto. Yet again, the minister plagiarises SNP policy. So much for the bonfire of the quangos—only Scottish Homes is affected. After two and a half years, I am pleased to note that the Minister for Communities has held to Labour's pre-election commitments, but does she agree that it is a pity that her colleagues have forgotten those commitments? It is a bit like having Guy Fawkes night in December.

The minister said that abolishing Scottish Homes as a quango

"is not . . . a broadside at quangos in general".

Does that mean that the bonfire has fizzled out?

On the other details in the minister's statement, does she agree that the single regulatory framework was in the SNP manifesto and not in the Labour party's? Does she further agree that the same performance standards on cross-tenure were in the SNP manifesto and not in the Labour party's? I am glad to see that she is coming round to the SNP's way of thinking.

On a more constructive note on the right to buy, the minister did not specify how the proposals will affect smaller housing associations or what her plans are for compensating them. Can she confirm that there is no new money and that the 18,000 houses that she mentioned will come from a redirection of existing funds, so that there will be losers in some areas where planned houses will not be built?

Members may know that the price of property that is bought under the right to buy can often be less than half the cost of building the same property. That could have a devastating impact on housing associations' investment programmes. Does the minister agree that, if she granted rights to one section of the community at the expense of another, she would be defeating what she is trying to achieve?

Finally, is the minister aware that the finances in the feasibility study for the Glasgow transfer were calculated on diminishing the right to buy rather than extending it? What action is she taking to ensure that her prize stock transfer proposals will not collapse around her ears as lenders get cold feet because of her proposals?

Ms Alexander: Where should I begin? Fiona Hyslop raised six points.

If the greatest criticism that the SNP has to offer is that we are doing the right thing, I am happy to accept that criticism. The real difference is that we put an extra £50 million into the communities

budget to help to deliver on our promises. I am not sure that I want to address the issue of the black hole in the SNP's budget today, but that black hole is still there and Fiona Hyslop's response begs the question whether the SNP would have had the resources to deliver this programme, however committed to it that party is in principle.

On the commitment to build new homes, one of the characteristics of the Government is its commitment to clarity on what it will deliver with the resources that it spends. We have made it clear that we will deliver 6,000 new houses a year, and I am confident that we will achieve that. There will not be a devastating effect. We have made it clear that giving all tenants in Scotland the same set of rights might lead to up to 800 or 850 additional sales a year, balanced against six times as many houses being built a year. That begs the question whether the SNP thinks that we should continue with the divisive, two-tier tenancy system in which some tenancies have contractual rights and others have secure rights.

What is the SNP's position on secure tenancies? We believe that a single housing plan and a single budget must be matched with a single tenancy for everybody, which would be secured in law and would ensure that there were no second-class citizens. We have had enough of second-class citizens in Scottish tenancies in the past.

Fiona Hyslop asked whether the proposals would affect the financial viability of housing associations. The figures in the research document, which are for the whole of Scotland, illustrate that, if the average value of a house is assumed to be £40,000, and people receive a discount of 55 per cent on that, which is the average discount, the end result is a receipt of £17,000. Partly because all those housing association houses were built with 70 per cent housing association grant, on average, there will probably be only £6,000 of debt to clear. When the receipt that housing associations get is offset against the lost rental income, the housing associations will build balances as a result of our proposals today. Their financial viability will not be undermined.

It might be suggested that one housing association somewhere might face some difficulty. If it did, we would talk to it, as would Scottish Homes. There is in excess of £200 million in the development programme. Should we, for the sake of one housing association—out of the hundreds in Scotland—that might experience a difficulty, deprive all Scottish tenants of a single set of secure tenancy rights? That was the choice that we faced, and I am convinced that we made the right decision.

The same argument on the finances—I shall not run through them—generally applies to Glasgow.

The suggestion that lenders believe that the right to buy will make it more difficult to finance the Glasgow stock transfer is simply not true. The view of lenders is that the right to buy will do nothing to undermine the financial viability of the options that are under consideration by the city.

The Presiding Officer (Sir David Steel): I remind members that this is not a debate, but a question-and-answer session. Many members want to speak, but will have no opportunity to do so if we have long questions and answers.

Bill Aitken (Glasgow) (Con): The Conservatives generally welcome the statement. In many respects, it seeks to build on the achievements of the previous Conservative Government. As the minister said, Labour and Liberal politicians argued for a new and better way, but Conservative politicians implemented that better way and increased home ownership in Scotland from 38 per cent to 62 per cent.

There are, however, several unanswered questions and we Conservatives need to reserve our position on some issues. Does the minister agree that the homelessness figures—which are a matter for general and genuine concern—might be improved if there was a compulsory local authority strategy for coping with the problem? Does she further agree that many of the proposals for dealing with anti-social tenants are already in place, and that there has been a lack of resolve on the part of local authorities in implementing them? Does she agree that the need to impose a single regulatory framework is, in itself, a condemnation of the Labour-controlled local authorities?

Does the minister agree that Scottish Homes has performed an extremely valuable role and, accordingly, that any change in its management structure must ensure that the organisation is still able to draw in the private sector's involvement? That sector's involvement has been a particularly successful aspect of Scottish Homes' operations. Are not Ms Alexander's plans for housing in rural areas an extension of the rural housing strategy that was so ably and far-sightedly introduced by my friend, Lord James Douglas-Hamilton?

Ms Alexander: I am tempted to ask the Tories why, if they had a better way, they have spent most of the past six months apologising to the people of Scotland for what they did in the past. There is a serious point to be made—no one political party in this chamber should try to claim that the benefits of community ownership are as a result of its policies, and are therefore party political.

On Tuesday, I visited Calvary Housing Association in Easterhouse in Glasgow, which has three types of tenant—secure tenants, assured tenants with the right to buy and assured tenants

without the right to buy. The thicket of mixed-up tenancies that the Tories left as their legacy to us had to go. Tomorrow Donald Dewar is attending the 25th anniversary celebration of a Glasgow community-based housing association. I am happy to say that none of us owns that movement—it resulted from community activists saying that there was a better way in which to manage and to govern our houses. It is to their credit that politicians are prepared to support tenants who organise themselves in that way.

There is an important point to be made about homelessness. I was in Sighthill in Glasgow yesterday and talked to the people there about homelessness figures. Glasgow has one eighth of the housing in Scotland and one third of applications for housing from homeless people. All the housing managers I spoke to were quite sure that there has been an increase in the figures partly because of representations from people who have chaotic lifestyles because of drugs, and from people who have repeated relationship breakdowns—which is also sometimes tied to substance abuse. The figures do not tell us how many people send in repeat applications, but Jackie Baillie's homelessness task force is examining that.

There are only 17,000 priority need applications in Scotland each year—less than the number of void and hard-to-let houses that local authorities currently have. If we are to find an answer to homelessness, there must be new investment in housing to make those void and hard-to-let houses lettable.

I am happy to agree that what we have done about anti-social behaviour is part of a continuum. It is important that we introduce yellow cards before the red card of eviction, so that there are a number of steps that local authorities can take without putting people on the streets, but which also protect the majority who are good tenants and who do not want to live with bad neighbours.

Finally, I am happy to agree with Bill Aitken about the valuable role that Scottish Homes has played, but I would rather regard Calum MacDonald as the parent of the increase in resources for rural housing than Lord James. However, that could be a matter for dispute.

Robert Brown (Glasgow) (LD): I also welcome the minister's announcements and her support for Liberal achievements in housing in the past.

Does the minister recognise that those achievements are not limited to rural housing, but include the Housing (Homeless Persons) Act 1977 and the achievement by the partnership Executive of the reforms to Scottish Homes that she has announced today? Does she recognise that many of us have reservations about the right to buy? Is

she satisfied that it is valid to base policy on generalised national statistics? Is she aware, for example, that the so-called rural areas include Kilmarnock, Stirling, Inverness and Dumfries and that extra houses in Stirling will not make up for even small sales of stock in Stirlingshire villages? Will she elaborate on the research that showed that 850 houses a year would be bought when over 1,300 houses a year are currently being sold from housing association and Scottish Homes stock?

Finally, will the minister undertake to leave open the possibility of a full review of the right-to-buy proposals in the light of detailed representations by the housing organisations and local housing associations, which she praised earlier but which are mostly opposed on pragmatic grounds to any extension of the right to buy, as they see it as damaging to a realistic housing strategy?

Ms Alexander: I am happy to welcome the contribution made by both sides of the partnership in developing our housing policy. That contribution can be seen in several areas: our response to dampness, rural housing, housing tribunals, the role of housing associations, community empowerment and other areas.

I am happy to share with the member the extensive research on right to buy. Throughout the history of right to buy, sales have been 2 per cent a year in local authorities, with a slight blip in 1989, and 1 per cent in housing associations; a third of housing association tenants in Scotland already have the right to buy. Therefore, there is a high degree of predictability on sales. As well as being based on that history, the estimates are based on complex algorithmic models that I would be happy to share with the member—but not now. The estimates have also been broken down authority by authority. We estimate that 120 sales will be in rural areas.

We are firm in our proposal that all Scottish tenants should have the best ever tenants' rights, including the right to buy. There are technical issues over retrospectivity on which we are happy to consult the organisations, and we will do so, but our vision is clear.

Tommy Sheridan (Glasgow) (SSP): I do not welcome the statement—I am sure that the Minister for Communities is not surprised to hear that. The proposals are ill thought out, riddled with contradictions and ideologically driven. The Tories have made it clear that they would have been very happy to make this statement.

The minister parades tenant involvement like a mantra—tenant control instead of municipal control—but for a year in Glasgow we have had a feasibility study without tenant involvement; we now have an interim steering committee to take

forward the result of the feasibility study, again without tenant involvement. Will the minister say why there is no tenant involvement in the proposal to sell off every single council house in Glasgow?

The minister is talking about sending a letter to Scottish Homes staff to reassure them that their jobs are safe in the subsuming of quangos, rather than the bonfire that was promised. Will the minister send a similar letter to all housing association staff in Scotland, who work hard to deliver the type of community housing that has been described today as a model for housing arrangements, but whose jobs are now threatened by the extension of right to buy?

My third question is on the letter of consent, which will be issued to local authorities for the next financial year. Will the minister today give a commitment—a commitment that should have been given two and a half years ago—to remove the capital receipt payback regulations? I know how much Glasgow has lost in terms of potential investment because of the minister's decision to stick with those Tory regulations—£60 million-worth of investment in the past three years. I have the figures here, but can the minister tell the chamber how much that great policy has undermined rent increases in Glasgow in each of those years, while denying the investment to which I referred?

Ms Alexander: It is rather bizarre for Tommy Sheridan to accuse me of being ideologically driven when I thought that he was a revolutionary Marxist, but there we go.

Tommy Sheridan: I am.

Ms Alexander: I will deal with the question of tenant involvement first. As the member may know, over the past year tenant neighbourhood forums have been set up in every part of the city of Glasgow. Indeed, only yesterday I was talking to members of the tenants forum in Ruchazie and Sighthill about what was planned for the city. Glasgow City Council, as the body that is devising the proposal jointly with us, has in the past month written to all its tenants to tell them what is under consideration.

Tommy Sheridan: Who is on the steering group from the tenants?

Ms Alexander: I want to talk about the big issue. Tommy Sheridan talks about the need to invest in Glasgow housing. Let us talk about John Wheatley. When he was elected, he did not say, "Let's do things the way they've always been done." Rather, he said, "We need to do things differently. We need to build £8 cottages and we are going to go and talk about how we access the investment to do that." I believe that, 90 years on from his election to the city council in Glasgow, we need to show the same vision. The essential

difference between—[*Interruption.*]

The Presiding Officer: Mr Sheridan, you have asked a question and you must listen to the answer without interrupting.

Tommy Sheridan: I am waiting for the answer.

Ms Alexander: Let me come to the main point. The essential difference between Tommy Sheridan and me is that his ambition extends to only one thing—that this Executive and this Parliament should take on the housing debt of the city of Glasgow and that the rents should be used to invest in houses. I have no problem with saying that the whole of Scotland should take more responsibility for outstanding housing debt, but my vision is more ambitious than Tommy Sheridan's. I do not want to say that the best that we can do is invest the rental income. If I think that I can use that income to access literally hundreds of millions of pounds to change the living conditions of people in Glasgow in co-operation with landlords who, to a person, are non-profit-making, I will do that.

Dr Elaine Murray (Dumfries) (Lab): I note that the proposals include new measures to prevent and mitigate anti-social behaviour by tenants and look forward to studying them in more detail. The minister will be aware of the provisions of the Crime and Disorder Act 1998 and of the fact that several local authorities do not use the powers that were given to them in the act. How does she propose to ensure that housing authorities will be able to use the powers and exercise the responsibilities that might be conferred on them under the new proposals?

Ms Alexander: As members know, it is less than a year since we introduced anti-social behaviour orders. Within 12 months, we expect to receive reports on how they are operating. As Dr Murray suggests, the reason that those orders are a major step forward is that we no longer require individuals to act against anti-social neighbours. We have vested that power in local authorities, which avoids some of the problems of intimidation that we have experienced in the past.

Anti-social behaviour orders help us, for the first time, to move the debate beyond seeing this simply as a tenant problem. Anti-social behaviour happens in every section of the community, and the orders give us the opportunity to act against owner-occupiers who become neighbours from hell. Local authorities need help and support to develop that function and we are happy to provide it.

Alex Neil (Central Scotland) (SNP): First, I say to the minister that she is no John Wheatley.

Is the minister aware that in the past 20 years rental income from local authority housing has increased from 44 per cent of total local authority

housing department income to 92 per cent, of which 56 per cent comes from housing benefit? In the light of the forthcoming review of the housing benefit system, is she putting all her eggs in one basket? What are the implications of the review of housing benefit for the policy that she announced this morning?

Ms Alexander: One difference between Alex Neil and me is that I do not think that we measure our success in terms of how much money I manage to lever out of Jack McConnell. As the success of Scottish Homes suggests, the joy of the community ownership model is its ability to leverage huge amounts of private investment into socially rented housing. That is the challenge which we face.

We are, of course, closely in touch with colleagues as proposals on housing benefit emerge. We have always acknowledged that they are part of the welfare reform programme that is being pursued by the UK Government. Obviously, housing benefit affects housing subsidy, but it also affects incomes and the welfare reform proposals. We must stay closely in touch with on-going matters.

Mr John McAllion (Dundee East) (Lab): Given that local authorities that transfer their housing stock will be rewarded with a share of Scottish Homes' £200 million development funding, what guarantee is there for local authorities such as Dundee that the large outstanding debt that is associated with their stock will transfer to the Scottish Executive? Unless such a guarantee is forthcoming, there will be no stock transfers in Dundee, which could find itself as the only local authority in Tayside that is unable to get access to that development funding. Such a situation will only further disadvantage Dundee in relation to Perth and Angus, and will make impossible a coherent regional housing strategy for Tayside.

Ms Alexander: Allowing local authorities to have responsibility for housing resources in their areas, including for development funding, is not a reward. It simply recognises the fact that it is difficult to expect somebody who is a direct housing provider to be completely impartial in providing resources to third parties in the area.

On Dundee, I am aware of the exciting proposals that the community in Ardler has developed, and of its desire to make that new housing partnership a success. Some of the difficulties surrounding debt in Ardler have demonstrated why the way forward is for whole communities to decide as tenants whether they want to go down the community ownership route. As soon as there are partial transfers, it becomes difficult to say what portion of the historic debt can be assigned to communities.

I am comfortable with the principle that this Executive and this Parliament should shoulder some of the burden for council houses that are long demolished. That principle distinguishes us whole-heartedly from the previous Conservative Administration, which, if it had ever thought of pursuing this policy, would undoubtedly not have started in Glasgow, which has the worst problems of damp; nor would the Conservative Administration have started in cities such as Dundee.

The Presiding Officer: In spite of my allowing an extra five minutes for questions, there are still eight members who wanted to speak.

Draft Standing Orders

The Presiding Officer (Sir David Steel): We move to the main debate, which is on motion S1M-354, in the name of Mr Murray Tosh, who is the convener of the Procedures Committee, on the first report of that committee.

10:44

Mr Murray Tosh (South of Scotland) (Con): It is with great pleasure that, on behalf of my colleagues on the Procedures Committee and our splendid team of officers, who are arrayed along the back of the chamber, I present to the Parliament a draft set of standing orders. It is appropriate that this is the first committee report to be debated in this chamber. Members will be aware that, since 12 May, when the Parliament first met, we have operated under a set of standing orders that was conferred upon us by a statutory instrument made by the Secretary of State for Scotland.

Rule 17.1 of the Scotland Act 1998 (Transitory and Transitional Provisions) (Standing Orders and Parliamentary Publications) Order 1999 states:

“The Procedures Committee shall before 6th May 2000, by motion propose to the Parliament a draft set of standing orders.”

It is a tribute to the focused work of the committee that we are able to bring a draft set of standing orders to the Parliament six months early. Today, we have the opportunity to make our own standing orders and so make a little bit of history in the development of this Parliament.

The Procedures Committee has met eight times. We considered at an early stage that it was important that the Parliament should have its own standing orders and that we should work towards presenting them to the Parliament before the Christmas recess. To be in a position to make our own standing orders is to be at an important stage in the Parliament's coming of age.

We also recognised that the Parliament was still a relatively new body and that it would be reckless to embark upon wholesale changes without the benefit of substantial experience. Furthermore, we recognised that the existing rules were of considerable merit—I pay tribute to those who thought about how the Parliament should work and to the draftsmen who turned those thoughts into the set of rules with which we have been working daily since May. Accordingly, the committee took the view that the current standing orders constituted a sound base for development and that the optimum approach was to consider priority changes in those areas in which members and clerks had detected difficulties in practice.

In identifying the priority changes that were likely to be required, the committee listened carefully to members. Two consultation exercises were carried out and, on behalf of the committee, I thank those colleagues who responded. I pay particular tribute to the contribution of the Executive, and of all political parties, to the complex process of identifying the issues for initial investigation and selecting suggested areas for substantial work.

More than 40 issues were identified in the consultation process. They were collated into subject areas and the clerks prepared papers on each area. The committee considered, discussed and debated each of those papers over a number of months. I am pleased to report that, in the spirit of the new politics, those debates were marked by a constructive approach and much good humour. That is reflected in the fact that, despite the considerable significance of the subject matter, a vote was resorted to on only one occasion—on the issue of summing up debates. Even then, after further consultation with the Executive, we were able to resolve the matter without the need to change the standing orders. That is a tribute to the sound common sense of everyone involved.

Of the papers that we considered, 15 resulted in proposed changes to the standing orders. Those are identified in annexe 3 of our report and are incorporated into a fully revised set of standing orders, which appear as annexe 4. In a moment I will touch on some of the key changes that we propose.

On all the remaining issues, the committee agreed that no change to the standing orders was necessary at this stage, but that a number of changes to parliamentary practice were required. Accordingly, on 15 October, I wrote on behalf of my colleagues to the Presiding Officer—that letter is contained in annexe 2 of the report—recommending that those changes be adopted as good parliamentary practice. I am glad to say that some of those recommendations have already been introduced—I hope that they have improved the smooth operation of parliamentary business.

In analysing the priority issues, the committee conducted research into the standing orders and procedures of a number of other Parliaments and Assemblies, and examined closely the prior work of such bodies as the Scottish Constitutional Convention and the consultative steering group. It is the duty of this Parliament and its committees to ensure that our procedures and practices are efficient, effective and in keeping with the spirit of the principles set out by the CSG.

I do not intend—nor do I have the time—to go over each of the changes in the report. It would be more helpful to members if I were to focus on some of the major changes that we think are most

likely to improve the conduct of business in this Parliament. In particular, the committee has recommended significant amendments to the standing orders in relation to question time, non-Executive half sitting days and parliamentary committees.

The format of question time was a vital part of the committee's work. Question time is a key event in the parliamentary week and attracts much public and media attention, so the committee was keen from the earliest days to monitor its operation. We considered that, after what was possibly a patchy start, question time had improved significantly over the months as members became more familiar and comfortable with the format.

At the same time, we received a number of submissions from members, including the First Minister and the leaders of the Conservative party and the Scottish National party, to the effect that some adjustments to the present proceedings would improve the utility of question time as a mechanism for holding the Executive to account.

The Procedures Committee intends, in line with the CSG report, to facilitate a rigorous approach to accountability. Therefore, the committee agreed to propose an extension of the total period for questioning ministers from 45 minutes to one hour and to introduce First Minister's question time, which will replace open question time. Question time will last for up to 40 minutes and First Minister's question time for up to 20 minutes. We hope that the additional time provided, together with members' enhanced ability to pursue topics with ministers by using supplementary questions, will lead to fuller accountability of the Executive.

To improve question time further, the committee also recommends that the deadline for questions for First Minister's question time should be three days before the event, rather than eight days as for question time. We hope that that measure will aid the topicality of questions and, by doing so, add to the interest of questions and answers during First Minister's question time. The committee further agreed that the extra five minutes would allow an increase in the number of questions that the Presiding Officer might select for First Minister's question time from the present three to up to six.

The introduction of First Minister's question time is intended to address members' concern that a key element of accountability should be members' ability to question the First Minister weekly. That view was also expressed by the First Minister. My colleagues and I very much hope that the changes—if accepted by the Parliament—will add to the Parliament's standing among the Scottish people, but we are all committed to constant improvement and have undertaken to monitor the

changes carefully. If they do not work as envisaged, members should be assured that the committee will return to the issues.

On non-Executive half sitting days, the committee considered at length a request from the Green party, the Scottish Socialist party and Dennis Canavan to be allocated one half day each of non-Executive time by increasing the number of non-Executive days from 15 to 18. We concluded, first, that it was necessary to distinguish between the standing of the single-member political parties and non-aligned members. There was unanimous agreement that all political parties that are not represented in the Scottish Executive should be considered for non-Executive business. Therefore, to facilitate the provision of such business time for the two single-member parties, we propose that the number of half sitting days be increased from 15 to 16. In my letter to the Presiding Officer on 15 October, I recommended that that extra half sitting day be allocated to the Scottish Socialist party and the Green party. It will be for those parties, in consultation with the Parliamentary Bureau, to decide how best to utilise that time.

On non-aligned members, we recommended to the Presiding Officer that he and the bureau adopted a flexible approach within the current parliamentary rules, including the use of members' business time, to ensure that any such members had the opportunity to put forward the issues that were important to them. Once again, I believe that that recommendation reflects the commitment of the whole committee to the key principles of the CSG and, in particular, to the notion of sharing power.

On committee procedure, we recognised that the work of parliamentary committees was central to the Parliament's existence. I have no doubt that the Procedures Committee will consider many aspects of that side of our collective work in Parliament in future. In this round, however, the committee was able to consider only a limited number of issues in relation to the operation of parliamentary committees.

First, we were asked by Mike Watson, the convener of the Finance Committee, to consider widening that committee's remit. The Finance Committee was concerned that its remit did not allow it to inquire into the Executive's handling of financial matters beyond the details of the budget proposals or such other documents as the Executive laid before the Parliament to propose public expenditure or tax varying.

For example, the committee could not initiate a general inquiry into finance matters relating to or affecting the expenditure of the Scottish Administration or expenditure out of the Scottish consolidated fund. We agreed that the remit was unduly restrictive and recommended the change

outlined in annexe 3.

Secondly, on the proposal of Kenny MacAskill, the convener of the Subordinate Legislation Committee, we agreed to recommend a change to that committee's remit to allow it to consider and report on general instruments not laid before the Scottish Parliament as a rule.

Thirdly, we considered a request from John McAllion, the convener of the Public Petitions Committee, to allow petitions to be lodged by the public during recesses, because it was felt that the present rules were restrictive. That change was also recommended.

Fourthly, on the absence of deputy conveners, the committee looked at the procedure for the selection of deputy conveners and made recommendations about temporary conveners. I understand that the matter of deputy conveners has been resolved and that the Parliamentary Bureau will bring forward a motion on that soon, but we have left the proposal on temporary conveners in the report as cover against the possibility that if, for whatever reason, a committee finds itself without a convener and deputy convener, it can continue to discharge its business.

Finally, we recommended a change to the standing orders that addressed an anomaly whereby the oldest committee member was not able to decline to chair the initial committee meeting and remain at the meeting. There are many other changes, but I have run out of time and must close.

Our intention in bringing forward this report is to begin a process of looking at and revising our standing orders. We want to move forward from the initial statutory instrument, so that Parliament has its own standing orders, which it can improve on an on-going basis. The report is not the last word; it is merely the beginning of a process that is evolutionary and on-going.

The committee found the process to be useful and stimulating. I hope that Parliament will find that the recommended changes are acceptable and that they add value to our debates. Anything that we have not touched on can be improved in future, because this matter will continue to be an important part of the committee's remit.

I move,

That the Parliament notes the terms of the First Report of the Procedures Committee entitled Draft Standing Orders of The Scottish Parliament (SP Paper 28); approves the draft standing orders set out in annex 4 of the Report and now makes the standing orders of the Parliament in terms of that draft, and agrees that those standing orders shall come into force on 17 December 1999.

10:57

Tommy Sheridan (Glasgow) (SSP): During this morning's statement on housing, I was described as a revolutionary, so it may come as a surprise to members that I support Murray Tosh's comments about the process being evolutionary. The Procedures Committee should be congratulated on bringing together a good document, which shows clearly that it has listened to all members about how Parliament operates.

We are all finding our feet. This is a new Parliament. We are still working out when we are allowed to smoke, if we are allowed to smoke, and, if we are allowed to drink, when we are allowed to drink. I am sure that matters such as that will be discussed in future debates.

The idea that the Executive should be as transparently accountable as possible to the whole Parliament is important, so I welcome the overwhelming majority of the changes that Murray Tosh mentioned. However, we feel that an amendment is necessary because of the newness of Parliament, which signifies a new politics in Scotland. We have moved from a Westminster situation in which politics is dominated by three parties—that always was out of synch with the reality in Scotland, where there were always four main political parties—to the election of this Parliament in May and the emergence of six political parties. That is a welcome development, and I hope that it will flourish in the years to come.

The election of Dennis Canavan as an independent member signified the fact that individuals in constituencies could use proportional representation to vote for either party list members or independent members. A number of individuals tried to stand as independents and were not successful, but Dennis was, and that will encourage those with independent minds who feel that they have something to offer Scottish politics to fancy their chances a bit more at the next election.

