MEETING OF THE PARLIAMENT

Wednesday 14 June 2000
(*Afternoon*)

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Scottish Parliament

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

Time for Reflection

The Presiding Officer (Sir David Steel): To lead time for reflection today, the Parliament welcomes the Reverend Iain Whyte, the chaplain of the University of Edinburgh.

The Reverend Iain Whyte (Chaplain, University of Edinburgh): In our chaplaincy centre there is a free-standing stained glass window that is visible from the street. It is a magnificent mosaic of nature that includes the sun, the moon, flowers, water, insects and a lot more in rich colours. The window is the result of a three-year project of a group from the Edinburgh University Settlement, all the members of which have mental health problems. I am delighted that they chose to place the work on permanent loan with us.

At the opening ceremony, one of the staff who worked with the group said to me, rather apologetically, "It's not really very religious." She probably thought that something that did not refer specifically to God or Jesus would seem inadequate to a chaplain. I do not know of anything more religious than a work of art that is lovingly and painstakingly made with beauty and hope by a group of people to whom life has dealt severe blows.

I believe that that window represents something vital in a Scotland where inclusiveness will be the litmus test for the future. Inclusiveness is very different from tolerance, although it can never be less than that. Tolerance is passive and permissive; it is about allowance and is quite often grudging. Inclusiveness is creative and encouraging in its recognition of the varying contribution that different people can make.

In the Bible, no end of bigotry and prejudice is exhibited, and the history of religion is similarly flawed. At its best, however, faith transcends tolerance and transforms society, as when Israel recognises God's choice of a shepherd boy for king and when Jesus singles out women, disabled folk and members of ethnic minorities as the ones who are taking the lead in pointing to the divine purpose. Our own society in Scotland must become confident enough to shed the fear of affirming the contribution of those who are different from others, in faith as in football, in philosophy as in politics, in social life as in sexual orientation.

In the top left-hand corner of that window, there is the figure of the sun with a message wrapped around it. The person who worked on that part died without seeing the project finished, but the lines that she wrote are, for me, a prayer in every sense.

"To grow everyone needs the sun—without it we all perish and die. Let us remember those who have not been given the chance to flourish, and may we never forget—but hope that one day the sun will shine on everyone."

Amen.

The Presiding Officer: Before we begin this afternoon's session, I am sure that members will join me in welcoming the delegates of the Commonwealth local government conference. They have come from many countries, and include Mr John Murray, the Speaker of the New South Wales Parliament, and many of his colleagues.

Regulation of Investigatory Powers (Scotland) Bill: Stage 1

The Presiding Officer (Sir David Steel): Our main item of business is a debate on motion S1M-983, in the name of Mr Jim Wallace, on the general principles of the Regulation of Investigatory Powers (Scotland) Bill.

14:35

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): The principles that underpin the Regulation of Investigatory Powers (Scotland) Bill are designed to ensure that a range of measures that are necessary for the security and protection of the community are used in a way that gives protection to the rights of individual citizens. When describing the bill, it is important to make clear what it does not do before we can move to a sensible discussion about what it actually does do.

I am sure that, by now, all members will be fully aware of the scope of the bill, not least thanks to the comprehensive report from the Justice and Home Affairs Committee. The bill does not introduce any new powers for the police to carry out surveillance on members of the public or to conduct entrapment operations, nor does it give new powers to any other public authority. The bill does not deal with methods of intercepting communications, such as phone tapping, the interception of e-mails or the decryption of encrypted material. Those aspects have generated much comment in the media, but it is important to be clear that they fall within specific reservations in the Scotland Act 1998 and as such are being dealt with in the Westminster version of the bill.

The European convention on human rights, which will apply to public authorities from 2 October, states in article 8:

"Everyone has the right to respect for his private and family life, his home and his correspondence."

It continues:

"There shall be no interference by a public authority with the exercise of this right except as is in accordance with the law".

The purpose of this bill is to provide a statutory basis to ensure that, where interference with privacy is necessary, it will be done in accordance with the law. That means that public authorities that want to conduct covert surveillance or use covert human sources will need to ensure that their operations fall within the specified purposes, that they are properly authorised at the appropriate level, that they conform to the requirements of a publicly available code of practice, that there are arrangements for oversight and that those who believe they have wrongly been the subject of investigation have an opportunity for redress. Failure to do so will mean that the public authority in question runs the risk that their activity will be held to be unlawful.

Phil Gallie (South of Scotland) (Con): Once the minister has finished telling us what is in the bill and what is not in the bill, will he tell us how the status will change once the bill is implemented?

Mr Wallace: As I tried to make clear, the bill does not give the police or any other public authority any new power. It puts into statute the things that will be required to ensure that, where interference with privacy is necessary, it will be done in accordance with the law. It addresses what authorisation will depend on and makes provision for the publication of a code of practice. It also makes arrangements for redress for those who believe that they have wrongly been the subject of investigation.

In considering the principles that underlie the bill, it is important that we remember how valuable the activities described in the bill are in protecting our communities from serious crime. In many cases, it is only the dangerous work done by undercover police officers or the use of techniques such as covert surveillance or informants that offers any realistic prospect of tackling organised criminals. In the past year, surveillance played a key role in 109 arrests by Scottish police forces. Ninety-nine of those arrests were related to drug trafficking. Drugs with a street value of £34 million were seized along with 10 firearms.

Increasingly, the police are aware that building up an intelligence picture of targeted individuals or types of activity is the most productive approach to preventing or detecting crime. The methods described in this bill will provide the essential details to fill in that picture. However, those investigative methods are vulnerable. Major criminals are increasingly sophisticated, especially in the area of drug trafficking, in which huge sums of money are at stake. The use of counter-surveillance measures is becoming increasingly common. The identities of informants and undercover officers are also an area of vulnerability and we need to ensure that such people are protected. That is why we need to insist on measures to safeguard those operations.

I am aware that a number of members have expressed concern, and I agree that in an ideal world we would prefer to be more open about the targets and methods employed. However, there is no doubt that while revealing the subject of surveillance may be harmless in some cases, in others it would serve only to make criminals aware of the law enforcement interest in their activities

and to help them to extend their knowledge of police methods and techniques, prompting them to take further precautions. It could also put at risk the personal safety of undercover police officers. In the circumstances, the Executive takes the view that the balance of public interest lies in protecting the use of such methods.

The investigative methods described in the bill are not used solely by the police. A range of other public authorities use such methods, quite properly, and the bill will therefore apply to them also. Examples include the use of test purchases by local authority trading standards officers to ensure that products are not being sold unlawfully and surveillance by officers of the rural affairs department of the Executive in cases of suspected breach of legislation on such matters as the use of pesticides or the protection of wildlife. All public authorities will be expected to apply the same high professional standards as police officers and will, like police forces, be required to work to a publicly available code of practice.

Mrs Margaret Ewing (Moray) (SNP): I apologise for my lack of voice. Will the minister advise the Parliament what responsibilities it will be given in relation to HM Customs and Excise, which plays a major role in drug surveillance?

Mr Wallace: I sympathise with Mrs Ewing. I know that she is struggling. We all wish her well and hope to see her restored to full voice.

Members may recall that when Parliament debated the Sewel motion in relation to this bill, I made it clear that provisions relating to HM Customs and Excise, including its operations in Scotland, would, as a reserved matter, be covered by the Westminster legislation and not by this bill.

I intend to outline how the scheme set out in the bill will work. In so doing, I will endeavour to address the issues identified by the Justice and Home Affairs Committee in its report. However, before I do that, it is appropriate that I say something about the timing issues referred to by the committee in its report.

It is true that the Executive has called on the good will of the committee in asking it to rearrange its timetable and to give this business a high priority. I want to record the fact that we are very grateful to it for doing so. Without the committee's co-operation, there is no doubt that we would be in serious danger of failing to put this legislation in place by the key date of 2 October. However, it is not correct to assert that, because there is a good deal of common language between this bill and its equivalent in Westminster, we should have been able to introduce our bill at the same time as the bill was introduced to Westminster in February this year. Members will appreciate that the Westminster Parliament does not have the same concerns about legislative competence as this Parliament. Members may also have noticed small, but extremely significant, amendments to the Westminster bill—as late as April, when we were considering the Sewel motion—which made adjustments to the extent and coverage of the Westminster bill in relation to Scotland.

The committee took issue with the Executive on the lack of pre-introduction consultation. In response, I point out that neither the Executive nor the Home Office consulted on this aspect of legislation, because—to put it quite simply—there was no real alternative to the policy we aimed to pursue. We were absolutely clear that we wished our law enforcement agencies to continue to use techniques effectively, but at the same time we recognised the need to make them compatible with the ECHR. Those two requirements left only a narrow legal avenue that we could follow. That does not mean that we are not open to suggestions for improvements. We expect to discuss proposals with the committee at stage 2. However, I draw a distinction between such consultation and wider consultation on whether the policy we are pursuing is the correct one.

On those two points, the Executive accepts that we have learned some valuable lessons about how to manage such situations. In hindsight, I appreciate that it would have been better if we had managed to get more information to the committee at an earlier stage, even if it was in a fairly preliminary form. We will aim to do that in future.

Donald Gorrie (Central Scotland) (LD): The police in this country have a long and undistinguished history of harassing groups thought to be politically dangerous, such as nationalist groups, anti-nuclear groups, left-wing groups and even, I believe, the present Home Secretary. Can Mr Wallace assure us that the powers under discussion will be used only against criminals and not against people who are politically suspect? I do not know whether I should declare an interest under that category.

Mr Wallace: Perish the thought.

I assure Mr Gorrie, and it will be clear when I describe the bill, that the authorisations refer to serious crime. [*Interruption.*] I trust that phone call is not the subject of interception.

Gordon Jackson (Glasgow Govan) (Lab): Sorry.

Mr Wallace: Making a political nuisance of oneself would not be a purpose to which the activities and operations covered by the bill would apply. I will say more about the purposes in a moment.

Alex Neil (Central Scotland) (SNP): On the same point, I believe that in recent months there

was a transfer of responsibility for the approval of phone tapping and other such activities from the First Minister to Whitehall ministers. If that is indeed the case, will Mr Wallace or the First Minister ever be aware that anyone is under surveillance for political reasons? Would they know if that were happening to anyone in Scotland? Are they part of the approval process for the surveillance of politically active people in Scotland?

Mr Wallace: I can confirm that I am not part of any approval process for the surveillance of politically active people in Scotland. The transfer referred to, from the Secretary of State for Scotland's role as it was before the Parliament was established to the Secretary of State for the Home Department, relates to matters of national security, which are reserved matters, so it would be inappropriate for the First Minister to deal with that. Interceptions in relation to crime remain a matter for Scottish ministers. I emphasise that we are talking today about crime, not political purposes.

Ms Margo MacDonald (Lothians) (SNP): Will the member give way?

Mr Wallace: For completeness I will continue, and then give way.

Grounds for authorisation of covert human intelligence sources, set out in section 4(3), and for directed surveillance, set out in section 3(3), are:

"(a) for the purpose of preventing or detecting crime or of preventing disorder;

(b) in the interests of public safety;

(c) for the purpose of protecting public health".

I will say later how we propose to deal with the other purposes that are referred to in paragraph (d).

Ms MacDonald: Given that the extent of that type of surveillance will be widened following the Schengen agreement on information to be shared among European countries, does the acting First Minister not think it makes sense for him to be at least consulted by Home Office ministers in other countries on what is happening to citizens of Scotland?

Mr Wallace: I am not sure I follow the point that is being made.

Ms MacDonald: Can I make it clear then?

Mr Wallace: The member can try.

Ms MacDonald: I wonder how the acting First Minister would feel if he heard that some Shetlanders were being monitored by intelligence services from another European fishing country. With the new sharing of information under the extension of the Schengen agreement that could happen.

Mr Wallace: That is hypothetical beyond belief. We are talking about provisions to make our law compatible with the ECHR. Other countries—and the convention applies to a much wider family of nations than just the European Union—are required to have similar provisions to ensure that their law is compatible with the convention, so one would hope and expect that such protections and rights were being observed in other European countries as well. That includes the right that I have mentioned:

"Everyone has the right to respect for his private and family life, his home and his correspondence."

That may be interfered with only in accordance with law. It is not really for us in the Scottish Parliament to be judgmental about the way in which other Parliaments have interpreted that, except to say that they would be expected—as are the Scottish Parliament and the Westminster Parliament—to ensure that their domestic laws are compliant.

Phil Gallie: I am comforted, to an extent, by the minister's comments about criminal activity. The minister mentioned Europe, and the Euro 2000 competition is taking place at the moment. The United Kingdom, and Scotland, has come under some criticism for not undertaking sufficient surveillance on people who are known to organise fan crime within the football community. Does the bill cover us on such issues, and will it bring some comfort to those in Europe who are concerned about one or two of our unruly fans?

Mr Wallace: Sadly, I would be very surprised if there were terribly many Scottish fans in Europe; it would be far better if we were there, but regrettably we are not, and I do not think that many fans are there.

I do not have information—nor, if I did have it, would it be appropriate for me to share it with the Parliament—about the covert surveillance that is being done on football fans. To share such information might run counter to the whole purpose of the operations being covert.

Suffice to say, the purposes of the bill in relation to intrusive surveillance are that such surveillance must be

"necessary for the purpose of preventing or detecting serious crime"

and must indeed be

"proportionate to what is sought to be achieved by carrying it out."

For directed surveillance or covert human intelligence sources, the purposes include detecting crime or preventing disorder, the

interests of public safety and the protection of public health. I suppose that a domestic football match that might lead to disorder could possibly come within the terms of directed surveillance or use of human intelligence sources.

Mr John McAllion (Dundee East) (Lab): The minister mentioned that covert human intelligence surveillance could be applied in response to the threat of public disorder. He will know that the recent demonstrations against the World Trade Organisation in Seattle were organised largely through the internet. Is he saying that it would be possible for Scottish ministers to impose surveillance on people who may be organising, through the internet, a demonstration that the police advised could be a threat to public order?

Mr Wallace: That was something that was happening outside the United Kingdom, therefore I do not believe that it would fall within the purposes of the bill. The bill is directed at criminal activity within Scotland.

The bill deals with the use of covert surveillance and human intelligence sources by the police and other public authorities. We intend to introduce an amendment at stage 2—

Mr McAllion: I understand that the Parliament has nothing to do with what happens in Seattle, but the WTO could well choose Edinburgh for a conference. Would the powers in the bill be applied to people who were organising against such a conference in Edinburgh?

Mr Wallace: Ultimately, if anyone complained, it would be a matter for the tribunal to determine whether the purposes of the bill had been met.

I will repeat where those purposes appear in the bill, so that Mr McAllion can look at them. There are different purposes for different parts of the bill. Directed surveillance is covered in section 3(3), and the use of covert human intelligence sources—undercover agents and the like—in section 4(3). Intrusive surveillance is covered in section 6(2); that section provides much narrower, more limited, grounds on which authorisation could be granted.

I cannot take a hypothetical case and say, in general, whether it would be covered, but the purposes are there in the bill. If the surveillance was for the purpose of preventing or detecting crime or of preventing disorder, that purpose would be provided for in the bill. It would be invidious to apply such purposes to some hypothetical case. Each case would have to be considered by the person who was being asked to grant authorisation, to determine whether, in that particular case, the purpose would be met. Of course, as I indicated, there is recourse to a tribunal if it is felt or suspected that the authorisation has not been granted properly.

