MEETING OF THE PARLIAMENT

Thursday 7 September 2000

Volume 8 No 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

CONTENTS

Thursday 7 September 2000

Debates

Col.

REGULATION OF INVESTIGATORY POWERS (SCOTLAND) BILL: TIMETABLE 65
Motion moved—[Mr McCabe]—and agreed to.
The Minister for Parliament (Mr Tom McCabe) 65
REGULATION OF INVESTIGATORY POWERS (SCOTLAND) BILL: STAGE 3 66
QUESTION TIME 126
FIRST MINISTER'S QUESTION TIME 142
REGULATION OF INVESTIGATORY POWERS (SCOTLAND) BILL 152
Motion moved—[Mr Jim Wallace].
The Deputy First Minister and Minister for Justice (Mr Jim Wallace) 152
Michael Matheson (Central Scotland) (SNP) 154
Mrs Lyndsay McIntosh (Central Scotland) (Con) 155
Scott Barrie (Dunfermline West) (Lab) 157
Euan Robson (Roxburgh and Berwickshire) (LD) 158
Gordon Jackson (Glasgow Govan) (Lab) 159
Donald Gorrie (Central Scotland) (LD) 160
Phil Gallie (South of Scotland) (Con) 161
The Deputy Minister for Justice (Angus MacKay) 162
DECISION TIME 164
SCOTS AND GAELIC 165
Motion debated—[Irene McGugan].
Irene McGugan (North-East Scotland) (SNP) 165
Cathy Peattie (Falkirk East) (Lab) 168
Mr Jamie McGrigor (Highlands and Islands) (Con) 169
Mr John Munro (Ross, Skye and Inverness West) (LD) 171
Dr Winnie Ewing (Highlands and Islands) (SNP) 172
Rhoda Grant (Highlands and Islands) (Lab) 174
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD) 174
Alex Johnstone (North-East Scotland) (Con) 175
Colin Campbell (West of Scotland) (SNP) 177
Maureen Macmillan (Highlands and Islands) (Lab) 177
Michael Russell (South of Scotland) (SNP) 178
The Deputy Minister for Highlands and Islands and Gaelic (Mr Alasdair Morrison) 181

Oral Answers

Col.

QUESTION TIME
SCOTTISH EXECUTIVE 126
Civic Government (Scotland) Act 1982 131
Creative Industries 127
Dental Services 128
Ferry Services 126
Genetically Modified Organisms 133
Liquid Petroleum Gas (Conversion Grants) 135
National Health Service 129
National Health Service 138
Roads (A96) 140
Sutherland Report 132
Water (Fluoridation) 136

FIRST MINISTER'S QUESTION TIME
SCOTTISH EXECUTIVE 142
Cabinet (Meetings) 142
Correction 188
Drugs 146
Less Favoured Areas Scheme 147
Local Government (Pay) 149
Scottish Cabinet 144

Scottish Parliament

Thursday 7 September 2000

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

Regulation of Investigatory Powers (Scotland) Bill: Timetable

The Deputy Presiding Officer (Mr George Reid): The first item of business is consideration of a Parliamentary Bureau motion. I ask Tom McCabe to move business motion S1M-1148, which is a timetabling motion in relation to today's stage 3 consideration of the Regulation of Investigatory Powers (Scotland) Bill. Any members who wish to speak against the motion should press their request-to-speak buttons now.

09:31

The Minister for Parliament (Mr Tom McCabe): I shall say a few words before moving the motion. All parties in the Parliamentary Bureau have agreed to the timetabling motion on this occasion, which has not always been the case in the recent past. The motion allows generous time for debate, which compares favourably with the time taken in the Justice and Home Affairs Committee at stage 2 of the bill and protects the time for discussion on the sections of the bill in which members are most interested.