It is important that we recognise that Parliament has not only two smaller parties, but an independent member. We should try to arrange our procedures to take on board that fact in determining the time that is allowed for non-Executive business. We must also recognise that things may change in future elections. Other independent members may be elected, for whom we would have to make time as well. We want to put down a marker that this Parliament will give due recognition to members who do not represent any political party.

I hope that the amendment will be non-controversial and will get cross-party support. It should not cause major problems for the arrangement of parliamentary time. There has

been justified criticism of the time scales that have been set for some debates as compared to the time allowed for others. We are learning and I hope that those mistakes will not be repeated.

It should not be too much to ask for accommodation to be given for non-Executive business not just for the Scottish Socialist party and the Scottish Green party, but for members who do not represent any political party.

I commend the amendment to Parliament and hope that it is non-controversial enough to encourage individuals of an independent mind to support it and not be whipped one way or the other.

I move amendment S1M-354.1, after "that draft" insert:

"with the addition of, in Rule 5.6.1(b), 'after "under Rule 5.2.2" insert "or by members who do not represent a political party."'

11:02

The Deputy Minister for Parliament (Iain Smith): I am speaking on behalf of the Executive to indicate our full support for the Procedures Committee's work so far on the draft standing orders. That work takes account of issues raised by members of the Parliament and others based on the early experience of the workings of the Parliament.

As members know, the standing orders of the Scottish Parliament are an essential framework within which Parliament can function and carry out its everyday business. We must get them right to enable the procedures of the Parliament to flow efficiently and smoothly.

Although there is a requirement for consistency and certainty in the application of standing orders, there is also a need for flexibility. That is a key requirement, as no standing orders can cover every eventuality and the time has come when the Parliament needs to develop its own operating practice.

Before commenting on the detail of some of the key changes, I want to express the Executive's thanks to the members of the Procedures Committee and its convener, Murray Tosh. The committee's balanced and conscientious approach to reviewing and revising the standing orders is to be commended. The Executive has every confidence that the future work of the committee will be soundly based.

At this stage, and for the most part, the proposed changes to the standing orders are of a technical nature and reflect the Parliament's experience of operating under the existing standing orders. The Procedures Committee has, however, addressed a few substantive issues. I

will outline the Executive's position on those.

The substantive revisions include changes to question time, including the proposal that open question time be changed to First Minister's question time. The revisions reflect the views on question time expressed by the First Minister in his letter of 24 June to the Presiding Officer. They also reflect the Executive's recognition of the need for First Minister's question time to be more attractive to a wider audience.

Accordingly, we welcome the fact that the revised orders propose that questions for First Minister's question time can now be tabled up to three days before the event rather than up to eight days as at present. That change, which the Executive supports, is proposed to meet criticism that members have found it difficult to raise issues of recent and current topicality. However, we look to members to frame questions in specific terms so that the First Minister and Scottish Executive departments will have a clear idea of the issues to be raised and will be able to prepare adequately in the much shorter time available. We welcome the proposal that the times allowed for both question time and First Minister's question time are to be extended.

The committee has also proposed that the time for answering written parliamentary questions lodged during recess should be extended from 14 to 21 days. That recognises that, during those periods, the Executive, like the Parliament, may be less than fully staffed and that the usual timeframe can reasonably be relaxed. It is perhaps worth noting that, unlike at Westminster, recesses bring us no respite from having to consider questions from members.

I take this opportunity to remind members that a statistical analysis, to which my colleague the Minister for Parliament referred in a recent answer to a parliamentary question, is currently being undertaken on the parliamentary questions tabled to date. A number of issues are being considered, including the number of questions asked since 1 July and the time scale for responses. The findings of the audit should be available shortly. However, I can say that there has been a 200 per cent increase in the number of questions, of which a substantial proportion are either about matters that are not the responsibility of the Executive or relate to issues where information is already in the public domain.

In addition, we are looking at all aspects of parliamentary question procedure, including the appropriateness of questions asked, the use of holding answers and the asking of questions during recess.

An extension of the remit of the Finance Committee is proposed. As Mr Tosh mentioned,

the committee's remit is restricted to matters connected with parliamentary scrutiny of the annual budget and committee reports that set out proposals covering public expenditure. The proposed additional strand of the remit will allow the committee to consider any other matters relating to expenditure of the Administration and of the Scottish consolidated fund. The revised orders will allow it to examine financial matters that do not fall within the remit of any other committee and on which documents may not necessarily be laid. That is welcome, as it will give the committee wider scope for its work within areas for which the Executive is responsible.

On the issue of flexibility, members will know that new procedures are proposed to allow standing orders to be suspended on a motion from the Parliamentary Bureau. That will, for instance, enable the rule requiring a financial resolution to be passed within three months of the introduction of the relevant bill to be suspended in appropriate circumstances. That will deal with the criticism that the rule places unnecessary pressure on the timetables of committees, as was suggested in the case of the two Executive bills recently considered by the Justice and Home Affairs Committee.

Greater flexibility is also proposed in the extension of Wednesday meetings of the Parliament to 7 pm, which will give more time for parliamentary business while retaining family-friendly working hours. The intention is that MSPs will be made aware, well in advance, of when business is likely to be extended. The extension will enable MSPs to have a full work programme in the Parliament while not encroaching on their time in their constituencies on Monday morning and all day Friday.

It is proposed that the number of Opposition half days be extended from 15 to 16 days. The committee agreed that this additional half day could be used by the minor parties, such as the Green party and the Scottish Socialist party. The convener has asked the Presiding Officer to take that into account.

As I said, the Executive commends the work that has been undertaken by the Procedures Committee and we are happy to support its recommendations. The revised orders reflect close joint working on the details between committee and Executive officials and we are grateful for the spirit of co-operation in which the work has been taken forward.

In particular, we very much welcome the extent to which the committee's views accord with those of the Executive as set out in the First Minister's letter on question time to the Presiding Officer. We are also pleased with the way in which they accord with the Executive's memorandum of 16 September, with the evidence given by the

Minister for Parliament to the committee on 21 September and, I am happy to note, with several of my own recent contributions.

The changes to the standing orders recommended by the Procedures Committee provide a coherent framework for the effective working of the Parliament in the future. Of course, this is just the beginning and the task is by no means completed. I fully expect that further changes will be required to standing orders. The Executive believes that the Procedures Committee could usefully consider, in the light of experience to date, the effectiveness of parliamentary procedures in relation to the legislative process, to the operation of the committee system and to parliamentary questions.

The Executive stands ready to assist the work of the committee and both the Minister for Parliament and I look forward to continued joint working and a productive relationship.

The Deputy Presiding Officer (Patricia Ferguson): We now move into the open part of the debate. The time limit for speeches will be four minutes. I advise members that it will be impossible to call everyone who wants to speak.

11:09

Michael Russell (South of Scotland) (SNP): I repeat what has become a constant theme: gratitude to Murray Tosh, my fellow members of the committee and John Patterson and his clerking team for making the Procedures Committee a pleasurable experience.

I know that members believe that people on the Procedures Committee are anoraks of parliamentary procedure who enjoy nothing more than dissecting rule 15.1(b). Their impression is correct. There are many sad people similar to ourselves in the world, but at least the Procedures Committee keeps us from train-spotting; it also contributes to the greater good of the Parliament. The committee has worked well, in no small measure because of the leadership of Murray Tosh.

A colleague said to me last night that, now that this report was before the Parliament, the work of the Procedures Committee would be over and we could go and do something useful. The reality is that the work of the committee has only just started.

Today's debate is about making the ideal standing orders that the consultative steering group gave us into something workable. There were elements of the CSG standing orders that were impossible to make work practically in the Parliament. The job of the Procedures Committee from now on is to take the workable standing

orders and make them better and perhaps, through the work of the chamber and the committees, to convert them back into something ideal.

A number of issues still need to be addressed. There are the abstruse but important issues surrounding the allocation of parliamentary time, a matter to which Tommy Sheridan has referred. To whom does the time of the Parliament belong? Does it belong to the Parliament, which can give it away to the Executive or to others? Alternatively, does it belong to the Executive, which simply doles it out in small amounts to the Opposition parties? I stand firmly on the side of the argument that the time of the Parliament belongs to the Parliament and that the Executive should be allowed to use it, but not all of it. There is a great need for that time to be used by Opposition parties and by individual members in bringing their concerns to the Parliament.

We heard two statements this morning, both of which overran and neither of which contributed a great deal to the parliamentary debate, leaving many members feeling frustrated. I would like the Procedures Committee to discuss the way in which the time of the Parliament could be put at the disposal of the Parliament's members, not just at the disposal of the Executive.

There is the question of private members' bills and committee bills, a process that we have not really started yet. We have a great deal to learn; as we do, and as those pieces of legislation go through, we will have to return to the standing orders and look closely at the best way in which to assist individual members to bring legislation through. We do not know precisely how that will happen.

We have to consider the relationship between the Parliament and other institutions. As we speak, the First Minister is taking part in a committee in London on which the Parliament has never been consulted. The joint ministerial committees will be important to the work of the Executive and the Parliament, yet the issue has been debated neither in the chamber nor in any of the Parliament's committees. It is extremely important that the Procedures Committee looks at such issues, makes a judgment on them and brings its recommendations to the chamber so that Parliament can be consulted.

The committee can also discuss the bizarre ideas that emanate from individual members, including the First Minister, who seems to think that there is a role for the House of Lords in scrutinising the work of the Parliament, an idea so odd that it must have been some sort of joke that simply fell flat on its delivery.

Dennis Canavan (Falkirk West): Lord James.

Michael Russell: In such circumstances, I welcome scrutiny from James Douglas-Hamilton, whom one might call the acceptable face of the House of Lords. In reality, there is no place for an unelected or appointed chamber furth of Scotland to scrutinise the work of this Parliament—we should say that formally and strongly.

The Procedures Committee has made a good start in the work that it has done. More is to be done, and I look forward to working with my colleagues on that. I believe that the committee is putting in place the ways in which the Parliament can serve the people of Scotland within the limits of the legislation; from my perspective as a nationalist, I hope that it is also putting in place the ways in which a fully independent Parliament can serve the people of Scotland without such limitations.

11:13

Donald Gorrie (Central Scotland) (LD): I add my thanks and support to Murray Tosh and the officials who have worked diligently with us to try to improve arrangements.

The committee looked carefully at the issue raised by Tommy Sheridan and came to a conclusion that I will support. I hope that it is not the subject of a whipped vote, as each member should make up his or her mind about the best mechanism for being fair to small parties and individual members such as Dennis Canavan, who all deserve an equitable but not excessive share of the Parliament's time and energy.

On a theme similar to the one that Mike Russell raised, I should say that we have done well so far but we now have to look at more fundamental issues. He mentioned some of those—for example, how the parliament exerts its authority over the Executive in getting questions answered in a reasonable time, which does not happen at present.

We must also consider how the Parliament exerts its authority over people who are apparently in the pay of the Executive yet spend much of their time denigrating members of the Parliament, parliamentary committees and so on. The Procedures Committee would be an appropriate vehicle to tackle that issue.

I look forward to the committee taking a similarly harmonious approach to thorny problems in the future. I congratulate Murray Tosh on the report.

11:15

Johann Lamont (Glasgow Pollok) (Lab): I welcome the opportunity to speak in today's debate. Mike Russell mentioned the anorak's interest in detail but, as a woman involved in

several fields, I am always conscious that the devil is in the detail—it is often the subtext that does one in. Debates such as this are important, because the organisational structure often reflects the opportunities for people to contribute.

Perhaps I should declare an interest—Fay, who is four, and Colin, who is two. They are the pressures on me to seek assurances that Parliament will honour its family-friendly rhetoric. Members will be aware that the Scottish Parliament was launched with great aspirations—particularly those held by women. Women saw the Parliament as an opportunity to develop a new model of working, to bring Government closer to the aspirations of Scottish women and to get rid of the synthetic anger and adversarial indulgence that we see in Westminster, where our MPs are separated from their families all week and deprived of sleep. For some reason, we are led to believe that that leads to good legislation.

We thought that the Scottish Parliament would offer the opportunity for more efficient working practices, with less ritual and more delivery of the goods. We also thought that it would provide a better opportunity for women to stand. Those who fought for the Scottish Parliament believed that it would commit itself to having representatives who lived in the real world. In the past, too many women who might have been interested in political life had to decide between standing or having a family.

If our MSPs are not rooted in real life, they are unlikely to be tuned in to what our society needs. There is no better way of putting yourself and your self-importance in perspective as you prepare for a parliamentary meeting than having to persuade your son that his clown outfit for the Hallowe'en do is really very nice and should not be taken off as he comes down the stairs and having to persuade your daughter that she ought not to do that with the broomstick.

I do not pretend that this job brings with it the stresses that many people face in a range of occupations for far less remuneration. However, in a world that is driving towards more flexible—not easier—working, it is ironic that our arrangements make it difficult to build flexibility into the care of our children. We argue that family friendliness should be not about doing less, but about allowing people to choose where and when they work. For many women, that means organising their lives so that they can get home but work later on.

I want to underline our concerns about the recommendation that Parliament should, on a vote, be permitted to sit until 7 pm. I am disappointed that that recommendation is being made, although I understand why it is being made. Women are used to managing time imaginatively; I contend that this is the least imaginative option. I

urge members to ensure that the late sitting takes place only in extreme circumstances, when all other options have been considered. Perhaps we should consider sitting late but holding the vote the next morning—that would allow some flexibility.

We must not do anything to hamper or prevent those MSPs with families from playing an active role in the work of the Parliament. We need an attitude that is more likely to enable us to be in tune with those outside the chamber and to listen to their concerns.

We should remember that being family friendly is not about providing the means to arrange child care, but about allowing us the space to work and care for our children ourselves. That is a model for good working and a challenge to employers who drive towards presenteeism. Encouraging employees, particularly men, to spend long hours at work away from their families causes many problems.

This is a real test for our new Parliament; we will see the result in four years' time, when the electorate sit in judgment. It will also be a test of our idea of family-friendly working. There are two questions. First, will those members who have families stand again? Secondly, will young people, particularly women who may wish to have children in the future, see being an MSP and having a family as a viable option?

I hope that, when we come to put the standing orders into practice, our family-friendly rhetoric is matched by family-friendly action. In only the most difficult circumstances should we consider using a Wednesday night. At the heart of our procedures should be a desire to be flexible and considerate to all who wish to participate in the work of the Parliament.

11:20

Dennis Canavan (Falkirk West): I wish to speak in support of Tommy Sheridan's amendment. In my first speech to this Parliament, away back in May, I made the point that I was the only member who was not a member of any party. That was not entirely of my own volition. The way in which I was elected to this Parliament was not my preferred way, but I felt that I had no option but to let the people of Falkirk West decide, which they did by giving me the biggest vote and the biggest majority in Scotland. I could therefore argue that I have the strongest democratic mandate of any member of this Parliament; but I am not going to go down that road. I take the view that, once elected, we should all be treated as equals.

Unless Tommy Sheridan's amendment is accepted, under standing order 5.6, I shall be the only member of this Parliament without any

opportunity to initiate a debate. I consider that to be unfair discrimination—not just against me personally, but, more important, against the people whom I represent. There are also longer-term implications for other non-aligned candidates who may be elected to this Parliament in future; and for present members who may find that their party membership is withdrawn, for example, for voting against the party line.

I signed the letter written jointly by Tommy Sheridan, Robin Harper and me to Murray Tosh, the convener of the Procedures Committee. The letter asked for some opportunity to be given to the three of us to initiate debates under standing order 5.6. We did not ask for any debating time to be taken away from any other parties. We were not asking for a slice of the existing cake; what we were asking for was a slight increase in the size of the cake and for a few crumbs.

I am very pleased that the Procedures Committee has responded positively, at least in part, to our request, and has allowed some opportunities for Tommy and Robin. However, I fail to understand why I have been excluded. Murray Tosh said that it was necessary to distinguish between single-member parties and non-aligned members, but he did not say why. For the purposes of standing order 5.6, does it really make much difference whether a member belongs to a party with only one member in the Parliament, or whether that member does not belong to a party at all? A member is a member is a member. We have been told recently by the Presiding Officer himself that all members of this Parliament have equal status. Well, I am not of equal status if I am prohibited from initiating a debate under standing order 5.6.

It is rather anomalous that I could presumably get round that prohibition by going out and forming my own party. I have no intention of doing so, but I have every intention of doing what I was sent here to do, namely, represent my constituents. Tommy Sheridan's amendment would allow me more opportunity to do the job that I was elected to do. I therefore support it, and ask all fair-minded colleagues to do likewise.

The Deputy Presiding Officer (Mr George Reid): I can call Janis Hughes if she can keep her remarks to under three minutes.

11:24

Janis Hughes (Glasgow Rutherglen) (Lab): Thank you. I will try.

I would like quickly to echo the comments of my colleagues on the Procedures Committee and congratulate Murray Tosh on the professionalism with which he has guided us, and the clerks on their commitment and hard work. It is a reflection

on the consultative steering group's excellent work that only a few changes are needed to the standing orders at this stage. Murray is right to say that the Procedures Committee has worked very well together. I have found it a very enjoyable experience. We have exercised a commonsense approach in the spirit of the new politics.

Johann Lamont is right to say that we have always to bear in mind the family-friendly aspects of the Scottish Parliament, especially as they encourage more women and people with caring responsibilities to participate. However, when we weighed up the issue of extending the evening meeting on Wednesdays to 7 pm when necessary, I certainly supported that on the basis that it would happen only when necessary and where notification was given. I will bear Johann's comments in mind and say to her that this is not the slippery slope to the Parliament becoming much less family friendly.

As for Tommy Sheridan's amendment, he is right to say that the Parliament has moved away from three-party domination. Six parties are represented in the chamber. However, no one is saying that independents should be discouraged from standing. We need a flexible approach and have asked the Presiding Officer to exercise such an approach within the parliamentary rules, which allow non-aligned members to participate.

We need to create standing orders that stand the test of time and that take into account changing circumstances. Bearing in mind that I need to keep my comments short, I commend the first report of the Procedures Committee as it stands.

11:26

Mr Tosh: I have many comments to which to respond. Tommy Sheridan welcomed the fact that all political parties have been drawn into the parliamentary process, so at least we agree on that. As for the substance of his amendment, the issue with which the committee had to grapple and to agree was how to handle a situation where we might have several independents. How realistic would it be in practice to give each independent a half day for a debate? We felt that we could not make allowance for that suggestion within the rules that govern political parties.

Dennis Canavan asked about the difference between a one-member party and a non-aligned individual. A political party has a manifesto and a programme that ranges widely and far beyond the individual member's constituency. A constituency member is a member for the constituency and Dennis is the member for Falkirk West. When we discussed the issue, we felt that any matters related to Falkirk West could be dealt with through

members' business, which allows MSPs to lodge motions on an enormous range of issues that might impact on their constituencies but not necessarily be specific to them.

I drew that fact to the Presiding Officer's attention when I wrote to him and asked him to give Dennis Canavan what amounted to preferential treatment within the members' business category. Although we recognised that he had no way in which to bring forward his election manifesto, we did not believe that he had such a manifesto. We hold Dennis in the greatest respect, as does every MSP; and I should say that, as an Opposition party, the Conservatives hold him in some affection. I am sure that, if pressed on the point and confronted with arguments that it did not take into account, the committee would reconsider the matter, as it would all matters in future. However, I cannot accept the amendment, because it does not reflect the committee's decision or recommendation.

I thank Iain Smith for his helpful involvement in the committee's work. He highlighted the fact that the report goes for flexibility and balance. His points about the extension of parliamentary time on Wednesdays and the suspension of standing orders show how we have tried to balance members' rights and the Executive's need to dispatch its business. He also referred to items that he wanted the committee to consider in future, which is what it will do. The committee will address all the procedures and practices of the Parliament. The Presiding Officer has written to me in terms similar to Iain's.

Mike Russell referred to remits from the Executive and the Presiding Officer and talked about on-going points from MSPs. Indeed, this week, members have raised several such points. The process will not stop—ever. MSPs and members of the public and the press, who write to us on a huge variety of issues, should be confident that the committee will continue to review its practices in the light of their points. Mike also mentioned members' bills and committee bills, which are enormous areas that we have still to consider. I will not, however, be drawn on what he said about independence.

Donald Gorrie spoke very helpfully, if briefly, about the on-going difficulties that the committee must address. I always welcome Johann Lamont's contributions to less adversarial politics. Her point about the Parliament being family friendly was important. Janis Hughes will have been able to give her some assurance on that. There is a need for the Parliamentary Bureau to handle the issue sensitively and to give adequate notice of extended hours in all cases.

I thank members for their positive comments and in particular for the warm comments that

many of them made about me, which are always nice to enjoy. I assure Parliament that the committee's intention is to continue to try to be fair to everybody involved. Nothing is finished; nothing is closed. The Parliament will continue to evolve and develop through the Procedures Committee. I hope that we can continue to operate in the same consensual and positive way that we have hitherto.

Adults with Incapacity (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Mr George Reid): We move to the next item of business, a debate on motion S1M-213, in the name of Mr Jim Wallace, which seeks the Parliament's agreement to the general principles of the Adults with Incapacity (Scotland) Bill.

Before we begin, I remind members that the debate will be held in two sections—from now until we adjourn for lunch and for a further one hour and 45 minutes after open question time this afternoon. I intend to bring the first section of the debate to a close just before 12.30 pm. It is therefore likely that only the Executive and main party spokespeople will be given the opportunity to speak in the first section of the debate. Other members will be called to speak when the debate resumes this afternoon.

11:32

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I am pleased to move this motion to approve the general principles of the Adults with Incapacity (Scotland) Bill. The bill is a major piece of law reform. It has been particularly close to my heart since those campaigning for its introduction approached me more than 18 months ago. It says something about what this Parliament can do that we are able to legislate on such an important area. Those of us who tried to get this legislation through at Westminster were often knocked back and frustrated. The legislation is likely to affect every family in Scotland at some time. The chance we now have to get the legislation on the statute book is an indicator of the real good that the Scottish Parliament can do.

The purpose of the bill is to improve the law for adults who lack the capacity to make decisions about their finances and welfare. Adults with incapacity include some people who have dementia or severe learning disabilities or who have suffered strokes or a brain injury. It is estimated that 100,000 people in Scotland are affected by incapacity at any time. Their families and those who look after them are also affected. The bill is part of the wider framework of Scottish ministers' commitment to social justice in which every one of those people matters. The bill will improve their rights and protection and will make the task of caring more straightforward. It will make a real improvement to the quality of life of Scottish people.

The process in which we are involved is a shared journey. A great many people helped to identify the need for reform and have helped us to

arrive at the proposals in the bill. I understand that campaigning to update the law started as early as 1984. It was prompted by the antiquated and unsatisfactory nature of existing arrangements and the increasing number of people affected by Alzheimer's disease and other forms of dementia. It was also prompted by changing attitudes in society, greater awareness of the rights of those with incapacity and moves away from institutional care to care in the community. I acknowledge the hard work and foresight of those who were involved in the early days of putting forward proposals for reform.

The Scottish Law Commission embarked on a major project when it published a discussion paper on the subject in 1991. The paper was debated across Scotland with a variety of interests, including statutory and voluntary bodies and, most important, those involved directly in caring for family or friends.

The Scottish Law Commission's report on incapable adults was published in 1995 and included a draft bill. I salute the commission for its breadth of thinking and the care that it took in developing this new framework of law. The commission is the architect of the bill that we are now considering.

The shared journey continued when the Scottish Office consulted on the issues in 1997. More than 160 responses were received, but the consultation and listening did not stop then. We have been assisted by groups such as the alliance for the promotion of the bill, by experts in mental health and social work and by many others, including carers. There has been a helpful debate on how to achieve the best outcome for this most vulnerable group of citizens. The process has given us confidence that there is widespread support for the bill.

The long consultative journey has embodied the Parliament's aims in developing legislation. However, I am aware of the limited time that the committees have had to consider the bill, and I am particularly grateful to the members of the Justice and Home Affairs Committee for their careful scrutiny, assisted by the Health and Community Care Committee and the Subordinate Legislation Committee.

I am also grateful for the Justice and Home Affairs Committee's thoughtful and constructive report to the Parliament. We have made a written response, which is available to all members, and I shall respond to some of the committee's other points today.

We are planning to bring forward some technical amendments at stage 2 to improve the bill further. They will include provisions for private international law, which governs how the law of

Scotland in this area interacts with that of other countries. I shall have more to say shortly about more substantive amendments.

The bill is based on strong and overarching general principles. I want to emphasise that incapacity is not an all or nothing condition, and there will be no labelling based on preconceived notions of what a person can or cannot do, nor will anyone be considered incapable just because they have a learning disability or a mental illness. Doctors will make most formal assessments of incapacity, but we expect them to get advice from others who know the adult and who are aware of the nature of the decisions to be made on the adult's behalf.

The bill requires everyone involved in the decision-making process to use appropriate means to communicate with the adult and to find out for themselves what the adult wants. There are other important general principles—whatever is done should be for the direct benefit of the adult. The least intrusive measure must always be chosen to achieve that benefit, and those close to the adult will have a right to be informed and consulted.

The Executive has listened to the concerns that have been raised about the bill's definition of the nearest relative who will be one of the people involved in decision making.

Mrs Margaret Ewing (Moray) (SNP): Part of the problem that I have with the bill is the inclusion of people in discussions of how to decide to give power of attorney, for example. What does the minister foresee as the legislative programme that will enable all the relatives organisations, as well as the family, to come together? That aspect of the legislation is complex, and we want to get it perfect.

Mr Wallace: Individual cases—it is important to stress that cases are considered individually—will differ according to the individual's incapacity and the particular circumstances. Is a specific intervention required for the sale of heritable property, for example, or is something more general needed? Such decisions will, by their nature, involve a range of people. As I have indicated, there will be medical input, and legal input will be important in identifying the precise requirements for particular situations. Obviously, the views and information of those most closely connected with the adult concerned are particularly relevant. Such people will have some knowledge of the adult's wishes. A clear indication of the person's incapacity will also be relevant.