The public authorities that will be referred to by the amendment will be those that operate in Scotland and on which there is absolutely no doubt about the competence of the Parliament to legislate. Members will recall that when we discussed the relationship between this bill and the UK equivalent during the debate on the Sewel motion, I explained that there are a number of UK-wide bodies that operate in Scotland—I am picking up Mrs Ewing's point—such as HM Customs and Excise or the Benefits Agency, where there was room for interpretation about the extent to which this Parliament could legislate to regulate their activities. We decided that the best approach in the circumstances was to remove any doubt, and thus any possible challenges in court to cases brought by those bodies, by ensuring that the UK bill covered all their activities.

Surveillance activity, for the purposes of this bill, is divided into two categories. The first category is that in which surveillance takes place when there is a high expectation of privacy. This is defined as intrusive surveillance and involves the placing of devices to record or transmit conversations or to film in places of residence or in private vehicles. That type of surveillance will be carried out only by police officers and will need to be authorised by a chief constable or the director general of the National Criminal Intelligence Service. It will be used only to tackle serious crime, and will in most cases require the prior approval of a surveillance commissioner, who is a senior judicial figure appointed under the Police Act 1997.

The commissioner will also have the power to quash authorisations and, where he feels it appropriate, to order the destruction of any records. On that point, I know that the Justice and Home Affairs Committee has expressed an interest in exploring the extent to which surveillance commissioners could be guided in taking their decision on whether to order the destruction of records. I say that the situation is not comparable with the destruction of fingerprints and DNA evidence when the decision is taken not to prosecute. Surveillance is often used to build up an intelligence picture, and the relevance of each part of the jigsaw may become clear only some time after the surveillance operation has been completed.

It would be very difficult to specify in advance how the surveillance commissioners should approach each case. Even in cases where it appears on the surface that the target of the surveillance was wrongly identified, subsequent developments may mean that the intelligence produced will need to be re-examined and re-evaluated. Our preference in those difficult circumstances is to ask commissioners—who, let us remember, are senior members of the judiciary—to use their experience and discretion to

decide when it is appropriate to order the destruction of records.

The less intrusive forms of surveillance, such as observing and following targets in public places, are defined in this bill as directed surveillance. That and the use of covert human intelligence sources, which is a rather grand way of expressing the use of informants and undercover officers, can be employed by any of the public authorities that we will identify in the schedule. All those activities will be kept under review by the chief surveillance commissioner.

For those lesser forms of surveillance the activities may be undertaken to prevent and detect crime or prevent disorder; in the interests of public safety; or for the purpose of protecting public health. Ministers may also add further purposes, subject to the approval of Parliament and provided that they are compatible with the ECHR. On that last point, members will have noted that we have given notice of our intention to bring forward amendments to make it explicit that ministers will be constrained by the ECHR in this respect, and that Parliament will be asked to agree by means of affirmative resolution. I hope that that meets the concerns of the Justice and Home Affairs Committee.

I am aware that the committee has expressed concern that the purposes for which the activities in the bill may be authorised are too wide. In particular, the definition of the prevention and detection of serious crime, which is the only allowable purpose for intrusive surveillance, has attracted some comment. My response is that the definition has been used without difficulty for 15 years in the Interception of Communications Act 1985. It is also used in the Security Service Act 1996 and the Police Act 1997. The definition has not been called into question in the courts in relation to those acts, nor have the commissioners who oversee the use of powers under the acts expressed any reservations. I see no reason why there should be any difficulty in relation to this bill.

In addition to the oversight arrangements, the bill provides for a tribunal that will offer an avenue for those who believe that they have been improperly investigated using these methods.

Dr Winnie Ewing (Highlands and Islands) (SNP): If any member of this chamber were to have their telephone interfered with, would the minister be informed?

The Presiding Officer: That has to be the last intervention. The minister has been generous in giving way, but it is time to wind up.

Mr Wallace: The issue relating to the interception of communications is not covered by this bill; it is covered by the provisions in the Westminster bill. There would be no automatic way in which ministers would be informed, unless the person concerned was engaged in serious crime and it was brought to a Scottish minister in terms of the existing Interception of Communications Act 1985. Although no special treatment or privilege is given to members, they are given the same protections as any other person to whom the Interception of Communications Act 1985 applies.

Members will recall that during the debate on the Sewel motion, I explained that, to allow the tribunal to develop a depth of expertise in this area, we believed that it would be sensible to subscribe to a UK-wide tribunal. Members might be further aware that the Home Office has since tabled amendments to its bill to ensure that Scottish considerations are taken into account in the establishment and operation of the UK-wide tribunal. I intend to write to the Justice and Home Affairs Committee with more detail on that point.

I am aware that there has been some concern about the effectiveness of a tribunal when targets are not aware of surveillance activity. I appreciate the point and wish that there was an easy answer. However, for reasons that I have already explained, in many cases revealing to someone that they had been the subject of surveillance would undoubtedly serve seriously to undermine the value of the technique. That said, I do not for one moment think that this will mean that the tribunal will be redundant. A useful parallel might be the Interception of Communications Tribunal, which considered 206 complaints between 1996 and 1998, despite the fact that it was not revealed who had been the subject of an interception warrant.

In conclusion, I want to place it on record that the Executive is grateful to the Justice and Home Affairs Committee and the Subordinate Legislation Committee for their thorough examination of the principles underlying this bill, and in particular for doing so within a compressed timetable. I hope that members will recognise the need for urgency and will agree with the Justice and Home Affairs Committee's conclusion in supporting this bill.

I move,

That the Parliament agrees to the general principles of the Regulation of Investigatory Powers (Scotland) Bill.

15:01

Michael Matheson (Central Scotland) (SNP): I am sure that, at first, many MSPs viewed this bill with suspicion and wanted nothing to do with it, particularly as its title abbreviates to RIP. However, as the minister has said, the Justice and Home Affairs Committee and Subordinate Legislation Committee have spent some time examining the bill. As it stands, the bill has wide-

ranging implications and there are still a number of concerns about some of its provisions.

The bill seeks to achieve a balance between the European convention on human rights and the need to make provision for suitable investigatory powers. However, the question for this Parliament is whether the bill effectively does that. I must confess that, from the outset, I have been more interested in ensuring that the bill does not erode human rights than in ensuring that it provides greater investigatory powers. However, I was somewhat reassured by the evidence given by the Deputy Minister for Justice, Angus MacKay, to the Justice and Home Affairs Committee that the bill does not introduce any new powers for the police. As the bill provides a legal framework for an area of policing and intelligence service work for which there has been no previous legal structure, it represents a step in the right direction.

In our debate on the Sewel motion in April, my colleague Roseanna Cunningham raised a number of concerns about the handling of the bill. The minister alluded to some of those concerns in his speech. Members will be aware that a similar bill is going through Westminster; it received its second reading on 6 March. However, the UK bill not only legislates for reserved matters, but covers several devolved areas. Having incorporated the ECHR in Scotland, this Parliament must ensure that all legislation is compatible with the convention; Westminster, on the other hand, does not have the same responsibility. As a result, this Parliament must remain vigilant to decisions made by Westminster so that we are suitably satisfied that provisions in the UK bill do not erode human rights in Scotland.

Phil Gallie: As from October of this year, all UK law must comply with the ECHR. Perhaps there has not been a problem in Scotland before now, but the fact that the bill will not be enacted until October might leave a gap that is not being addressed.

Michael Matheson: There is an issue about the way in which we have planned for incorporation of the ECHR—Mr Gallie has made known his views on that. I view the ECHR positively. If we had not incorporated the ECHR, we might not be having this debate. The convention has necessitated regulation of a system that was not previously regulated. We should also remember that the UK has a poor record in relation to surveillance and in relation to compatibility with the ECHR. The principle that is applied in Scotland is that the ECHR should serve as a safety net. Parliament should try to raise its standards above those that are set by the convention, but I imagine that Phil Gallie will not necessarily agree with that.

The minister has acknowledged the pressure that the Justice and Home Affairs Committee has been under, although I speak not on the committee's behalf, but merely as a member of it. We have had only limited time to take evidence on the bill and I am aware that there are many organisations and individuals who might have wanted to bring issues to the committee's attention but have been unable to do so because of time constraints. Although the minister has acknowledged the concerns that were expressed by the committee, it is important to recognise that Parliament has a responsibility to balance the way in which we deal with legislation. Perhaps the Executive has the right to see its legislative programme to a conclusion, but that must be balanced by sufficient time being made available for scrutiny of legislation. We should all be mindful of the fact that rushed legislation is likely to be bad legislation.

Robin Harper (Lothians) (Green): Does Mr Matheson regret that the invitation to the Internet Society of Scotland to give evidence before the Justice and Home Affairs Committee was withdrawn?

Michael Matheson: That certainly is regrettable, but it was the result of time constraints that were faced by the Justice and Home Affairs Committee. There is, however, no reason why that organisation could not write to the committee with evidence that could be circulated to members with a view to lodging amendments at stage 2.

The minister said that lessons have been learned from the way in which the bill has been handled. It is therefore essential that we do not allow a precedent to be set by the route that we have taken so far.

Particular concerns that were expressed in evidence to the Justice and Home Affairs Committee centred on the independence of authorisation for surveillance under the bill. As it stands, the bill would allow Scottish ministers to grant an individual in a public authority in Scotland the power to authorise surveillance. It is likely that the police would be the public authority that was granted such powers, but the police are often the same people who will be responsible for undertaking the surveillance. There are concerns, therefore, about potential conflicts of interests. Such surveillance operations involve considerable intrusion of privacy, so it seems appropriate that greater safeguards should be available to address that problem.

It has been suggested that the surveillance commissioner—there is a job title for you—should be the person who is designated by Scottish ministers as being responsible for the authorisation of surveillance operations. That might help to address any conflict of interests. There are also concerns about the grounds on which authorisation for surveillance would be

granted. Section 3(3) of the bill sets out the grounds on which authorisation can be granted, but it gives no grounds on which authorisation can be revoked. Authorisation can be made

"in the interests of public safety"

or

"for the purpose of protecting public health".

In answer to questions from the Justice and Home Affairs Committee, the Association of Chief Police Officers in Scotland was unclear about the distinction between those areas and was unable to give examples of what would fit under the headings.

Euan Robson (Roxburgh and Berwickshire) (LD): As I recall, the police gave a general welcome to the bill. In discussion with Gordon Jackson, the witnesses said that they would prefer that their powers were set down in legal form so that there was clarity about what they were doing and so that they could test that against the legal provision.

Michael Matheson: In no way do I imply that ACPOS was hostile to the bill. However, when concerns about definitions in the bill were put to the ACPOS witnesses, they were not very clear about how the definitions would apply. The example that was given in committee was whether the spread of E coli in the general population would come under the heading of public safety or public health. We need to consider that point, given that such a senior organisation has found it difficult to be clear about it.

Robin Harper: Did ACPOS express similar concerns about definitions of disorder? Almost any public gathering—perhaps even the Parliament—could lead to disorder. I am particularly worried about that definition.

Michael Matheson: We discussed aspects of the definition of serious crime with ACPOS. I refer Robin Harper to the evidence that was taken by the Justice and Home Affairs Committee, which can be found in the committee's report—he will be able to read there exactly what the association said.

There is some concern about the definitions. They appear broad and, to some extent, unclear, so there is room for misinterpretation, which it is essential that we try to avoid.

Section 3(3)(d) contains an interesting provision, which allows ministers to authorise a form of surveillance that is outwith the bill's definitions. I confess that it was not clear to me why ministers required that general additional power. Even ACPOS, when it was asked for examples of why ministers might require that power, could not come up with anything. If there is no clear justification for such a power, why should it be contained in the legislation? I look forward to receiving an explanation from ministers as to why they require the power.

The minister addressed concern about the definition of serious crime in the bill. Serious crime is referred to as such on the basis that it

"results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose."

Those are very general terms. Although the minister referred to the current legal standing of the definition of serious crime, concern was expressed about it in evidence to the Justice and Home Affairs Committee. Does "substantial financial gain" mean £100, £1,000 or £10,000? How do we quantify that term? How will anyone who issues authorisation for surveillance be able to determine whether there are sufficient grounds for authorisation if they do not have guidance on what "substantial financial gain" means? There is also the question of what is meant by

"a large number of persons".

Does it mean five, six, 10 or 20 people? There is concern about the lack of a clear definition in the bill of serious crime. I take on board what the minister said, but I think that that point should be considered, given the concern that has been expressed.

The minister talked about the tribunal for which the bill provides. A key aspect of the bill is the need to balance the rights of the individual with the need to undertake surveillance. However, the way in which the bill is drafted gives rise to concerns about whether the tribunal will be effective. In Scotland, there is concern that the tribunal could be challenged under article 6 of the European convention on human rights, which ensures the right to a fair trial. That point was highlighted by Professor Miller and the Law Society of Scotland.

Under the bill, the tribunal will not be able to examine the merits of a decision to undertake surveillance; it can consider only the procedure and nature of that surveillance. The tribunal is covered by the UK part of the legislation; that highlights the need for us in Scotland to be vigilant to ensure that the legislation is compatible with the European convention on human rights—there are concerns that it may not be. To some extent, the whole purpose of the tribunal could be undermined by the fact that, under the bill, a person has no right to be informed that they are under surveillance or have been under surveillance at some time in the past. If someone is not aware of being under surveillance, how can they be in a position to make a complaint on the basis of what happened during the surveillance process?

Ben Wallace (North-East Scotland) (Con): Does the member recognise that surveillance

operations are often suspended because they have not yet gathered the evidence that was needed? Such operations are long term and, if the individuals under surveillance were notified, that could damage a future case. That is an important issue because some surveillance operations go on for many years.

The Presiding Officer: That must be the last intervention, Mr Matheson.

Michael Matheson: I would always acknowledge Mr Wallace's expertise in surveillance matters. However, I would say that the bill seeks to strike a balance between the need to undertake surveillance and the need to protect the rights of individuals. There are cases where surveillance has been undertaken, where nothing has been discovered and where it was inappropriate for the surveillance to have taken place; in such cases, the individual could be informed.

Ben Wallace might currently be under surveillance, as might the minister. The minister does not know whether any MSPs are currently under surveillance. If Ben Wallace or the minister were currently under surveillance, they might want to know why. If they did know and were unhappy about it, they could make a complaint. As the bill stands, there is no provision for that.

I recognise that there are on-going individual investigations where it would be inappropriate to inform someone that they had been under surveillance. However, there is also room in cases where surveillance has been inappropriate to allow people to be informed so that they can bring a complaint if necessary.

I have made it clear that the bill is a step in the right direction, providing regulation on a previously unregulated subject. However, it is worrying to think that this form of surveillance has been going on for so long without any form of regulation. Many questions remain unanswered. I hope that, at stage 2, the minister will lodge many of the amendments to which he has referred to address the concerns that have been expressed.

The Presiding Officer: Thank you. I call Phil Gallie.

Phil Gallie: It will be Mrs McIntosh.