I move,

That the Parliament agrees that for Stage 3 of the Regulation of Investigatory Powers (Scotland) Bill, debate on each part of the proceedings, if not previously brought to a conclusion, shall be brought to conclusion no later than the following times after commencement of the Stage 3 proceedings—

Group 1 to Group 5 – 1 hour 30 minutes
Group 6 to Group 9 – 2 hours 30 minutes
Group 10 to Group 13 – 3 hours
Group 14 to Group 17 – 4 hours
Motions to pass the Bill – 4 hours 30 minutes

The Deputy Presiding Officer: As no member has asked to speak against the motion, I shall put the question. The question is, that motion S1M-1148, in the name of Tom McCabe, be agreed to.

Motion agreed to.

Regulation of Investigatory Powers (Scotland) Bill: Stage 3

The Deputy Presiding Officer (Mr George Reid): We now move to stage 3 consideration of the Regulation of Investigatory Powers (Scotland) Bill. I shall begin by making the usual announcement about the procedures that will be followed.

Members will be becoming increasingly familiar with the procedures. First, we shall deal with amendments to the bill and then we shall move on to a debate on the question that the bill be passed. For the first part of the proceedings, members should have copies of the bill—document SP Bill 16A—as amended at stage 2, the marshalled list containing all amendments selected for debate, and the groupings that have been agreed. Where appropriate, amendments will be debated in groups. Each amendment will be disposed of in turn, and an amendment that has been moved may be withdrawn with the agreement of the members present. It is, of course, possible for members not to move amendments should they so wish. The electronic voting system will be used for all divisions. I shall allow an extended voting period of two minutes for the first division that occurs after each debate on a group of amendments.

Section 1—Conduct to which this Act applies

The Deputy Minister for Justice (Angus MacKay): Amendment 25, in the name of Jim Wallace, is designed to provide that surveillance that involves a device or person on residential premises or in a private vehicle, but which is targeted on someone who is outside the premises or vehicle, would be classed as directed, rather than intrusive, surveillance.

The bill recognises that there are degrees of invasion of privacy; in our view, the expectation of privacy would clearly be highest within a person's home or private vehicle. The most important factor in deciding the extent to which an individual's privacy is likely to be invaded is the location of the target, as opposed to where the surveillance devices are located.

Under the bill, surveillance that is targeted on someone within a residential premises or private vehicle is rightly classed as intrusive surveillance. However, an individual's expectation of privacy is clearly far less if they are in a public place. For example, people walking down the street are aware that they can be seen from the windows of houses overlooking that street. For that reason, surveillance targeted on a person who is outside residential premises or outside a private vehicle

clearly does not, in our view, justify an authorisation for intrusive surveillance, irrespective of where the surveillance device itself is located.

I move amendment 25.

Euan Robson (Roxburgh and Berwickshire) (LD): I would like the minister to clarify whether, if someone moves from a domestic premises out of doors, the type of surveillance would change. I am not clear about the purpose of the amendment—if one was applying for an order for intrusive surveillance, one would also have to apply for an order for directed surveillance. Can the minister enlighten me?

Phil Gallie (South of Scotland) (Con): These points are queries. Perhaps the minister could explain what is meant by residential properties. I might be failing to understand, but I think that we could have a situation where an individual was being checked on in a business property.

I would like to know the reasoning behind the amendment. I compared its wording to what was presented to the Justice and Home Affairs Committee. The two paragraphs, (a) and (b), have been reversed, but there does not seem to be a major difference between the wording and effects of the amendments. I do not intend to oppose amendment 25, but I would like the minister to clarify those points.

The Deputy Presiding Officer: As no other member wants to speak, I ask the minister to respond to those points.

Angus MacKay: I will deal with Phil Gallie's point first. The purpose of amendment 25 is to provide that surveillance that involves a device or a person on residential premises or in a private vehicle and that is targeted at someone who is outside the premises or vehicle would be classed as directed rather than intrusive surveillance. The nub of the issue is how we define what constitutes intrusive or directed surveillance. Is it where the surveillance device is located or where the person under surveillance is located? It seems common sense that our starting premise should be the individual's expectation of privacy and what they would think their rights were. If the individual were located within their home, they would have a high expectation of privacy, whereas if they were in a more public space—as I said, degrees of privacy are involved in the invasion of privacy—we feel that what is set out in this amendment would be appropriate.