We intend to lodge an amendment to the bill to allow the adult to ask for the nearest relative to be removed from their position in exceptional circumstances. We have also listened to concerns

about excluding partners of the same sex from the definition of spouse or partner. That was reflected in the Justice and Home Affairs Committee's report. We will introduce an amendment to the effect that a same-sex partner may be included as the nearest relative for the purposes of this legislation.

On more specific provisions, the bill will expand and enhance private arrangements that an individual can make for the possibility of their future incapacity. We hope that an increasing number of citizens will take advantage of those provisions. It is already possible to appoint an attorney to look after one's property and financial affairs. The bill will make it possible to appoint a welfare attorney to make decisions about personal welfare, including medical treatment. Though powers of attorney are essentially private arrangements, there will be new safeguards against abuse. A new office of the public guardian will keep information on public registers about the powers being exercised on behalf of people who have lost capacity. The courts will be able to intervene if something is wrong and to remove an attorney's powers as a last resort.

The freezing of accounts when the account holder loses capacity has been one of the most common and distressing problems with the current arrangements. The bill will resolve those difficulties by including, at part 3, a simple and much-needed scheme for access to an adult's funds, which will provide supervised access to, for example, an adult's bank or building society account. It will allow a carer or relative to use the adult's funds to manage day-to-day household expenses.

Part 4 of the bill sets out unified arrangements for managers of care establishments to look after their residents' finances in the event of incapacity and where there are no other suitable arrangements. This provision will encompass those living in hospital and in residential and nursing homes. For the most part, managers who currently perform that service for their residents do so informally and without checks and safeguards. The scheme in the bill puts that right.

We have listened to the genuine concerns expressed to us about the possibility of conflicts of interest for managers and we agree that there should be stringent safeguards to prevent any such conflicts. The bill provides for independent monitoring of establishments and for national standards. Where residents have significant funds, other measures will generally be taken to protect their financial interests.

A significant part of the bill sets up a new, flexible and accessible system of intervention and guardianship orders, which replace the existing offices of curator bonis, tutor at law, tutor dative

and guardianship as defined by mental health legislation.

Where an adult lacks the capacity to make a one-off decision, such as signing an important document, a one-off order can be sought in the sheriff court. Where longer-term arrangements are needed, a guardianship order can be made, with powers conferred over specified aspects of an adult's life. A relative or carer could apply to be guardian and, when there is no other alternative, the chief social work officer of the local authority may be appointed welfare guardian.

It will be possible for the courts to appoint a financial guardian to an adult with incapacity. Specific powers will be conferred over the adult's property and financial affairs, and the public guardian will supervise the exercise of those powers. Accounts will normally have to be kept and the public guardian can investigate any concerns.

It is fair to say that part 5 of the bill, which deals with medical treatment and research, commanded the attention of the Justice and Home Affairs Committee and of the Health and Community Care Committee, and rightly so. We recognise, as does the Parliament, that these provisions raise sensitive issues and require the closest consideration. I repeat that the Executive appreciates the careful and balanced views expressed by the Justice and Home Affairs Committee, which were based on widely differing written and oral submissions, all of which were sincere expressions of deeply held opinions.

It is useful to rehearse briefly the background to part 5. The law as it stands is not clear. There is no explicit authority for a doctor to treat a patient who is unable to consent, except in an emergency. That lack of clarity could well result in such patients not receiving treatment that could enhance their well-being and quality of life. That is manifestly unsatisfactory. Similarly, current research practice lacks the statutory underpinning needed to provide safeguards for those patients, as well as for researchers. Part 5 of the bill introduces a statutory framework that protects the interests of the patient, gives a balanced role to his or her legal representative and, at the same time, invests doctors with appropriate authority.

I now turn to some of the specific areas of difficulty. A recurrent theme has been the implication that, in some way or another, the bill opens the way to passive euthanasia. I want to make the position absolutely clear. The Scottish Executive is totally opposed to euthanasia. Any such act is a crime in Scotland and nothing in the bill is designed to alter that position.

That said, however, the Executive believes that some changes to part 5 are desirable to create a

more balanced approach to treatment decisions. We accordingly propose to lodge amendments at stage 2, which will help to allay some of the concerns that have been expressed. We propose an amendment to section 47, which will allow a doctor to seek a second medical opinion in cases in which the guardian or welfare attorney has refused consent to the medical treatment that has been proposed. If that second opinion confirms the need for the treatment in question, the doctor will be able to proceed. However, anyone with an interest in the personal welfare of the patient, including a doctor, welfare attorney, guardian or relative, will be able to appeal to the Court of Session if they are concerned about the course of action that had been proposed by a doctor, even when that action is supported by a second medical opinion.

We have listened carefully to the views that were expressed by the committee on the definition of medical treatment and, in particular, the inclusion of artificial nutrition and hydration. That particular part of the bill has caused considerable unease. We propose to amend the definition of "medical treatment" to remove reference to particular procedures and to define treatment simply as "any procedure or treatment designed to safeguard or promote physical or mental health". The positive nature of the new definition will underline the fact that the purpose of this bill is to help, not to harm, adults with incapacity.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I welcome the change to section 44 and the deletion of the reference to nutrition and hydration by artificial means as a medical treatment. However, as that deals with the concerns that people had about the powers of welfare attorneys or guardians in section 47, why has the minister gone against the wishes of the alliance for promotion of the incapable adults bill and of Alzheimer Scotland in giving primary authority on treatment decisions to medical opinion rather than to the welfare attorney or guardian?

Mr Wallace: Malcolm Chisholm is talking about situations in which there is a conflict of opinion between the doctor and the guardian on a proposed course of action. We have tried to create a balance, which no one pretends is easy to strike. We have allowed a second medical opinion, to ensure that the view of not only one doctor would prevail in such cases. We have also provided for recourse to the courts, in the event of a dispute.

A reasonable balance has been struck in a difficult area. I have no doubt, however, that we will return to these matters at stage 2, during detailed committee scrutiny, when that balance can be explored further. We have listened to the concerns that have been expressed to us, and

have tried to act on them by striking a different balance from that which was proposed in the original draft of the bill. I believe that the balance that we have struck gives weight to the various concerns. However, as I said, I am sure that we will return to that issue.

There have been demands to include a statutory duty of care for welfare attorneys and guardians in this bill. The intention behind that proposal is good, but we are convinced that that statutory duty is neither necessary nor desirable. As the Scottish Law Commission said in 1995, a duty of care already exists. Section 73 of the bill refers to that duty and to the requirement for attorneys and guardians to act in good faith.

The contribution of Professor Sheila McLean, in her evidence to the Justice and Home Affairs Committee, which is reported in the appendices to the report, is well argued and sets out the position clearly. It is clear that attorneys and guardians must follow the general principles and codes of practice, and must seek professional advice when that is appropriate. Professional duties of care exist only in relation to specific services. A statutory duty in the bill for welfare attorneys and guardians would be extremely difficult to enforce. We are convinced that we should not go down that road.

The Justice and Home Affairs Committee sought clarification of our decision not to include provisions on advance statements in this bill. Our position remains that we have no plans to legislate in that controversial area, in which there is a sharp division of public opinion.

How does that sit alongside the requirement in the bill to take account of the present and past wishes of the adult? The Executive sees a clear distinction. The provision in section 1 of the bill to take the adult's wishes into account is intended to impose a responsibility to establish what the adult wants, or has previously expressed a wish for. The provision does not, however, have a bearing on the legal status afforded to an advance statement or living will that was made by an adult when they had the capacity to do so.

The provisions on research in section 48 have also attracted a good deal of comment. That is a sensitive area in which it is necessary to ensure that the interests and well-being of the adult are fully protected. We have, therefore, been careful to construct the terms of section 48 as tightly as possible. The conditions placed on such research are rightly onerous.

There have been persuasive arguments that the type of research allowed should be broadened slightly. Research is, by its very nature, more likely to be of general benefit than of benefit to an individual and there is a case for slightly greater

latitude. I propose, therefore, to bring forward at stage 2 an amendment based on the Council of Europe's Convention on Human Rights and Biomedicine, which has already been accepted by many European countries and is seen as an international standard. That will permit research in exceptional situations; research that aims to benefit, through significant improvements in the scientific understanding of an individual's condition, disease or disorder, the person concerned or other persons in the same age category who are afflicted with the same disease or who have the same condition.

Section 45 of the bill allows certain treatments to be excepted from the general authority to treat in section 44 of the bill. In finalising which treatments should be excepted, we have made it clear that we will take on board the views expressed in the Parliament and by the Millan committee. That remains our position. I want, however, to be open with members about our current thinking and, with that in mind, I will now outline the specific treatments that, subject to comments, we propose at this stage should be covered by regulations made under section 45. We recognise that electroconvulsive therapy is a controversial treatment and we intend, therefore, that ECT should be possible under this bill only where a favourable second medical opinion has been obtained. For three other treatments, we believe that Court of Session approval should be necessary. Those are psychosurgery, sterilisation and the implantation of hormones to reduce sexual drive.

Part 5 of the bill has, perhaps unsurprisingly, provoked the greatest debate. I believe that some of the changes that I have outlined today will improve the bill, and will ease the anxieties of those who have had concerns about its purpose.

Finally, I am sure that the Parliament will want to know the eagerly awaited timetable for implementing the bill. We want to press on with the bill as fast as possible; no one is under any illusion that there is not a great deal of work to be done. Nevertheless, up to half the changes could be made by April 2001. By then we hope to have set up the public guardian's office, to have introduced provisions for continuing and welfare attorneys and provisions for the access to funds scheme.

The medical treatment and research provisions could be implemented by summer 2001. We intend that arrangements for managing residents' finances will be implemented in September 2001, when we hope the new Scottish commission for the regulation of care will become operational, following the passage of a bill to establish it. Intervention orders and the new form of guardianship should be in place by April 2002.

We shall set up a national implementation steering group, which will include some of the key organisations that will be preparing themselves for implementation and that can advise the Executive on what needs to be done. We want to make sure that carers' and service users' views are effectively represented.

As the Justice and Home Affairs Committee says in its report, this bill is good. We have worked hard to ensure consensus of opinion in some difficult areas. There is agreement that reform of the law is long overdue. I look forward to the debate today, and to the rest of the shared journey towards passing this important legislation.

I move,

That the Parliament agrees to the general principles of the Adults with Incapacity (Scotland) Bill.

11:54

Roseanna Cunningham (Perth) (SNP): It is only right that, as convener of the Justice and Home Affairs Committee, I take a few minutes in the chamber to comment on the committee's experience of dealing with the bill. I hope that I will be allowed a little latitude to do that. It is fair to say that all members of the committee feel as if they have come out of a long, dark tunnel only to be faced with another long, dark tunnel at stage 2 of consideration of the bill.

I would first, and most importantly, like to express my appreciation of the work that was put in by every member of the committee in a difficult period, when the committee worked extremely hard. We have been dealing not only with this bill, but with the Abolition of Feudal Tenure etc (Scotland) Bill, which will be debated next week. The committee has also had a member's bill referred to it and has continued to progress two items of specific committee interest—prisons and domestic violence—which we began to examine in September. On top of that, the committee has dealt with a variety of petitions and items that have been referred to it by the Subordinate Legislation Committee and the European Committee.

Our work load has been colossal, so it is lucky that all members of the committee managed to retain their sense of humour and—more important—the sense that we were working as a committee, not just as a collection of more or less party political individuals.

In the past two months, when we dealt with stage 1 of this bill and the Abolition of Feudal Tenure etc (Scotland) Bill, there were times when we felt like guinea pigs. If we occasionally plaintively asked one another what a stage 1 report looked like, it can now be judged whether we got it right. That we managed to get this far is in no small measure due to the excellent work of

the committee clerk and his team; they worked flat out and we owe them a great debt. We are very lucky to have them and I hope they, too, felt part of a real team.

The approach that we adopted to the report reflects our belief that it is important to represent in it all shades of opinion in the committee. Not all opinions were held unanimously but, in my view, to refuse to record views because they were not held by all members of the committee would be to misrepresent the range of views on aspects of this and, no doubt, other bills. If we say that a view was held by the committee as a whole, it was; anything less than a unanimous view has been recorded with the appropriate qualification. On this bill, it was important that we did that, because far more of it was controversial than might have been anticipated.

We were aware of the extensive consultation undertaken by the Scottish Law Commission, which did the initial drafting. The committee took its own informal briefings during the summer recess, so that we would be better prepared to deal with the bill. We heard oral evidence from seven organisations and from one individual, Professor Sheila McLean, over three meetings. We could easily have heard a good deal more evidence from organisations and individuals. Even now, I am getting letters from organisations and individuals confidently expecting to be able to continue giving evidence at stage 2. That would have a serious impact on the timetable; we might have to discuss that. The areas of particular concern are highlighted in our report and arise principally from a handful of sections on the medical aspects of the bill. I will return to them later.

Returning to my shadow justice persona, I emphasise that if the Scottish National party had won on 6 May, we would all still have been here today debating essentially the same bill. We had a manifesto commitment to the introduction of an adults with incapacity bill and had also set our faces against including living wills in it. On SNP benches, therefore, there is support for the legislation, which I suspect extends to all parties. That is because of the clear need for reform.

In the welter of coverage of the controversial parts of the bill, the very real difficulties that people face right now have been overlooked. I hope that members have read the evidence highlighting some of those problems, by organisations such as ENABLE and the alliance for the promotion of the incapable adults bill. The large and increasing number of people who have had to deal with a member of their family who can be described as incapable—and I am in that position—will know that there is little choice between the existing power of attorney, which was not designed for

those with incapacity, and the nuclear option of appointing a curator bonis.

I say nuclear option because the curator takes over the management of the whole estate, although the level of incapacity might mean that some money matters could be understood and handled by the individual. Nor does that system work when the incapacity is over the short term rather than the longer term. There are problems even when people think that they have sorted out their affairs through a joint account. A bank or a building society can, and often does, freeze the whole account when one of a couple becomes incapable. Just as bad is the situation that can occur when one person goes into hospital and the hospital takes over the management of their finances, effectively excluding their perhaps very long-term partner from further involvement.

Those are all actual examples of what can happen currently, and they make the need for the bill very apparent. The bill would allow a new form of welfare power of attorney, which would mean that medical and financial decisions could be delegated without having to do so on the once-and-for-all basis that is the case now. It would allow most of those functions to be carried out without the time-consuming and expensive process of going to court.

At present the position regarding who can decide what, when it comes to medical treatment of an incapable adult, is highly uncertain. Doctors can feel legally unprotected, even when they are making relatively minor and routine decisions about treatment. Alternatively, they have to delay necessary treatment until some kind of authority can be sought. The bill clarifies the legal justification for administering medical treatments that might otherwise be regarded as common assaults. We should not run away from the problem that doctors and nurses occasionally feel that they have to do something for which they could be prosecuted. The fact that they are not is a measure of the common sense of most people involved. However, that does not solve the problem that doctors and nurses are leaving themselves open, potentially, to prosecution in a situation in which most of us recognise that that should not happen.

For all the good that the bill does, we would be foolish not to recognise that it has other, more controversial aspects that have not been dealt with by the decision to remove the sections recognising advance directives or living wills that were contained in the Scottish Law Commission's original draft. When the bill was first announced, many people were relieved by the indication that those sections would not be included, because they felt that that meant that we would not become bogged down in the long-drawn-out arguments to

which the recognition of advance directives or living wills would have given rise.

However, lo and behold, we are having those arguments all the same. The exclusion of the sections that I mentioned was widely welcomed—as I indicated at the beginning of my speech, had the SNP been in government, we would also have excluded them—but there are still strongly expressed concerns that have not been alleviated. There is no doubt that much of the debate today and at stage 2 will centre on those concerns.

I cannot list them, but later speakers will no doubt pick on some of the issues that they feel need further clarification. Some of what the minister has said today and some of the concessions that he has already indicated will be made might help to address those concerns. However, we will have to await the response of the various organisations and individuals involved to see whether they feel that the amendments that are being trailed today go far enough.

One overarching concern has been what is meant precisely by the word “intervention” in section 1 of the bill. Witness after witness, including the bill team from the Scottish Executive, has assured Parliament, through the Justice and Home Affairs Committee, that intervention is meant to describe something that has happened—what might be termed an act of commission. However, others have equally strongly pointed out that, unless defined, an intervention could also be held to be an act of omission. That is what is giving rise to a great deal of the concern.

Perhaps it would be useful to provide a clear definition of the word “intervention” in the legislation. That would go a considerable way towards relieving the anxieties of those who feel that the end result of passing the bill will be decisions not to treat, rather than what it is being presented as—legal justification to treat. The ability to treat is important—I have already referred to the fact that, strictly speaking, doctors and nurses might at the moment be doing things that could technically be described as assault.

The dangers inherent in not treating are currently hugely controversial, as recent newspaper articles—not about the bill, but about practices that it is alleged take place throughout the national health service—highlight. Concern is being stoked up by that external controversy, which does not relate directly to the bill. If it is not the Executive’s intention to permit the refusal of treatment, perhaps that should be more clearly spelled out than has been the case until now. It might be said that it is not necessary to do that when that is not what is meant, but one could equally argue that there is no reason not to do so, because it can do no harm to the overall intent of the bill.

Another issue that arises out evidence taken at stage 1 is the question of advance directives or living wills. The Executive took a decision to exclude them from the legislation, despite the fact that they were included in the Scottish Law Commission’s original draft bill. I have already indicated that that would also have been the SNP’s view, had we been in government. The Justice and Home Affairs Committee recognises the reasoning behind the decision and supports it.

The decision to exclude advance directives was widely welcomed as sensible, given that to include them would have risked the whole bill over that argument. The difficulty that I and, perhaps, some members of the Justice and Home Affairs Committee have is that, having heard the evidence of the British Medical Association, which was that the existence of an advance directive will have enormous weight when a decision about treatment is made, we began to wonder whether advance directives would be imported into the scenario in any case.

If one accepts that section 1(4)(a), to which the minister referred, is correct and that account has to be taken of

“the present and past wishes and feelings of the adult so far as they can be ascertained”,

it is difficult to imagine any clearer expression of those wishes than an advance directive—basically, that is what the BMA told us.

As a result of that recognition, the Royal College of Nursing has expressed concern that the bill will in practice result in enormous weight being attached to entirely unregulated living wills. That issue needs consideration. Perhaps the decision to exclude advance directives was taken in the clear knowledge that, in practice, they could not be excluded, and that there was no point in having a row about something that was inevitable. However, the concern of the RCN should at least be recognised. I do not have any specific suggestion as to how that could be done. I think that most of us do not want living wills to become part of statutory law, although perhaps they will become part of our law, willy-nilly. We have to think carefully about how we deal with that issue.

The Deputy Presiding Officer: Please close.

Roseanna Cunningham: A great deal of concern has also been expressed about the definition of “medical treatment” in the bill. In large part, that is linked to the definition of “intervention”. The inclusion of

“ventilation, nutrition and hydration by artificial means”

in the definition of “medical treatment” has caused alarm, because the thought of proxy decision makers being empowered to refuse that aspect of treatment, thereby causing death, fuels concerns

about passive euthanasia. No matter what attempts are made to reassure those who are alarmed by that section of the bill, they have remained firmly of the view that it could well result in proxy decision makers being able to make decisions that will inevitably lead to death, with all that that implies. The requirement that an intervention be of benefit to the patient is interpreted by the critics as having no application to a refusal or failure to act. It seems to me that the absolute assurances that that will not be a result of the legislation have counted for so little thus far that we are in danger that that aspect of the debate will overshadow everything else.

I do not know whether the minister's announcements today will change that. If the intention of the drafters of the bill is that it does not authorise withdrawal of treatment, and that any such decision will still require resort to the courts, it may be that consideration should be given to spelling that out more explicitly in the legislation.

The Deputy Presiding Officer: Will you close now, please?

Roseanna Cunningham: The clock shows that I have 50 seconds left, Presiding Officer.

The Deputy Presiding Officer: You are two minutes over.

Roseanna Cunningham: We should recognise that many organisations feel that, whether it intends to or not, the bill will introduce euthanasia by the back door. Much of the evidence that was heard at stage 1 was directed at that problem. I admit that there are areas of that debate in which I am, as yet, undecided as to whether the alarm that is being expressed is justified.

Most of those issues will ultimately be addressed as matters of conscience. Certainly, when the specifics of the issues are debated, SNP members will have a free vote. Given the strength of feeling that exists, and assuming that there will be a free vote across the parties, I do not want the whole bill to be put at risk unnecessarily. I hope that the minister will go as far as he can to make the changes that would pacify the critics. The indications—I refer, obviously, to the proposals to amend sections 44 and 47—are that that is in his mind.

We all agree that the bill is necessary. I hope that we can get it through with a minimum of fuss—that will be a victory for us all.

12:09

Ben Wallace (North-East Scotland) (Con): I speak as the reporting member of the Health and Community Care Committee and as the deputy health spokesman for the Conservative party. When I welcome the changes that the Minister for

Justice has announced, I can do so only on behalf of my party—I would not like to speak for the committee on that. I am sure that the changes are very much to the point and have gone a long way to making my speech much shorter.

The Health and Community Care Committee has had a heavy work load recently, although discussion of our work on the Arbuthnott report is for another time and place. I was given the proposed bill on a Friday evening and asked to report on it by the following Wednesday morning after a visit to the Justice and Home Affairs Committee on the Tuesday. Although all members recognise the need for the bill and welcome it, that does not mean that we should be bounced into it. I apologise to any members of the Justice and Home Affairs Committee and the Health and Community Care Committee who might have felt that my report was not as robust as it could have been if more time had been available.

As someone who has found himself rather incapacitated on many a Saturday night, I welcome any measure that protects the rights and welfare of individuals with incapacity. On a more serious point, however, I know that people throughout Scotland will appreciate the steps that are being taken to ensure that adults with a variety of mental and learning difficulties will have their lives and affairs better managed.

The bill attempts to ensure that the wishes of adults with incapacity are observed while, at the same time, legislation is in place that will ensure that no advantage is taken of those people. In my report to the Health and Community Care Committee, I covered parts 1, 5 and 7 of the bill. Part 1 deals with general principles and definitions, part 5 ensures that those who are responsible for medical treatment are given the correct authority to treat the adult who is deemed incapable, and part 7 plugs many of the loopholes, concerns and limits of liability.

It is disappointing to note that, in comparison with similar legislation in other countries, the bill makes no attempt to recognise partial or temporary incapacity. Jim Wallace expects general practitioners to come to decisions in agreement with incapable adults and their carers, but the bill does not cover that. Other countries have gone some way towards realising that assisted decision making can be used in classifying someone as incapacitated. Many people can make sound and qualified decisions with assistance—indeed, the Liberal Democrats do it all the time.

Will the Minister for Justice assure me that when the Millan committee reports with its new definitions of mental health, he will review the position of the bill? If the definition of incapacity changes radically, the bill should be flexible

enough to reflect that difference.

Mr Jim Wallace: I am happy to give the member that assurance.

Ben Wallace: Although we all agree with its aims, the proposed legislation throws up the ethical question of euthanasia. Despite the minister's assurances, there are parts of the bill that could allow unscrupulous individuals to apply some form of back-door euthanasia. I ask the minister to clarify the priorities in the bill. Part 1 lists the number of conditions that must be taken into account, but it does not say whether, for example, medical evidence should override previous wishes. The conditions are listed (a) to (d), rather than ranked in order of priority. Some classification of priority would be helpful.

The bill tries to balance a medical opinion with the opinion of a carer who may be ill informed. In 99 per cent of cases, the decision will be made jointly by carers and medical staff in the best interest of the adult with incapacity, but we must make plans for the exceptions. For example, a carer who is set to benefit financially may decide to override a doctor's decision, and there is no onus on that carer to seek informed medical advice. I note Jim Wallace's announcement that there will be an independent body to monitor people who have such a financial interest. His changes to section 47 have satisfied me that there will now be an onus on carers who may be the financial beneficiaries of the people for whom they care, and that medical advice will play a more prominent role in the carer's decision.

The Hippocratic oath binds doctors to a duty of care. The legislation lifts some of that responsibility from the doctor, but it does not transfer it to the carer. I am concerned that, coupled with the limited liability described in section 73, which the minister has now amended, that reduction in the duty of care could allow power without responsibility.

I am aware that this is stage 1 of the bill, so I have concerned myself only with protecting the aims of the legislation, on which we all agree, from the worst-case scenarios. However, the size of my mailbag confirms my view that there is genuine concern about back-door euthanasia. Although I am confident that the Executive does not intend to allow that, I urge it to take those concerns seriously. Better clarification of the priorities and a tightening up of the liability provisions would go a long way to ease those concerns.

The Deputy Presiding Officer: I call Nora Radcliffe.

12:15

Nora Radcliffe (Gordon) (LD): I did not expect

to be called.

The Deputy Presiding Officer: You are on the list to speak for the Liberal Democrats. Do you want to speak? If not, I can open the general debate.

Nora Radcliffe: I have not prepared a speech, but I will make some remarks, wearing my equal opportunities hat.

I welcome, in particular, the bill's emphasis on the rights of the individual and the fact that attempts have been made to treat the incapable adult—the person with incapacity—as an individual. I welcome the fact that the bill recognises different degrees of incapacity; that is fundamental. It is much to be welcomed that we are not considering an incapable adult as some sort of entity. The incapable adult is an individual—a person—and the bill goes to considerable lengths to ensure that they are treated as such and to ascertain, as far as possible, exactly what the individual wants.

I also welcome the bill's recognition of the rights of same-gender couples. Non-recognition of those rights was a discriminatory element of previous legislation that was to be deplored. I am extremely glad that the Executive has recognised that and that the bill will deal with it.

The Deputy Presiding Officer: Contrary to expectation, we can probably fit in two general speeches before lunch. I call Richard Simpson, to be followed by Kay Ullrich.

12:16

Dr Richard Simpson (Ochil) (Lab): The bill is to be welcomed—that is clear—but there are some problems with it. I am not sure whether the bill will last as long as the Curators Act 1585, which is the first act to be repealed by the new bill.

The change in the bill's title to "adults with incapacity"—from the original proposal of "incapable adults"—recognises that incapacity is not an absolute, for the individual with a learning disability, or for the individual with Alzheimer's. Incapacity may be temporary or permanent, it may be worsening, or it may vary according to the area in which the decisions are to be made. Much attention has been paid to the most severe situations, but the thresholds of incapacity are important and I am not convinced that the bill covers them adequately.