The Presiding Officer: Have you changed round?

Phil Gallie: Yes. I am giving the winding-up speech.

The Presiding Officer: I apologise.

Gordon Jackson: They are interchangeable.

Mrs Lyndsay McIntosh (Central Scotland) (Con): Almost.

The Presiding Officer: We all know that you are not Phil Gallie.

Phil Gallie: She is not Phil Gallie in drag. [*Laughter.*]

The Presiding Officer: Order.

15:18

Mrs Lyndsay McIntosh (Central Scotland) (Con): As this is the first occasion on which I have led a debate on behalf of the Conservative party since the Parliament's first anniversary, I will begin by affirming my political credentials. A week may be a long time in politics, but I am glad to say that my transformation from being somewhere to the right of Attila the Hun to a middle-of-the-road party moderate—as recently reported in the media—has taken a full 12 months and required no change on my part. Of course, I hesitate to comment on what has just taken place.

I thank the convener of the Justice and Home Affairs Committee, Roseanna Cunningham, for her stewardship of our evidence-taking sessions in preparation for the recommendations that we are discussing today. I also give thanks to the committee's long-suffering and hard-working clerking team.

The introduction of statutory guidance on the policing of investigatory powers continues to receive cross-party backing, including from the Conservatives. However, it has become increasingly important that we should restate our position on several policing issues. Our position, put simply, is that whatever the police require to do their job responsibly, we as Conservative politicians are prepared to give them. We acknowledge the need for this legislation in order to ensure that a consistent statutory regime on investigatory powers is in place throughout the United Kingdom when the ECHR becomes applicable in October this year. However, our crime fighters must be given the means to fight modern crime in the modern age. As a truly unionist party, we say that that is common sense—it is a commonsense approach to a complex issue that recognises few, if any, borders, particularly when organised crime is involved.

We share the reservations expressed by the Justice and Home Affairs Committee, and by many of those who gave evidence, that the suggested restrictions will principally disadvantage the police in investigating serious crime, while having little effect on their ability to investigate lesser offences.

Gordon Jackson: Would Mrs McIntosh accept that the police who gave evidence did not say that they were disadvantaged? Those very senior police officers said that they were glad that the

provisions were being put in place, for everyone's sake.

Mrs McIntosh: I will come to exactly what the police said in their evidence in a moment or two.

As members regularly tell their constituents, the focus must be on the organised networks of serious crime if we are to make a difference in communities. We recognise, without a shadow of a doubt, that it is organised crime that is flooding our streets with drugs and challenging the authority and ability of our police to keep order. To deal with organised and serious crime, it is absolutely necessary for the police forces to have access to the tools and resources needed to bring alleged criminals before the courts so that guilt or innocence can be determined.

If we are to regulate investigatory powers, we must put the right of the individual and of society to be free from the fear of intimidation and of drugs at the forefront of legislation and before the rights of any individual who, through the pursuit of their organised criminal activity, illegally disrupts the lives of the law-abiding citizen.

All the evidence taken by the Justice and Home Affairs Committee on this issue would indicate that, in upholding that principle, we would be representing the true wishes of the Scottish electorate and acting in their best interests at all times. The organisations representing the police at the committee's meetings were unanimous in agreeing that the bill would ensure compliance with the ECHR, and that, in the words of Detective Chief Inspector Irving, who was representing the Association of Chief Police Officers in Scotland, that would be a "good thing".

The evidence repeatedly suggested that the most important limit that the bill would impose on our police force was time—which waits for no man. The information technology revolution is not lost on criminals, who have not been slow to use it to their advantage.

We heard amusing testimony that chief constables will welcome a statutory requirement that they be involved in decisions relating to covert investigations. After all, it is their necks on the line if something goes wrong.

I am sure that we all recognise that there will be many occasions when time is of the essence and someone other than a chief constable could be empowered to conduct inquiries. Otherwise, situations may arise in which, by the time an investigating officer has tracked down a senior officer, explained the circumstances of the request for covert surveillance, received authorisation and then set up the surveillance, the criminal has completed his job and is at home with his feet up having a laugh at the police's expense.

Scott Barrie (Dunfermline West) (Lab): I take on board the scenario that Mrs McIntosh describes, but is she suggesting that we do not regulate what the police are doing and that we end up with a free-for-all?

Mrs McIntosh: I am not suggesting that for a second.

Members of the Justice and Home Affairs Committee questioned the police about the procedures that they plan to adopt in cases where surveillance powers have to be undertaken without foundation. I agree that covert operations are costly in terms of manpower and resources and that the police do not enter into them lightly. It is not all crouching behind steering wheels in smoke-filled cars, with junk food and with paper cups full of cold coffee, as portrayed on television. The point was well made by Assistant Chief Constable Pearson, that, in the pursuit of justice on behalf of our democracy, expense is a consideration, but not the overriding concern, in deciding to authorise covert activity.

The Parliament need not fear that the bill will provide the police with greater scope to undertake costly surveillance. We have been assured by all those who presented evidence, including the Law Society, that, far from increasing covert surveillance operations, the bill may restrict police activity in this area.

The Justice and Home Affairs Committee has been subject to time constraints in considering the draft bill with which we were presented. The idea of tandem legislation going through both Parliaments at about the same time would have been better served if we had received the proposals at the same time as our Westminster counterparts did, instead of having this rushed affair. I am sure that that point will be made with monotonous and increasing regularity.

If we are to comply fully with the ECHR, as the Government has committed us to doing, we must consider seriously the appointment of an independent surveillance commissioner, as recommended by Professor Alan Miller. Conservative members have some sympathy with that suggestion. Professor Miller was asked to assist the Parliament in considering this legislation as part of his work with the Scottish Human Rights Centre. Of all his recommendations, the proposal for the appointment of an independent surveillance commissioner is by far the most significant for ensuring our compliance with the ECHR. Professor Miller also suggested that the grounds for surveillance outlined in the bill were "too broad" and "too vague". We in the Conservative party believe that there is considerable merit in that observation.

The police gave evidence that they would

undertake surveillance only in relation to groups that were "very extreme" or if

"there would be major disruption to public order."—[*Official Report*, *Justice and Home Affairs Committee*, 15 May 2000; c 1230.]

However, a lighter note was struck by the committee convener, Ms Cunningham, who asked who those extremists might be. Could they be a group of people, or a party? What size would such a group be? Could it be a committee, or a Parliament? "It could be you"—as the lottery ad says. The good news that followed was that, under section 27(7), such persons would have to resort to violence or intend to extract "substantial financial gain". That was a relief, but we still lacked a proper definition. Clearly, definitions throughout the bill will require appropriately drafted amendments to clarify their meaning. That is particularly important for the definition of "serious crime". We look forward to playing a full and active part in preparing amendments when the time comes.

I remain unconvinced by the assurances of ACPOS that the bill will not risk placing any additional administrative burden on our police. However, I welcome the association's assurance that the bill will strike the perfect balance between protecting police officers and ensuring proper public accountability, without impinging on the police's ability to operate effectively. I also welcome the fact that the legislation will be particularly useful, if we are to believe Professor Miller, in reducing the incidence of police entrapment.

Of course, covert surveillance is not the sole preserve of the police. Society today has developed a very lucrative private sector, which needs to be regulated as much as, if not more than, our public investigation bodies. That is the clear message of the Law Society, which admits to being concerned that private sector investigations have the same implications for rights of privacy as operations regulated by this bill do. It is vital that those undertaking such investigations do so knowing where they stand in relation to the convention.

In his evidence, Professor Miller illustrated the benefits that could accrue from the establishment of an independent, authoritative human rights commission. Although this bill is not the appropriate vehicle for establishing such a body, we are pleased to note that the Scottish Executive is now to consult on the case for doing that.

On the Executive's apparent unwillingness to take any amendments to the bill, to which the minister has already referred, I associate myself and my Conservative colleagues with the remarks made in the Justice and Home Affairs Committee's fourth report. Democracy is based on a parliamentary structure that ensures that parliamentarians receive expert evidence, on the basis of which they can propose amendments to improve legislation. Every amendment must be considered on its merits, and the Scottish Executive's view that changes to the bill are not in practice deliverable denies elected representatives an opportunity to deliver the best results for Scotland. In principle, the bill is worthy of delivery for the people of Scotland. It merely puts into statute rules and regulations for the police that they currently follow as guidelines. The police believe that compliance with the ECHR is desirable; the bill will assist them in delivering that compliance.

The Conservatives agree with the recommendations of the Justice and Home Affairs Committee that the general principles of the bill should be agreed to. We look forward to a fair, open and honest debate on the detail of the definitions and on whether a surveillance commissioner and a human rights commission should be appointed. After all, when we say that the police should get what they need to do the job, we mean it.

The Presiding Officer: Thank you—spot on time.

I call Gordon Jackson to open for the Labour party. When we come to the open debate, the usual four-minute time limit will apply, with a little latitude for interventions. However, Gordon Jackson has 12 minutes.

15:30

Gordon Jackson (Glasgow Govan) (Lab): Michael Matheson says that the bill is about striking a balance. As he will understand, I could not agree more.

Surveillance is a necessary part of life, even, unfortunately, in a free society. Whether it is directed or intrusive, or involves the use of so-called informers, it has always gone on; with or without this legislation, it always will. It is the backbone of law enforcement work. Crimes are not solved and criminals are never brought to justice—at least, not often—by television-style detective work, but by the sort of techniques that we are dealing with here. The harsh reality is that crime and criminals are becoming increasingly sophisticated. The techniques that we use to counter them must follow suit.

On the other hand—I endorse Michael Matheson's sentiment—I am convinced that any kind of power to interfere in the life of a citizen must be closely monitored and controlled. No one—no organisation—is ever to be entirely trusted with such power. I do not say that out of any sense of being anti-police or anti-authority. It

is simply about understanding the nature and effect of the sort of power that is being put into statute. It is always in danger of being abused.

Phil Gallie: Michael Matheson suggested that the United Kingdom has not always had the best record. Given the member's illustrious career elsewhere, has he any experience of surveillance being abused in Scotland in the past?

Gordon Jackson: I do not wish to go into individual cases. I am making a general point. I do not trust this sort of power to go unmonitored—ever. That is not an anti-police or an anti-authority point; it is simply the reality of human nature. There is always the danger that this sort of power will be abused and uncontrolled. That is true of the police and it is true of Governments. It is just the nature of authority. That is why we need a balance between surveillance and control. In my opinion, the bill achieves that.

I say that for a number of reasons. First, the Executive—especially Jim Wallace—is committed to that balance. The Executive is committed to what is often called "law and order". I do not wish to pre-empt tomorrow's debate, but it is part of the Executive's agenda to see to it that ordinary, decent citizens have the full protection of the law and that the relevant agencies have the tools and resources to turn that protection into practical reality.

Let me add—

Alex Neil: Will the member give way?

Gordon Jackson: I will finish this point.

Almost anyone, of any political complexion, shares that purpose. To say otherwise is cheap point scoring. I say that because last week David McLetchie—I am sorry that he is not here—stood and, somewhat melodramatically, pointed to the Executive and said something like, "The police agree with us and the criminals agree with you." I find myself shaking my head at that sort of nonsense. There is real politics, there is soundbite politics and there is plain silliness—plain daftness. The reality is that all of us, including the Executive, are committed to a safer society and to the powers contained in the bill.

Alex Neil: Most people would agree with Gordon Jackson about the need for balance between surveillance, justice and controls. Does he agree that members of the Parliament might have much more confidence in the effectiveness of those controls if the Scottish Executive ministers were brought into the loop for approval and were informed about all types of surveillance in Scotland, rather than the bill being some sort of secret weapon from London?

Gordon Jackson: I take Alex Neil's point, but I fundamentally disagree with it. This Parliament is dealing with a matter on which it has legislative competence and I see no reason to get into an argument at this stage about how other matters will be dealt with.

Although I said that the Executive is committed to law and order—I am tired of people saying that it is not—it is also committed to protecting the legitimate rights and freedoms of the individual citizen. That is in our statutory commitment to the European convention on human rights, but I think that it goes much deeper.

Christine Grahame (South of Scotland) (SNP): Under the legislation as it stands, there are certain circumstances in which an individual has no right to know whether he or she has been under surveillance. Is Gordon Jackson content with that situation, or would he like such a right to be included?

Gordon Jackson: I hope that Christine Grahame will bear with me if I do not cover that point until later in my speech. I certainly do not intend to duck it.

We must be careful how we deal with the ECHR. Everything that we do must, by law, comply with it, but it is not our only yardstick. I hope that we are not giving proper protection to the individual simply because the ECHR says that we must. I would like to think that we are doing it because we believe it to be right. I know that that is true, and we should not apologise for it. The commitment to monitor the power of the state—and that is what we are doing—is appropriate and should address Michael Matheson's concerns.

The unusual thing about this process is the balance and unanimity of the evidence that the Justice and Home Affairs Committee heard, which was strange to me. On the one hand, we heard from Professor Alan Miller, whom I have known for many years and who has long been involved with human rights and, before that, with what used to be known as civil liberties. He said that he broadly welcomed the legislation as having a proper statutory framework. On the other hand, we heard from the police, who also welcomed the legislation for pretty much the same reasons. They thought that it was in everyone's interests, including their own, to have a properly regulated system.

That may sound unremarkable, but not so long ago it would have been very unusual. It is not very long since someone such as Alan Miller, a passionate advocate for civil liberties, would have been viewed as a kind of dangerous liberal by certain factions, members of which are sitting not far away from me in this chamber. On the other hand, the police would have been distrusted on an issue such as this. The fact that we can now introduce legislation that gives power and then controls it, and does so in a way that has broad

agreement between Alan Miller and the police, suggests to me that we are making progress as a mature society.

Another reason for optimism is the bill itself, which recognises the need for lawful surveillance. People will be followed about—members of this Parliament might, for all I know, be followed about—and their movements carefully watched. Informers can be placed in sensitive positions and can penetrate activities. Devices—whatever they might be—can be put into what is normally private property. On the other hand, the bill will say when those powers can be used, who can use them, who must authorise their use and what redress there will be for the aggrieved citizen. That is a good balance. I have not forgotten Christine Grahame's question; I am trying to forget about it, but I have not done so yet. The bill provides a good and proper balance and is to be welcomed, but it is not perfect.

One reason for the scrutiny process undertaken by committees is to examine this kind of legislation in some detail. As we tell the Executive over and over again, we are here not to rubber-stamp its work, but to make things better. I hope that the Justice and Home Affairs Committee's stage 1 report makes that clear. We have tried to be constructive. We have tried to be helpful and there are several issues that might be worth thinking about. Perhaps some of them are not of great importance, but I would like members to think about them.

Concern has been raised about the granting of authority for covert human intelligence sources—the mole or informer—and the fact that that authority will be granted by persons designated so to do by the Scottish ministers. The suggestion was made—I think by Michael Matheson—that the surveillance commissioner should authorise such action. I tend to the view that that is not necessary, partly because that form of intelligence gathering is used all the time. I was tempted to intervene on Michael and ask him how often he thought it would happen, because the scale of operation is so huge. However, I want the Executive to make it clear that only senior officers will be authorised to grant authority for covert human intelligence sources. No one under the rank of superintendent should be allowed to do that. I hope that the Executive will confirm that.