Phil Gallie: I accept the minister's definitions. However, an individual who was running a small business might be in a private office, which he would feel was a place where he could expect privacy.

Angus MacKay: I was coming to that point. As I said, the bill recognises that there are degrees of invasion of privacy. For that reason, we must consider where an individual could expect to have absolute privacy or near absolute privacy and where he would be operating in a public place. My understanding is that, if an individual were in a place of business, they would expect greater privacy than they would in a public place. For that reason, Mr Gallie's concern about the authorisation would be met by what is proposed in the amendment and by what will be covered in the code of guidance.

Euan Robson also made a point, but I am afraid that I cannot recall what it was. May I invite him to repeat it?

Euan Robson: If a target is moving between premises, is it necessary to apply for the more onerous intrusive surveillance rather than directed surveillance?

Angus MacKay: I recalled the point as Euan started to speak. If the intrusive surveillance target is expected to be mobile or is likely to be mobile, it would be prudent for the relevant public authority to have directed surveillance authorisation as well. I think that that covers Euan Robson's concern.

On Phil Gallie's point, business premises per se would not be within the specific definition relating to intrusive surveillance, but it may be possible to deal with that sort of issue in drawing up the code of guidance, when we examine how forces would be expected to operate in more specifically defined circumstances.

Amendment 25 agreed to.

The Deputy Presiding Officer: We now come to amendment 1, which is grouped with amendment 2.

Ben Wallace (North-East Scotland) (Con): In lodging these amendments, I was trying to sum up what the bill is about—it is designed to protect not just the police in the course of their duties, but the public. I am grateful to members of the Justice and Home Affairs Committee, who listened to some of my past experiences.

I have tried to clear up the grey area that will result from the bill: when is a source not a source, and when is the use of a covert human intelligence source actually just the use of a regular contact, who volunteers information to the police or develops a relationship with a detective or a member of an agency?

Many covert human intelligence sources derive benefit from their actions. They are either paid or it is perceived that they get some benefit or special treatment from the agencies, which is used to cultivate them so that they carry out directed surveillance or actions. That is why the amendments refer to direction. I want to clear up

what is often a difficult problem on the ground.

Notoriously, the relationship between handlers—the people who deal with the sources—and senior officers is often strained. Handlers are secretive about whom they know or develop as sources and they do not like to share that information with senior officers. In my experience, senior officers have mostly shied away from any legislation on this matter; if there has to be legislation, they would like it to be as woolly as possible. However, handlers would like better and more directed legislation, so that they know when they cross the line between having a friendly relationship with someone or leaning on them and making them work for the agency.

The minister will probably say that the term "cultivation" provides a clue to determining whether a source becomes directed and, in effect, comes into the employ of an agency. However, sources are not cultivated overnight. A handler picks a group of people in an area and tries to develop relationships with them all, sometimes over many years. When those relationships come to fruition, it may be that one in 10 of those people can be called on as a source. That is when the cultivation happens.

This is a very grey area, which my amendments would go a long way towards clearing up, so that we can avoid cases like those that have occurred in the past, both in national security and police forces, when handlers have crossed the line and public safety and privacy have been put at risk. The amended section would provide that, if a person came under the direction of an agency or gained benefit, they would in effect be a covert human intelligence source. However, if the person happened to be a good neighbour who had a good relationship with a detective on a regular basis or another member of that agency on an ad hoc basis, that individual would not be a source and there would be no need for a lot of unhelpful paperwork and approvals to allow contact to be made. I know that senior officers will say that they are sure that handlers can make the right judgment, but time after time we have seen that they cannot make that judgment. That is when the public, as well as the handler, lose out.

The best-known case—it would not be covered by this bill, but it involves the same issue of the handling of sources—was that of Brian Nelson in Northern Ireland, in which the handlers were reticent about checking with their senior officers how far they could push their source. The case ended up with public safety being infringed and several people quite rightly going to jail.

I have spoken to many people about this matter. There is a marked difference between the feelings of people on the ground and those of people up top and in the bureaucracies. I am trying to protect everybody on the ground rather than the senior officers, who are probably not in favour of any regulation of the use of covert intrusive surveillance or sources.