The rules on consent for treatment in relation to children, which have always been rather person-oriented in Scotland, have recently changed to allow consent to be given based on the ability to understand, without a specific age limit. It seems that the bill attempts to treat incapacity in a similar way, but that is not absolutely clear because of the

medical certification that has to be issued. Such certification has to deal in absolutes, rather than in thresholds.

Evidence from various organisations has indicated that people with learning disabilities at the most severe end of the scale will undoubtedly require the full capacity of the bill, but those at the lesser end will not. We are slightly hide-bound by the timing of the Millan commission; if it had reported first, we might have had new definitions, which would have made things much easier.

Will the minister, in summing up, advise what consideration was given to the inclusion in the bill of a concept of partial incapacity, assisted decision making, or advocacy? None of those terms appears in the bill, yet they are the new clinical issues at present.

On the matters that have caused the greatest difficulty—certainly, the Health and Community Care Committee has had problems with them—I will limit my remarks to three areas. First, the decisions are currently made by a team rather than by individuals, and it would be helpful to find a way of recognising that in the bill.

The second difficulty concerns the balance between the decision of the medical team and that of the proxy. I understand from the minister's speech that an amendment will be proposed on that, but—as the minister said—it is a matter of balance between the two decisions. It seems to me that the courts should be involved only in instances where disagreement is recognised between the two. There should be no primacy over who should go to court. I am not a lawyer. I do not know how that could be done. However, when it is recognised that decisions should be made jointly, if they are not and if there is a dispute, there should be an automatic reference to the courts, rather than one or other party having to go to court.

There has been much discussion about duty of care. I accept the evidence of Professor Sheila McLean to the Justice and Home Affairs Committee that we cannot impose a duty of care on proxies. That would be inappropriate. Nevertheless, there is inadequate reference in section 73 to the limit of liability of proxies, and it would be helpful to extend that limit in some way without going as far as a duty of care.

The issue of omissions as opposed to commissions of intervention has been dealt with. I understand that legally, interventions include intervening as well as not intervening. However, the issue of cessation of treatment has not been covered adequately.

On the matter of research, if I understand the minister's statement, the bill will be amended to take into account the European Convention on

Human Rights and Biomedicine. I welcome that, because the original text of the bill seemed to rule out the use of randomised controlled trials with placebos, and also defined the benefit to the individual as having to be "real and direct", which was a strict definition that would rule out genetic research that might produce a distant benefit.

The bill is to be welcomed. It will benefit a significant number of adults. However, the definitions in section 1, particularly those in relation to the wishes of the individual, are not sufficiently clear. I am not a lawyer, but if primacy is given to section 1(4)(a), which refers to

"the present and past wishes and feelings of the adult so far as they can be ascertained",

the written statements that I was presented with as a general practitioner, and which many of my GP colleagues increasingly are being presented with, will be of considerable importance. It might be possible to address that issue in notes of guidance, but further clarification is required at stage 2.

12:22

Kay Ullrich (West of Scotland) (SNP): As Roseanna Cunningham said, we made a commitment in our manifesto for the Scottish Parliament to support an incapable adults bill, with the proviso that the bill should not include legislation on advance statements. That was done for a simple reason: we did not wish the focus of the bill to be distorted by the inclusion of what, obviously, is a controversial issue. I was delighted in June when the First Minister stated that the bill would not include legal provisions for advance statements.

However, there are still concerns that the bill could lead to what some call back-door euthanasia, particularly because nutrition and hydration are defined in the bill as medical treatments. The concerns have not been lessened this week by claims in the press that food and drink have been withdrawn from elderly people in national health service care who were not terminally ill. In spite of the minister's concession today, which I welcome, that area will attract amendments at stage 2. My colleague Trish Marwick will expand on the issue later.

When the committee took evidence, concerns were expressed, particularly by the British Medical Association and the Scottish Neurosurgical Consultants Forum, that measures to help long-term incapacitated adults could inadvertently affect the emergency care of those with acute organic mental incapacity, for example, those admitted to hospital after bad road traffic accidents with severe head injuries. Decisions to treat in such cases often have to be taken at night and at

weekends, and often before relatives, proxies or guardians can be contacted. It is important to ensure that the measures in the bill for securing consent to treatment do not present an obstacle in emergencies. I hope that amendments at stage 2 will enable clarification of the necessity to treat in emergencies.

Section 48 is about authority for research. I welcome the minister's concession. As it currently stands, it would be illegal to conduct research for the benefit of other, and potential, sufferers rather than for the benefit of the adult with incapacity. I was impressed by the submission of Alzheimer Scotland. It pointed out that a great deal of non-therapeutic research is currently being carried out and that the cessation of such research could have serious consequences for future prevention and treatment.

For example, Alzheimer Scotland claims that, as it stands, the bill would outlaw the taking of blood samples, which could aid genetic research, and it would preclude all proper clinical trials of drug or other treatments. It also points out that many people with early dementia state that they would wish to give their consent to research being carried out at a later stage, even though they know that it is unlikely to be of direct benefit to them.

The Law Society of Scotland recognises those concerns and suggests that amendments could be made, as long as they involve minimal risk or discomfort to the patient and ensure that non-therapeutic research is subject to strict regulation.

In the short time allocated, I have highlighted a few of the health issues arising from the bill. The bill is not a political issue. I know that it has the support, in principle, of most—if not all—members of this Parliament.

I ask not only the minister but members to ensure that at stage 2 amendments are lodged to clarify and enhance the bill, and to give rights, status and protection to Scotland's 100,000 people with mental incapacity. The bill will also make life a great deal easier for their carers, as it should enable them to manage their loved one's finances and make welfare decisions on their behalf when they can no longer do so for themselves.

The Presiding Officer (Sir David Steel): I am sorry, but the chair is in some slight confusion.

The debate will be resumed this afternoon.

I advise members who have indicated a wish to speak that I have noted their names. The screen will now be cleared, so those who wish to speak after question time should press their buttons again.

Business Motion

The Presiding Officer (Sir David Steel): We now come to the business motion and two other Parliamentary Bureau motions.

The next item of business is consideration of business motion S1M-364, in the name of Tom McCabe, on behalf of the Parliamentary Bureau.

Motion moved,

That the Parliament agrees

a) the following addition to the programme of business on 9 December 1999—

that the Business Motion will be followed by Parliamentary Bureau Motions, and

that the Continuation of the Stage 1 Debate on the Adults with Incapacity (Scotland) Bill will be followed by a motion on a financial resolution required in relation to the Adults with Incapacity (Scotland) Bill, and,

b) the following programme of business—

Wednesday 15 December 1999

9.30 am Debate on a motion on a Standards Committee report on Cross Party Groups

10.00 am Debate on draft 2000-2001 budget—level 2 figures

12.00 pm Ministerial Statement on Salmon Anaemia

2.30 pm Time for Reflection

followed by Stage 1 Debate - Abolition of Feudal Tenure etc. (Scotland) Bill

followed by Motion on a Financial Resolution required in relation to the provisions of the Abolition of Feudal Tenure etc. (Scotland) Bill

followed by Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business

Thursday 16 December 1999

9.30 am Debate on an SNP motion on the Act of Settlement

followed by Business Motion

followed by Parliamentary Bureau Motions

2.30 pm Question Time

3.00 pm Open Question Time

followed by, no later than 3.15 pm Debate on Executive Motion on Health

5.00 pm Decision Time

followed by Members' Business—debate on the subject of S1M-297 Dr Sylvia Jackson: Cornton Vale—[*Iain Smith.*]

Brian Adam (North-East Scotland) (SNP): May I ask the Presiding Officer whether it is the intention of the Executive to make a statement on Mr John Rafferty's future? I ask that in relation to the business motion because there are a number of rumours circulating about that possibility. It would be courteous to let Parliament know whether the Executive intends to make such a statement. Many members would welcome it.

The Deputy Minister for Parliament (Iain Smith): The Executive has no intention to make a statement. Members will have the opportunity to ask questions this afternoon, at question time.

The Presiding Officer: The question is, that business motion S1M-364 be agreed to.

Motion agreed to.

Amnesic Shellfish Poisoning

Motion moved,

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Order 1999 (SSI 1999/143) be approved.—[*Iain Smith.*]

The Presiding Officer (Sir David Steel): The question is, that motion S1M-365 be agreed to.

Motion agreed to.

Devolution

Motion moved,

That the Parliament agrees that The Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) (No. 2) Order 1999 be approved.—[*Iain Smith.*]

The Presiding Officer: The question is, that motion S1M-369 be agreed to.

Motion agreed to.

Question, That the meeting be now adjourned until 2.30 pm today, *put and agreed to.*—[*Iain Smith.*]

Meeting adjourned at 12:29.

14:30

*On resuming—***Michael Russell (South of Scotland) (SNP):**

On a point of order, Presiding Officer. At 12.20 this morning, the Deputy Minister for Parliament said that there would be no statement on the matter of John Rafferty. A press statement was issued at 12.52 announcing that Mr Rafferty would leave the Executive's employment. Have you had notice that the Executive will make a statement, and do you think that the Executive should make a statement on the matter?

The Presiding Officer (Sir David Steel):

In fairness to the deputy minister, he said that there would be no statement to Parliament. Someone joining or leaving the employment of the Executive is not a major policy announcement of the kind that must be made to Parliament. In any case, on this day of all days, people have the chance to question the First Minister if they feel strongly about the matter.

Question Time

SCOTTISH EXECUTIVE

Rural General Practitioners

1. Mr Duncan Hamilton (Highlands and Islands) (SNP): To ask the Scottish Executive whether it will detail the support available to general practitioners serving rural communities. (S10-822)

The Minister for Health and Community Care (Susan Deacon): GPs serving rural communities receive the same fees and allowances as their urban counterparts. They can also receive support through additional payments and schemes, which have been introduced in recognition of the needs of general practice in rural areas.

Mr Hamilton: Is the minister aware of the real crisis facing many rural GP practices across Scotland, including the one at Dalmally near Oban? Will she concede that the decision to press ahead with the Arbuthnott report as it stands will mean a cut for Argyll and Clyde Health Board? If the minister had had the humility to read the report of the Health and Community Care Committee, that cut would not be implemented and the Dalmally practice's position would be buttressed. Does she regret not giving a more considered response to the report of the Health and Community Care Committee on the Arbuthnott report, and will she admit that her actions undermine the Executive's commitment to rural health care?

Susan Deacon: Mr Hamilton does a great disservice to the Parliament and to the issues that he raises. His question serves to indicate what a mass of hyperbole he is becoming. Not for the first time, he uses the word crisis in the same sentence as a reference to the health service completely falsely and unnecessarily. I am very much aware of the situation in Dalmally to which he refers. I point out to the member that the matter is in fact a question for the Scottish Medical Practices Committee.

If Mr Hamilton and other members care to look at the press release that I issued on the Arbuthnott report, they will see that I said very clearly, as I have said throughout, that I and the Executive will examine very carefully all 90 submissions that have been received in response to the consultation exercise including, obviously, the submission of the Health and Community Care Committee. We will reach conclusions based on a careful and considered response to the consultation. We are determined to put in place a fairer system for the allocation of health service

resources that is linked to need. We are keen to do that at the earliest possible opportunity.

Strategic Rail Authority

2. Mr Murray Tosh (South of Scotland) (Con):

To ask the Scottish Executive, further to the statement made by Sarah Boyack on 7 October 1999, whether the proposed strategic rail authority will have powers and resources to provide grant aid to assist with the construction of new railway lines in Scotland, other than passenger revenue subsidies, and whether such powers will be subject to executive devolution to the Scottish Executive and Parliament. (S1O-803)

The Minister for Transport and the Environment (Sarah Boyack): Yes. The shadow strategic rail authority administers the rail passenger partnership scheme, designed to encourage improvements in the rail network. The Scottish Executive will be consulted on applications from Scotland.

Mr Tosh: Will the Scottish Executive have full control over a given percentage of the amount available to the strategic rail authority, or will it have to bid on a project-by-project basis? Can the minister indicate the budget that she expects to be able to command in the life of this Parliament?

Sarah Boyack: The budget will be allocated for the whole of the United Kingdom. Schemes in Scotland will have to be justified in terms of their effectiveness for the whole of the UK rail network. Resources for the Scottish passenger franchises, which have already been discussed in Parliament, are also available from the shadow strategic rail authority, amounting to £120 million this year alone.

Anti-drug Education Programme

3. Trish Godman (West Renfrewshire) (Lab):

To ask the Scottish Executive whether it will publish any evidence it holds on the effectiveness of its anti-drug education programme in reducing the extent of drug use among young people. (S1O-826)

The Deputy Minister for Children and Education (Peter Peacock): We are continuing to evaluate the impact of schools drugs education as part of the Scottish drug strategy. We will publish the results of recent research shortly.

Trish Godman: Will the deputy minister seek to ensure that no school will or can opt out of drug education programmes, which aim to protect children? Given his answer to my first question, can he assure us that he will continue to monitor those programmes and bring the results to the chamber regularly?

Peter Peacock: We want to ensure that every

school participates in the drug education programme. I cannot see any good reason why any school in Scotland should exempt itself from that programme. I am happy to give an assurance that we will keep the matter firmly under review.

Student Finance

4. Mr John Swinney (North Tayside) (SNP):

To ask the Scottish Executive when it expects to report to the Parliament on any recommendations from the independent committee of inquiry into student finance. (S1O-790)

The Deputy Minister for Enterprise and Lifelong Learning (Nicol Stephen): The committee intends to present its report to the Executive on 21 December and we will lay a copy in Parliament that day.

Mr Swinney: The deputy minister will recall that when Parliament accepted Mr Jim Wallace's motion to establish the independent committee, it was stated that the committee should report to Parliament. Does he agree that it is rather strange that the committee has decided to report when Parliament is not meeting? Does he agree that it is utterly inappropriate for the coalition partners to be joining together in a Cabinet committee, formed by Mr Henry McLeish to discuss the issue, before Parliament has had any opportunity to discuss the subject?

Nicol Stephen: I can understand that some members might prefer the report to be published while the Parliament is in session. Equally, I am sure that all members agree that this is, and should be, a matter for Parliament, not for the Executive. In its proposals for dealing with the Cubie committee's recommendations, the Executive will announce its plans in due course. We, and all MSPs, look forward to digesting the committee's proposals over the festive period.

Mr Swinney: Notwithstanding the deputy minister's Christmas day reading, does not Nicol Stephen find it contradictory—and he may find it contradictory when he reads the answers that he has just given in the *Official Report*—that Parliament set up the committee of inquiry, yet it is the Executive that will be forming a response to it when the Parliament is not in session? Surely that is a betrayal of the motion agreed by this Parliament on Mr Wallace's suggestion.

Nicol Stephen: No, it is not. I checked this morning the motion put before and approved by Parliament. The clear intention was that the report be submitted to the Executive on the basis that the Executive would get absolutely no forewarning of it. It will be received by the Executive on the same day that it will be laid before Parliament. That was the intention when Parliament set up the committee of inquiry, and that is what will happen.

The date of publication, as should be the case with an independent inquiry, is entirely a matter for Mr Andrew Cubie and the other members of the committee of inquiry.

National Park

5. George Lyon (Argyll and Bute) (LD): To ask the Scottish Executive when a decision is to be taken on the boundaries of the Loch Lomond and Trossachs national park. (S10-811)

The Minister for Transport and the Environment (Sarah Boyack): The enabling legislation will be brought forward early next year. Once it has received royal assent, we will prepare, after full consultation, a designation order to set up a national park in Loch Lomond and the Trossachs, and set its boundaries. The order will be subject to approval as normal by the Scottish Parliament.

George Lyon: Will the minister look favourably on the submissions, when they come forward, to include Argyll forest park as part of the Loch Lomond and Trossachs national park when the consultation phase is over?

Sarah Boyack: I would be happy to consider representations from different areas on whether they want to be included or excluded in the national park's boundaries.

I am happy to announce that I have asked Scottish Natural Heritage to continue its work on both areas of potential national park status and to take forward discussions with local stakeholders and interest groups. It seems appropriate that those discussions could continue in the area that George Lyon has described.

Roads (A75)

6. Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): To ask the Scottish Executive when it intends to publish a route action plan for the A75. (S10-821)

The Minister for Transport and the Environment (Sarah Boyack): The route action plan study is in the final stages of preparation. I expect to receive a report for my consideration in the near future.

Alasdair Morgan: I have to say that that is a very disappointing response. I have a letter here from one of Sarah Boyack's many predecessors.

The Presiding Officer (Sir David Steel): Order. Mr Morgan, you do not have to say anything. You have to ask a question.

Alasdair Morgan: Is Sarah Boyack aware that one of her many predecessors, Malcolm Chisholm, wrote to me in November 1997 to say that a route action plan was being developed?

How long does it take to develop a route action plan, and does she think that it is a fitting way to recognise the strategic importance of the A75 for Scotland, Northern Ireland and the Republic of Ireland?

Sarah Boyack: It is important that we get the action plan right and that we identify the correct way forward. I am keen to ensure that, on that road and on many others in Scotland, we make the right decisions. We do not have enough resources to do everything, but I am keen to take the views of Mr Morgan and those of my colleague Elaine Murray, who has talked to me about this issue. I know that the A75 is a matter of great concern in Mr Morgan's area and I hope that we will be able to produce a finalised plan soon.

Fire Service

7. Mr Lloyd Quinan (West of Scotland) (SNP): To ask the Scottish Executive what fire service property and equipment is now owned privately as a consequence of construction through the private finance initiative or public private partnerships. (S10-807)

The Deputy Minister for Justice (Angus MacKay): None.

Mr Quinan: I thank the minister for that answer, which clarifies the situation. I am sure that the minister agrees that the fire service and the vital cover that it provides will be particularly important over the coming holiday period. Not only is the risk of fire greater, but the service is expected to provide assistance during flooding and storms.

Throughout the millennium celebrations this winter, I have no doubt that the pressure on all the emergency services will be particularly high. Therefore, will the minister join me in condemning the fact that, while this Parliament will enjoy a millennium break, the fire service will be expected to provide cover for our celebrations without a single extra penny in payment? Does he acknowledge the damage to morale that will be caused by the fire service being the only emergency service to work without millennium pay?

The Presiding Officer: Order. I remind members that points of view are not supposed to be expressed in questions. That is made clear in standing orders. Mr MacKay, will you answer Mr Quinan's supplementary question?

Angus MacKay: I can confirm that there are no prospective private finance initiative or public private partnership projects that will have any impact on service provision over the millennium.

Banking Facilities

8. Patricia Ferguson (Glasgow Maryhill) (Lab): To ask the Scottish Executive what steps it is taking to encourage Scotland's banks to provide banking facilities in local communities. (S10-798)

The Minister for Communities (Ms Wendy Alexander): We have encouraged the banks to provide basic, low-cost current accounts for all and to identify ways of improving access to these products through partnerships with credit unions, post offices and housing associations.

Patricia Ferguson: Does the minister agree that the lack of commercial banking facilities in many of our communities means that many of the services once provided by banks are now provided by credit unions, such as the Maryhill and Greater Milton credit unions in my constituency? Does she agree that the role of credit unions is particularly important in preventing debt and consequent reliance on loan sharks?

Ms Alexander: Credit unions have an important role to play, which is why we welcomed the recent report of the Treasury task force, chaired by Fred Goodwin, which considered how to improve the regulatory climate for credit unions.

I am aware that, in Scotland, many local authorities and housing associations are helping to establish credit unions such as Queens Cross Housing Association, in the member's constituency, which provides facilities for credit unions.

Hill Farming

9. Christine Grahame (South of Scotland) (SNP): To ask the Scottish Executive what proposals it has to promote hill farming in the Scottish Borders. (S10-818)

The Minister for Rural Affairs (Ross Finnie): The Scottish Executive is committed to maintaining hill farming throughout Scotland, including the Borders. More than £300 million will be paid this year in beef, sheep and hill livestock compensatory allowance subsidy payments, most of which will go directly to those who farm in our hills and uplands. The Agenda 2000 package will result in higher levels of direct support to beef producers, estimated to be worth an additional £50 million in 2000.

Christine Grahame: I thank the minister for his answer. Is he aware that Scottish Borders Enterprise and Scottish Borders Council are financing a feasibility study into establishing a meat processing plant in the Borders, with estimated capacity for 500 sheep a day? Does he agree that locating such a plant in the Borders would allow the Galashiels abattoir to be utilised fully, with the possibility of the Hawick abattoir

being reopened? Consequentially, that would allow the marketing of products as Borders lamb.

Does the minister agree that such action would have major economic benefits to farmers and to the Borders, and will he confirm that the Executive will assist with the necessary capital funding if the report, which is due to be published in March, makes a positive recommendation?

Ross Finnie: I will have to await the publication of that report. As Christine Grahame knows, while such a development could be important for the Borders, we have an overcapacity of total slaughtering capacity in Scotland and it would not necessarily be in our interests to increase that. However, I look forward to the report with interest.

Landfill

10. Dorothy-Grace Elder (Glasgow) (SNP): To ask the Scottish Executive whether it will take steps to ensure that any residents in the districts of Mount Vernon, Carmyle, Baillieston and Sandyhills affected by any problems associated with Paterson's toxic landfill site receive immediate compensation, possibly in the form of a reduction in council tax. (S10-834)

The Minister for Finance (Mr Jack McConnell): No. There are no provisions within council tax regulations that allow the payment of compensation to local taxpayers who live adjacent to Paterson's landfill site.

Dorothy-Grace Elder: I thank the minister. As his own proposals involve an increase in council tax, can he think of any way in which it would be possible to compensate those who are forced to pay the already high levels of council tax in Glasgow, but who happen to reside next to a toxic tip that has been described by the public health department in Glasgow as emitting smells so noxious that they are literally breathtaking?

Mr McConnell: There are no provisions in the council tax regulations to make such payments. That position is clear.

Pig Industry

11. Alex Fergusson (South of Scotland) (Con): To ask the Scottish Executive what plans it has to ensure that Scotland retains a viable pig industry into the 21st century. (S10-795)

The Minister for Rural Affairs (Ross Finnie): As Mr Fergusson will be aware, the operation of the European Union state aid rules makes it difficult, if not impossible, to provide any direct financial assistance to the pig industry. I am, however, committed to doing what is possible to help the home industry by seeking to ensure that consumers, caterers and retailers recognise the high quality and welfare standards of Scottish

pigmeat.

Alex Fergusson: I thank the minister for his answer, but that will be of little comfort to the pig farmers who are in the public gallery today. Does the minister accept that the opinion of a growing number of farmers from all sectors is that, as far as their needs are concerned, the Executive has become no more than a talking shop, and that, as far as the pig sector is concerned, that will continue to be the case until meat hygiene and inspection charges are taken over as part of the health budget and away from the primary producer, in common with many other European countries, until the question of country of origin labelling is addressed immediately—

The Presiding Officer: We must have a question.

Alex Fergusson: I am asking a question, Presiding Officer—and until the minister takes a proactive lead in approaching both Nick Brown and Franz Fischler to fight for state aid to ensure that Scotland retains the healthy pig industry, which is only weeks away from total collapse?

Ross Finnie: Mr Fergusson knows perfectly well that the answer that I gave to his first question outlined the major stumbling block to providing aid that would overcome the price that we acknowledge the home industry must pay for the stall and tether ban and the BSE costs. We are fully aware of that, and it is a matter that we will continue to prosecute in Europe. Until we can overcome the state aid problem, we are in a difficult position, as Alex Fergusson knows. He also knows that, through our consultation we are trying to tackle misleading labels of origin. We hope that that will ensure that those labels will state the country of origin, not say that bacon is cured in Scotland if it is not processed here.

Alex Fergusson also knows that we have been promoting that aid within the Scottish home industry, and that we have provided additional advertising aid to promote the Scottish pig initiative. Alex Fergusson is quite wrong in suggesting that we are taking no action at all. We are not complacent. We recognise the difficulties and know the problems that must be overcome.

Fur Farming

12. Ms Irene Oldfather (Cunninghame South) (Lab): To ask the Scottish Executive whether it has any plans to ban fur farming. (S10-797)

The Minister for Rural Affairs (Ross Finnie): I announced last week that the Scottish Executive will introduce a bill in the Scottish Parliament to ban fur farming in Scotland. That follows the decision to introduce similar legislation for England and Wales and is required to prevent fur farming businesses relocating to Scotland.

Ms Oldfather: Further to the minister's reply, which agreed to legislation, can he give Parliament an indication of his proposed time scale, as a bill has now been published that prohibits fur farming in England and Wales?

Ross Finnie: I have no precise timetable, but Ms Oldfather is absolutely right. The intention of the Executive is to ensure that we produce a consultation paper in time to deal with the responses, to run in parallel with the legislation that is being introduced in England and Wales and to ensure that there will be no relocation of those businesses in Scotland.

Teachers

13. Mrs Lyndsay McIntosh (Central Scotland) (Con): To ask the Scottish Executive what plans it has to improve the morale of teachers in North Lanarkshire. (S10-814)

The Deputy Minister for Children and Education (Peter Peacock): Our aim is to develop a stronger, more self-confident teaching profession throughout Scotland, through, among other things, our proposals for continuing professional development and the work of the McCrone committee.

Mrs McIntosh: I thank the minister for his response. I am sure that those in Cumbernauld will welcome his efforts. Does he believe that the recently announced consultation on the introduction of compulsory testing for primary and early secondary school pupils—which seems quite familiar to me and to others in the Conservative party—will impact on the morale of North Lanarkshire teachers, and that it will be more welcome now than when it was first proposed?

Peter Peacock: We are in the process of issuing a wide-ranging consultation paper that dwells on the benefits of our experience in the past few years, and seeks to strengthen the system in a variety of ways. We look forward to hearing people's input into that consultation.

Airport Rail Links

14. Mr Kenny MacAskill (Lothians) (SNP): To ask the Scottish Executive what plans it has to improve rail links to Scottish airports. (S10-809)

The Minister for Transport and the Environment (Sarah Boyack): I understand that Railtrack is currently working with Strathclyde Passenger Transport Executive to assess options for providing a rail link to Glasgow airport. A rail link to Edinburgh airport has also been examined a number of times.