Christine Grahame asked whether someone who had been the subject of surveillance should be told about it if no serious crime had been found or if there was—I take Ben Wallace's point—no operational reason not to tell them. I find the matter difficult. It is difficult to legislate on it; I accept Jim Wallace's point that there are dangers and I accept Ben Wallace's point that operations go on for years. However, on some occasions, people have been under surveillance without a continuing operational reason.

I wonder about this issue in the context of the ability to complain to the tribunal if improper surveillance has taken place. My difficulty with it—I have no concluded view—is that it is difficult to see how anyone will be able to complain unless they know that it has happened. That seems to be a Catch 22 in the legislation. We should return to that matter once we see how the legislation is working; not at stage 2, but at some time in the future. I certainly do not want to prejudice operations—again, I take Ben Wallace's point—but on certain occasions it might be appropriate to tell someone that they have been the subject of surveillance.

Ms MacDonald *rose*—

Gordon Jackson: I have only half a minute. If I get another 10 seconds, I will take Margo MacDonald's intervention.

Ms MacDonald: Would it be possible, in this instance, to categorise the sorts of people who are surveilled? I hope to raise the matter of a constituent of mine who was under surveillance. Even with the tribunal as outlined, he would not have known had it not been for an accident and a leak, yet everyone admits that he was innocent. How can we categorise cases into the very serious and those who should not have been caught in the net?

Gordon Jackson: That is a question for the minister, although I have some sympathy with that point.

The problem with all surveillance is that it is secret. The difficulty is that the situation is always a Catch-22 one.

I have concerns on two issues. The authorisation for covert intelligence must be justified on certain grounds: preventing crime; public safety; protecting public health; and the catch-all that Jim Wallace mentioned—any purpose specified by the Scottish ministers. I appreciate why flexibility is needed and why the Executive wants to be able to deal with unforeseen situations. On the other hand, we have asked everyone we can think of, and no one has come up with even a hypothetical situation to which that catch-all provision might apply. In the context of legislation designed not only to give the power, but to limit and control it, there seems to be a question mark over such an open-ended provision.

Jim Wallace says that that provision will be ECHR compliant. We know that. Everything must be ECHR compliant. Subordinate legislation under the provision will be subject to the affirmative procedure—that is encouraging. I know that there

is no sinister purpose, but in the context of legislation to control such surveillance, I wonder whether it would be appropriate—unless we can think of a good reason to keep it—to remove that catch-all provision. I am not entirely comfortable with it.

My last point is the definition of serious crime. I have no doubt that, in section 27, the words

"a number of persons in pursuit of a common purpose"

refer only to criminal conduct. However, ministers have heard a number of people wondering about that. One of the more senior members of the Law Society of Scotland came to the committee and misinterpreted those words. He read those words as if they applied to political things rather than just to criminal things. I know that that is not so, but all of us in the Justice and Home Affairs Committee felt that section 27 on interpretation might be better worded, in order that it is clear that the conduct referred to is criminal conduct.

However, those are minor improvements. The bill is greatly to be welcomed and I commend it. I am grateful to you, Presiding Officer, for your latitude.

15:46

Alex Neil (Central Scotland) (SNP): The SNP is well qualified to speak about these subjects, as we have a strong connection with the world of espionage. If I am interrupted, I will be shaken but not stirred. [*Laughter.*] I see that the acting First Minister is not very quick on the uptake these days—perhaps he is too busy.

I agree with the points that Gordon Jackson has made, because there is no doubt that the revelations of recent years about the misuse of powers of surveillance have led people—not only in Scotland but throughout the United Kingdom—to be suspicious of the legality of some of the activities of organisations such as MI5 and MI6, and of some police forces. Rather than leaving the wording loose, which could lead to careless interpretation, we should, as Gordon suggested, revise the wording at stage 2 to improve it substantially.

I do not say that because I believe in conspiracy theory. However, as a young man working for the Labour party—when it was a Labour party—

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): That was not yesterday.

Alex Neil: It was a long time ago. Duncan was in his 40s. [*Laughter.*]

I remember standing on the terrace with Ted Short—at that time deputy Prime Minister—who knew that he was the subject of a conspiracy by the security services, which were planting stories in the press about bank accounts in Switzerland, among other things. We now know—following the revelations of Peter Wright and all the others—that some of Harold Wilson's suspicions during his second premiership were well founded.

We are not talking only about people who operate at a fairly low level. People who operate at the most senior levels of Government in this country have been the subject of misuse of surveillance and other powers that the security services and others possess. It is extremely important, when we are framing legislation of this nature, which touches on our basic rights as citizens, that we get the wording right. We must ensure that our rights are fully protected.

I would also like to draw attention to section 27(7)(b) of the bill and the reference to activity that

"is conducted by a large number of persons in pursuit of a common purpose."

Again, the common purpose is open to interpretation, especially when we consider the definition of very extreme activities.

Euan Robson: I understand the member's concern, but does he not agree that, in section 27, subsection (7) must be read in conjunction with subsection (6)? The tests in the previous subsection should be read into subsection (7). I agree entirely with Gordon Jackson that clarification is necessary, but I do not think that we should say that the bill is fundamentally flawed in that area.

Alex Neil: I did not use the words "fundamentally flawed". But to go back to "very extreme"—I have been called very extreme, even in this chamber. However, I am sure that nobody, on any side of the chamber, has me under surveillance. [MEMBERS: "Behind you."] I am now exceeding my four minutes.

My final point is that the House of Commons has substantial procedures and support functions in place, through Tom King's Intelligence and Security Committee, to scrutinise the security services and to ensure that there is no misuse of the powers that they exercise.

Now that Scottish ministers are in place, with substantial powers of surveillance, albeit within devolved matters, this Parliament should consider the establishment of a parallel procedure—a watchdog committee—to ensure that there is no abuse of those powers in Scotland. We should consider that sensible suggestion because part of our function as parliamentarians is to scrutinise the Executive and to ensure that there is no abuse of power in such areas. Before the acting First Minister falls asleep, I suggest that there is a strong case for the establishment of such a parallel committee in this Parliament, to ensure

that civil rights in Scotland are fully protected under the Regulation of Investigatory Powers (Scotland) Bill.

15:51

Miss Annabel Goldie (West of Scotland) (Con): In the best traditions of conservatism, I shall attempt to compensate for Mr McNeil's—

Alex Neil: Mr Neil's.

Miss Goldie: I shall attempt to compensate for Mr Neil's expansive loquacity by being relatively brief, as some of the points that I wished to raise have been covered already.

I say to the acting First Minister that, while I fully understand his comment that the Regulation of Investigatory Powers (Scotland) Bill will not create powers over and above those that are being enacted at Westminster, none the less the bill has far-reaching implications for Scotland. I am concerned that the Justice and Home Affairs Committee has not been given a greater opportunity to consider the bill in more detail and over a longer time. Issues are emerging which that committee, with its expertise and the facilities available to it, could have expanded upon and clarified. I suggest that such an approach might make for better legislation. I wish to record my general concern about the approach that has been adopted, which is a consequence of the hefty legislative programme that currently prevails.

I was slightly concerned about the provisions of section 5 of the bill, which give Scottish ministers the power to designate, by order, those persons within the "relevant public authorities" who are to be entitled to grant authorisations for surveillance. I note the attempt in section 5 to define the phrase "relevant public authorities", but I would be grateful for guidance from the minister as to what he has in mind. For example, is the Scottish Drug Enforcement Agency a public authority for the purposes of the bill? I hope that it is, but, on the other hand, if Historic Scotland is not so designated, I am not overly concerned. We would find it helpful if the minister could give guidance on which authorities that phrase is meant to embrace.

I note the reference in the bill to the surveillance commissioner. My attitude is clear: I want the bad lads to be nailed, but I do not want them to be nailed in a climate of zealous, enthusiastic discharge of regulatory powers by our authorities in a way that may contravene the fundamental freedoms of private individuals. I do not wish to shackle our police forces with cumbersome bureaucracy, but, at the same time, I do not want the procedures engaged in by our law enforcement authorities to be rendered nugatory because they contravene the ECHR. Again, a comment from the minister on how he envisages the role of the surveillance commissioner would be helpful. Does he think that the commissioner is necessary in order to keep us on the right side of the ECHR? What other advice has been made available to him?

I have a further, slight concern with section 3(3). Section 3 is concerned with the authorisation of directed surveillance, and section 3(3) states:

"An authorisation is necessary on grounds falling within this subsection if it is necessary—

(a) for the purpose of preventing or detecting crime or of preventing disorder".

That seems to be a wide definition. What disorder is that intended to embrace—public or civil disorder?

Reference has been made to subsection (3)(c). The matter of E coli outbreaks, which that subsection is intended to cover, came up in the Justice and Home Affairs Committee.

I confess to slight alarm about subsection (3)(d), which allows the authorisation of covert surveillance for any purpose that does not fall within the other subsections. That seems a very broad power and we should receive some guidance from the minister as to what he envisages within the scope of that subsection.

We welcome the principles of the bill, which we consider a useful aid to the proper enforcement of law and order and the proper detection of crime. However, some serious concerns must be weighed against the virtues of the bill and I hope that the minister will address those in his winding-up speech.

15:56

Donald Gorrie (Central Scotland) (LD): I welcome the bill. It is a serious attempt to regulate what needed to be regulated. I have complete confidence in Jim Wallace as a man of great integrity and intelligence who will oversee its implementation very well, but the bill must stand up to being implemented by a different minister at a different time, and that person might share the more draconian attitude of the current Home Secretary at Westminster. We must be able to guard against that.

Gordon Jackson made a good speech in which he raised the point that several of us have made. It may ruin my political career if I use Latin, but I will quote a famous question posed by Juvenal:

"Sed quis custodiet ipsos Custodes?"

But who is to guard the guards themselves? Who regulates the regulators? My fellow rebel, Margo MacDonald, advised me that it was okay to use Latin if I did not know the Gaelic. The serious point is this: who will control the over-enthusiastic police

who are dead keen to pursue some people and go over the top in using their various methods to do so? The classic Liberal concern about civil liberties must be put forward.

Other members have pointed out the dangers of section 3(3)(d), which allows authorisation of covert intelligence sources for any other purpose

"which is specified for the purposes of this subsection by an order made by the Scottish Ministers."

A serious Liberal must be suspicious of the establishment. I enjoy the detective novels of Ian Rankin. His character Inspector Rebus is always investigating the evil-doings of the Edinburgh establishment and most of his novels deal with a huge plot by that establishment. I share Inspector Rebus's view: a lot of life involves a plot by the Edinburgh establishment. We must stop that establishment being in any position to get at people who are merely causing it some trouble. I fear that the subsection could be used inappropriately by a less happy Government in the future.

With respect, Jim Wallace did not deal adequately with John McAllion's point about football and preventing disorder at football matches. I can imagine over-enthusiastic police thinking that there might be a riot at a football match and setting up all sorts of surveillance to prevent it. It is obvious that we want to stop professional hooligans, but a story can easily be cooked up. For example, if there is an orange march—or a green march—the other side may threaten to disrupt it and surveillance may be set up to stop the whole thing. The threat of public disorder can be used as an excuse to stop reasonable activity.

There are many detailed issues to be resolved, but the bill is a good start and is on the right lines. I hope that the minister will consider carefully the various amendments that will arise at stage 2. The Executive is understandably dead keen to get its legislation passed untrammelled, but a bit of trammelling by committees is a good thing. So long as the minister accepts that, he will have made a good start. I have great confidence in him, personally, doing the right thing.

16:00

Pauline McNeill (Glasgow Kelvin) (Lab): We have before us a complex piece of legislation in two parts. When the Justice and Home Affairs Committee first took evidence on the bill, I was disappointed when the convener told us that we could not call for evidence from MI5. Some of us thought that that would be rather interesting.

It is important to focus on the "Regulation" in the title of the bill—no new powers are being introduced; the bill serves to regulate existing practice.

Members have heard that the Justice and Home Affairs Committee felt that the evidence-taking process was a bit rushed, particularly as we are being asked to consider the freedom of individuals whose privacy could be at stake. It is important that clear guidance is given to police authorities and other agencies when they seek to intrude on an individual's, or a group's, right to privacy.

It is important to note that until recently we had no such privacy rights in the UK. We have had a right to privacy only since the incorporation of article 8 of the European convention on human rights. For that reason, we should be careful about how we regulate how those rights can be interfered with.

A code of practice on surveillance has been supplied to members of the Justice and Home Affairs Committee. It is similar to the bill. The committee was concerned that the bill would add a burden to police who are carrying out covert surveillance, but the Association of Chief Police Officers told us that it would be helpful. It regulates the appropriateness of the relationship with informants of officers who work under cover. It speaks of human covert intelligence, but I am sure that the ordinary police officer would think of them as touts. They are crucial to the work of police—without them, police could not get the right kind of information—but, by their nature, they are vulnerable. The bill forces a requirement on police officers to register informants and reminds them that they should have regard to the vulnerability of informants by assessing their health and safety. We should not forget that informants sometimes live in difficult situations and that if they are found out, there could be dire consequences.

As Christine Grahame said, we should think carefully about the destruction of evidence. In the committee, Euan Robson talked about the need to examine carefully section 2(2), which deals with civil liability. That should be amended to ensure that the usual protection is given to innocent individuals during surveillance work in which personal injury might result.

It is important that we clear up the matter that John McAllion raised. As drafted, the bill could be used to authorise pursuit of individuals in pursuit of a common purpose. Gordon Jackson was correct to say that the bill is confusing. The Parliament has to be clear about how we will reword that section.

Many of us who lived through the 1980s will remember Clive Ponting and Cathy Massiter, of MI5, who monitored Campaign for Nuclear Disarmament calls. We remember also the unusual case at the Dagenham Ford plant where authorisation was given to listen in to the phone

calls of trade unionists to determine what their bottom line on pay was. The suggestion was that the union was in pursuit of a common purpose. Perhaps the fact that Thatcher was in power made people think that they had carte blanche to do something like that.

The crucial thing about the bill is that, throughout, it says that authorisation on matters of surveillance must be proportionate. We must bear that phrase in mind. Authorising tapping of the phones of trade unionists engaged in pay talks cannot be seen as a proportionate response. We should have clear guidance on that.

Michael Matheson said that any one of us could have our phones tapped or be under surveillance. I remind members of a way of telling whether a phone is tapped: if the bill is not paid, the phone is not cut off.

16:05

Colin Campbell (West of Scotland) (SNP): I begin by declaring an interest. I have been assured by people in the know that, because of my interest in defence, it is almost inevitable that I have been tapped from time to time. I know of one or two colleagues in the SNP who have firmer evidence of that than I have, although I cannot put a time, date or place on it.

Ben Wallace: Does the member recognise that security services tap only the telephones of people who have a sensible defence policy and do not waste their time in Disneyworld?

Colin Campbell: I will take that point in the spirit in which it was intended, but Ben Wallace should know better than that.

We know that tapping takes place and, as has been mentioned, that it took place during Harold Wilson's Government, so if I am a little bit sceptical about what is happening today, members will understand why.