I move amendment 1.

Christine Grahame (South of Scotland) (SNP): The amendments are very interesting. It is obvious that Ben Wallace has a great deal of experience. I did not think that someone who said that their neighbour was up to something funny would count as a covert human intelligence source. Section 1(7) defines a covert human intelligence source as a person who

"establishes or maintains a personal relationship or other relationship with another person for the covert purpose"

of facilitating the doing of something as defined. The relationship is established or maintained for a specific purpose. This is not about information that is passed willy-nilly. I would like further information on why Ben Wallace does not think that that definition is tight enough.

09:45

Ben Wallace: The problem is that sources are, by their very nature—the fact that they have a relationship with the person, perhaps a workmate rather than a neighbour, on whom they inform—covert. Section 1(7)(b) says that a person is a covert human intelligence source if the person

"covertly uses such a relationship to obtain information or to provide access to any information".

The relationship—being in business with someone or working with them—is being used. My initial amendment, which was changed slightly by the committee clerks, simply used the word "directed", because using a relationship in a directed manner is key to what I mean when I talk about covert intelligence.

Christine Grahame: The member is making it sound as though obtaining information in such a manner is incidental to the relationship, but the definition relates to relationships that are set up for the purpose of obtaining covert information, so I do not see why we need the amendment.

Ben Wallace *rose—*

The Deputy Presiding Officer: The member can deal with that point when he winds up.

Gordon Jackson (Glasgow Govan) (Lab): Like Christine Grahame, I believe that the amendment is interesting and I feel that Ben Wallace's experience in these matters is valuable, as it gives us an insight into the problem. I have no idea what the minister will do with the amendment, but I have a question. I can understand that there are people in the grey area whom we would not necessarily want to fall within the terms of the bill, because

that would inhibit the work of the security services. However, I would have thought that, in practice, the security services or the police would still use the kind of people whom Ben Wallace is talking about outside the scope of the bill, without feeling the need to bring them within the terms of the bill. My fear is that, if we include this exception in the bill, the authorities could use it to justify not registering people when they should and could contrive situations in which they would say that they were not directing the person or paying them money. They could use the grey area in reverse, so to speak, and get round the provisions of the bill by using Ben Wallace's exception. I am interested to hear whether the member believes that that could be a genuine danger.

Ben Wallace *rose—*

The Deputy Presiding Officer: Let the minister in, Mr Wallace, and you can deal with those points when you wind up.

Angus MacKay: Let me set out our general position and make it clear from the beginning that we intend to resist the amendments.

Law enforcement agencies regularly rely on information volunteered to them by members of the public with no expectation of reward. In our view, it is important that that useful source of information should not be fettered. It is therefore not our intention that those who carry out such activities, which Christine Grahame described, should fall within the definition of a covert human intelligence source.

As section 1(7) of the bill makes clear, covert human intelligence sources are individuals who establish or maintain a relationship with another person for the covert purpose of obtaining, providing access to or disclosing information obtained as a result of that relationship. Furthermore, under section 1(6), references in the bill to the conduct of a covert human intelligence source are references to public authorities inducing, asking or assisting a person to engage in or to obtain information by means of such conduct. Although amendment 1 seeks to clarify that point, our view is that it would not work, as it refers to persons authorised for using covert human intelligence sources. The bill does not authorise people in that way. Instead, it provides that officers of a particular rank—in the case of the police, we propose that that rank should be superintendent—can authorise the use of a covert human source in specified circumstances.

It is also worth drawing the member's attention to the foreword to the code of practice covering the use of covert human intelligence sources, which states that

"members of the public are encouraged to give information or to provide assistance to the police and other authorities . . . with no expectation of a reward . . . Nothing in the provisions of the Regulation of Investigatory Powers (Scotland) Act 2000, nor in this code of practice affects such activity."

Indeed, it could be argued that it is the duty of citizens to come forward with such information on criminal acts.