Mr MacAskill: Is the minister aware of the report that was published in September 1997 by the Association of European Airlines that indicated

that there should be rail links to airports that have a traffic volume of around 3 million passengers? That report also indicated that the only two international airports on the mainland of the United Kingdom that did not fit that criterion were Edinburgh and Glasgow. Those airports now have passenger turnover of approximately 6 million per annum and £54.6 million was paid in air passenger duty last year. Surely it is lamentable that there is still no rail link to either of those airports, which serve 6 million passengers.

Sarah Boyack: I am happy to remind Mr MacAskill that air passenger duty is a reserved matter. I am keen to ensure that the Scottish Executive takes forward the issue of improving access to airports. I do not know whether Mr MacAskill is aware of the current Scottish airports study, which will examine our airports in terms of the next 30 years. Access and surface links will be examined in that study. I expect to take forward its key recommendations to ensure that we improve access to airports, as we did only two weeks ago through the new service linking passenger rail services from the north of Scotland via the Inverkeithing airport link, which is now running regularly.

Convention of Scottish Local Authorities

15. Mr Keith Harding (Mid Scotland and Fife) (Con): To ask the Scottish Executive when the Deputy Minister for Local Government last met representatives of the Convention of Scottish Local Authorities and what issues were discussed. (S10-787)

The Deputy Minister for Local Government (Mr Frank McAveety): My most recent meeting with COSLA was on Monday 6 December when I, along with the Minister for Communities, met COSLA representatives to discuss housing issues.

Mr Harding: Does the minister agree that yesterday's financial statement for local government will mean further job losses and service cuts, and that it does nothing to address the plight of pensioners, whose pension increases will be wiped out by council tax increases?

Mr McAveety: I thank Mr Harding for his crocodile tears about the alleged plight of many folk across Scotland—[*Interruption.*] I will get to the answer if members from the Scottish National party extend the courtesy of allowing folk to get to the end of answers without interruption. Such interruptions are a common occurrence in this Parliament.

We believe that yesterday's settlement was fine and fair and we want to work in conjunction with local authorities to ensure that we deliver changes. I remind the chamber that many folk from the SNP yesterday complained about council tax increases.

Last year, they advocated greater increases for many places in Scotland.

Concessionary Fares

16. Dr Sylvia Jackson (Stirling) (Lab): To ask the Scottish Executive how much local authorities spent in the year 1999-2000 on concessionary fares for bus, rail and ferry services in Scotland. (S10-801)

The Minister for Transport and the Environment (Sarah Boyack): The Scottish Executive does not hold the information requested for the current financial year. The provisional outturn expenditure for concessionary travel schemes that are operated by local authorities for the 1998-99 financial year is £41.6 million.

Dr Jackson: Can the minister give some information about other community-based transport initiatives that will help older people?

Sarah Boyack: It is worth commenting on two things. First, there are the community transport initiatives in rural areas, which the Executive is supporting and which have a direct benefit for elderly people. The other is our objective of improving and harmonising existing concessionary fare schemes throughout Scotland. I call to Dr Jackson's attention the scheme that the Executive launched last week. That scheme results in blind people getting free travel throughout Scotland.

Polio Centre

17. Hugh Henry (Paisley South) (Lab): To ask the Scottish Executive what plans it has to establish a centre of excellence to provide health care and therapies to people with polio. (S10-825)

The Minister for Health and Community Care (Susan Deacon): There are no plans to establish a national centre to provide health care specifically to people with polio. A range of support and advice is, however, available across the national health service in Scotland to those who have, or have had, polio.

Hugh Henry: Is the minister aware of the problems faced by older people who suffered polio as children? Is she aware of the concern that support and expertise is not being provided throughout Scotland and of the demands for a concentration of specialists services?

Susan Deacon: I am very much aware of the condition now known as post-polio syndrome and of the views expressed by individuals and organisations on that. I have looked carefully at the issue and I believe that the current NHS provision meets those needs.

It is worth noting that there have been no new cases of polio in Scotland for two years and it is

more than 30 years since there was an epidemic. That is a testament to our immunisation programmes over the years. I hope we can say the same in the future about meningitis C.

**Secretary of State for Trade and Industry
(Meetings)**

18. Alex Neil (Central Scotland) (SNP): To ask the Scottish Executive how many times the First Minister has met the Secretary of State for Trade and Industry since May 1999. (S1O-791)

The First Minister (Donald Dewar): I have had no formal meetings with the Secretary of State for Trade and Industry since May 1999, but of course our departments keep closely in touch about matters of mutual interest.

Alex Neil: I suggest that the First Minister should arrange a meeting with the Secretary of State for Trade and Industry and say to him that, over the past two years, an eighth of all quoted companies based in Scotland have disappeared, either through takeovers or mergers, which represents a major erosion of the economic base in many sectors of the Scottish economy. Will he press for powers over takeovers and mergers to be transferred to this Parliament so that we can protect the future of the Scottish economy?

The First Minister: That was debated during the passage of the devolution legislation and it was at the urging of Scottish business that it was decided to leave those matters on a United Kingdom basis. As far as the general situation is concerned, there are examples of mergers and of failures and successes. The important thing about the Scottish economy is that we are ahead of the pace, with the lowest unemployment claimant count for well over 20 years and low and stable inflation. When I talk to people either in manufacturing or in the service sector, particularly financial services, they say that the economy is supporting their efforts more effectively than for decades.

Island General Practitioners

19. Tavish Scott (Shetland) (LD): To ask the Scottish Executive what progress is being made towards introducing flexibility into the postgraduate education allowance to address the travel costs faced by island-based general practitioners who wish to update their training. (S1O-831)

The Minister for Health and Community Care (Susan Deacon): I have no plans to review the travel cost element of the postgraduate education allowance. My officials and the Scottish general practitioners committee of the British Medical Association are, however, holding discussions on more flexible access to the full allowance for GPs in remote areas, including the islands.

Tavish Scott: Will the minister accept that while distance learning has its place, island GPs depend for maintaining their professional role on a training regime that includes personal contact between GPs? Will she investigate the concerns of GPs in Shetland that the time being taken to come to a decision on this matter is over years, not months?

Susan Deacon: I want to ensure that we reach the right decision and that we take effective steps to meet the learning needs of GPs in remote rural and island areas. I will ensure that progress on it is maintained.

Local Government Boundaries

21. Lord James Douglas-Hamilton (Lothians) (Con): To ask the Scottish Executive whether there will be any possible consequences for local government boundaries arising from any legislative provision for the future reduction in the number of members of the Scottish Parliament, whether it will make representations on any such consequences and, if so, what its representations will be. (S1O-785)

The Deputy Minister for Local Government (Mr Frank McAveety): No, the Parliamentary Boundary Commission has no power to alter local government boundaries.

Lord Douglas-Hamilton: Is the minister aware that, in the past, local government boundaries have been influenced by the position of parliamentary boundaries? If the numbers in this Parliament are reduced by a fifth, as is planned under current legislation, that could have a big impact on the manning of committees and would hardly be a signal of confidence in the Parliament.

Mr McAveety: I do not accept that portrayal. It is a bit rich from someone who was an architect of the most recent botched reorganisation of local government to lecture anyone about boundaries. We will address the matter when it is appropriate but we do not believe that it is appropriate to look at the boundaries of local authorities in this context.

Open Question Time

SCOTTISH EXECUTIVE

Secretary of State for Scotland (Meetings)

1. Mr Alex Salmond (Banff and Buchan)

(SNP): To ask the Scottish Executive when the First Minister last met the Secretary of State for Scotland and what issues they discussed. (S10-789)

The First Minister (Donald Dewar): Many matters. The meeting was on 1 December.

Mr Salmond: In that case, can I ask the First Minister about the political meltdown of the Executive? Did John Rafferty jump or was he pushed? Was John Rafferty sacked for lying to the press and the public, was he sacked for a breach of the civil service code or was there some other reason why, after a week of dithering, the First Minister withdrew his support from Mr Rafferty? Does the First Minister accept personal responsibility for the chaos at the heart of his Administration?

The First Minister: I do not accept the terms that have been used; "meltdown" is an extraordinary overstatement. I can say very simply to Mr Salmond that when I take decisions, I accept responsibility for them. This has not been an easy matter. John Rafferty left the employment of the Scottish Executive today and it has been a very anxious time. Because it is difficult to establish the facts amid the welter of allegations, I thought it right to take time to make the right decision. That was only common courtesy.

I am firmly committed to the principle that the Administration should be founded on integrity and trust, but also fairness. That is why I wanted to be very clear in my mind before reaching a decision with such obvious consequences for an individual whom I have known for many years. I greatly regret the fact that John Rafferty is leaving his employment with the Scottish Executive as my principal special adviser. He and I have known each other and worked together for some 20 years; he has been a supporter and a friend. I want to pay tribute to him for his many achievements, which stand to his credit—most recently in the post that he has just left, in which he made a contribution to the organisation of the Executive that will be widely acknowledged.

As I said, this has not been an easy time. I took the decision after a great deal of thought, and I stand by it.

Mr Salmond: The First Minister has managed to pay that tribute without telling Parliament why Mr

Rafferty was sacked. Why was he sacked? Will the First Minister accept that what is required is not just a change of personnel, but a change of political culture? Will he accept responsibility for allowing a culture to develop in which statements can be made selectively to the press, rather than to this Parliament, and in which members of parliamentary committees can be rubbished by one of many Government sources as "numpties" when they publish their reports? Will he tell us, in the interests of freedom of information, which of the many Government sources described the Parliament's Health and Community Care Committee in those terms? Does he know, does he care and is he capable of doing anything about it?

The First Minister: I am certainly not aware of anyone who described the Health and Community Care Committee as numpties, although I have, of course, seen reports in the press. Seriously, if Alex Salmond is telling me that he has some method of alchemy that allows him to trace and put a name against every quotation that he sees in the press, I will be prepared to listen to him with rather more patience and care than I often do.

Mr Salmond: The First Minister exemplifies the political culture for which he is responsible. Government sources described the Health and Community Care Committee in the terms to which I have referred. At the third time of asking, will he tell us why John Rafferty was sacked, and will he accept his personal responsibility for the departure of his chief of staff and for the chaos and in-fighting at the heart of his Administration?

The First Minister: I think that in the period ahead Alex Salmond will very disappointed; there will be neither chaos nor in-fighting in the Administration. I certainly take responsibility. As I said, I took the decision after anxious consideration. I am not prepared to go further on why I took it. This is a staff matter within the Administration, and it does no service to anyone to speculate about it in public—I do not believe that Mr Salmond or any of his colleagues would expect me to do so.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): Whether John Rafferty jumped or whether he was pushed, does the First Minister share my concern at Mr Alex Salmond's very frequent absences from this chamber? *[Interruption.]* Would he care to surmise who Mr Salmond's successor might be? *[Interruption.]*

The Presiding Officer (Sir David Steel): Order.

The First Minister rose—

The Presiding Officer: The First Minister is not responsible for that matter.

The First Minister: This is, of course, an

absolutely fascinating subject for speculation, which is made all the more difficult by the fact that there is no obvious candidate to replace Alex Salmond.

2. David McLetchie (Lothians) (Con): To ask the Scottish Executive when the First Minister last met the Secretary of State for Scotland and what issues were discussed. (S1O-793)

Was the room filled with smoke at the time?

The First Minister: I think that that was a witty reference to smoking bans, but I am not sure whether it is entirely relevant. I refer Mr McLetchie to the answer that I have just given Alex Salmond; I cannot help him further.

David McLetchie: I wonder whether the First Minister and the secretary of state discussed reviewing the bloated size of the Scottish Administration and its retinue of advisers, who clearly have very little to do with their time other than fight like ferrets in a sack. Now that one ferret has been dismissed, can the First Minister advise us whether others will follow, in the interests of improving the efficiency of government in Scotland?

The First Minister: I said that this has been a difficult business involving serious people and matters. To describe someone as a ferret does not seem to be a great contribution to the civilised handling of these matters. There were circumstances that led me to believe that it was right for me to take the actions that I did. The matter is a private one, which, I hope, was pursued with dignity by both sides.

David McLetchie: In light of the termination of Mr Rafferty's employment by the Executive, will the First Minister confirm that no compensation will be paid to him from the public purse in respect of the premature termination of his contract of employment? If compensation is to be paid from the public purse, will we be seeking reimbursement from the Labour party, which is responsible for this shambles in the first place?

The First Minister: This happened this morning. Clearly there will be discussions about housekeeping matters and tidying up. We have been dealing with a human problem, which I greatly regret. Anyone who knows the circumstances and the people involved will know that this has been peculiarly difficult for me. I submit that it is unlikely that I took this action on a whim. I pursued it with reluctance, but with great care.

Dennis Canavan (Falkirk West): Why should the taxpayer have to fork out more than £150,000 a year to enable the First Minister to employ not just one, but two spin-doctors, especially when, over the past week or so, one of them seems to

have spent much of his time spinning stories about the other one? Is it any wonder that a massive number of people hope that it is one down and one to go?

The First Minister: I understand that Mr Canavan has every interest in exploiting this situation. He does not know the difference between a spin-doctor and a special adviser. I challenge anyone in the chamber to name me a sophisticated Administration that does not have adequate press advice and the equivalent of special advisers. It does not help to reduce the matter to caricature terms, as Mr Canavan attempts to do.

Phil Gallie (South of Scotland) (Con): Can I say to the First Minister—

The Presiding Officer: No, you cannot.

Phil Gallie: Can I ask the First Minister—I would certainly very much like to, although I will not ignore the Presiding Officer as the First Minister did a moment ago—whether he is aware that in the previous Administration there were only three such advisers, whereas he has 50, I think, stretched across the whole Executive?

The First Minister: If Mr Gallie thinks that I have 50 special advisers, there is something very wrong with his basic arithmetic. I suggest that some remedial teaching is required.

Tommy Sheridan (Glasgow) (SSP): Given the involvement of the Minister for Health and Community Care in the fiasco that has developed in the past week, will the First Minister give a commitment today that Mr Rafferty, as special adviser to the First Minister, will not be replaced and that the sum of money for that post will be given instead to the health minister to employ an extra five nurses in the health service in Scotland?

The First Minister: I am not in the habit of taking on staff for the sake of it. I always use my judgment to ensure that people who are employed are employed for good reasons to do important jobs, and I will hold to that.

Public Services

3. Andrew Wilson (Central Scotland) (SNP): To ask the Scottish Executive what assessment it has made of the impact of the "Barnett squeeze" on the resources available for public services in Scotland. (S1O-805)

The Minister for Finance (Mr Jack McConnell): The Barnett formula delivers the same increases or decreases in spending per head on comparable programmes in Scotland as are planned in England.

Andrew Wilson: Is the Minister for Finance aware that, according to Professor Brian Ashcroft

of the University of Strathclyde, spending on public services in England will increase two and a half times more quickly during this Administration than it will in Scotland? Is he aware that, as was pointed out yesterday, Labour will spend less during this Administration than was spent under the Conservatives? Is he further aware that, despite the warm words and deceitful spin, Labour is not delivering for Scottish public services?

Mr McConnell: I am aware that Mr Wilson's claims are complete and total rubbish. By the end of the comprehensive spending review, this coalition Administration and the Government at Westminster will be spending more money per head, not only in Scotland but throughout the United Kingdom, than the Tories did at the high point of their spending in 1994-95. As I said yesterday, the amount of money spent on local government in Scotland will be higher this year, next year and the year after that than it was under the Tories' plans for the same period.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): Will the Minister for Finance provide the SNP with a maths teacher—Mr Canavan springs to mind—to explain to its members that if one starts with a higher base and gets the same expenditure boost as from a lower base, the higher base necessarily creates a lower percentage increase?

Mr McConnell: The problem with the SNP is that, as someone said last week, it wants to take Scotland out of Britain instead of taking poverty out of Scotland. The real divide in this country is between the rich and the poor, not between Scotland and England, and those constant comparisons do no good whatever for Scotland.

Kay Ullrich (West of Scotland) (SNP): Will the minister confirm that health spending in Scotland in the next financial period will not match the level of spending in England and Wales, and that that means a loss of £400 in health terms for every man, woman and child in Scotland?

Mr McConnell: It is absolutely shocking that the health spokesperson for a major political party in Scotland does not know that health spending in this country is 20 per cent higher per head than it is in England. *[Applause.]* The coalition Administration is committed to ensuring that health spending will be at its highest level ever by the end of this Parliament.

Dr Richard Simpson (Ochil) (Lab): Will the Minister for Finance give a rough estimate of the additional expenditure that would be involved in implementing the promises already made by the SNP, over and above the fact that the Scottish block budget is 18 per cent higher than the average budget for English regions?

Mr McConnell: I may have been a mathematics

teacher, and my arithmetic and algebra were both very good, but I am afraid that I have had problems with exponential functions as a pupil, a student and a teacher. *[Laughter.]* However, I will certainly try to do what Dr Simpson suggests and will publish the results in due course.

Donald Gorrie (Central Scotland) (LD): Will the minister take issue with the Chancellor of the Exchequer to secure more spending on a UK basis to which the Barnett formula might then apply?

Mr McConnell: Mr Gorrie asked me the same question yesterday. Discussions are constantly taking place between departments here in Scotland and at UK level on overall spending and on the expenditure that is appropriate in any given area; those discussions will continue. I must stress, as I have done on a number of occasions since June, that this Parliament must ensure that the money that we spend—some £17 billion—is spent in the best possible way on the services that we provide. I do not believe that constant comparisons, to which this question time has occasionally stooped, between expenditure in Scotland and in England are the best way forward for this Parliament. We were elected to make best use of the money that we have. If we do that, we will be serving Scotland well.

Mr David Davidson (North-East Scotland) (Con): As he is in expansive mood today, will the minister kindly tell the chamber why, week after week, he insists on talking in cash terms and not in real terms, so making his spending look important?

Mr McConnell: If Mr Davidson listened occasionally, he would have heard that, in my earlier answer to Mr Wilson's question, I said that, by the end of the comprehensive spending review, real-terms spending in Scotland and in the rest of the UK will be significantly higher than it was at the very highest point of spending under the Conservative Government in 1994-95. That is in real terms—real real terms—which is why it will count more.

The Presiding Officer: That concludes question time.

Phil Gallie (South of Scotland) (Con): On a point of order, Presiding Officer. I draw your attention to a matter of which I have already given notice to you and to the Deputy Minister for Rural Affairs, Mr John Home Robertson. It refers to an issue that I raised in yesterday's debate, when I queried nephrops allocations for the Clyde fishing area—

The Presiding Officer: Hang on, Mr Gallie. Quite courteously, you gave me notice of this but, before you go any further, I have to say that it is not a point of order. You are arguing about the

content of a ministerial answer; I am afraid that you will have to take that up with the minister.

Adults with Incapacity (Scotland) Bill: Stage 1

Resumed debate.

The Presiding Officer (Sir David Steel): We move to the resumed debate, which we were in the middle of when we adjourned for lunch and question time. The next speaker is Gordon Jackson. *[Interruption.]* Would those members who are not taking part in the debate please leave quietly.

15:16

Gordon Jackson (Glasgow Govan) (Lab): Consideration of the bill in committee has been an interesting experience. The Justice and Home Affairs Committee has been good and I certainly agree with Roseanna Cunningham that we have worked very hard. The staff have given us every possible help.

Taking evidence on the bill has been interesting, but sometimes extremely difficult. Some issues that were raised were—to my surprise—much more difficult than I thought they might be. The obvious example is the evidence that we heard from people who feared that the bill would lead somehow to euthanasia by the back door. My initial reaction was to dismiss that; I thought that I was dealing, by and large, with people who had a particular agenda—who saw, as it were, euthanasia under every bed.

However, the more evidence I heard, the more I began to worry. That worry has not entirely gone away. I accept without reservation what Jim Wallace said this morning about the Executive having set its face absolutely against any form of euthanasia. In no shape or form is it the bill's intention that euthanasia should occur. However, I would add a rider to that: history is full of legislation that did something, or helped to do something, that it was absolutely never intended to do. The fact that the bill does not intend to assist euthanasia does not totally satisfy me.

To some extent, the complaint of those who are concerned about euthanasia is not against the bill, but against the law in general. Some people think that the law in this country has gone the wrong way on that subject; they look at recent court decisions and disagree with them. Their argument is often with the existing law, not with any changes that the bill would make.

I am delighted that the Executive has decided to remove certain words from the bill, in particular the words

“ventilation, nutrition and hydration by artificial means”

from the definition of medical treatment. I was never happy about the inclusion of those words. I understand that they were not meant to do any harm, but they introduced doubt, fear and worry. Many members of the committee were uncomfortable about those words, even if we could not always articulate why. They seemed to cause more problems than they were likely to solve, so we are pleased to be shot of them.

The worry persists in other people's minds, if not in the Executive's—not in relation to withdrawing artificial hydration from someone who is in a persistent vegetative state, but in the much greyer area of psychogeriatrics. Before I deal with the change, it is worth saying what is in the minds of those who have that fear. They envisage that a doctor may feel that a particular treatment might be beneficial, but that he will be told by the guardian or the other appointed person, "I don't want that done." In that stalemate, treatment that is needed might not be given. That was a genuine fear. Those who are not clear about why the Executive is making the change should realise that that fear came not just from groups such as the Catholic Church or the Scottish Council on Human Bioethics, but from responsible and reputable medical opinion.

There were two ways of dealing with that fear. One was to put a legal duty of care on the guardian. Rightly, Jim Wallace rejected that, because it is not workable. It would raise more problems than it solved, so I am glad that we have not gone down that path. The second way was to move the goalposts—I commend the Executive for taking that step. The idea is that, if two bodies of medical opinion agree that treatment is required, the onus will be on the guardian to stop it—if that does not happen, the doctor will be free to go ahead and give the treatment. I hope that that alleviates the fears that were raised. Whether it will do so, I am not sure, but I await with interest responses from those who have given evidence about whether that arrangement satisfies them, because this is a difficult problem.

I welcome the bill. It shows the value of the way in which our legislative process works. It shows the value of front-loading legislation with the taking of evidence, which allows matters to be focused on at an early stage and the Executive to respond. We will wait and see whether more needs to be done but, for the moment, I welcome the bill and especially the Executive's flexibility on these issues.

15:22

Christine Grahame (South of Scotland) (SNP): I will focus my comments, which I hope will be helpful, on proxy decision makers and the role of the courts. I welcome the opportunity to

rationalise the law in this area, with the appointment of welfare attorneys, continuing attorneys and guardians and with the role of the public guardian.

I say to Dr Richard Simpson that, under section 18(2), the sheriff has the power to place the welfare attorney under the supervision of the local authority. In addition, section 3(4)(a) provides for the appointment of a person as a safeguard. However, as the Law Society of Scotland pointed out, the bill makes no provision to deal with powers of attorney that existed before the enactment of the bill. I draw members' attention to the Law Society's submission that such powers of attorney should be registered within a specific period, that they should not be used until they are registered and that they should fall if they are not registered. The bill omits such measures.

I welcome the fact that the bill's definitions of capacity and incapacity are flexible. I say to Ben Wallace that this is not a matter of absolutes. Rightly, the sheriff has great discretion, not only in hearing evidence, but in the kind of orders that he makes on recalling people. If I have time, I will deal with sheriffs, but that measure is welcome.

Eric Clive raised points about the role of European law. I know that Mr Wallace mentioned that, too, but I am not sure whether he was referring to the Council of Europe's recommendations on the principles on the legal protection of incapable adults. Professor Clive said that the Council of Europe principles are reassuringly similar to the ones that lie behind the bill. In an interesting paper, which I am happy to provide the minister with if he does not have a copy, Professor Clive refers to the Hague conference on international law and the convention that will be signed—it is in final draft—dealing with incapable adults, their carers and officials when the laws of more than one country are involved. The conflict between laws should be noted—it would be good for Parliament to take account of that international legislation.

Eric Clive also mentions a problem under section 60(1), which relates to the appointment of guardians and their extensive powers. His view—I have read it carefully and concur with it—is that this measure could cause difficulties when an adult recovers some capacity but there has not been time to vary the guardianship order. We could end up with a capable adult with a guardian. An amendment could take care of that, but it is another issue that the Minister for Justice should address.

The Mental Welfare Commission has voiced concern about the fact that there is no right to appeal automatically against renewal of a guardianship order. It is also concerned—I share that concern—that the three-year appointment

may be too onerous and put people off. I know that, in his response to the committee's report, the Minister for Justice addressed the fact that the sheriff could make an order for a shorter period, but I think that three years might become the norm.

I have dealt with section 17 on continuing attorneys. I am glad that the minister mentioned the training of sheriffs. I would have liked him to go further and nominate sheriffs in this area. Perhaps that will come in due course.

Will the Minister for Justice clarify where the Court of Session has exclusive jurisdiction? This morning, he mentioned areas where there is exclusive jurisdiction under section 45 and section 47. I want it made plain in the bill what is exclusive and where jurisdiction is not with the sheriff court. I would like a response from the Executive on legal aid. I want movement towards there being no means test for applications on behalf of an incapax under this bill, just as there are no means tests for some matters covered by the Mental Health (Scotland) Act 1984.

15:26

Mary Scanlon (Highlands and Islands) (Con):

I welcome the bill. Adults with incapacity need to be protected, and the bill will certainly make the financial side of an incapable adult's life easier to manage.

The Minister for Justice announced some amendments this morning. I believe that the amendments on guardianship and the public guardian's office go some way to addressing some of my concerns, but those concerns should be raised anyway—I will scrutinise the amendments further.

As far as I am aware, the Executive feels that section 1 offers protection, as it states that any intervention by a proxy decision maker must be of benefit to the patient. However, it does not give protection against a situation in which there is a refusal to act. There is a fear that the bill may make passive euthanasia possible.

Although section 44 gives a doctor a general authority to treat—treatment includes nursing and administration of food and liquids by artificial means—it defines not only the use of a feeding tube but food and water themselves as “medical treatment”. That could cause problems—should food and drink be regarded as basic care? I appreciate that the Minister for Justice mentioned some amendments on the definition of treatment and I look forward to further clarification on that point.

The welfare attorney has authority to refuse the treatment authorised under section 44. The bill

gives proxy decision makers considerable influence to refuse medical treatment. For example, a proxy or guardian can refuse to allow commencement of tube-feeding for a patient who is not dying but has difficulty in swallowing. That needs further scrutiny.