The bill does not impose a requirement on public authorities to seek or obtain authorisation, where such authorisation is available under the bill, but not doing so may be an infringement of section 6 of the Human Rights Act 1998. In other words, somebody might initiate surveillance and risk prosecution under the Human Rights Act 1998, but they will have obtained the information they want before there is any prosecution. Even if it were legally watertight, what is to prevent a perceived overriding national interest with a requirement for maximum security from bypassing the entire authorisation process? What is to prevent an overriding political interest from doing the same? What is to prevent rogue surveillance from being carried out? Can we build in administrative safeguards to prevent that kind of thing?

The bill assumes that everyone—those authorising surveillance and those carrying it out—will play by the rules. That is not meant to impugn anyone in the chamber's honour. The bill also assumes that the purpose for which surveillance is being authorised is what it is stated to be. The philosophy of covert security is based on playing outside society's normal parameters. The bill is a welcome attempt to bring it inside the rules, but it cannot be regarded as foolproof.

If that seems a little bit labyrinthine, it is because the key element of this kind of exercise is security, which is best served by as few people as possible being involved in the intent and execution of a mission, especially if the purpose of the surveillance is not within the terms of the proposed legislation. The bill says that persons entitled to grant authorisation shall belong to relevant public bodies—the police, the National Criminal Intelligence Service or any other public body. There has been some question about what is a relevant public body. The committee agreed that the National Galleries of Scotland would be unlikely to initiate surveillance in any circumstances. It would therefore be helpful at stage 2 to define the bodies that might have that right.

Covert sources are to be independently managed and supervised and records kept. By whom? How fully must such records be maintained? Will they contain information pertinent only to the inquiry, and justifiable as evidence, or will they include background material, which may have no immediate relevance to the inquiry being carried out? Will there be a guarantee that records will be destroyed if they prove to be irrelevant?

Section 10 provides that authorisations for intrusive surveillance will not take place until the surveillance has been approved by the ordinary surveillance commissioner and written notice has been given to the person who granted the authorisation, except in urgent cases. Who decides what an urgent case is? Will there be a definition?

I want to touch briefly on the UK bill. Although it is of no relevance to us here, in that we cannot affect it, I hope that Westminster is listening, because everything should be screened. I am advised that it is already widely known how to get into somebody else's computer, send e-mails and make the victim's computer hold a copy.

Security is so bad that it is rumoured that a leading bank paid an ex-employee residing in Switzerland to discover how he was robbing them and how much he had taken. A ban on encryption will damage further security on the web, which is already poor. Internet service providers' systems have to be resilient, with several routes in and out. Therefore, a single black box is insufficient. From

the black box, there will have to be a pipe to the e-collecting point for screening. Evil-doers will get round that by the sheer volume of e-mails. The bill will bring the internet to a halt if it is applied; it will drive e-commerce out of the UK. That is for Westminster—as I assume people there are screening us.

16:10

Scott Barrie (Dunfermline West) (Lab): As the acting First Minister and other members have said, the bill must be seen against the backdrop of the desire by the UK Government and the Scottish Executive to provide a regulatory regime for investigatory powers that is compatible with the European convention on human rights. The task facing the Executive is to establish a regulatory framework that strikes an appropriate balance between effective crime prevention and safeguarding the rights of the individual. I contend that the bill achieves that.

Like Annabel Goldie, I find that the points I want to make have already been made. However, I want to highlight several issues of particular importance that exercised the minds of the Justice and Home Affairs Committee. As the committee report says,

"Much of the Scottish bill is concerned with a system of authorisations for conducting surveillance operations and using covert human intelligence sources. It gives new powers to the 'Surveillance Commissioners' . . . and provides a mechanism whereby persons aggrieved by conduct under the Bill can complain to the tribunal to be established by the UK bill".

I echo the reservation, expressed by the committee and Professor Alan Miller, that the bill fails to require that persons who have been subject to surveillance are notified of that fact after the event. Someone who is charged with a criminal offence will of course know whether they were subjected to surveillance. Both Gordon Jackson and Michael Matheson spoke eloquently about the Catch-22 situation that people might find themselves in if they are subject to surveillance but are not found to be guilty of criminal activity. The failure to include any way, however difficult it may be to find, to remedy that situation is an omission.

As Lyndsay McIntosh conceded, although I suspect she may have wished it otherwise, the police evidence to the committee showed that the bill will not add to their administrative burdens, but will assist them. It will help to

"demonstrate externally the appropriateness of our relationships with informants, but to protect individual officers"—[*Official Report, Justice and Home Affairs Committee,* 15 May 2000; c 1237.]

from allegations of involvement in criminal activity.

The police believe that the bill strikes the balance "perfectly" between protecting police officers and ensuring proper public accountability on the one hand and allowing the police to operate effectively on the other. It is important that legislation on regulation does not overburden those subject to it. The police do not believe that that is the case. I do not believe that the bill places undue restrictions on individual liberty either.

In the past, my convictions have usually been with the promotion of civil liberties. I approached the bill perhaps slightly differently from other members of the Justice and Home Affairs Committee in that I was concerned about our becoming too much of a police state. The evidence we took from the police was heartening in that it showed that they do not think it will be like that—and people advocating human rights did not think it should be either.

The Executive should be commended for striking the right balance between competing demands. I endorse the view of the Justice and Home Affairs Committee that we endorse the general principles of the bill.

16:13

Ms Margo MacDonald (Lothians) (SNP): I welcome the opportunity to raise a matter concerning surveillance in general and oversight and redress in particular. I have been trying unsuccessfully to raise the matter with the Home Secretary since last December; I have written three or four letters that have gone unanswered. I reminded the acting First Minister on his way out of the chamber that I have now written to him to ask him to intercede. I am bringing living proof of the validity of Donald Gorrie's demand that we keep an eye on what is happening in the Home Office, because my experience of trying to act from this Parliament on behalf of a constituent has certainly not been productive.

Mr Munro contacted me to see whether I could help him discover whether his personal phone calls to a friend in Ireland had been intercepted during the period April 1996 to December 1998. It is known that the British security services eavesdropped electronically on calls from the UK to the Republic of Ireland during that period.

Mr Munro has no police record, nor has he ever been connected with any terrorist organisation. His calls were of a more personal nature and of no concern to anyone other than the person to whom he was speaking in Ireland. His simple and entirely reasonable request is that he should know whether his calls were spied on, by whom, and for what reason; he would also like to know whether a record was kept of his private conversations, by whom, and for how long that record would be kept.

During the period when Mr Munro suspects his calls were intercepted, the technology used in Capenhurst Tower in Cheshire to monitor calls between the UK and Ireland—until 1997—involved calls being selected and codified, and listened to specifically by the intelligence services. That is well recorded. Unfortunately, I discovered that information, at Mr Munro's behest, not through replies from the Home Office to my written requests for information, but from answers to parliamentary questions to the Irish Minister for Foreign Affairs, following an investigation that was shown on television on Channel 4.

One of the weaknesses of the intended legislation, as far as I can tell, is that if people are going to discover something, they will discover it by accident or through a leak; that is perhaps true of the Regulation of Investigatory Powers (Scotland) Bill, but certainly true of the UK legislation. That is not at all satisfactory. When new legislation is being drawn up, we can be a bit more precise about how people can monitor their individual human and civil liberties.

The nub of the objections to the new scheme for interception and surveillance is that Mr Munro would not have known anything about the infringement of his personal liberty unless there had been open questions and answers in the Dail and excellent investigative journalism into Capenhurst Tower by Duncan Campbell. Nobody dropped Mr Munro a wee card to let him know that he was off the hook. He was not told that his calls had been intercepted as a matter of routine security, or that they had either been kept on record or not and that he should now count himself out. That was the purpose of my inquiry into his case.

Could we start categorising people a little better, and being a bit more sensitive about who is getting caught in a security net?

Ben Wallace: Does the member acknowledge that 60 per cent of terrorists who were tried and convicted had no criminal record or criminal past and no criminal association? They were "lily white"—as they were called by paramilitary organisations—for the very reason that there was no such trace of them. The security services and the police are faced with the problem, when dealing with organised crime, that the criminals know how to exploit the system.

There should be some element of freedom to allow the investigative bodies at least to investigate people they have reasonable grounds to suspect of being involved in such incidents. I do not know whether Margo MacDonald's constituent was eavesdropped on, but he was neither convicted nor tried—merely under suspicion. The member may have had confirmation from Ireland that he has nothing attached to his record.

Society has a right to protect itself; perhaps the case of the member's constituent came under that right.

Ms MacDonald: I wonder how Ben Wallace knows that my constituent has nothing attached to his record. I wonder whether Ben Wallace knows whether my constituent has any record as a result of the telephone calls.

I suspect that there is no record; that is what I was suggesting. He was an entirely innocent person who was caught up in a net. I do not seek to deny the need for that net; I agree that there are security requirements. However, when it is obvious, and has been proved, that the person who has been caught up in those surveillance techniques is an innocent bystander, surely that person has some right to know that he is in the clear. That is what I am talking about—redress for people who are caught up in such situations.

Even if the proposed tribunal had been in operation when Mr Munro's calls were being monitored, he would not have known—he had no idea at that time that he was being listened to. Remember that this was happening from 1996 to 1998. He did not know, so he would not have known how to question or complain, or how to find out why it was happening or when it would stop.

I appreciate that this part of the new security operation will fall under the ambit of the Home Secretary. I have referred to my experience of trying to deal with him. Perhaps we should consider Alex Neil's suggestion about the watchdog committee, or Donald Gorrie's suggestion that we examine how the regulations are to be applied. I am not absolutely sure that by simply saying that the matter is reserved and will be taken care of by the Home Office, we will have the protection of civil liberties that we in the Scottish Parliament want.

The tribunal system appears to be a fig-leaf to cover the Home Secretary's embarrassment at his continuation of the culture in Her Majesty's secret service that has scant regard for people's civil liberties.

16:20

Janis Hughes (Glasgow Rutherglen) (Lab): As it starts to take effect over the next few years, the European convention on human rights will have a massive impact on Scottish society. The Regulation of Investigatory Powers (Scotland) Bill is needed to ensure that surveillance and interception techniques that are used in law enforcement activities in Scotland are brought into line with the ECHR. If that does not happen, I fear for the consequences.

The bill does not give the authorities greater

powers of surveillance. It will not lead to greater intrusion into people's private lives. It simply seeks to give a framework to what currently exists. The problem with certain old laws—even laws from just 10 to 15 years ago—is that they are quickly irrelevant and out of date. It is fundamentally important that Scots law is adapted to ensure that statutory investigatory powers cover all forms of communication that have been developed since the Interception of Communications Act 1985 was passed. Such forms of communication are, of course, addressed in the UK bill. A law that was prepared in 1985—the year of the Commodore 64 and Atari games, which our children laugh at these days—is not adequate.

Some people believe that the bill is simply another concession to the nanny state or big brother—a bill that empowers Governments to look into every aspect of someone's life. However, a bill that seeks to bring Scots law into line with the requirements of the ECHR is not likely to lead to greater intrusion into people's lives.

It is necessary for police and Governments to have investigatory powers. Even in the land of the free, where laissez-faire liberalism is seen almost as a religion, surveillance powers are widely used. That is as it should be. After all, in 1998, as Jim Wallace mentioned, a large proportion of heroin seizures resulted directly from intelligence interception. In excess of £34 million-worth of hard drugs was stopped from killing our children.

The bill should enjoy support from all parts of the chamber. It allows for surveillance of all modern technologies while protecting individuals' human rights. I am not advocating excessive snooping by organisations; it is important that we strike a balance between the protection of an individual's civil liberties and the protection of civil law. We must ensure that the bill is crystal clear on matters of the individual's right to know that they are being monitored, or on the bill's interaction with other criminal justice legislation, for example, but the general principles—which is what we are debating today—are sound.

The bill empowers individuals. Instead of developing piecemeal changes to the law in response to individual cases being lost in the European Court of Human Rights, the Executive is seeking to enshrine citizens' rights in legislation. Therefore, new avenues of redress will be made available, through the regulation of investigatory powers tribunal, to those who feel that their human rights have been abused. Does this sound like a bill that infringes our civil liberties? The bill does not attack any of the freedoms upon which a democracy is built. If it did, I would not be supporting it. We may not always like what the press prints about us, but I think that we would all fight to the bitter end to preserve its right to call us what it wants. Freedom is not being sacrificed here, and that must be made clear.

This is a good bill. The Scottish Executive and the UK Government are to be commended on preparing a bill to end the anomaly that sees modern technologies failing to be covered by investigatory legislation. I hope that this Parliament can unite to support the bill and bring Scots investigatory powers into the 21st century.

16:24

Ben Wallace (North-East Scotland) (Con): I do not come to this as a lawyer. Many lawyers and solicitors have spoken today on the bill, which is complicated. I come at the matter as a layperson who in the past has had experience on the ground of such issues, and who would have to implement the changes in the law that we see before us.

We have heard many comments, especially from the SNP, on matters that pertain to the UK security services, secret intelligence services and Government communications headquarters. Those are reserved matters and they are not for this chamber. However, society has a right to protect itself from those who would damage its structure.

People have the right to believe that no one is above investigation. Members have referred to Harold Wilson and suggested that members of this chamber might be under suspicion. However, we are all equal before the law; and anyone in any position who seeks to subvert our society should be under investigation. For example, although Adolf Hitler might have been elected democratically, any suggestion that he was above surveillance because he was at the very top of society is as ludicrous and wrong as the suggestion that the establishment conspires to deprive others of their rights. That said, Ian Rankin is quite right to go against the establishment in his fiction.

When the police investigate normal or major crimes, they do not have a legal right to inform us that we have been investigated. Unless we were taken in for an interview, we probably would not know that, for example, a member of this chamber had made a complaint against us. Surveillance is just a modern means of investigation, and is no different from the old method of snooping policemen asking our neighbours whether we were in or out on a certain day.

Organised crime, paramilitaries and foreign powers all exploit the grey area between suspicion and evidence, as does the UK in its foreign services. The bill tries to introduce measures to protect both the individual and the agencies whose mission is to protect society from being exploited and themselves from having their time wasted in

court.

For example, I once received a document from a paramilitary organisation—

Christine Grahame: On the issue of balance, I am interested in Ben Wallace's professional experience. Does he think that, in spite of his reservations about the individual's right to know, individuals should sometimes have the right to know whether they have been under surveillance when such operations have proved fruitless?

Ben Wallace: Yes, when it has been proven beyond doubt that there is no need for further investigation. In fact, under a process that was started by the previous Conservative Government and continued by the present Government, files that come up for declassification are put before an independent arbitrator—not a member of the security services—to decide whether those files should be declassified. Once a decision is made, the files are released into the public domain. A similar procedure could be carried out either by the chief surveillance officer or by someone in the department with the independence to make such a decision; however, the problem is deciding when it is in anyone's interest to release such information. However, on the whole, I would agree.

I once received a paramilitary manual on how to avoid forensic investigation and surveillance. We must never forget that organised crime is very clued up about avoiding detection, and it is the fact that our law enforcement agencies are at the cutting edge of forensics and similar technology that keeps them ahead of the game. The day that we are not in that position is the day that organised crime begins to defeat our society.

The Deputy Presiding Officer (Mr George Reid): Wind up, please.