We ask Mr Wallace not to press amendments 1 and 2 on the grounds that they are not necessary and that amendment 1 is technically deficient. The bill and the code of practice already provide that the actions referred to in the amendments do not fall within the definition of the use of covert human intelligence sources contained within the bill. Although I understand and have some sympathy with what Ben Wallace is trying to achieve, we feel that the bill contains adequate cover.

Phil Gallie: I commend Ben Wallace for lodging these amendments. He is certainly well intentioned and to some degree we ignore his advice at our peril. He has been in the front line and knows what is required.

Ben seeks protection for the source, who is carrying out acts of good citizenship. I am concerned that, under certain circumstances, the source could lay themselves open to civil actions somewhere along the line through becoming involved in this process, even though their actions might not come under the description of "covert" offered by the minister. I will listen to Ben's summing-up on that point and we will try to determine the best interests of the good citizen and society as a whole.

Ben Wallace: Instead of developing a relationship with a source, one can use their geography. For example, if the old lady who lives at number 74 happens to be a good neighbour of someone in number 86 who is known to be a criminal, we do not have to tell the source to develop a relationship with that person for our benefit; we target their situation, so that their information becomes important and directed. We go to number 74 and develop the relationship in that way. As a result, the old lady might not know why we are developing such a relationship. We do not tell the source to look out her front window at her neighbour every day; instead we manipulate the situation by using the source's geography. That point needs clarification.

Gordon Jackson's comments were interesting. In the case of Brian Nelson, where handlers overstepped the mark, a woolly use of the word "direction" was used by the defence during the trial. The handlers said, "We were not directing our informer; he simply happened to tell us what he was doing and that there were bad people in the area, and we were giving him information to help him to get closer to running his sources." They said that they did not tell him to pervert the course

of justice or target certain individuals. However, they were found wanting with such a passive defence.

My amendments seek to protect the public as well as the handlers. Intelligence is all about knowing the full picture. Very often the source is the person being manipulated. Sources often do not know what operation they are part of; for example, no one tells them that they are actually informing on their workmate because he is involved in a £2 million fraud. It is the nature of source handling that sources are manipulated as much as anyone else, which sometimes makes the job pretty unpleasant. I am trying to protect the public from such manipulation as well as the handler who sometimes gets it wrong, which is why I will press the amendment to a vote.

The Deputy Presiding Officer: The question is, that amendment 1, in the name of Ben Wallace, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Johnston, Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Wallace, Ben (North-East Scotland) (Con)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Campbell, Colin (West of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Ms Margo (Lothians) (SNP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McLeish, Henry (Central Fife) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, Mr John (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Ullrich, Kay (West of Scotland) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 14, Against 86, Abstentions 0.

Amendment 1 disagreed to.

Amendment 2 not moved.

After section 1

The Deputy Presiding Officer: We now come to amendment 27, which is grouped with amendments 28, 29, 67, 69, 71, 73 and 74.

Angus MacKay: These amendments are, unfortunately, rather lengthy, but their purpose is simple: to replace the commissioners who are established under the Police Act 1997 as the mechanism for providing oversight of the use of powers under the bill with an identical system of oversight to be provided by commissioners to be appointed by Scottish ministers.

I make it clear that the Executive is perfectly content with the work done by the Police Act 1997 commissioners. It is important to put on record our thanks to Lords Davidson and Bonomy in particular for their work in relation to operations conducted by the Scottish police forces under the 1997 act.

The amendments are the result of further consideration that the Executive has given to whether it is competent for the Scottish Parliament to confer new functions on a class of bodies known as cross-border public authorities. Those authorities include the surveillance commissioners. Although we believe that it is competent to confer such functions on such bodies, that matter has not been conclusively determined by the courts. We cannot therefore discount the possibility of arguments being raised in the courts on this point. Because of the importance of the functions in question to the regulatory scheme, and because we want to avoid any possibility of arguments being run in the courts on that issue, we think that we should take the opportunity to reconsider the matter at this stage.