The liability of the welfare attorney is a sensitive issue. Welfare attorneys must act in good faith and their behaviour must be reasonable. Giving power without responsibility to proxy decision makers may—I stress may—allow passive involuntary euthanasia and remove protection for the incapable adult from abuses of power.

As the law stands, if medical staff starve an incapable patient to death, they are liable to prosecution for a criminal omission and may be sued for breach of a duty of care. They could also be struck off. Under the bill in its present form, the power to refuse treatment, food and fluids could be passed from people with duties of care to people with no such duties. I appreciate that the Minister for Justice addressed that this morning.

If the incapable patient is starved to death as a result of a refusal or omission by a proxy, no one can be prosecuted or sued. That is because, in those circumstances, in order to prosecute a person under the criminal law or to sue them under the civil law, one must first prove that they had a duty to act.

I welcome the amendments that the minister put forward this morning and I look forward to hearing the responses.

15:31

Pauline McNeill (Glasgow Kelvin) (Lab): Like everyone else, I welcome the bill. I knew little about the difficulties faced by thousands of Scots until I heard the evidence at the Justice and Home Affairs Committee. It is a measure of our democratic system that the Parliament has found time to allow more than 60 organisations to present their views on the subject so far. I am sure that many more will lobby us in the weeks ahead.

Having heard the evidence, I have decided that the bill is urgently required. We should commend the efforts of the groups and individuals who have taken time to assist us in its preparation. Many of my constituents have written to me with concerns about medical issues raised by part 5. I hope that they will be as reassured as I am by Mr Wallace's amendments.

To those who say that lawyers will have a field day with the bill, I say that by the end of the debate Parliament's wishes will be clear and on record. There will be no doubt about the meaning of the act when it comes into force.

At the heart of the bill is the protection of an

adult's capacity and the provision of flexible legislation if an adult lacks capacity. We are not dealing with an all or nothing principle; we are dealing with decisions relating to cases involving an adult who might have partial capacity. We want the person to retain their individuality. We should respect the decisions that they can take.

The bill would confer positive powers to appoint welfare attorneys who should always act in the best interests of the incapable adult. For the first time, health care workers will have clear legislation governing their activities with incapable adults. That will reassure them that their practices are lawful, not just established practice.

A fundamental aim is that procedures be simplified. Welfare attorneys can take action on a range of issues, preventing the need always to go to court. We want to make the process less costly, less cumbersome and less traumatic for those on whom the bill seeks to confer rights.

There will be a single integrated approach to the welfare property needs of adults who are incapacitated and the act will provide a legal framework for research. The bill has clear principles for clearer legislation. While we should scrutinise it further, I believe that we have it broadly right.

I have considered carefully the arguments about whether we should impose a duty of care on welfare attorneys and proxies. I am persuaded by the comments of Professor Sheila McLean. She states, as others do, that there is no tradition of a duty of care on individuals in the community. Imposing that duty on an individual, as a non-professional person, would turn legal tradition on its head. I prefer the option presented by the British Medical Association, which calls for a code of practice.

It is incumbent on us as legislators to balance the interests of all individuals who are affected. We must not make the duties and responsibilities on an individual so onerous as to deter or weigh down the welfare guardian. The amendment that deals with the definition of the nearest relative is significant. I have argued, as have others, that we should modernise our approach to that. I am pleased that this bill will lead the way.

I reject the claim that we are opening the door to constructive euthanasia. We have to guard against unscrupulous relatives or doctors not acting in the interests of incapable adults, but I believe that that scenario is unusual. However, there should be provision for interested parties to go to court. The bill is not about constructing detriment or confusion, but takes a refreshing, simplified approach that will benefit more than 100,000 adults in Scotland.

I support the bill and the amendments that have

been announced today.

15:35

Mrs Margaret Smith (Edinburgh West) (LD): I welcome the bill, which is much anticipated and long overdue, and will address gaps in the legal position regarding medical treatment and the financial affairs of up to 100,000 adults with incapacity. The chamber should extend thanks to the many individuals and organisations that have campaigned for the bill and made comment on it to all of us, as well as the significant contribution made by the Scottish Law Commission.

As the secondary committee, the Health and Community Care Committee, of which I am convener, had a very short period in which to make a contribution at stage 1, but while we raised certain points of concern, we are happy to accept the general principles. I am pleased that the Parliamentary Bureau and the Executive have acknowledged the problems with timetabling. Suspension of elements of standing orders and discussions with all relevant conveners means that in future no committee should find itself in the same position with regard to the legislative process.

I thank committee members, particularly our reporter, Ben Wallace, for their diligent work under great pressure of time. I also thank the Justice and Home Affairs Committee for its considerable work so far, including its attention to many of the medical issues that have been raised. I look forward to working with it again at stage 2. Given the lack of notice and time at stage 1, it is clear that the Health and Community Care Committee will want to consider the bill in some depth at stage 2, particularly as the majority of areas of concern are medical.

Many of the key issues that were raised with our committee have been taken up by the Executive, and I welcome Jim Wallace's statement this morning. It is clear that the Executive has listened and acted on many of the points of concern that have been raised. It remains to be seen what the response will be of those who raised their concerns about definition of treatment, withdrawal of treatment, duty of care and living wills.

It is important that, for the purpose of the bill, incapacity is not seen as an all or nothing condition. Just because an individual is not capable of making one sort of decision does not mean that they cannot make any. Just because they cannot make a decision today does not mean that they cannot make a decision tomorrow. Adults must be given every assistance to make decisions for themselves where possible. I was glad to hear Jim Wallace's comment that people with a learning difficulty should not be viewed as being

incapable—that was an area of great concern to the Health and Community Care Committee.

Right from the start, the Executive has made it clear—I am pleased to hear the Executive reiterate it today—that the bill is not a euthanasia bill, either by the front or the back door. Many organisations have expressed reservations and concerns that section 44, by classifying

“ventilation, nutrition and hydration by artificial means”

as medical treatment, allows for the possibility that guardians—some with conflicts of interest and no statutory duty of care—would advocate withdrawal or withholding of treatment as being of benefit to the patient. That spectre loomed large for many as a result of the bill. It is to be hoped that the minister’s statements and the Executive’s amendments to define medical treatment more positively and more broadly will go some way to alleviating those concerns.

However, I feel that Roseanna Cunningham and Mary Scanlon had a point when they said that there is a requirement in section 1(2) that interventions must benefit the person with incapacity, but that there is no corresponding requirement that a decision not to intervene must benefit them. Intervention in section 1 could be spelled out in terms of acts of omission as well as positive acts of treatment. We know what the Executive’s intention is in this bill—let us make it as watertight as possible.

Organisations such as Alzheimer Scotland have raised the issue of research with the Health and Community Care Committee. I welcome the comments that have been made to broaden that out to be of more general benefit than only to the individual. It is clear that there are still outstanding issues in terms of the primacy of opinions when people have to go to court; we are moving in the right direction, based on the amendments outlined to us today. We need to take into account some of the British Medical Association’s comments about advance directives to the Justice and Home Affairs Committee.

Generally speaking, we all welcome the bill. I welcome the Executive’s comments and the amendments it has announced today.

15:39

Malcolm Chisholm (Edinburgh North and Leith) (Lab): I begin by congratulating the Justice and Home Affairs Committee on a superbly impressive report. In my years at Westminster, I have never seen such thorough and effective work on a bill before the first Parliament debate. We should all be proud of the Parliament’s new procedures and the effective work being done by all its committees. I also congratulate the

Executive on introducing the bill.

Most parts of the bill are universally welcome. I want to focus on its medical aspects. The bill addresses the current lack of clarity, which the Minister for Justice mentioned this morning. In some cases, the lack of clarity has resulted in no treatment being given.

I am delighted by the amendment on research. I welcome the fact that artificial nutrition and hydration are to be taken out of the definition of medical treatment, resulting in a broad definition. That ought to deal with the serious concerns that have been raised by a range of organisations. I look forward to receiving their detailed responses to the amendment.

We should no longer need to discuss euthanasia in connection with the bill, although many interesting questions about euthanasia were raised in evidence. We should deal with them on another occasion. During the evidence taking by the Justice and Home Affairs Committee and the Health and Community Care Committee, I was struck by the confusion about whether it is necessary to go to court to withdraw hydration and nutrition.

As I said this morning, I must disagree with the Executive’s significant change to the balance between medical opinion and that of a proxy. As there is now no issue surrounding hydration and nutrition, it is unnecessary to change section 47 as the Executive proposes. The change goes much further than was suggested even by medical opinion—neither the BMA nor my colleague, Richard Simpson, suggested it.

We all received a briefing from Alzheimer Scotland, which made it clear that

“any challenge should have to be made by the doctor”.

In other words, the decision should rest with the welfare attorney or guardian. Alzheimer Scotland goes on to discuss

“inappropriately prescribed or over-prescribed neuroleptic drugs”

and says that

“when carers ask for medication to be reviewed they are often refused and their views disregarded.”

That situation will be made worse by what was proposed this morning.

More serious opposition will come from campaigners for people with learning difficulties. Those who are currently tutors dative will lose the rights that they have. One person has approached me about the matter and I know that she will be very angry about the Executive’s announcement. She was told 28 years ago by doctors that she should put her daughter into Gogarburn hospital. She has looked after her daughter all that time,

resisting certain epileptic drugs doctors have tried to give her because she knew what effect they would have on her daughter's stomach. What doctor knows better what is good for her daughter?

We all know that medicine is not an exact science—it changes from year to year and even month to month. At stage 2, I will lodge an amendment to deal with that matter. Furthermore, the fact that electroconvulsive therapy can be given with a second medical opinion, against the wishes of a proxy, is another matter that is totally unacceptable.

15:43

Tricia Marwick (Mid Scotland and Fife) (SNP):

I want to concentrate on two areas of the bill that have been the most contentious: the inclusion of hydration, nutrition and nursing care as medical treatment and the role of proxies in deciding whether medical treatment can be withdrawn. I welcome the minister's opening statement that those areas will be subject to amendment. However, we will need time to consider whether the amendments deal with the concerns that have been raised or whether new amendments will be necessary.

The minister has made it clear that the bill will not change the current position—euthanasia is illegal. The problem is that there are widely differing interpretations of the current law, or rather ways in which it is carried out in practice. Following the Law hospital case, the Lord Advocate stated that he would not authorise prosecutions of qualified medical practitioners who, acting in good faith and with the authority of the Court of Session, withdraw life-sustaining treatment from a patient in a persistent vegetative state, which results in the patient's death.

In its evidence to the Justice and Home Affairs Committee, the British Medical Association contended that it is not necessary to go to court to get permission for cessation of treatment for every case of PVS. It further said that it believes that the law is more flexible in Scotland than in England. It said that the Executive's interpretation—and, by definition, Lord Hardie's statement—would cause it concern. It also said that it hopes that the general principle of withdrawing and withholding treatment from a wider group of patients who are similarly incapacitated will operate with the same flexibility.

It is against that background that alarm has been raised about the intentions behind the bill and what will happen in practice. The inclusion of nutrition, hydration and ventilation as medical treatments, with the power of proxies to deny medical treatment, has led a number of witnesses

to suggest that the bill would allow euthanasia.

Professor Sheila McLean said that the bill gives positive powers to treat people who are incapable and that the concerns of other witnesses should be assuaged because of that. She drew attention particularly to the fact that everything that is done under legislation should be governed by the general principles set out in part 1.

I believe that the Executive, ministers and many organisations genuinely wish to modernise the law and to bring benefit to perhaps 100,000 people in Scotland. I also believe that there is no intention on the part of ministers to make euthanasia possible. However, many witnesses have expressed sincerely their view that the law is confused. The Executive has a responsibility to reflect on and to allay all such concerns. This Parliament has a responsibility to produce legislation that is unambiguous. While I welcome the minister's statement today, we need to wait until we see the amendments that will be lodged. I would like to hear that the concerns of the people who made representations to the committees have been assuaged by those amendments.

These issues will continue to be highlighted at the next stage of the bill. I hope that the minister will reflect on the evidence that has been given and accept that further changes may be needed to allay the genuinely held concerns of many people.

15:47

Karen Whitefield (Airdrie and Shotts) (Lab): I welcome the opportunity to contribute to today's debate. I have a long-standing interest in the bill.

I am pleased that the Scottish Executive has recognised the deficiencies in the current legislation concerning adults with incapacity, and the confusion surrounding it. Placing this bill before Parliament at such an early stage of the legislative programme demonstrates the Executive's understanding of the severity of the problems facing people who are affected by current legislation.

I believe that the bill represents a genuine and successful attempt to alleviate the problems facing adults with incapacity and their carers. It seeks to balance the concerns of those who opposed elements of the Scottish Law Commission's original draft bill with the overwhelming need for change to current legislation. Existing legislation is fragmented and archaic. As we heard this morning, some of it dates back hundreds of years. The trail of legislation through history has resulted in a system that lacks any semblance of coherence or structure.

The diversity and complexity of applicable legislation is widely regarded as causing

unnecessary disadvantage to vulnerable people. Even those who have concerns about the bill generally accept the need for reform. I recognise and understand those concerns and I hope that the Minister for Justice and the Minister for Health and Community Care will help to alleviate such fears and bring about unanimity regarding the benefits of the bill.

We should no longer be forced to endure legislation that, among other things, leads to the freezing of joint bank accounts when carers are already facing the most extreme difficulties and pressures. Measures in the bill will address such practical problems and help to alleviate the stress faced by carers of incapable adults.

I believe that the general principles—as laid out in part 1—provide a firm and humane foundation for new legislation. Within those principles, the rights of the adults concerned are given priority. Indeed, there is now a duty to use and develop—where reasonably practical—adults' skills in relation to the management of their welfare.

Of the estimated 100,000 people who lack capacity in some or all areas of their lives, around 60,000 suffer from some form of dementia. The continued increase in the number of older people in society, coupled with the higher incidence of dementia in that age group, means that the problem can only get worse. Alzheimer Scotland's report to the Royal Commission on Long Term Care of the Elderly predicts that, by the middle of the next century, more than 100,000 Scottish people will suffer from dementia. The need for continuing research into the causes, cures and treatments of dementia is evident. I hope that that is borne in mind during the various stages of the bill and that the final version places priority on the needs and care of the sufferer and is not overly restrictive.

The passing of this bill will prove that the Scottish Parliament is able to respond to the real needs of the Scottish people. Existing legislation causes misery, suffering and indignity to countless families around the country. National and local organisations throughout Britain have been calling for changes to existing legislation for many years. We in Scotland have the opportunity to pave the way towards a legal system that genuinely enhances the rights of adults with incapacity and their carers. I urge everyone in the chamber to support the bill.

15:51

Mrs Lyndsay McIntosh (Central Scotland) (Con): At the outset, I want to reaffirm my party's support for the bill that the Scottish Executive has placed before us. I also pay tribute to the work of the Justice and Home Affairs Committee, its

convener and its clerks. As Roseanna Cunningham said this morning, the committee has been extremely hard-working and has considered an enormous amount of material from the Executive and other sources—some of it self-inflicted—with great diligence and good humour.

Having broadly welcomed the bill, I should add that the Conservatives also welcome the amendments that the minister has said he is prepared to make. Colleagues from all parties have signalled their concerns about a number of areas and I am relieved that changes will be incorporated to include same-sex partners in decision making. It was abhorrent to me that a partner of very long standing should be excluded from any part of the decision-making process, simply because they were of the same sex.

The area that is undoubtedly of greatest concern—and on which colleagues across political divides will have had most representations—is artificial hydration, nutrition and ventilation. The debate will go beyond the doors of this chamber between individuals and organisations as diverse as the Society for the Protection of Unborn Children, the Scottish Council on Human Bioethics, the British Medical Association, the Royal College of Nursing and the Law Society of Scotland.

Those organisations represent professions as diverse as doctors, nurses, a host of other medical practitioners and, importantly, lawyers. Such individuals have a shared interest in that they will be left to police and manage the legislation practically and morally once it is passed. It is no coincidence that they are the only people who are highlighting the euthanasia issue time and time again. Most often, they—along with religious confidants—help us to deal with the emotional consequences of family bereavement.

Who are we to deny those various correspondents the right to air their concerns in a fitting and proper manner? The Scottish Executive has set its face against passive euthanasia; I hope that it will not be so set in its mind about voluntary euthanasia, which is a topic that has been raised by many of the people who e-mail me and other correspondents.

Duty of care, advance statements and medical research are other areas of concern that will come within the scope of possible amendments. Without the Millan committee report to guide us, I felt that considering a bill with dubious definitions and medical treatments was putting the cart before the horse. I am therefore happy with the minister's reassurance that the definitions will be tightened.

As time is short and many other members wish to speak, I want, finally, to comment on section 48, entitled "Authority for research". I was delighted

when Mr Hide, currently in Kuala Lumpur, gave his evidence on the changes and improvements in treatment that have developed thanks to research. My nephew was recently the victim of a serious cycle accident, which resulted in severe head trauma. Without Mr Hide and the knowledge gained from research, my nephew may not have lived. Please, therefore, do not curtail too many of the researchers' activities.

15:55

Mr Duncan Hamilton (Highlands and Islands) (SNP): I join members in welcoming the bill and commend the Justice and Home Affairs Committee for its work. Unlike Malcolm Chisholm, I have not had that many years' experience of ploughing through committee reports, but having read this one I feel that there is a great deal in it that merits re-emphasis. I make no apology for re-emphasising one or two specific points today.

My first point relates to the definition of mental disorder, which is a debate that has been running in the chamber for some time. I am acutely aware of the position of the Millan committee and others on this matter. Nevertheless, the report makes it clear that the need for as broad a definition as possible of the so-called threshold test should be re-examined. The example that is often used is brain damage caused by an accident or stroke. We must ensure that people who are rendered incapable in those circumstances are not excluded from the process.

Mr Chisholm also remarked that the debate on euthanasia is perhaps not one that we should be having any more. I do not agree. The bill is not watertight. The range of opinions that we have heard today makes it clear that there is some confusion, even in the chamber, about what the bill could mean in that respect.

I associate myself with the remarks made by Roseanna Cunningham, Gordon Jackson and Margaret Smith. I fully accept that the Executive's intention is to disallow euthanasia by the front door, the back door or any other means, but that being the case, I cannot for the life of me understand why that is not simply specified. There may come a point when we want to discuss euthanasia in the chamber, but that is not what we are trying to achieve with this bill. If we want any semblance of euthanasia categorically to be removed from statute, we should say so explicitly. I cannot see what the problem is.

On the health aspects of the bill, it is worth picking up on one of the points made by the Royal College of Nursing and the BMA in their submissions. The difference between clinical and medical treatment seems to me to be a lot more than simply semantic. If the potential for omission

remains, there is the potential when treatment is withdrawn for nursing care to be withdrawn too, simply because nursing is in the same section. It would be useful to clarify exactly what we mean. Clinical care is a better term than medical care because it encapsulates the important role that the nursing profession plays in the treatment of patients.

Rather than putting that point in my own words, I quote Dr Wilks of the BMA, who said when giving evidence:

"We have made it absolutely explicit that the process leading to, and the decision to withdraw or withhold treatment, should be consensual among doctors, nurses and the family. We also understand clearly that when a decision has been made to withdraw or withhold treatment of any type, it is primarily the nurses who have to pick up the consequences of that decision for short-term or long-term nursing."—[*Official Report, Justice and Home Affairs Committee*, 17 November 1999; c 392-93.]

It is also important to recognise that the nursing profession's immediate responsibilities are governed by a clear professional code of conduct. Professionals could be led into conflict if the legislation is not nailed down. It would be a sad state of affairs if we put the people who are at the coal face of providing essential services into such a difficult position.

The bill is to be welcomed. I do not think that there is in any sense a party political slant on it. While the Executive has made some steps towards accepting the concessions the committee recommended, further action could be taken on the specific areas I have mentioned.

15:59

Scott Barrie (Dunfermline West) (Lab): There can be no doubt that a bill such as the Adults with Incapacity (Scotland) Bill is long overdue. The proposed legislation will provide a much needed and, unfortunately, long delayed overhaul of the current Scottish legal system as it affects adults who, for a variety of reasons, lack sufficient capacity to make decisions about their welfare, medical treatment or financial affairs; decisions which the vast majority of us take for granted.

The difficulties that such people face affect not only themselves, but partners, other family members and carers. In my career in social work, I came across many instances in which incapacity caused havoc in a family, not just for the more obvious reasons of someone no longer being able to do things that they once did, and of the emotional impact that that caused, but on a more practical level. We have already heard about a couple's joint bank account not being able to be accessed by the partner who remains capable, even if the money is for the benefit of their incapacitated partner.

Under current legislation, the only remedy available is to apply to court for the appointment of a curator bonis, and that is a costly, complicated procedure. The bill would allow for the capable partner in such cases to operate the joint account for the benefit of both partners, without resort to a complex, inflexible legal remedy. That benefit is to be welcomed.

I also welcome today's announcement by the Minister for Justice, echoed by several other speakers in the debate, that the Executive intends to include partners of the same sex under the definition of nearest relative. That was highlighted in the Justice and Home Affairs Committee report, and takes into account the social realities of contemporary Scotland. It advances the definition contained in the Mental Health (Scotland) Act 1984.

As has already been mentioned, the largest group of adults with incapacity who will benefit from the bill are those suffering some form of dementia, and their carers. With life expectancy increasing and the population aging, the current figure of 60,000 people with dementia is likely to increase over the next three decades.

It should be noted that Alzheimer Scotland welcomes the bill, and when the Justice and Home Affairs Committee was taking its considerable amount of evidence, I was particularly struck by the paper that it presented and by its concerns about the legal status of research. According to Alzheimer Scotland, section 48 as drafted would render it illegal to carry out therapeutic research where it was for the benefit of others or for future sufferers, rather than for the adult concerned.

Although such research would have to be carefully regulated, it is clear, if we are to advance our knowledge of the causes of dementia and offer hope for future cures, that such research is necessary. I do not believe that it is the intention of the bill to preclude proper clinical trials of drug treatment or other treatment in this or related areas. I therefore welcome this morning's speech by the Minister for Justice, in which he said that the Executive would seek to widen the scope of section 48 at stage 2, in line with European conventions.

During the evidence sessions of the Justice and Home Affairs Committee, a number of references were made to the fact that the bill could result in back-door euthanasia because the wording of sections 41, 44 and 47 was not sufficiently specific. I believe such arguments to be something of a red herring. On many occasions, not least in the speech by the Minister for Justice this morning, the Executive has stated that it is totally opposed to living wills. In "Making the Right Moves", the Executive specifically rules out giving clear legal force to advance statements, as

proposed by the Scottish Law Commission and the alliance for the promotion of the incapable adults bill. I do not believe that the bill, as currently written, would change that.

Perhaps that is a pity. I would have preferred to have debated the issue as covered by the Law Commission's draft proposals. I have a great deal of sympathy for the concept of living wills, the legal and moral minefield notwithstanding, but I accept that to deal with them would have greatly held up the bill's progress, because of their controversial nature, and I accept that the issues that the bill addresses require immediate action.

As I said, the measures in the bill are long overdue, and I appreciate why the Executive has omitted advance statements from it, but we should discuss that issue at some point in the future.

I completely concur with the statement in the recommendation in the Justice and Home Affairs Committee report, that

"this is a good Bill."

However, as stated in the Health and Community Care Committee memorandum, the bill contains

"a number of ill-thought-out provisions."

The bill will require some amendment to clarify or strengthen what already exists; we have already heard from the Minister for Justice about some of the Executive's intentions, not least those on section 44.

I believe the bill to be basically sound. It should be supported. It will enhance the lives of a number of people in our society, and the lives of those who care for them.

16:03

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): What a pity the press gallery is empty. I suppose that that tells us about politics and the story. The good news is that a large bus-full of people came down from the Highlands to hear today's debate. The fly in the ointment is that they were all members of the Conservative party—you win some, you lose some.

I particularly enjoyed what Lyndsay McIntosh said. Tricia Marwick and Malcolm Chisholm also made strong contributions. I am coming to the debate as a layman, who has had no involvement with the bill thus far. When we read about the bill and about old people, people with dementia and so on, it is easy to think that lightning will not strike us.

I will share with members the fact that lightning did strike my family. In January, my wife was diagnosed as having a brain tumour. It was a very traumatic, frightening period of her life. The good news is that she is much recovered and is coming

on. I and my family can speak from first-hand experience of how such things can come at anyone: the bill affects us all.

I have personally experienced the lack of co-ordination—albeit with the best of intentions—among dedicated health professionals who are absolutely devoted to their jobs. However, because their roles were sometimes not brought together, one could see the gaps. As a spouse and a parent, I found that pretty difficult. I had to get more involved than perhaps I should have been.

I am quite proud to be associated in a small way with the bill. It ties up a lot of loose ends. However, I plead with the minister to ensure that, as the bill progresses, the maximum consultation takes place with health professionals from residential homes, social work departments, hospitals and so on. As I said, I am a layman—I cannot tell what is right or wrong with the bill, but health professionals can. I am sure that Mr Wallace will take that on board.

I do not know how many members read a poisonous piece in the *Daily Mail* of 30 November by a Mr Heathcoat-Amory—or amoral, or whatever his name is. He spent quite a few column inches rubbishing this Parliament and every one of us from all parties. I assure members that he used language stronger than “numpties”.

I am proud to be involved in a piece of legislation such as the bill. It goes to show what a lot of tripe some of our critics talk about this Parliament. If we did not have a Scottish Parliament and if we did not have devolution, we would find it much more difficult to introduce the bill. I commend it to the chamber.

16:06

Maureen Macmillan (Highlands and Islands) (Lab): I particularly appreciated Jamie Stone’s speech.

The arguments for reform have been well rehearsed, and I do not wish to go through them again. Suffice it to say that the bill and the reform of the law are important, to enable control of the affairs of persons who are unable to take some, or any, decisions for themselves. The bill allows decisions to be more tailored to their particular needs and made more user friendly.

It is with a great sense of both humility and pride that we are discussing and will eventually decide on the issue—humility, because the bill involves vulnerable people, their carers and their families who have to make difficult decisions, sometimes about life and death, and pride because the Scottish Parliament, which represents the diversity of opinion of the Scottish people will, finally, decide on the bill.

I have been involved in the issue for some considerable time as a member of the Justice and Home Affairs Committee. The evidence that we received was, in all cases, presented in a manner that brought dignity to the people whom we are trying to help. I want to take this opportunity to pay tribute to all those who contributed and to the convener, members of the committee and the clerks.