Ben Wallace: When I picked up a certain member of a terrorist organisation, he would be sitting in a white evidence coat with the rest of his clothes next to him and would say to me, "We have been watching you. We knew you were coming and have washed everything."

I ask the minister to clarify two points. First, on safeguards for data, the surveillance commissioner will deal with extremely detailed and personal data concerning sources and other people whose lives are on the line. As a result, security is vital, because if such information gets out, people will be killed. We need only think of the civil case in which a man was shot dead investigating driving licence fraud in England.

If I can briefly raise my other point—

The Deputy Presiding Officer: Briefly, please.

Ben Wallace: Other agencies are not covered by the bill. Agencies that work in covert operations very often talk about the need to know, which leads to different agencies intruding on others' turf. For example, there are often clashes between the security services and the police, and I ask the minister to ensure that there are checks to make sure that there is no conflict between surveillance operations, because that is when people's lives and liberties are put at risk. I hope that the surveillance commissioner is tied in with the commissioners specified in the Police Act 1997.

The Deputy Presiding Officer: I ask you to close, please—you are a minute and a half over your allotted time.

Ben Wallace: The bill is balanced, and I—as somebody who once risked himself in such situations—am pleased that, in future, cases will not be thrown against the rocks when they go to court and that individuals know that their liberty is protected.

16:30

Mr John McAllion (Dundee East) (Lab): It is not merely advisable, but essential that Parliament treats the bill with some suspicion. Lyndsay McIntosh said that our crime fighters must be given the powers to enable them to take on organised crime. I assume that she meant not Batman and Robin, but our own beloved polis. If she did mean our police, no member would disagree with her. There is, however, a big "but" in this case. Alex Neil was right to say that we must learn from history. Some of the greatest abuses of civil and political liberties in the United States of America occurred when the Federal Bureau of Investigation was led by J Edgar Hoover. He used powers that were granted to that agency—to help it to take on serious crime—to attack his political opponents. We must be careful that powers that are granted for one purpose are not used for another purpose by those to whom they are granted.

That is important not only from an American perspective, but from a UK perspective, because our track record is not much better than that of J Edgar Hoover and the FBI. We should not—as Ben Wallace did—equate Harold Wilson with Adolf Hitler, but when Harold Wilson was Prime Minister, MI5 was given the task of protecting our democracy and our system of elected government from domestic subversion. However, MI5 officers used their powers to get involved in a plot against the head of the elected Government. They abused their powers. We must take that on board. I was, incidentally, interested to hear that when Alex Neil was a young man, he was associated with Ted Short. I always thought that Alex kept too close to right-wingers, whichever party he was in.

We must be careful about the powers that are

granted by Parliament and about how those powers might be used by the agencies to which they will be granted.

Michael Matheson rightly raised the issue of the right of a person to be informed when they are under surveillance. Nobody—Michael included—would suggest that that should apply to criminals who are suspected of being involved in serious organised crime. However, what about other people who are covered by the bill, for example, those who might be likely to be involved in or to cause public disorder, or who might be considered a threat to public safety? All kinds of people spring to mind to whom that might apply.

It was feared that the strike at the Timex factory in Dundee more than 10 years ago would result in public disorder. I was the local member of Parliament at that time and I supported the strikers and addressed them from the platform at mass rallies and so on. I was once the supporting speaker for Arthur Scargill, but did that make me a legitimate target for phone tapping? My phone was tapped. The reason why I know that it was tapped is nothing to do with not paying my bill and finding that the phone was not cut off. I know because my wife once picked up the receiver immediately after it had been put down and when she did, she heard a voice saying, "Recording ended," followed by that voice giving the time and the date. That was during a strike when I—as an elected politician—was going about my rightful duties and exercising my democratic rights. My phone was tapped without my knowledge. If I had pursued the matter, I would have been met with denials that my phone was being tapped.

Parliament must address such issues seriously. I have had a number of letters from constituents on the matter; one of them referred to the introduction into our democracy of horrific tyrannies such as those of Hitler and Stalin. I would not go along with that—the bill is not that serious. Another constituent, however, wrote to me and talked about the possibility of criminalising all bodies of legitimate opposition in this country. That is a serious problem, which must be addressed. Will trade unions be regarded as a threat to public order? Will environmental groups that destroy genetically modified crops be regarded as legitimate targets?

We must examine the bill critically. I am not saying that the balance must be right before stage 2—Parliament must judge whether the balance is right when the bill completes stage 2 consideration.

The Deputy Presiding Officer: Because of overruns, I can allow Linda Fabiani time for only a brief contribution.

16:34

Linda Fabiani (Central Scotland) (SNP): If we are to allow surveillance in our country, we must be confident that any surveillance that is undertaken is justified and—in the spirit of freedom that we expect in our democracy—necessary. We must also ensure that it is compatible with the ECHR. For those reasons, it is vital that the codes of practice relating to the bill are given greater weight than appears to be intended at present. To ensure that there is no concern about lack of accountability, we have to be sure that the codes of practice are comprehensive and are backed by the full force of the law.

My worry is about the wording of section 22(2), which states:

"A failure on the part of any person to comply with any provision of a code of practice for the time being in force . . . shall not of itself render the person liable to any criminal or civil proceedings."

The bill will require those wielding the powers of surveillance that are enabled by it to have regard to the provisions of any code of practice that is issued by ministers. However, ignoring the code of practice would be neither a criminal nor a civil wrong, and could not be penalised in court.

In the eyes of the public, that will be seen as carte blanche for unscrupulous members of the security services and the police—that is not acceptable. The forces of law and order must not be above the law. Equally important, they must not be perceived as being above the law. For too long, there has been a perception that our security forces operate on the margins of acceptability and frequently breach the spirit, if not the letter, of the law. That must not be the way of things in the new Scotland. A simple pledge that anyone who fails to observe legislation that is passed by Parliament will be punished would go a long way toward changing that perception.

I urge the Executive to address those concerns, take full responsibility for the outcomes of the bill and not leave our police officers carrying any burden of suspicion.

16:36

Euan Robson (Roxburgh and Berwickshire) (LD): The hasty progress of the bill has been just about manageable. Like Michael Matheson, I pay tribute to the clerks of the Justice and Home Affairs Committee, whose assistance in producing our stage 1 report was invaluable. The compressed timetable has been unfortunate. It has also applied to the other bill that is before the committee, the Bail, Judicial Appointments etc (Scotland) Bill, which is perhaps even more controversial than this bill is.

I start by emphasising that, as Pauline McNeill said, the bill contains no new powers for the police or public authorities. It creates a legal structure for activities that were not previously so encompassed. The result of the important change that we are making is that, after enactment of the legislation, interference with privacy will be carried out within a proper legal framework.

Gordon Jackson talked about striking a balance between protecting the rights of the individual and protecting the community from crime. I agree with him that the bill appears to achieve that. Of course, as Ben Wallace said, we must ensure that the police can keep pace, and indeed outstrip, the criminal, who is now mobile, uses advanced technology and is well resourced.

Frankly, I think that we can improve that balance at stage 2, and I will make a few brief points about how we can do that. At stage 2, we can pursue the question of the catch-all powers for ministers, under which they can extend the purposes of granting authorisation. However, I welcome Jim Wallace's clear assurance that that would be done only within the terms of the European convention on human rights and by affirmative order. The issue that we need to explore is how far Jim Wallace can bind his successors.

On the destruction of records, I had originally thought that there should be a presumption that records should be destroyed in certain circumstances. However, if, instead of adopting the extremes of "will keep" or "must destroy", the minister is steering a middle course, that is acceptable.

As the minister knows, I have serious concerns about section 2(2), which deals with civil liability. In essence, if A is conducting surveillance of C, and B is in the way, A should be subject to civil liability if he acts negligently and causes B loss. I do not think that section 2(2) is suitable—it gives carte blanche to avoid civil liability. That is not acceptable, and amendments will have to be introduced in that area at stage 2.

I also have reservations about section 26, on the general saving for lawful conduct. Shorn of the legal language, section 26 says that as long as conduct is lawful, the terms and requirements of the bill need not be followed. We should include in that section a requirement for a presumption that the authorities follow the terms and conditions of the bill. If we do not, why have the bill at all?

I know that the minister wants the European convention on human rights to be the key reference point, but we need an amendment to provide that the requirements of the Regulation of Investigatory Powers (Scotland) Bill be met automatically, rather than leaving the matter open-ended.

Having made those remarks, I have no hesitation in commending the principles of the bill to Parliament on behalf of my party. When the bill is enacted, it will certainly improve the situation.

16:41

Phil Gallie (South of Scotland) (Con): I will disappoint members in the chamber today, because there has been a remarkable level of agreement and I will not step aside from that. Overall, I accept the principles of the bill. I accept the haste behind it and acknowledge that one of the reasons for that is the recognition of the difficulties that have arisen from ECHR compliance. As the minister has pointed out, there is no new change in surveillance practice as a result of the bill. The bill is a consolidation—a dotting of the i's and a crossing of the t's.

Michael Matheson commented on the European convention on human rights. I agree that, over the years, the ECHR has been a safety net; we have observed the convention. However, our mistake was to incorporate the convention, which has forced decisions on our legal system that do not always match the requirements. In Scotland, we have an adversarial legal system, whereas on the continent there are more inquisitorial systems—that is a fundamental problem.

Michael Matheson: Does the member agree that one of the best ways in which to manage the incorporation of the ECHR is to establish a human rights commission for Scotland? Would the member support the establishment of such a commission in order to address those problems, given that Lyndsay McIntosh suggested that she would support such a step?

Phil Gallie: I would support a commission that would investigate the full implications of the ECHR, to see how it matches our law.

We must recognise that the bill parallels a Westminster bill that has already passed through the House of Commons. Scotland, particularly Scottish business and industry, should be concerned about part III of the UK bill. I would have thought that our Scottish MPs would have done a better job in bringing about changes. Sadly, it is now up to the Conservative members of the House of Lords to look after Scottish interests.

Having observed the havoc that the incorporation of the ECHR has wrought, we consider the bill a step towards ensuring that the capability of Scotland's law enforcement, security and intelligence systems is not damaged and that cases where guilt appears not to be in doubt do not fail on technical grounds. Although the bill names certain individuals who can authorise surveillance techniques, it might not go far

enough. We are likely to seek some changes by lodging amendments at stage 2. One example might be the addition of the head of the new Drug Enforcement Agency—not their name, simply their position.

We welcome the recognition that, under some circumstances, surveillance must go ahead before full authorisation has been given. We also welcome the fact that if that happens, there must be immediate follow-up and retrospective approval—that is very important. In the Justice and Home Affairs Committee, the minister acknowledged the value of the emergency aspect.

Alex Neil suggested ministerial involvement in appointments. I would have to ask the minister what effect that would have under the ECHR. It seems to me that the ECHR pulls back from any political involvement in such appointments. That is a point that we will need to consider carefully when dealing with amendments.

It would be helpful if the Deputy Minister for Justice confirmed his satisfaction with developments on the UK Regulation of Investigatory Powers Bill, and gave us his assurance that he has no outstanding concerns as a consequence of discussions that he has had with his southern counterparts.

I would like to highlight Ben Wallace's valuable contribution. He spoke about his involvement and knowledge from a different standpoint from that of the rest of us.

I do not think that the speed with which the bill has been pushed through the Justice and Home Affairs Committee is the point—the point that worries me is the speed with which a lot of legislation is being pushed through committees, including this bill, the Bail, Judicial Appointments etc (Scotland) Bill and, to a degree, the Standards in Scotland's Schools etc Bill, which was passed by the Parliament last week. We recognise the pressures and the lack of time for back-bench members in such debates. I would like to think that the Parliament would address those issues for the future.

The bill will get our support at this stage and at stage 2, but the minister can expect a number of amendments from the Conservative party. All I would ask is that he pays attention to those amendments, looks at them in detail, does not rush to judgment and ensures that, in the end, the bill is valid and will not contravene the ECHR in any aspect.

16:47

Christine Grahame (South of Scotland) (SNP): I echo what Phil Gallie has just said about the Justice and Home Affairs Committee being rushed. We do apply ourselves, but the pressures that we are put under are becoming quite ridiculous. I accept the minister's apologies for the rush job on the bill, but ask him not to let it happen again too often.

The Scottish National Party, like all the other parties, welcomes the bill's principles. It regulates what is already taking place, and operates—I hope—on the principle of transparency, which is what this Parliament should be about.

We have already heard from all parts of the chamber that there was no conflict between the Association of Chief Police Officers in Scotland and Professor Alan Miller, which was refreshing to us all.

We are not dealing with a minor matter: there are at present 1,500 surveillance operations in Scotland. Since Labour came to power, the number of phone taps has gone up. The number of bugging operations is at its highest since the second world war, and I say to Janis Hughes that Big Brother is watching her—that gives new meaning to the term "the listening party". I just hope that it is listening to crooks, not to other people—we do not know. I hope that the bill, and what I will come to later, will make improvements.

We are in favour of the broad sweep of the bill, but there are problems with the detail. There are difficulties, in the view of the SNP, with ECHR compatibility.

This bill is not just about crime or serious crime. We should focus also on what is contained in section 3(3), which deals with other matters, including "public safety", "public health" and "preventing disorder". We have no difficulties about preventing serious crime, if that is defined.

There is a serious problem with paragraph (d) of that subsection, which reads:

> "for any purpose (not falling within paragraphs (a) to (c) above) which is specified for the purposes of this subsection by an order made by the Scottish Ministers."

In the Justice and Home Affairs Committee, I asked ACPOS, the Law Society and the Executive to give examples to demonstrate why that catch-all was there. I got no examples, and the paragraph looks like a blank cheque—and nobody likes signing blank cheques. I am unhappy about that, and so is my party. We might seek to lodge an amendment to delete that paragraph, unless examples can be found of what would fall within section 3(3)(d).

There are other problems with the independence of authorisations, which have already been raised. Given that Scottish ministers have the power to designate persons within relevant public authorities—the definition of which is also a problem—by order, I must ask the minister

whether the Justice and Home Affairs Committee will have advance notice of what those public authorities will be, apart from the ones already mentioned in the bill. In any event, it is the SNP's position that a surveillance officer is required to make those appointments more at arm's length. As we know, the ECHR insists on separation of the various power bases. That separation is insufficient when police officers, albeit senior police officers, are making those appointments.

There are also problems of definition regarding the grounds for authorisation of surveillance operations. I agree with Gordon Jackson that the bill as it stands represents no more than tweaking of the draft legislation. However, if the Law Society gets it wrong, someone else is likely to get it wrong.

There are more serious problems to do with the threshold tests. As Donald Gorrie, John McAllion and others have said, one person's disorder is another person's demonstration. That is where the codes of practice come in. The Justice and Home Affairs Committee has not seen those codes and they are vital. In his evidence at the committee's meeting of 10 May, the minister said that the codes would be attached to the legislation, that they would have statutory force, and that there would be consultation on them, which is crucial. He also said that Parliament would have the opportunity to discuss them fully before they came into effect.