We have therefore taken the view that the most prudent step would be to replace the references in the bill to oversight being provided by the surveillance commissioners established by the 1997 act with a system of oversight to be provided by equivalent commissioners to be appointed by Scottish ministers. Our intention is that this should make no difference in practice to the operation of the oversight mechanism. The amendments provide for a chief commissioner, ordinary commissioners, assistant commissioners and for staff to assist the commissioners in their work.

I emphasise the fact that the amendments do not represent any change in policy in the type or level of oversight of the powers in the bill; they represent our determination to ensure that the legislation in this important area is as robust as possible against challenges made in the courts to evidence gathered in accordance with the legislation's provisions.

I move amendment 27.

10:00

Michael Matheson (Central Scotland) (SNP): I take on board the minister's comments, in the sense that the amendments do not make any fundamental changes to the bill, but amendment 27 states that ministers will be responsible for appointing the given number of chief surveillance commissioners or surveillance commissioners. That will not require any form of parliamentary approval. I seek assurance from the minister on the required number of surveillance commissioners and chief surveillance commissioners. I am sure that, from one Government to the next, there may be a difference of opinion on how many such commissioners are needed at any given time.

Amendment 27 requires the removal of a chief surveillance commissioner to be approved by the Scottish Parliament. I welcome that, but I am concerned that subsection (10) of the new section that amendment 27 would insert states that there shall be no appeal mechanism to challenge any decision of a chief surveillance commissioner. I would like the minister to comment on the ECHR implications when someone seeks to challenge the decision of a chief surveillance commissioner, but cannot do so as a result of amendment 27.

Phil Gallie: I have similar comments to those of Michael Matheson on the numbers of chief surveillance commissioners and surveillance commissioners. I accept, or at least presume, that a major part of the change is a result of the implementation of the Scotland Act 1998.

What difference will there be in the number of surveillance commissioners once the Scottish commissioners are in place? Is there a cost complication? Will additional people also be appointed at deputy level, or do the new provisions simply represent a continuation of the work of those people who have already been appointed and have acted under Scots law in the past?

Will there be any implications for cross-border activities and how will the work of the surveillance commissioners in Scotland fit in with work that is going on south of the border? Will there be any erosion of past practice in that area? How do the conditions and requirements in the bill compare with the conditions of appointment that applied to commissioners previously, apart from the fact that Scottish ministers will now make the appointments?

If the minister could address those points, I would be quite happy.

Euan Robson: We are prepared to support this group of amendments, but I want the minister to address similar points to those raised by Michael Matheson and Phil Gallie.

In subsection (7) of the new section introduced by amendment 27, there is no reference to the circumstances of bankruptcy or criminal offence on the part of the surveillance commissioner, nor to a commissioner's removal by the Scottish ministers being reported to the Parliament. I presume that the contents of proposed subsection (6) are implied in proposed subsection (7), but I would like clarification from the minister on that.

Amendment 28 deals with assistant surveillance commissioners. Towards the end of that amendment, subsection (5) of the new section that it proposes states:

"Subsections (3) to (8) of section (*Surveillance Commissioners*) above apply"—

and I reiterate Michael Matheson's point about ECHR compliance—however, proposed subsection (10) under amendment 27 does not appear to apply to assistant surveillance commissioners. Does that imply that there is some appeal mechanism against their decisions?

Angus MacKay: I reiterate that we are not attempting to put in place a different, altered structure to the content of the bill: we are not attempting to change it qualitatively. The purpose of the amendments is simply to ensure that we avoid any challenge in the courts to the propriety of the Parliament appointing the commissioners. It is important to make it clear that the Scottish ministers will appoint commissioners here in Scotland, to ensure that we are not open to challenge at a later date.

It would be difficult to give an undertaking for future Administrations, but I see no reason why we would want to reduce the number of commissioners. The numbers have been in place in previous legislation, for previous matters, for some time. In discussion of the bill, we have debated the way in which we want the oversight of scrutiny to take place, and I recognise no argument for changing that.

Several more specific questions were raised, the first of which concerned the ECHR. We believe that there are no ECHR considerations in respect of this matter, as the commissioners will not determine civil rights. The level of oversight that will be involved will be the same and should be sufficient for the purposes of article 8 of the convention. Existing ECHR cases on this law make the position clear, and we do not think that there will be any change in that position.