One could address many issues when speaking about the bill. However, like many other members, I will concentrate on medical treatment. Members are aware that the committee report notes that that issue raises

“difficult and often emotive issues, on which it is unlikely that consensus can ever be achieved.”

However, I hope that, with good will and sensitivity, we can achieve consensus.

Obviously, one hopes that medical decisions will be made through discussion between doctors and proxies, with the best interest of the patient in mind. As the committee report highlights, the role of proxy decision makers is of some concern. I was concerned that non-intervention was not specifically mentioned as having to be for the patient’s benefit and that, while the bill gave doctors discretion over medical treatment, it left proxy decision makers with the right to refuse medical treatment. In short, the final decision of whether to refuse medical treatment seemed to lie with the proxy decision maker. That led some individuals and groups to fear that that role could be abused either by the more unscrupulous who had a financial interest or by those who were tired of the responsibility of an aged relative.

The committee report notes that, for some witnesses, the rights of the proxy decision makers were not adequately balanced by responsibilities. Those witnesses did not feel that the general principles of the bill, as proposed, gave adequate protection to vulnerable people—particularly regarding the administration of

“ventilation, nutrition and hydration by artificial means”.

I welcome the proposed amendment, which will remove those words.

It is important that people understand that there is no possibility of the bill introducing euthanasia by the back door, as that is certainly not the Executive’s intention. I share the concern expressed by Roseanna Cunningham and Tricia Marwick that the British Medical Association’s evidence to the committee seemed to show that euthanasia is not unknown. That is what worries organisations such as the Churches, and it will have to be addressed.

The idea of introducing a statutory duty of care was put forward by the BMA and the Scottish

Council on Human Bioethics, but it would be difficult to place on individual proxies, as Professor McLean said in her evidence. I realise that there are concerns about disempowering the proxies, and although I take on board what Malcolm Chisholm said, I am still inclined towards placing the final decisions on treatment in the hands of doctors—particularly when lack of treatment, or the withdrawal of treatment, would result in the patient's death. However, as Malcolm says, that might not be necessary any longer.

Doctors already have a statutory duty of care. If there was disagreement or misconduct, the families of the incapable adult could seek recourse through the courts. That would strengthen this aspect of the legislation. I welcome the Minister for Justice's proposed amendment that will allow for a second opinion before the proxy's wishes can be countermanded.

This is an important issue that we must get right. It is essential that there should be no grey areas, no ambiguities. This Parliament has the privilege—and it is a privilege—of making an important contribution to people's lives. The area that I have highlighted, and the solutions that I suggest and which have been suggested by the Minister for Justice will, I hope, bring clarity to the sensitive issue of medical treatment.

16:11

Fiona Hyslop (Lothians) (SNP): I welcome the bill and much of its content. I congratulate my colleague Roseanna Cunningham, the Justice and Home Affairs Committee and the Health and Community Care Committee on the immense amount of work that has obviously been put into the scrutiny of the bill. They have demonstrated clearly the true value of the committee structure in this Parliament, and they deserve the congratulations of all members. They set an example to us all. I agree with the point that was made by Gordon Jackson about the front-loading part of the consultation process. This legislation is the first evidence that that will work, and is a good example of how we can open up areas of concern at an early stage, to achieve consensus in resolving them.

I will confine my comments to the subject of the nearest relative. The section of the bill that defines the nearest relative is of great importance to the entire bill, as it defines who may or may not be regarded as the person who is most appropriate to look after the affairs of the person who is unable to make their own decisions. A priority list is provided in the bill, which details who should be regarded as the nearest relative—child, father, mother, brother, sister and so on. The definition is crucial. The issue is whether this Parliament will recognise the rights and, importantly, the role that should be

played by partners who are not genetically, genealogically or technically legally linked to the patients. That key area must be addressed, as it concerns the way in which the bill will deal with the issue of same-sex partners. I welcome the fact that the minister is seeking to extend the definition of nearest relative to same-sex partners.

I want to raise a point of procedure, although I am not sure whether there is such a thing. It might be helpful, in future debates, if notice is given—even during the debate—of any amendments that have been lodged by the Executive. A list of those amendments could be given to members. I understand that, in the Executive's response to the Justice and Home Affairs Committee, some of the amendments that are being proposed might not have been put forward. I raise that point in a spirit of co-operation. In the scrutiny of future legislation, a listing of Executive amendments might be considered.

It is of some concern that same-sex relations have been left out of the original draft of the bill. The idea that a person who may have lived with their partner for decades could have their guardianship over that partner overruled by the next nearest relative, who may not have been around for the past 20 years, is untenable. The potential grief and upset that could be caused is incalculable. In our age, not to acknowledge that men and women live in long-term single-sex relationships—particularly when we are considering who is best placed to act as proxy—is unacceptable. Further consideration of that issue is necessary, and I am pleased that the Executive wants to do that. We should not imply to the lesbian and gay community in Scotland that their relationships are second-class, or that, on important issues that affect their human rights, they cannot rely on the Parliament to act in a just and fair way.

I do not think that the bill will become a totem of gay rights. We should focus on the right of the patient to have the person who is closest to them helping to protect and support them and their decisions. I believe that—in a spirit of equality—there is consensus on the issue. We should address the needs of patients in times of crisis and distress. Few in the chamber would disagree with that.

Human rights are universal. They apply to us all—patients and loved ones. I hope that we are all loved ones because, as Jamie Stone said, the bill potentially affects all of us. It is a credit to the Parliament that it is being introduced, and the manner in which that has been achieved is credit to the committees and to the Executive.

16:15

Des McNulty (Clydebank and Milngavie (Lab)): Like others, I want to congratulate the relevant committees on the work that has been done in scrutinising the bill. I welcome the fact that the bill has been introduced in such a short time—we are all conscious of the difficulty in bringing forward detailed bills such as this at Westminster. The Parliament was created to be able to deal relatively quickly with matters that are of immediate interest to people in Scotland, and to deal with those matters in a way that is appropriate to the needs of the people. It is worth recording the fact that the committees have done such a thorough job.

I shall highlight three areas of concern—areas that I would like to be addressed more effectively during the remaining stages of the bill. First, I am concerned that controversial treatments for mental disorders, such as electroconvulsive therapy and neurosurgery, might—as I understand the terms of the bill—be given in certain circumstances to adults who are incapable of consenting to or refusing such treatments.

On Fiona Hyslop's point, I agree that human rights apply to everybody in all circumstances. We must be extraordinarily careful in ensuring that the principle of consent applies where humanly possible. I am not against necessary treatment being given where circumstances demand it, but it is important to maintain the principle that informed consent should be sought whenever possible, before treatment is given.

Secondly, I am concerned that the balance of control has shifted a bit too far in the direction of carers. I am concerned that the terms of the proposed legislation place no duty of care on welfare attorneys. There should be a quasi-contractual legal basis for the rights and responsibilities that apply to both the incapable adult and the carer, and there should be greater clarity in that process. It is difficult to produce legislation that applies to all circumstances, but I do not understand why it is not possible to establish the duty of care in the legislation or to apply that to welfare attorneys.

My final point is that the legislation is meant to apply to a relatively confined group of people in particular circumstances. In parallel with that, an increasing number of people suffer from Alzheimer's disease, dementia and so on. There is some concern that, when the legislation is enacted, it might come to apply to people to whom it was not intended that it should apply.

We must ensure that the application of legislation such as this cannot be extended to apply where it was not intended. More research must be done and we must take more expert

advice on how to define what dementia is, and who the sufferers are. We must establish clear boundaries in relation to the bill—we must ensure that people's rights are protected and maintained wherever that is feasible and whatever people's circumstances. The Parliament must do everything that it can to ensure that protection of human rights is applied to everybody. That is an important principle for legislation from the Scottish Parliament.

16:20

Euan Robson (Roxburgh and Berwickshire (LD)): The Justice and Home Affairs Committee report describes the bill as good; by the time it is enacted, it will be legislation that all members are proud of. The Liberal Democrat manifesto contained a commitment to such a bill, although of course other parties were similarly committed. The bill would not have come about without the efforts of many people before the Parliament was established; I mention particularly the alliance for the promotion of the incapable adults bill and the Scottish Law Commission. Jim Wallace rightly talked of the shared journey of developing this new legal framework.

How a society treats its most vulnerable members is perhaps a mark of how civilised it is. In the past, we have fallen short in that. The fact that, within a year, the Scottish Parliament will have rectified a deficiency that affects more than 100,000 people is a demonstration of the strength of the devolution settlement. We may all be touched by this legislation, personally or through our relatives, as Jamie Stone eloquently said.

The key principles embedded in the bill are that there should be appropriate efforts to communicate with the adult concerned; that whatever is done is for their direct benefit; that the least intrusive measure must be chosen to achieve that benefit; and that those close to the adult will have a right to be consulted.

Having looked at the evidence to the Justice and Home Affairs Committee, I welcome some of the amendments that the Minister for Justice mentioned this morning. It is difficult to digest them all quickly, but it seems right that, in exceptional circumstances, the nearest relative should be removed from their legal position. As other members have said, it is clearly right that the category of spouse or partner should include partners of the same sex. I strongly agree that it is necessary to reform the handling of the general and financial affairs of incapable adults and accept the Minister for Justice's assurances that there will be stringent safeguards on managers of care establishments and others who look after residents' finances. However, I want to see exactly what the safeguards are.

Part 5 has caused most comment to the Justice and Home Affairs Committee. As Jim Wallace and Roseanna Cunningham said this morning, it is unsatisfactory that, except in an emergency, there is no explicit authority for a doctor to treat a patient who is unable to give consent. It is important to change that. I welcome the clear opposition to euthanasia expressed by the Minister for Justice, which, I think, all members will share.

When are the regulations under section 45 likely to be made? If we had at least draft regulations by stage 2, that would facilitate debate. I welcome the proposed changes to section 48. I welcome the simpler and more positive definition of medical treatment. Like Pauline McNeill, I agree with the cogent arguments that Professor Sheila McLean made at the Justice and Home Affairs Committee against placing a statutory duty of care on welfare attorneys and guardians. Des McNulty, who is no longer in the chamber, would be wise to look at what she said, as it clarified the issue.

I have some difficulty with section 1(4)(a), which concerns living wills. I give weight to the Royal College of Nursing's evidence and feel that there are considerable difficulties in trying to take into account previous wishes when medical science may have moved a long way on. We will need to return to that matter and give it very careful consideration. I do not have an answer at this stage. I look forward to hearing what others say at stage 2, but I think that there are still some concerns about section 1(4)(a). If the minister has anything to add to what was said this morning, I will be grateful to hear it.

16:25

Phil Gallie (South of Scotland) (Con): This debate is a starting point for the bill, rather than even the first hurdle. We have taken the evidence, we have information before us, we have appraised what is, in the minds of many, a very good bill, but there is long way to go before it can come into force.

Richard Simpson suggested that the need for change dated back as far as 1585—a time when there was another Scottish Parliament. That is noted. However, this process, involving the Scottish Law Commission, started in 1981. The previous Government considered this proposal in 1995 and decided to carry it forward. This Government, to its credit, took that onwards in 1997. It is now time to bring the recommendations to fruition.

We must remember the principal aim of this bill, which is to make things better for people who suffer from incapacity—permanent incapacity, transient incapacity or progressive incapacity. Those are the people whose fundamental rights,

to which Des McNulty referred, must be protected.

Like Euan Robson, I want to pick up one of the features of this debate. All of us in the chamber today and all the members of the Justice and Home Affairs Committee have tended to concentrate on the medical and health issues, but the bill goes a lot further than that. We are talking about the everyday issues of life. When in section 1(4)(a) we read about

“the past and present wishes”

of individuals who have suffered incapacity, we need to remember that we are dealing not only with life-and-death issues, but with the material and all other aspects of those people's lives, such as where they wish their goods to go. We should bear that in mind when considering section 1(4)(a), important as the medical aspects are.

The bill is about not only those who suffer from incapacity, but those who care for them. The carers are a very important aspect, as Karen Whitefield reminded us. It is important that their wishes are taken on board all the way through this process. There are many cases of children who have suffered incapacity and are living with an elderly parent. The great concern of the elderly parent is what will happen after their death to their child. I believe that the bill offers them a way forward. It offers them fresh hope, in that others can be identified to take on the mantle that they have borne for many years.

The bill is unique, because it is not based on political interest or dogma. Every member of this Parliament has a chance to contribute to it. This is a chance to get legislation into place that means something and that can help people who are extremely vulnerable. To that extent, Fiona Hyslop's comment about the spirit of co-operation applies easily to this bill.

Some members of the Justice and Home Affairs Committee will be more involved in the preparations for the bill's next stage than others. At this point, I would like to pay tribute to Roseanna Cunningham. She paid tribute to all the members of the Justice and Home Affairs Committee, and Malcolm Chisholm offered his commendations as well. Roseanna has taken us through this bill with great fairness and, at times, panache. Lyndsay McIntosh thought that there was always an element of humour, but there was also a firmness that put us in our place.

A problem for Roseanna Cunningham was to get this bill through to a time scale. We recognised that that was important at stage 1, but we now move on to stage 2. The Justice and Home Affairs Committee must ensure that it does not face too much pressure to meet time scales. We should remember that stage 2 is a line-by-line examination of the bill, which contains a lot of

words and much detail. Such an examination cannot be hurried. If the committee is put under pressure to meet a deadline, one could say that a form of guillotine was being imposed. We have to ensure that we do not bow to such pressures.

Roseanna Cunningham (Perth) (SNP): I do not know whether this will cheer up Mr Gallie and the other members of the Justice and Home Affairs Committee who are still in the chamber, but I should advise them that I am in discussions about the possibility of the committee having a regular twice-weekly slot between January and Easter.

Phil Gallie: Roseanna is always cheering me up. What would really cheer me and every member up would be for the bill to go through as quickly as possible, as its aims are full of merit and it will improve the lot of many people.

Of course I have concerns about the bill, as everyone else does. I will not list them because of time constraints. This debate has been particularly eloquent. Many representations have been made and much detail has been picked up by members from all parties. Issues such as intervention cause me some concern. It is easy to identify positive intervention, but it is more difficult to identify what constitutes negative intervention. Perhaps such issues will be taken on board at stage 2.

Everybody will welcome the appointment of the public guardian. On welfare attorneys, as far as I am aware, the bill does not allow for the fact that people might already be acting as advocate for individuals. Perhaps registration is needed of those who are currently regarded as attorneys.

The ending—in effect—of the curator bonis system will be welcomed across the board. The system could be excessively expensive and many of the people who were being looked after could ill afford it.

The arguments about medical treatment could have been eased, although Malcolm Chisholm raised the valid point again about removing the contentious words “ventilation, nutrition and hydration” from the bill.

I welcome the minister’s amendments. They go some way to satisfying many of the representations that we have had, but I take on board Malcolm Chisholm’s warning that we must ensure that the wishes of people who care and have given their lives to looking after others are not undermined.

Finally, on an issue on which everybody expects me to be slightly contentious—same-sex partners—I will say that it would be nonsense to eliminate the views of people who had been in a long-standing and loving same-sex relationship, or even just a friendly relationship irrespective of sexual involvement. I make no apology for saying

that, as I always argue that loving relationships, or partnerships that are based on friendship, should be recognised. Therefore, I welcome the minister’s comments on same-sex partners or friends.

16:35

Michael Matheson (Central Scotland) (SNP): I am aware that, as the last person to speak before the minister closes the debate, I am in acute danger of touching on some points that have already been made. I hope that you will forgive me, Presiding Officer, if I cover some territory that has already been covered. Given Phil Gallie’s last remarks, I am not sure what influence Lyndsay McIntosh is having on his politics these days—[*Laughter.*]—but his comments are welcome none the less.

It is clear that all parties support the general principles that underlie the bill. As several contributors to the debate have pointed out, moves to introduce a bill for adults with incapacity began in the 1980s and we should give credit to those who started that campaign. I congratulate the members of the Justice and Home Affairs Committee on their work, and I do not say that simply because I am Roseanna Cunningham’s deputy. As this is the first time that a committee has had to take a bill through the legislative process, they should be congratulated on the way in which they have handled that task.

It gives me some pleasure to be able to wind up this debate for the SNP, because I was the person who moved this issue as party policy at our national conference in Inverness two years ago. We recognised the growing campaign for the introduction of this measure, and it is good to see that the Executive has chosen to introduce this bill early in the Parliament.

I would like to refer back to my own professional experience and to the disadvantages that result from the present legal system. Those disadvantages have to be dealt with not only by professionals who work with adults with incapacity, but by some of the most vulnerable members of our society. That problem has been mentioned by several speakers, including Jim Wallace and Scott Barrie, who referred to the freezing of joint bank accounts when one person in a couple develops dementia.

In my area, one of the most common problems concerns young people with acquired brain injuries. Because of the legal difficulties, the relatives have found themselves struggling to deal not only with the trauma of a young member of the family having a head injury, but with that person’s personal and financial affairs. Unfortunately, that is a problem that some people experience day in, day out, and that is why most people recognise

the value of the bill.

The burden that those legal difficulties create often falls upon the shoulders of a relative or carer who may have little understanding of the legal problems. Very often, those people have had to resort to seeking expensive legal advice to address those problems. Karen Whitefield made that point in her contribution this afternoon. In my experience, the relative or carer was often an elderly person who had to cope with the trauma of their child's condition and the legal problems associated with it.

A couple of members have mentioned the fact that myths have built up around the bill. It is important to highlight the fact that this bill does not focus entirely on the issue of incapacity. That point was initially raised by Nora Radcliffe, who was taken somewhat by surprise when she was called to speak this morning. The bill seeks to empower individuals to make decisions on their own behalf where they have the capacity to do so. I fear that there is a growing impression that those who have learning difficulties, mental illness or a head injury will somehow automatically fall under the provisions of the bill. The bill is not about removing rights; it is about providing greater safeguards for individuals in managing their affairs. We must provide protection where it is required.

I want to raise a point that has not been mentioned in the debate so far. From my discussions with organisations with a particular interest in the bill, it has become clear that considerable misunderstandings exist about the bill. Organisations such as the Scottish Association for Mental Health and ENABLE, to mention only two, find themselves dealing every day with people who may benefit from the bill's provisions. They report that there is a clear lack of understanding amongst local organisations about the legal technicalities that may arise from the bill. I believe that information needs to be provided on that specific area.

I find a clear willingness on the part of organisations with an interest in the client groups who may be affected by the bill to work with the Executive to produce an information guide. The guide could be distributed to local organisations to disseminate information to field workers, who may be someone's first port of call for advice on the issue. Concerns exist that some of the people who may get the greatest benefit and security from the bill may not receive it because of a lack of information. When the bill has passed through Parliament, I ask the Executive to consider the possibility of producing a public information leaflet that can be disseminated to local organisations to help them pass on the valuable information that will be required.

Several members have mentioned ECT and

neurosurgery for mental disorder, an area where there appears to be some ambiguity over the impact of the bill. Jim Wallace said in his opening speech that he is trying to clarify that area, but there is some confusion about how the bill will apply to a person who is either an informal or formal patient, who may have incapacity and who ends up in hospital. A distinction exists on the type of treatment that that person can be provided with in hospital. I hope to see that addressed at stage 2, although I recognise that the matter may cross over to the Millan committee's considerations.

It is clear from the debate that the major area of controversy centres on the medical areas in the bill. That was also clear from the evidence that was given to the Justice and Home Affairs Committee. I do not intend today to rehearse all the concerns that have been raised, but Roseanna Cunningham highlighted in her opening speech the need to address that subject at stage 2.

The definition of intervention needs to be clarified. I ask that the Executive give serious consideration at stage 2 to Roseanna's point about the inclusion of such a definition in the bill.

Tricia Marwick raised a number of important points on nutrition and hydration, in particular with regard to the BMA's evidence. Gordon Jackson made the point that the words "ventilation, nutrition and hydration" in section 44(2)(b) of the bill have created fear and uncertainty. I welcome the Executive's commitment to amend that section, but I must add that the jury is out—until we see the Executive's amendment—on whether the clarification will be sufficient. The concerns on this part of the bill focus primarily on the possibility of back-door euthanasia. As several members have pointed out, the Executive has no intention of providing for that, but it will have the opportunity, at stage 2, to ensure complete clarification.

The assessment and certification of incapacity also requires clarification. The explanatory notes state that the bill makes

"assessment of capacity . . . a matter for the medical practitioner in charge of the patient's treatment."

Although that is fairly clear, the definition in the bill is

"any person who is responsible for the medical treatment".

That definition is slightly wider. It relates to a point that Richard Simpson raised earlier, when he pointed out that in modern medicine, decisions are often made by teams. The definition needs to be amended to recognise the change in medical practice.

Christine Grahame made a point about the right of appeal over the renewal of guardianship orders. That issue is of particular concern to the Mental Welfare Commission. I hope that the minister will

heed those concerns and, if necessary, amend the bill at stage 2 to take account of them.

A number of aspects of this bill require clarification and amendment, especially those sections that deal with medical provision. I believe strongly that the Executive is committed to addressing those problems, and I hope that amendments will address those concerns adequately, so that the bill will be recognised for its good aspects, not its bad aspects.

16:46

The Minister for Health and Community Care (Susan Deacon): It gives me great pleasure to close this debate on behalf of the Executive, and to welcome warmly and enthusiastically the new politics that has broken out across the chamber. I am struck by the extent to which I agree with almost every word that Phil Gallie uttered. I am worried that that could become a habit. [*Laughter.*] Much more intriguing was the love-in between Phil Gallie and Roseanna Cunningham. We will watch for developments with great interest.

The extent to which members have been able and willing to come together across party political divisions and discuss this issue is testament to the commitment that people of all parties have to ensuring that we take positive, constructive steps on this matter. As a number of members have said, that shows the difference that having a Scottish Parliament can make. It has enabled us to introduce in the first year of our existence legislation that many people have waited a long time for. We should not lose sight of the significance of that fact.

Like others, I pay tribute to a number of people, in particular the Justice and Home Affairs Committee for the work that it did. Roseanna Cunningham effectively and eloquently set out much of that work earlier today. I pay tribute also to the contributions made by the Health and Community Care Committee and the Subordinate Legislation Committee.

In addition, I thank the wide range of organisations that have contributed to the debate—not just since we began to consider the matter formally in Parliament, but in the months and years leading up to that time—which has enabled us to reach a consensus on the direction we wish to take.

I commend also Eric Clarke, MP for Midlothian—who was in the chamber earlier—whose recent amendment in Westminster closed a loophole that will provide an interim arrangement for the management of finances of a number of people who will be protected by our own legislation.

The fact that so many people have contributed

to getting to this stage is an excellent basis on which we can move forward. However, we recognise that it is important that we get the detail of the legislation right. Many people have made the point that this is a stage 1 debate, but in the weeks and months ahead, in this chamber and, crucially, in the Justice and Home Affairs Committee at its twice-weekly meetings, there will be a need for careful scrutiny. We welcome that.

At the risk of agreeing with Phil Gallie twice in one day, the principal aim of this bill is to make things better for persons with incapacity. I do not mind who we work with, or who we sit down and have discussions with, to ensure that we do that. It was interesting that one or two speakers talked about concessions on the part of the Executive in relation to the amendments that we propose to make. I do not see those amendments as concessions. They indicate exactly what we are about—listening to what people say to us and ensuring that we improve the process and the legislation as we go along. I hope that the amendments are positive evidence of our willingness to listen to those who raise points with us.

A number of points of procedure were made about the legislation, which I know are more matters for the Presiding Officer to take on board. I noted the point that Fiona Hyslop made about the presentation of amendments. We tried, through Jim Wallace's introduction of those amendments in his opening speech, to set out clearly at the beginning of this debate the direction in which we are moving. We are open to suggestions as to how that process can be developed.

Phil Gallie: Will Susan Deacon give way?

Susan Deacon: Since I am agreeing with Mr Gallie today, I will give way.

Phil Gallie: On the issue of amendments, Mr Jim Wallace suggested that there would be a second medical opinion, but Dr Simpson referred to team decisions being taken, which suggests that there could already be more than one opinion. Would the second medical opinion be seen as an independent one, separate from the team decisions being taken?

Susan Deacon: It is important to clarify a couple of points in relation to that. First, as all members have agreed in this debate, individual circumstances vary dramatically. What is best for the individual is central. In various situations there are teams of people involved. We have tried to get the right balance between the different individuals involved but have always tried to keep the adult with incapacity at the centre of that consideration.

The amendment in question relates to decisions that are taken about specific treatment administered to the individual. A view emerged,

during discussion on this issue, that the introduction of a second medical opinion in such circumstances was an important safeguard, should a proxy not consent to treatment for the individual. It was felt that the balance should be altered further by the introduction of a check into the system for a doctor to give a second medical opinion. I have listened to the speeches on that issue. It is clear that there are different views in Parliament on that point. We are trying to get the balance right. I hope that we can work together to do that.

The issue of euthanasia has come up repeatedly in the debate. I feel the need to restate the Executive's intent. We do not intend in any way to change the existing law on euthanasia. Gordon Jackson made an important point earlier in the discussion, which applies to some of the other areas that we have touched upon. It is important that we focus on the provisions of this bill and what it will do. Of course it has raised discussions on other matters, on which people have strong views, and no doubt discussions will continue. However, many of those matters are outwith the scope of this bill.

As far as this bill is concerned, it does not alter the existing position on euthanasia. Euthanasia will remain a crime in Scotland. Similarly, it does not alter the position in relation to living wills. It does not alter the existing provision in relation to emergency treatment. I give the assurance to Kay Ullrich, who raised this point, that a patient who requires emergency treatment will get it.

It is certainly not our intention to change the existing legal provision as far as the withdrawal of treatment is concerned. I hope that the amendment that Jim Wallace mentioned earlier helped to make clear that the principle of this bill is that any treatment must be done for the benefit of the adult. The wording, if I can repeat it, is that "any procedure or treatment designed to safeguard or promote physical or mental health" is what will be provided within the context of the bill. I hope that that makes our intent clear.