When I asked Professor Miller at the Justice and Home Affairs Committee whether we must see the codes before considering amendments at stage 2, he answered in the affirmative. The obligation for such codes to be in statute and for us to see them is also enshrined in section 20 of the bill, entitled "Issue and revision of codes of practice". Stage 2 of the bill is scheduled for next Wednesday. What stage have the codes of practice reached and when is consultation on them likely to begin? As we cannot see them before the deadline for amendments, will the minister comment on Professor Miller's view? Is not this a consequence of rushing into legislation—in this case, to suit a Westminster timetable?

Section 19, on complaints to the tribunal, is another problem area under the ECHR. Article 6 of the ECHR concerns the right to a fair trial. I appreciate that this is a Westminster matter, but I want to say for the record that being able to examine only procedures and not substance will cause difficulties, as substance is at the heart of the matter. It is easy to prove or disprove procedural difficulties, but proving what the authorisation was based on will be crucial.

There are also problems to do with rights of appeal to the tribunal. All the members who have spoken have raised that issue. Unless they fall over binocular man among the lupins or see themselves reported in the Sundays, it is difficult for people to know that they have been under surveillance. As Ben Wallace and others indicated, there will be circumstances in which it will not be appropriate for that information to be divulged—when the subject is a known criminal, for example. However, other individuals who have proved to be wholly innocent should be entitled as a right to know that they have been under surveillance. I am glad that Gordon Jackson, Ben Wallace and SNP members agree that that issue needs to be addressed in order to get the balance right.

Although the SNP supports the thrust of the bill, in the spirit of greater openness and accountability and so as to enshrine in statute regulatory powers—powers that are used for society, on behalf of society—we must draw attention, as we have, to areas where the balance might have tipped too far, with the result that the rights of society impinge unnecessarily on the rights of the individual, as underscored by the ECHR. If, as Gordon Jackson said, it is right that these things should happen, they should be done.

16:54

The Deputy Minister for Justice (Angus MacKay): This has been a wide-ranging debate. A number of interesting speeches have been made, but there have also been a number of speeches that, to be frank, bore no relation to the bill that is before us. That is, to some extent, understandable, because this is a technical piece of legislation that deals with complex areas. None the less, it is appropriate that all the issues that members see as important should have been given an airing today.

Many useful comments have been made in the debate, particularly by members of the Justice and Home Affairs Committee and the Subordinate Legislation Committee. The Executive is grateful to those committees for their careful and thoughtful consideration of the bill at short notice. I wish to add my thanks to that which has already been expressed today in that regard. It is appropriate that I should also put on record my thanks to the witnesses who gave evidence on the bill: representatives of the Law Society of Scotland, the Association of Chief Police Officers in Scotland and Professor Alan Miller of the Scottish Human Rights Centre. The expert contribution of those witnesses has been invaluable in the deliberation of the Justice and Home Affairs Committee in this technical area. Such informed contribution is essential if we are to ensure high-quality legislation.

Throughout stages 2 and 3 of the bill, we must attempt to move away from some of the hyperbole that we have heard today. On the one hand we

have heard about MI5 plotting to undermine Harold Wilson and on the other we have heard that the current Labour Government is responsible for additional phone taps under MI5 for the purposes of I do not know what. We should acknowledge that important work needs to take place between those two poles if we are properly to protect the rights and interests of all the citizens of this country.

Before I address in detail some of the issues that have been raised today, I wish to restate the main purposes of the bill, which were to some extent lost sight of in parts of the debate. The Regulation of Investigatory Powers (Scotland) Bill protects important human rights by ensuring that the use of the techniques that we have been discussing is compatible with the European convention on human rights.

I should reiterate that the bill does not introduce any new powers—that important point must be understood. It imposes controls on techniques currently used by bodies such as the police and the National Criminal Intelligence Service. It does not deal with the security services. The legislation that we are discussing is vital to protecting the use of those techniques by law enforcement agencies in coming to grips with organisations and activities over which—as I am sure every member of the chamber would agree—we wish to see effective law enforcement. I am thinking especially of serious organised crime and terrorist activities. The bill will allow surveillance to remain an important tool in the fight against serious crime, today and in future.

I acknowledge that, in the context of this debate, it is impossible to do justice to all the issues that have been raised in anything like the detail that they deserve. That is a matter for stage 2. However, I wish to address some of those issues now.

I recognise that the timetabling of the bill imposed heavy constraints on the Justice and Home Affairs Committee, a committee with which I have had substantial dealings and which I recognise is under heavy strain. The UK Regulation of Investigatory Powers Bill had to be introduced earlier in the year—in February. That bill is three times the size of the Regulation of Investigatory Powers (Scotland) Bill and contains provisions establishing controversial new powers in areas such as e-mail and encryption. The bill that we are discussing does not deal with those areas.

If the UK bill had not been introduced when it was, there would have been little chance that it would have been implemented by 2 October, when the Human Rights Act 1998 comes into force. The legislation was introduced at the Westminster Parliament to ensure compliance by October. We would have preferred the Scottish bill to have been introduced at an earlier stage. I am sure that the Justice and Home Affairs Committee and the chamber feel the same. We regret that Parliament has had to conduct its scrutiny more quickly than would have been desirable.

The reason for the delay was the need to establish beyond all doubt which parts of the legislation were within the legislative competence of the Parliament. As the Deputy First Minister explained during the debate on the Sewel motion, many of the activities were on the borderlines of legislative competence. That fact has been reflected in the confusion in today's debate. At the same time, we recognised that powerful criminals would be likely to use considerable legal resources to challenge evidence produced using those techniques. It was important, therefore, that the legislation should be watertight. We believe that we have ensured that it is; the delay, although unfortunate, was therefore used to good effect. Lyndsay McIntosh raised that concern, and I hope that my comments go some way towards explaining why we are in the position that we are in.

Phil Gallie asked about change as a result of the bill. The bill does not provide any new powers to do any new things; it puts in place a statutory authorising process simply to allow the police to meet ECHR obligations when the Human Rights Act 1998 is fully in force. The bill will codify existing police practices. It will not shackle the activities of the police; it simply creates a proper and appropriate legislative framework within which those activities can continue to take place.

Margo MacDonald asked about alleged phone tapping of constituents and oversight of the way in which powers are used. She recognised that these matters are reserved. As for oversight of the operation of the Scottish bill, that will be the responsibility of the surveillance commissioner, whose annual report will be laid before this Parliament. It will be for this Parliament to decide how it chooses to deal with that report.

Alex Neil went on to raise the issue of oversight by the Scottish Parliament itself. The UK Intelligence and Security Committee does not oversee use of powers under the equivalent legislation in England and Wales; that is done by the intelligence, security and interception services commissioners. Surveillance commissioners will provide parallel oversight for the Scottish bill and will lay their conclusions before Parliament. There will therefore be a line of accountability.

Ms MacDonald: Can Angus MacKay confirm that ultimate scrutiny and accountability rests with the committee chaired by Tom King in Westminster?

Angus MacKay: The direct responsibility for scrutiny of activities under the equivalent legislation in England and Wales lies with the commissioners. A parallel process will be in place here in Scotland and I hope that members will be assured that they will have the opportunity to discuss these matters in future.

As I said at the outset, there is not enough time in a stage 1 debate to do justice to these issues, which I hope that I or my colleagues will have the opportunity to do at stage 2. I commend the bill to the Parliament.

Regulation of Investigatory Powers (Scotland) Bill: Financial Resolution

The Deputy Presiding Officer (Mr George Reid): The next item of business is consideration of motion S1M-930, in the name of Mr Jack McConnell.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Regulation of Investigatory Powers (Scotland) Bill, agrees to the following expenditure out of the Scottish Consolidated Fund—

(a) the expenditure of the Scottish Ministers under the Act; and

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

Decision Time

17:03

The Deputy Presiding Officer (Mr George Reid): There are no Parliamentary Bureau motions before us today. There are two questions on today's business.

The first question is, that motion S1M-983, in the name of Mr Jim Wallace, on the general principles of the Regulation of Investigatory Powers (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Regulation of Investigatory Powers (Scotland) Bill.

The Deputy Presiding Officer: The second question is, that motion S1M-930, in the name of Mr Jack McConnell, on a financial resolution in respect of the Regulation of Investigatory Powers (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Regulation of Investigatory Powers (Scotland) Bill, agrees to the following expenditure out of the Scottish Consolidated Fund—

(a) the expenditure of the Scottish Ministers under the Act; and

(b) increases attributable to the Act in expenditure payable out of that Fund by or under any other Act.

The Deputy Presiding Officer: That concludes decision time. Those members who do not want to participate in the members' business debate should leave the chamber quickly and quietly.

Disabled People (Housing Needs)

The Deputy Presiding Officer (Mr George Reid): The final item of business is a debate on motion S1M-659, in the name of Robert Brown, on the housing needs of disabled people. The debate will be concluded after 30 minutes without any question being put. Those members who want to speak in the debate should press their request-to-speak buttons as soon as possible.

Motion debated,

That the Parliament notes with concern the chronic shortfall of provision to meet the housing needs of disabled people and the lack of adequate information on the extent both of need and of provision; welcomes the forthcoming establishment by the Centre for Independent Living of the Disabled Persons Housing Service (DPHS) in Glasgow and Renfrewshire following the pioneering work of the DPHS in Edinburgh; and believes that the Scottish Executive, local authorities and voluntary groups should make the concept of independent living a reality for all disabled people, in particular by including a disabled audit in the proposed single seller survey, setting needs-related targets for the achievement of more barrier free housing, reviewing the building regulations to move to the standard of "stayability", encouraging fuller use for disabled people of housing with major disabled adaptations; supporting user-led DPHSs as equal partners in delivering these improvements and supporting adequate facilities and support for homeless disabled people.

17:05

Robert Brown (Glasgow) (LD): I start by thanking the considerable number of members who have signed the motion and the various groups with which we have had contact and which have briefed us on the background to this issue.

The language of the Scottish Parliament and the Scottish Executive is full of aspirations about inclusiveness, empowerment, fighting discrimination and building a new type of democracy. Most members subscribe to those aspirations and see our Parliament as an instrument of progress in that direction. There can be few areas where reality falls as far short of aspiration as it does in the provision made for disabled people, especially on the key issue of homes.

One of the privileges of being an MSP has been the opportunity to meet all sorts of different voluntary groups. I was struck, at an early stage of my career in this Parliament, by three groups. The first was the Advocacy Project near the Trongate in Glasgow, which empowers disabled people through the concept of advocacy, whereby other people speak up from their point of view.

The second was the Centre for Independent Living in Brook Street in Glasgow, which, as its name suggests, is about giving to disabled people—even many who have profound impairments—control of decision making in their lives. Two thirds of its staff are disabled, including five of its six senior people.

The third was, in its way, perhaps the most significant—the Disabled Person's Housing Service, which is just round the corner in Johnston Terrace in Edinburgh. I must say that I had not noticed it before I was elected to the Parliament and I did not know what it did. The Edinburgh DPHS, under its director Wlad Mejka, has been a pioneer in giving disabled people real, person-centred choices in housing. Its example is now being followed in Glasgow and Renfrewshire. I understand that eight more DPHSs are in the pipeline. Few innovations can have achieved so much for so little investment. Parliament must find ways of providing proper, long-term support to the DPHS network and of extending it across Scotland.

Sam Galbraith, when he was health minister, put it precisely:

"It is time to stop doing things to people and, instead, move to doing things with and for them."

That is what the DPHS is about.

Nobody knows the scale of the need. There are said to be 40,000 people who are wheelchair users, yet there are only 5,000 wheelchair-accessible houses in Scotland, which is a staggering discrepancy. Even worse, it is thought that only 2,000 of those 5,000 wheelchair-accessible houses are occupied by the people who need them.

I know from the Murray Foundation that there are about 7,000 amputees in Scotland—mostly elderly people with vascular problems. Almost a third of all Scottish households have at least one household member with a long-term illness or disability. That is a total of more than 600,000 households, according to the 1996 Scottish house condition survey. Disability is not an esoteric or minority situation in our society; it is a mainstream issue.

The lack of accurate information is extraordinary. The Equal Opportunities Committee has examined this matter. It heard evidence in February from the DPHS in Edinburgh. In his evidence, Wlad Mejka stated:

"This country seems to be willing to trace the journey of a cow from the field to the supermarket shelf, but it is unable to tell what happens to the £30 million or £35 million that is spent on adaptations across all local authorities in Scotland each year."—[*Official Report*, *Equal Opportunities Committee*, 29 February 2000; c 383.]

Across Scotland, most councils cannot tell how many houses have been adapted, how many wheelchair-accessible properties are held within their stock, which houses have been adapted and

how they have been adapted. They cannot tell whether the houses are still occupied by people making use of the adaptations or whether the adaptations—usually funded from the public purse—have been removed later.

The first priority is to identify the houses in the public and private sectors that have been adapted using public resources and to track their use. It is a scandal if we cannot use this scarce resource effectively. The second priority is to put disabled people in control of the process, because it is the right thing to do and because they are much more likely to understand better what is required.

The DPHS is the link between those objectives. The Edinburgh project has already developed a database to match disabled people with housing. The Scottish Executive, to its credit, has provided a small budget for a pilot study to track grant-aided adaptations in the private sector. What are the grants used for? Are the adaptations kept by the successor to the property? Can disabled people access such houses when they are sold?

The DPHS in Glasgow, which is relatively new, has done some work on housing associations. The information is not yet complete, but it has identified only 251 housing association houses out of around 17,000—that is 1.4 per cent—that are fully wheelchair accessible. Of those houses, 367 are barrier free, 853 have some adaptations, and there are some sheltered houses with various sorts of facilities. However, a staggering 14,563 houses—83 per cent of the total—have no adaptations and are not accessible. If those figures are typical, there is a hell of a lot of work to do to provide houses that are accessible and suitable for disabled people. I will come back to that point.

Ms Sandra White (Glasgow) (SNP): I take Robert Brown's point about houses that have been converted for disabled people. In my years as a councillor, houses were adapted for disabled people but, when the people moved or died, the adaptations were pulled out. Would it not be possible for local authorities to keep a register of houses that had been adapted for disabled people? Putting in adaptations and then pulling them out is a waste of money, and houses that have been adapted can be taken out of local authority control.

Robert Brown: In the past, there has been no such register available, but the DPHS is trying to tackle the problem and to get information that will match the houses and facilities with the people.

The single seller survey has a lot of potential. It could include a standard access audit that would allow disabled people to access options for home ownership effectively. The Minister for Communities has been looking to the market to develop products in this area, but without much success. It is time that we considered a statutory requirement. There ought also to be an energy efficiency audit, which would be important to people on low incomes.

The information landscape for disabled people is fairly barren. Little or no information on the accessibility of houses is available. It is worth mentioning the sheer trauma that a wheelchair user, or a disabled person generally, faces when going round looking for houses. There should surely be some sifting information available in the seller survey to help them.

I urge the minister, when he replies, to consider what support can be given for the establishment of a nationwide system of DPHSs; whether an assessment of the effectiveness of the existing spend could yield more resources to provide more suitably adapted housing; and to what extent Scottish Homes should be instructed to support investment in accessible housing for the disabled. Will more consideration be given to the single seller survey?

The lack of training for architects on housing for disabled people is a big problem. There needs to be a coming together of the views of disabled people on one side and the architects on the other.