The issue of duty of care was raised in relation to medical professionals and to attorneys and guardians. Euan Robson made reference to points that Professor Sheila McLean made before the Justice and Home Affairs Committee. Persuasive arguments have been made throughout the consideration of the bill that point out why we do not want to place a duty of care on attorneys or guardians. We appreciate the intent but we believe that there would be practical difficulties relating to enforcement. Doctors and nurses have a duty of care to patients when making clinical decisions about a patient's treatment and care. To pick up on a point that Duncan Hamilton raised, it is inconceivable that basic nursing care would be

withheld from a patient whatever their condition.

Many other points of detail were raised in the debate. I give an assurance, on behalf of the Executive, that we will closely consider them and points that are raised during stage 2 consideration of the bill.

I join everyone who has spoken in this debate in saying that I hope that we can take this bill through to completion and make sure that this Parliament delivers real improvements and better legal protection for some of the most vulnerable people in our society and those who care for them.

I am proud to have had the opportunity to speak for the Executive on the matter today.

Adults with Incapacity (Scotland) Bill: Financial Resolution

The Presiding Officer (Sir David Steel): The next item of business is the financial resolution, motion S1M-254, in relation to the Adults with Incapacity (Scotland) Bill. I ask Jack McConnell to move that motion. Mr McConnell, you have no more than three minutes in which to do so.

The Minister for Finance (Mr Jack McConnell): I move the motion formally.

The Presiding Officer: It would help us fill in time before decision time if you read the motion out. We cannot move to decision time before 5 pm. Yesterday, a member, who shall remain nameless, failed to reach their desk in time, so I believe that it would be unfair to bring decision time forward.

Mr McConnell: I rise to move the financial resolution on the Adults with Incapacity (Scotland) Bill, which, more accurately, is called the Adults with Incapacity (Scotland) Bill financial resolution.

The resolution, as members will realise, is very complete and I imagine that it requires no discussion by this Parliament. It bears no relation whatsoever to council tax compensation for landfill sites in Glasgow. *[Laughter.]* Furthermore, it has no comparison with the budget in England.

I move,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Adults with Incapacity (Scotland) Bill, agrees to—

(a) any increase attributable to that Act in the sums payable out of the Scottish Consolidated Fund by or under any other Act;

(b) charges by the Public Guardian in connection with his functions under the Act.

Ms Margo MacDonald (Lothians) (SNP): I apologise for missing most of the debate. Could we start at the beginning again?

Susan Deacon (Minister for Health and Community Care): On a point of order. I want to apologise to all members. I could have gone on for considerably longer on the subject of incapable adults. However, as the clock had changed, I thought that I had been speaking for 16 minutes. I would like to bring that to the attention of other members of the Executive.

The Presiding Officer: I was responsible for changing the clock in the hope that you would not be misled and believe that you had to count down too fast.

I think that we have filled in time satisfactorily. I can fill in the remaining seconds by making an

announcement that I was going to make tomorrow. The clerk of the Parliament and I, together with the Presiding Officer and clerk of the Welsh Assembly, will be travelling on 21 December to Belfast at the invitation of the Speaker of the Northern Ireland Assembly. I am sure that all members want us to convey our good wishes to our colleagues in Northern Ireland on the resumption of their Assembly. *[Applause.]*

Decision Time

17:00

The Presiding Officer (Sir David Steel): The first question is, that amendment S1M-354.1, in the name of Mr Tommy Sheridan, which seeks to amend motion S1M-354, in the name of Murray Tosh, on the Procedures Committee report, be agreed to. Are we agreed?

Dennis Canavan (Falkirk West): On a point of order. Tommy Sheridan's amendment would simply redistribute the time given for opposition debates. Is it therefore in order for the Labour party to have a whipped vote against this amendment, especially when the Labour party's time for debate is not affected at all by the amendment?

The Presiding Officer: Order. As Mr Canavan may know, the Presiding Officer never knows anything about whipping or otherwise; it is not a matter over which I have any influence.

The question is, that Mr Sheridan's amendment be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 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)
 McGugan, Irene (North-East Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Reid, Mr George (Mid Scotland and Fife) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Salmond, Mr Alex (Banff and Buchan) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 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)
 Davidson, Mr David (North-East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 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)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Johnston, 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)
 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)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Ms Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (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)
 Thomson, Elaine (Aberdeen North) (Lab)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Iain (Ayr) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

Young, John (West of Scotland) (Con)

ABSTENTIONS

Jackson, Dr Sylvia (Stirling) (Lab)
McAllion, Mr John (Dundee East) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peattie, Cathy (Falkirk East) (Lab)

The Presiding Officer: The result of the division is: For 28, Against 13, Abstentions 4. Is that correct?

Tommy Sheridan (Glasgow) (SSP): Hear, hear. Your first result is fine, David.

The Presiding Officer: I beg your pardon, I misread the handwriting. The result is: For 28, Against 73, Abstentions 4.

Amendment disagreed to.

The Presiding Officer: The second question is, that motion S1M-354, in the name of Mr Murray Tosh, on the Procedures Committee report, be agreed to.

Motion agreed to.

That the Parliament notes the terms of the First Report of the Procedures Committee entitled Draft Standing Orders of The Scottish Parliament (SP Paper 28); approves the draft standing orders set out in annex 4 of the Report and now makes the standing orders of the Parliament in terms of that draft, and agrees that those standing orders shall come into force on 17 December 1999.

The Presiding Officer: The third question is, that motion S1M-213, in the name of Mr Jim Wallace, on the general principles of the Adults with Incapacity (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Adults with Incapacity (Scotland) Bill.

The Presiding Officer: The next two questions I put to the chamber in error earlier in the day and I must correct that now.

The fourth question is, that motion S1M-365, in the name of Mr Tom McCabe, on the amnesic shellfish poisoning order, be agreed to.

Motion agreed to.

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 4) (Scotland) Order 1999 (SSI 1999/143) be approved.

The Presiding Officer: The fifth question is, that motion S1M-369, in the name of Mr Tom McCabe, on the Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc) (No 2) Order 1999, be agreed to.

Motion agreed to.

That the Parliament agrees that The Scotland Act 1998

(Transfer of Functions to the Scottish Ministers etc.) (No.2) Order 1999 be approved.

The Presiding Officer: The sixth question is, that motion S1M-254, in the name of Mr Jack McConnell, on the financial resolution in relation to the Adults with Incapacity (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Adults with Incapacity (Scotland) Bill, agrees to—

(a) any increase attributable to that Act in the sums payable out of the Scottish Consolidated Fund by or under any other Act;

(b) charges by the Public Guardian in connection with his functions under the Act.

Pollokshaws Sports Centre

The Presiding Officer (Sir David Steel): Members' business today is motion S1M-275, in the name of Nicola Sturgeon, on Pollokshaws sports centre. The debate lasts 30 minutes and I ask those who are not staying for the debate to leave quietly and quickly.

Motion debated,

That the Parliament recognises the importance of accessible sport and leisure facilities in communities around Scotland; notes with regret the decision of Glasgow City Council to close the well-used Pollokshaws Sports Centre and urges reversal of that decision, and calls upon the Scottish Executive to highlight the positive role that community sports facilities can play in combating social exclusion and improving the lives of people in our most deprived communities.

17:04

Nicola Sturgeon (Glasgow) (SNP): I begin by thanking the Parliamentary Bureau for placing this motion on the business bulletin for debate. It sends a clear message to communities around Scotland that the Parliament is responsive to local needs and concerns.

I welcome representatives of Pollokshaws community council, who are in the public gallery today to hear the debate. Their determination to save a valued local facility is commendable. I thank those of all parties who have given their support to this motion, including the constituency MSP Gordon Jackson.

We have heard a great deal in recent weeks about so-called turf wars between constituency MSPs and regional MSPs. I hope that Gordon and I have demonstrated the potential for all MSPs, even those like Gordon and I, who were opponents in a hard fought election, to work together in the interests of the people who sent us here.

For people who do not know the area, I should say that Pollokshaws is a distinct community on the south side of Glasgow. For historical reasons that I will not go into just now, people who live there are referred to as the queer folk. Pollokshaws sports centre is a long-established facility that houses a swimming pool, dry sports facilities and a launderette. The sports centre is extremely well used by people of all ages who live in and around Pollokshaws.

The swimming pool, in particular, is a favourite for everyone in the community. Many elderly people use it for pleasure and when they are recovering from operations such as a hip replacement and have been advised to swim as part of the recovery process. Most local children

learn to swim in the sports centre's swimming pool. However, in spite of all that, the City of Glasgow Council has decided to close the sports centre as part of its review of sports facilities in the city.

The council's justification for the closure is threefold. First, it says that Pollokshaws sports centre is housed in an old building that is in need of refurbishment and that it would cost too much to bring it up to the required standard. Various figures have been bandied about—from £1 million to £5 million—but at no time has there been any detailed explanation of the work that needs to be done. In fact, the council document that confirmed the closure of the sports centre says that a saving of £400,000 per year is the reason for the closure. It does not require additional money that needs to be spent. All that leads to the understandable suspicion among locals that the cost factor is being greatly exaggerated to give the council an excuse to close a well-used local facility.

The council's second justification for closure is that people in Pollokshaws will be able to use the new sports facilities in Glasgow—the new sports centre in Pollok and the soon to be opened centre in the Gorbals. People who know anything about the south side of Glasgow will know that to offer elderly people and families the opportunity to use alternative facilities in Pollok or the Gorbals is little better than offering them alternative facilities on the other side of the city. It takes two bus journeys to travel from Pollokshaws to either Pollok or the Gorbals. In its strategy for sports facilities in Glasgow, the council refers to the importance of low-cost and affordable access to swimming pools, but a parent with two kids would have to shell out more than a fiver just to get to and from either of the alternative facilities. Those facilities do not provide a real alternative to elderly people who would find the bus journeys difficult.

The third justification the council gives is that the decision to close Pollokshaws is the result of a wide-ranging consultation process. I am not sure whom the city council consulted, but it strikes me that in the whole process, it managed to overlook the views of the 4,000 or so people who have signed a petition protesting against the closure, the 600 people who wrote directly to the council, the local councillor and the Glasgow MSPs from all parties. Only the city council favours closure and it is about time it started to listen to those in Glasgow and Pollokshaws who pay their council tax.

Pollokshaws is an area of considerable deprivation in a city with horrific health problems—recently we saw Glasgow's dreadful health statistics. Over the past few years, Pollokshaws has only lost facilities. The irony is that local people are not asking for anything new—they are

simply asking to hold on to the one remaining community facility. That is not unreasonable.

The Executive has commendably pledged to combat social exclusion. Accessible sports facilities can play a huge role in that. In a recent press statement, Rhona Brankin said that sport is an important tool in the fight against social exclusion.

I am aware that the decision rests ultimately not with the Parliament but with the local council, but by debating the matter today we can send a message of support to all the people in Pollokshaws—all those in the public gallery today, and the thousands more who are fighting to protect and sustain their local community.

The Deputy Presiding Officer (Mr George Reid): Seven members have asked to speak, so the shorter the speeches—which should be under three minutes—the more members will be called.

17:10

Gordon Jackson (Glasgow Govan) (Lab): I am happy to support Nicola's motion, and I will not simply rehearse the arguments that she has just given.

For the people of Pollokshaws, this issue goes wider than the baths. They feel very badly let down. They write to me—and, no doubt, to others—about their sense of betrayal and about the fact that an area is going into decline and nothing very much is being done about it.

I have campaigned for the sports centre and written to the council about the general decline in the area. I have had a number of responses, but—thankfully, perhaps—I do not have time to go into all of them. I might paraphrase one response in this way: things are not quite as bad as they are made out to be. The council says that the area is not especially badly served, but that there are some worrying signs.

That is not my impression of the area. In the arcade in Shawbridge Street, I find empty shops and an area that I can describe only as increasingly dilapidated. People in the area feel that it is becoming a dumping ground, although Glasgow City Council will deny that. A council report talks of a huge increase in drug-taking; it talks of the high rate of referral and of not having the resources to deal with it. Crime is up. There are no facilities: tennis courts, gone; bowling green, gone; and now we are told that the sports centre, the baths and the laundrette are to go too. The local people are told to take two buses to the Gorbals; as Nicola says, we might as well tell them to go to the other side of the city.

In fairness, a lot of the reports that we have received make interesting reading. But what will

happen tomorrow? Will the library go? I am told that it will not, but another council report—"Council Services and Investment in Pollokshaws"—says that the future of the swimming pool and the library is limited. The conclusion of that report talks of an area "at risk", and of an area

"requiring perhaps relatively modest additional investment to maintain certain provisions."

That is good—it suggests that it will not take much to make things better—but then I read in the next sentence that it is

"difficult to identify the necessary resources to undertake identified work."

In other words, it will not take much to make things better but tough, the money required is apparently not to be made available. That is the response and I can understand why the people of Pollokshaws feel badly let down.

Another response suggests that members of the Scottish Parliament might be better advised to mind their own business and not get involved in the business of the council. In my opinion, this is our business. I understand that the council will make the final decision, but our business is not just to come here and to legislate, but to represent the people who elect us.

I know that this is a difficult issue and I understand the arguments that we will hear from Rhona Brankin about best value, financial constraints and new for old, but the people of the area are asking just one question—what are we getting? We are being told what we are losing, but what are we getting?

The answer, so far, is nothing. Until that question is answered, we are entitled to say, "Don't shut down this last facility."

17:14

Bill Aitken (Glasgow) (Con): I am grateful to Nicola Sturgeon for the opportunity to participate in this debate, which highlights a number of important issues.

The first issue is the effect that the loss of this amenity will have on the local area. Nicola has articulated very well the arguments that should have been advanced earlier at city council level. However, the major issue is the attitude that seems to exist concerning facilities that should be offered to communities generally.

Several former Glasgow city councillors are present at this debate and they will remember that the word "culture" used to make the eyes of even the most hard-headed council members glaze over. It has to be realised and appreciated that culture is an all-embracing word, which can mean sport and physical recreation. For the people of

Pollokshaws, many of whom will have considerable and wide cultural interests, the present centre provides a sporting facility that is much in demand by both young and older people. As Nicola said, some of those older people need the facility to recover from surgery.

We have to consider this issue in the broadest sense. I hope that the minister will address the point that culture must be a much more widely embracing concept than it is at present. One man's culture is another man's sport, but they are basically the same thing. People are entitled to have a recreational facility in which they can enjoy their free hours in team sports and other such activities that can promote a community's spirit.

17:16

Tommy Sheridan (Glasgow) (SSP): Although I want to associate myself with Nicola's opening comments, I want to make one correction for the record. Nicola said that the residents of Pollokshaws are being referred to the new sports centres in Pollok and the Gorbals. Pollok does not have a sports centre and no such facility is in the pipeline, which is a disgrace. Pollokshaws residents have been referred to the sports centre at Bellahouston, where a swimming pool is currently being built.

Anyone who knows about getting from Pollokshaws to Bellahouston will know how inconvenient that journey will be, particularly for residents in the high-rise flats surrounding Pollokshaws swimming pool, compared with the current ease of access to existing facilities. They will realise that the idea behind going to the Gorbals or Bellahouston is simply spin. The number of people who will make the journey to those facilities will be nowhere near the number who use Pollokshaws. The Labour council should be ashamed of its decision to close those facilities.

I am often accused of being overly political. I do not want to disappoint people. Although I welcome Gordon's support in the campaign to keep the facility open, I remind him that when his report was submitted to Glasgow City Council's culture and leisure services committee, which I attended as a city councillor, I moved a motion of opposition to the closure on the basis that it would remove a very important amenity for the people of Pollokshaws. Although the SNP councillor, John Mason, seconded that motion, not one of the 30 or so Labour councillors present supported it. They should be ashamed.

What we have here is death by a thousand cuts. Govan pool had a pool and a laundry and was well used by the local community, but it was closed a year and a half ago, despite a very vociferous and organised local campaign. Pollokshaws pool has a

very important proper pool—not a fun pool—that many elderly people use and another pool where people can learn to swim. I learned to swim there myself, because we used to be fed to that pool from Lourdes secondary school. The removal of this facility will be a disaster for the community.

Two days after the culture and leisure services committee's decision, I was asked by three individuals from the sport and leisure industry to facilitate a meeting with the director of culture and leisure. They were interested in taking on that facility because they thought that, although they could not afford to run the pool, the sports centre was a viable project. If three individuals think it is viable, it should be viable for Glasgow City Council.

17:20

Robert Brown (Glasgow) (LD): I associate myself with all the comments that have been made so far. It is a little ironic that in the year of the setting up of the Scottish Parliament, with the extra emphasis on communities that has come with the renaissance of Scotland's national life and after the reports of the past week about the east-west divide, the north-south divide, and the divides within Glasgow, we are debating the closure of a well used community facility.

I gained a little experience of the closure of community facilities during my time on the council. It is an awful lot easier to close facilities—taking away the associated clubs and other various uses—than it is to reopen them. Tommy Sheridan is right to talk about death by a thousand cuts—the closure will affect much more than just the facility itself.

Glasgow has the merchant city and the second largest shopping facilities in Britain and—in stark contrast—a high proportion of deprived communities. The health perspective has been touched on. The infant mortality rate in Glasgow Govan is 86.1 per 100,000—almost treble the rate in a typical south of England constituency. A large number of people in the constituency, children in particular, live in poverty.

It is appropriate that the Parliament should debate this issue. The council will make the ultimate decision, but it operates within a financial regime set out by this Parliament, which itself operates within the block laid down by the Westminster Parliament.

I reiterate a point made repeatedly by my colleague, Donald Gorrie. The Chancellor of the Exchequer has a growing nest egg—in the national insurance fund and in the surpluses that are being kept in London—that could and should be used to support community initiatives and facilities such as the one in Pollokshaws. The

money should trickle down, so that we can ensure that local communities in Glasgow have the support of all levels of government to enable them to survive.

I hope that the council will reconsider its decision and that even at this late stage there is a chance that it will change its mind.

17:22

Mr Kenneth Gibson (Glasgow) (SNP): In case folk are wondering why the expression "queer folk" is used about the people of Pollokshaws, it is because the area has a very interesting history. It was founded as a Huguenot village in the 18th century. I understand that French was spoken there until the early 19th century.

Linda Fabiani (Central Scotland) (SNP): It still is.

Mr Gibson: Indeed.

Tommy Sheridan: John Maclean stayed there too.

Mr Gibson: That is right.

The social structure of Pollokshaws is such that a third of the population is retired, which is considerably higher than the Glasgow average. More than 60 per cent of people in Pollokshaws have no access to a car and rely on public transport. As others have said, it would be extremely difficult to travel to the sports centres at Bellahouston or Gorbals due to the routes that would have to be taken.

Pollokshaws is one of the poorer areas in the Glasgow Govan constituency, which has the eighth worst health record in the United Kingdom. If it were not for the fact that the area is in Glasgow, it would be a social inclusion area. That is a point that must be taken on board.

Bailie Liz Cameron, who I know very well and who is convener of culture and leisure services at Glasgow City Council, sent a letter to Nicola Sturgeon on 2 December. In her letter, Bailie Cameron mentioned that other facilities are available in the ward, such as the Burrell museum, Pollok House and the Tramway theatre. However, those facilities are not particularly close to Pollokshaws, especially for elderly people who would have to walk to them, as there are no reasonable bus routes. In any case, such facilities do not necessarily appeal to the people who live in the area.

Bailie Cameron says:

"if MSPs like yourself could persuade the Scottish Executive to fund . . . the Capital Spend on . . . Pollokshaws Pool then it might be a different story."

She is basically appealing to us and the Scottish

Executive to make resources available to Glasgow City Council so that it does not have to close the facility. The council talks about new for old but, in my seven years' experience as a Glasgow councillor, it is often nowt for old. When facilities close, they rarely reopen.

Consultation has been mentioned. The council's deputy director of culture and leisure services wrote to the community council on 16 August, inviting it to a meeting on 20 August. I do not think that that is time enough to consult and to let the community attend a vital meeting on the future of such an important facility. I hope that we have all-party consent and Executive support for Glasgow City Council to maintain it.

17:25

Linda Fabiani (Central Scotland) (SNP): I would like to focus on one issue that has already been mentioned: the lack of consultation by Glasgow City Council. While council members insist that they have consulted widely, it is a fact that the local community council has had only one meeting with them. There has been neither a public meeting nor direct consultation with those who will be affected by the council's decision. That is despite a petition with 4,000 signatures and 600 letters sent directly to the council.

Why has Glasgow City Council refused properly to consult the people of Pollokshaws? How can it justify to local people the fact that it is closing the only facility of its kind in the area? How can it justify the fact that, although it readily bandies about projected refurbishment costs, no actual assessment of what work needs done has taken place, let alone been costed?

Glasgow City Council has refused properly to consult the people of Pollokshaws because those in control of the council have created a culture of arrogance—a belief that they know best and that their decisions are beyond reproach. Witness the complete lack of consultation with city tenants over the housing stock transfer. This is more of the same.

Glasgow City Council should note that it does not necessarily know best. It should try listening to those most directly affected by the decisions that it takes. It could start by listening to the people of Pollokshaws and reverse the decision to close Pollokshaws sports centre.

17:27

The Deputy Minister for Culture and Sport (Rhona Brankin): I am delighted to have the opportunity to wind up this debate on the provision of sport and leisure facilities in Scotland and particularly in Pollokshaws.

I would like to say at the outset that, as part of its philosophy of sport for all, the Scottish Executive wants a wide range of sport and leisure facilities and opportunities to be made available to people in all parts of Scotland. Significant progress has been, and continues to be, made.

Local authorities have a statutory duty, under section 14 of the Local Government and Planning (Scotland) Act 1982, to ensure adequate provision of facilities for recreational and sporting activities for the inhabitants of their area. Glasgow City Council, through its sport for life for you strategy, has made a major commitment to developing a network of new, state-of-the-art facilities. To achieve that, it has been necessary in some cases to adopt a policy of closure and replacement to address problems of poorer quality, more outdated facilities and, in some cases, inappropriate locations.

The policy has been subject to a rigorous and planned process that has drawn on sportscotland's facilities planning model. Glasgow has been responsible in its approach to facilities provision. As it has added new, quality facilities, it has not sought to keep open poorer quality provision that, in some cases, has outlived its usefulness.

The sport for life for you strategy reflects the national strategy for sport in Scotland, "sport 21: nothing left to chance". Since the launch of its strategy, Glasgow has opened modern, accessible, high-quality facilities at Scotstoun, Tollcross Park, Springburn and Gorbals, with another due to open at Bellahouston park next year.

Lottery sports fund spending on facilities in Glasgow amounts to—

Nicola Sturgeon: Will the deputy minister take an intervention?

Rhona Brankin: Sorry, I think I know what the intervention is.

The lottery sports fund spending amounts to £21million for project costs with a total value of £52 million.

Nicola Sturgeon: Will the deputy minister give way?

Tommy Sheridan: Will the deputy minister take an intervention?

Rhona Brankin: No thanks.

The matter of Pollokshaws sports centre was addressed as part of a wider review that involved the closure of facilities because of their low usage levels, poor physical condition, age and proximity to recent and proposed developments.

Sportscotland's facilities planning model was

used to assess an analysis of pool provision and indicated that Pollokshaws should be closed when the new facilities at Gorbals and Bellahouston open in 2000. This assessment was based on supply, population, usage, present condition and accessibility.

Nicola Sturgeon: Will the minister take one intervention?

Rhona Brankin: No, thank you.

A fabric survey of Pollokshaws in August 1997 indicated a requirement to spend a minimum of £265,000 on roof and other essential repairs. That figure did not include any costs related to the full structural survey that was required, nor did it take any account of the replacement of obsolete and inefficient pool plant.

Tommy Sheridan: Will the minister give way?

Rhona Brankin: No thank you, Tommy—it is not worth the bother. *[Interruption.]*

Presiding Officer, I would prefer not to be interrupted constantly by members shouting out.

The Deputy Presiding Officer: I do not find the remarks too intrusive, minister. Please continue.

Rhona Brankin: It was estimated that keeping the facility open for another few years might require capital expenditure of up to £1 million. A total refurbishment that might require more than £2 million was not thought to be an effective investment. The conclusion drawn from that survey was that the facility was nearly at the end of its useful life.

The impact of the closure must be balanced against the overall provision of facilities at Govanhill, Castlemilk, Pollok, Bellahouston and Gorbals, giving the south side of Glasgow some of the best provision in Scotland.

Nicola Sturgeon: Will the minister give way?

Rhona Brankin: No, thank you.

The provision of these facilities and others has seen almost £54 million allocated to sports centres in some of the most run-down areas of Glasgow.

Sport 21 develops a vision of a new sporting environment in Scotland, in which access to quality facilities is convenient and affordable to all, in which Scotland's disadvantaged groups have equal and open access to sport and in which rural and remote communities are no longer isolated from mainstream Scottish sport.

As one of its four key challenges, sport 21 recommends that local authorities should publish a strategic plan for sport and recreation that draws on the resources and efforts of all council services including leisure, education, planning, social work, economic development and other departments, as

appropriate. I urge local authorities that have not yet done so to respond positively to that challenge.

Sportscotland's lottery sports fund began distributing funds in January 1995 and has made 525 awards under its capital programme up to 1 December this year. The awards total almost £85 million—funding that has stimulated an overall expenditure programme of some £246 million on sports facilities in Scotland.

Levelling the playing field, the new lottery strategy, is placing even greater emphasis on local neighbourhood provision by opening up school facilities for use by local communities. Within that strategy policy, sportscotland will give priority to projects located in deprived communities and in areas of special need.

The current sport 21 review process is also important with regard to the issue of facilities and their impact on deprived communities.

Nicola Sturgeon: One last time—will the minister give way?

Rhona Brankin: No thank you, Nicola.

The review is being driven forward by five forums, two of which have a particular focus on this area: the facilities for sport and the sport and social inclusion forums. We recognise the link between sport and social inclusion.

In partnership with sportscotland, the Scottish Executive is conducting research on the role that sport plays in regenerating deprived areas. The findings of that research will be published early next year and we hope that it will provide examples of good practice that can be disseminated to all relevant interests in this field.

Sport in Scotland has made tremendous progress in recent years. Although we have a long way to go, participation rates are higher than 25 years ago, facilities are far more widespread and accessible, coaching is more widely available and is of a higher standard and the governing bodies of sport are more open and responsive.

We continue to need to make progress in sport, but the Executive firmly supports the key role that sport plays in social inclusion.

Meeting closed at 17:34.

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