The Centre for Independent Living in Glasgow developed from a somewhat different starting point from that of its colleagues in the Edinburgh project. Both organisations have a well-developed basic theme of empowering disabled people to have more control over life's choices. According to people at the Glasgow centre, an accessible house is the cornerstone of independent living. Most disabled people do not have such a house; their right to independent living is compromised. I hope that today's debate will help to put that right. How long can people wait? I commend the motion to the Scottish Parliament.

The Deputy Presiding Officer: In order to accommodate all members who wish to speak, it would be helpful if members could limit their remarks to three minutes.

17:14

Michael Matheson (Central Scotland) (SNP): I begin by congratulating Robert Brown on obtaining this debate. He is a colleague of mine in the cross-party group on disability and I am very aware of his interest in this field. I, too, have a particular interest: as a community occupational therapist, I was formerly one of the professionals who were responsible for adapting properties for disabled people.

The vast majority of housing for disabled people,

with which a number of problems have been identified, is provided by local authorities or housing associations. From my experience, when disabled people required some type of adaptation to be made to their property, many of them found themselves waiting on a list. It could take months for someone to assess their need for the work to be undertaken in the first place; when we had undertaken that assessment, we then had to go through the process of obtaining the finance to ensure that the work was carried out. Once the work had been carried out, it was necessary to keep the situation updated. Once a property has been adapted, one cannot just turn one's back on it. Often, the situation moves on, a person's condition progresses and further adaptations are required.

A situation that used to frustrate me, as someone who used to work within the system, was when a new tenant moved into a property that had been continually adapted and stripped out the adaptations. Level-access showers, which cost £1,500 to £2,000 to install, were removed and a bath was reinstalled. At the same time, there were people on our waiting list who were waiting for that very adaptation. As Robert Brown highlighted, we must ensure that the resources that we deploy in adapting houses for disabled people are used effectively. We must have a sensitive allocation policy, ensuring that local authorities track properties that have been adapted and that they try to match up those properties to individuals who have a disability. In my view, such steps could be undertaken readily, but they have been ignored for years.

When we consider the adaptation of properties for disabled people, it is important that we also consider safety issues. People may install a stairlift so that they can reach their bedroom or toilet upstairs but, if a fire breaks out in their property, the electrical circuit may go and they will be unable to escape. Central Scotland fire brigade has developed a domestic sprinkler system that could be installed, which would give additional protection to disabled people should a fire break out in their property. The device is very simple and would provide disabled people with additional reassurance.

I hope that ministers will consider not only adaptations of houses for disabled people but the safety issues. I also hope that they will consider ensuring that properties that are either built or adapted by local authorities or housing associations have such safety devices installed as a matter of course, in order to provide disabled people with additional security.

I welcome this debate. I hope that the minister will show today that the Executive is committed to an inclusive society and that housing for disabled people is a mainstream provision rather than something that we have to go round in circles to try to achieve through adaptations.

17:18

Bill Aitken (Glasgow) (Con): This is an important debate and Robert Brown is to be congratulated on bringing the matter before the Parliament.

A number of issues—social and economic—require to be addressed. For far too long there has been a tendency to ignore the housing needs and desires of disabled people. That has not been as a result of a lack of concern—far from it—but there has been a lack of understanding. We must appreciate the fact that disabled people wish to live in the community. Sometimes, even people with the most profound handicaps wish to live in the community. For social reasons, we should attempt to ensure that as many as are physically able to live in the community are allowed that opportunity.

Many of the beds that are blocked, unnecessarily, in the health service could be freed up if houses were adapted to enable people to return to their homes and live, with some form of support, in the community.

Fiona Hyslop (Lothians) (SNP): Does Bill Aitken agree that part of the problem is to do with attitudes? He uses language such as "allowed" and "opportunity"; perhaps we should be talking about rights. People with disabilities have the right to live in the community. That puts the responsibility on us and on the minister. We must break through that attitude problem.

Bill Aitken: It is a question of attitude. It is incumbent on those of us who are able bodied to ensure that as many people as possible who do not have our advantages are able to live in the community with the support of relatives, neighbours and everyone else. There is a tremendous fund of good will waiting to be tapped. The fact of the matter is that people are, by nature and inclination, sympathetic towards someone who is in that situation and I am confident that neighbours would be tremendously supportive. We should recognise that.

The question of adaptations has been dealt with. From my council experience, I can tell members that—Sandra White also identified this—councils simply do not have a sufficiency of adapted homes. Nor do they have a register. Some of the situations that arise from time to time are unbelievable. Houses that have been half-adapted after someone has thought to obtain an adaptation are, following a change of tenancy, altered again and the adaptation is ripped out. That is madness and surely cannot be allowed to continue.

There is much to be said for what has been put before us today. There is much to be said for following it up in a fairly determined manner. I look forward to the Deputy Minister for Local Government's comments in his winding-up speech. When the long-awaited housing bill, the arrival of which has been much postponed, eventually sees the light of day, it should contain provision for what Robert Brown has suggested. We would also like 5 per cent of new build in social housing to be adapted for the disabled. That in itself would be a step forward.

17:22

Donald Gorrie (Central Scotland) (LD): I congratulate Robert Brown. His motion and supporting speech covered a lot of the main points very well.

In my previous incarnation as an Edinburgh councillor I had dealings with the DPHS just around the corner and I was very impressed with it. It has injected a new attitude into disabled housing in Edinburgh and Lothian and is to be greatly congratulated.

The situation is extremely unsatisfactory, as other members have said. Partly, we have approached the matter from the wrong end, as all these matters are decided by planners, council housing officials and other worthies rather than by the people who are concerned. We should provide the houses that people want, which means involving them and asking them what they want of housing design and policy. We must work with the people, not for them.

We also need to fund organisations such as the DPHS properly. Frank McAveety listens to me quite often—in private or in public—on this issue. The funding of the voluntary sector is a disaster. We need to get a serious grip on it—and there must be some continuity. People in those organisations waste a huge amount of their time fund-raising instead of getting on with the job they are supposed to be doing. We must sort out the funding of the voluntary sector as a whole.

Robert Brown mentioned something that could be included as a discrete point in a bill: the single seller survey. It would not be unreasonable to legislate so that people who are selling a house have a survey of the disabled facilities that have been installed. That would take 10 minutes of a well-briefed person's time. The survey should appear with the particulars of the house and the advertisement could say that the house is suitable for a handicapped person. As Robert Brown said, that would make a great difference to people who are looking for houses. That point could be included in a bill, as it would not be unduly onerous.

Those of us who are lucky enough not to have disabilities should exert ourselves on behalf of those who do—not just make noises in favour of them. I look forward to the minister doing something. A lot of us will hound him until he does.

17:25

Dorothy-Grace Elder (Glasgow) (SNP): In the 1980s, I produced for ITV a series about people with disabilities. One sequence showed newly adapted housing. The people who dwelt there had not been restored to normal life by medication or any so-called miracle operation; they were living properly for the first time only because of their housing.

I pay tribute to the Margaret Blackwood Housing Association—then in Edinburgh, now throughout most of Scotland. Margaret Blackwood was a great and courageous pioneer. I was privileged to know her at the beginning of her campaign. She was in a wheelchair and told me that she often felt imprisoned in her tenement home in Edinburgh. It may have been a very nice tenement, but she was just as much a prisoner as some of the disabled I have met in Russia who live in the appalling Khrushchev flats. There, they are carried downstairs to feel the sun on their faces only once a year because the stairs are crumbling, there is often no stair lighting and, very often, their wheelchairs have only pram wheels. A person with a disability who lives in a tenement in Glasgow will say that that is what their life is like. They, too, get downstairs only once or twice a year when they find someone strong enough to carry them. That is utterly disgraceful.

We treat people with disabilities disgracefully in terms of funding. Some 37 per cent of the £275 million that is spent on learning disability services alone goes into hospital care. I would suggest that some of that money would be better spent on housing that could transform lives. People with learning disabilities are desperate to have what so many others have: a front door of their own and the dignity that comes with that.

I pay tribute to Robert Brown for initiating this debate and for referring to the excellent scheme in Lothian that aims to log in a database the accessible housing that is available. Lothian has investigated more than 55,000 public sector houses for access. It is moving on to deal with private sector housing.

In London, there is an empty homes initiative that scours the city to discover which houses are wasting away. There are tens of thousands of them in London. Often, a legal battle must be fought to trace owners and liberate the houses into the market and push through sales. We could do that with the many wasted dwellings to be found in

Scotland. We could set up an empty homes initiative and pinpoint the homes that might be suitable for adaptation for the disabled.

No one can tell me that we do not have money to invest. This country can squander £850 million on that utterly fatuous dome at Greenwich. I see the minister smiling, but he should think about the money that has gone down the Thames. We have money. We should spend it more wisely.

17:29

The Deputy Minister for Local Government (Mr Frank McAveety): I have to get a factual point across: there is an empty homes initiative in Scotland. It has been pioneered by the Executive and will continue over the next three years. It was one of the noble commitments in our programme for government, which I hope Dorothy-Grace Elder will read soon.

Fiona Hyslop *rose—*

Mr McAveety: I will make some progress first—I can imagine what the intervention will be about.

I thank Robert Brown for bringing this matter to the chamber this evening. I want to put on record the role that Robert and his colleagues have played in trying to raise these matters through consultation and the discussions that they have with Executive ministers. I hope that the speeches that we have heard will influence what can be achieved in the period to come.

We all agree that there is in Scotland a shortage of housing that meets the needs of people with disabilities. It is a historic deficiency that has been ignored for far too long. We need to move much more quickly than we have in the past. It is important to recognise the progress that has been made to date, but there is much more that we can all do. I will sketch out some of the programmes that are in place and respond to some of the points that Robert Brown and others have raised.

We recognise the shortfall; we need to address it. Robert Brown clearly identified the scale of the problem. Twelve per cent of the housing stock has adaptations, but the overall need is probably much greater than that. We want to find ways to address that. Scottish Homes plays a key role in providing adaptations. This year, we expect Scottish Homes to spend around £2.5 million on 500 adaptation schemes to properties in Scotland. We are also working with Iain Gray, the Deputy Minister for Community Care, to see how community care can be better planned and delivered. That may address the issue raised by Bill Aitken about hospital stays and the availability of suitable housing for people to move into.

It is not just about the scale of the challenge, but about the willingness to work across departments, within local authorities and with other providers. I am sure that Michael Matheson can testify, on the basis of his professional experience, to the frustration that is felt.

I want to sketch from my experience one example of empowerment and addressing the needs of individuals. Robert Brown mentioned the Centre for Independent Living and transport provision for individuals with disabilities in the city of Glasgow. The best-value review recognised that the city should engage with consumers or customers first to discover what they require. Initially, there was scepticism. Users were critical of the bureaucracy; provision had perhaps not been effective. Over time, trust was developed, which resulted in much more acceptable transport provision, non-stigmatising in form and fashion, which was shaped to meet the needs of the individuals.

That is a small snapshot. Folk at different levels took it upon themselves to be responsible for that. If we do anything, we should encourage that more across Scotland. I have a fair number of doubts that that can be done solely through legislation. Dialogue and debate should be about encouraging such things.

In our programme for government, we made a key commitment on new-build housing in Scotland. Scottish Homes will spend £215 million on new and improved homes this year. Those new houses should be built to design standards that make them suitable for all, including people with disabilities. The vast majority of those new houses should be built to barrier-free standards. A number of major new developments have been designed to that standard.

That is a small snapshot of a much larger picture. Scottish Homes identifies design guidance for other mainstream providers of housing through the housing association movement. Many of the new developments that I have seen during my period of tenure as a minister have been about working through that over a period of time.

Robert Brown: Will the minister take on board the need to make better use of adaptations that have already been made and paid for, which a number of members raised? I know that Administrations are not very good at making new commitments of extra money. This is a big opportunity to get things right without spending any more money.

Mr McAveety: There are two things. First, I accept Robert Brown's point. We need to involve disabled groups and individuals, who understand the process more than many of us, more—without patronising anyone in those circumstances. We need to engage them in the process at the beginning, so that the issues raised by Michael

Matheson and others are part of developments.

Ms White: Will the minister give way?

Mr McAveety: In a moment.

The second issue is the willingness to get clear commitments across local authority departments to deal with the confusion between social work and housing budgets. Anyone who has been a councillor will recognise the utter frustration of being faced with horrific cases that individual members sometimes have to deal with. It is about simple solutions rather than anything with large-scale resource implications. It is about drawing down resources more effectively. That can best be done if the overall agenda on best value and involving customers and individuals is dealt with much more effectively.

A third element to add to the two points I have mentioned—having given it greater thought—is the framework within which adaptations are made. In April, we brought into force amendments to the building regulations for new housing. They introduce a series of ways in which we can build more suitable housing for individuals. We want to continue and review that process. I welcome the views of voluntary agencies and local authorities on whether we can find further ideas on how building regulations can be used in that way.

Ms White: I know we do not want to usurp local government's powers, but can we not ask councils, through the Convention of Scottish Local Authorities or by writing to them, to set up a register of houses that are already adapted? That would save money that is being wasted on removing adaptations and putting homes back into the letting pool. Is there something the Parliament and the Executive can do to encourage councils to keep houses for disabled people?

Mr McAveety: One of the commitments we have made with the DPHS is to put together a computerised database for private sector dwellings. That could be extended, but we need to see how it works. We need to work in partnership with local government on that. Central to what Wendy Alexander and I have been saying is working out ways to develop things more effectively at a local level. It is important that we address that issue, but I think it may be best addressed through the consultation process on the housing bill.

If there is to be a development role for local authorities in assessing need in their area, it is to be hoped that the underpinning consultation will influence the Executive's deliberations. That is why it is important for the Executive to support the organisations it is supporting—to get the experience and knowledge that means questions are raised where that is appropriate.

Robert Brown was very positive about the role played by voluntary organisations. I agree. We want the kind of work that they are doing to be undertaken more effectively, and to expand on that knowledge base. I do not think anyone here really knows the full picture. I want to emphasise that the Executive supports those organisations and will continue to do so.

The Deputy Presiding Officer is asking me to conclude. There are three very important points to mention. Wendy Alexander has announced that we will not legislate on sellers surveys until we see how successful the private sellers surveys are. The individual can already ask for a disability audit to be taken and one of the current providers of sellers surveys can offer that. Again, we welcome views and have a fairly open and flexible mind on it.

On the broader issue of the role played by local authorities, there is big agenda of housing change across Scotland. In Glasgow there is, I hope, the housing transfer development. It would be useful if that debate were influenced by the needs of disabled people so that some of the investment package that could be put together reflects such needs. I hope that organisations involved with these issues will make representations to Wendy Alexander, me and the new model housing associations, to propose that as a key area of future needs. The profile of much public sector housing need is increasingly elderly and will reflect greater needs in terms of disabilities.

In conclusion, I have sketched on behalf of the Executive a number of areas where we are moving forward. A great deal more needs to be done. I hope we can do that in partnership with parliamentarians, the independent organisations, local authorities and other housing providers. We want to fulfil the noble sentiments Robert Brown expressed on the initial purposes of the Parliament. I hope we can do that and reflect that thinking in legislation, in the housing bill and in other policy developments over the next few years.

Meeting closed at 17:39.

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