We cannot say anything further about future appointments—about the number of commissioners or whatever—beyond the undertaking that I have given. Our intention is to replicate the existing number and structure of the commissioners; that is made clear in the detail of the amendments. Under the previous arrangements, costs were met by Scottish ministers, and we do not envisage any additional costs. The costs are already incurred and in place; it will be simply a matter of allotting them to a different structure. We are absolutely clear that there will be no impact on cross-border operations.

I have just received a note with Mr Robson's name on, to remind me to address his question. I confess that I missed Mr Robson's point, as I was thinking about a point that Mr Gallie raised. I am not suggesting that Mr Robson sent the note—I see a look of confusion on his face—as it came from someone else.

Mr Robson asked me about the applicability of proposed subsection (10) of amendment 27 to assistant commissioners. The role of an assistant commissioner will be only to assist a commissioner in his or her functions. It is therefore not necessary to place the same obligation on the assistant commissioners, as they will carry out only the role of assistants.

I think that that addresses most of the points that were raised. I apologise if I have missed any.

Phil Gallie: I recognise that the bill was rushed through stage 2, but the stage 3 amendments contain a substantial amount of wording. Why did it take so long to lodge the amendments and why did it take so long to recognise their necessity, given that they were not included originally? They constitute a major section.

Angus MacKay: As I said in my opening speech, although there are a lot of words in the amendments, their substance is simple and pithy. They are designed simply to replace the mechanism whereby commissioners are appointed and to allow Scottish ministers to do what would otherwise be done on a UK basis. A lot of words are needed to describe that change, but the substance of the amendments is fairly straightforward.

The purpose of amendment 27 is to ensure a belt-and-braces approach to the issue. The last thing that we want is the possibility of challenges in the courts, in serious circumstances, simply over the technicality of whether it is appropriate for the Scottish Executive to appoint commissioners. We want to ensure that we are not open to that challenge, so that the mechanism can proceed smoothly and law enforcement will not be hindered in any way.

Amendment 27 agreed to.

Amendments 28 and 29 moved—[Angus MacKay]—and agreed to.

Section 2—Lawful surveillance etc

Phil Gallie: Amendment 30 concerns an issue that I raised in the Justice and Home Affairs

Committee, as the minister and committee members will recall. The minister wrote helpfully to me about the matter on 31 July. The main reason I have lodged the amendment is to put on record the minister's confirmation of what he said in that letter, covering an element of protection for sources against charges of, for example, civil intrusion. I quote from the letter, although I would like the minister to endorse everything he said in it:

"The cancellation of an authorisation for the use of a human source would not mean that the source was acting unlawfully if he was not told."

I remind the minister that there could be circumstances when an authorisation was cancelled but someone working in the field carried on without knowing of that cancellation and so could face the charge of acting unlawfully. This is about protection for someone acting in good faith.

I move amendment 30.

Christine Grahame: I have some sympathy with Phil Gallie. I have looked at section 16 on cancellations and seek clarification of when exactly an authorisation is cancelled—when the decision is made or when the source is told. I seem to recall that that was to be included in a code of practice but I may be wrong. I cannot see it in the draft codes of practice. Perhaps it would be appropriate to include clarification of exactly when a cancellation is effective.

Angus MacKay: I have some sympathy with the intentions of Phil Gallie's amendment; I have put that on record already. He is right to say that after we discussed a similar amendment at stage 2 I wrote to him about it.

Amendment 30 seems to depend on the source being told of the cancellation of the authorisation in writing. That will not always be possible and may be dangerous in many circumstances. Human sources may be operating in difficult situations where the arrival of an official letter could seriously endanger their safety—particularly if the letter was misaddressed to someone on the other side of the street, in the kind of circumstances we discussed with Ben Wallace. The cancellation of an authorisation must mean just that. It would not be right for elements of the authorisation to continue after cancellation. For example, if a human source decided to disappear, for whatever reason—as police informants might well decide to do—the protection provided by Mr Gallie's amendment could continue up until the police had managed to locate the informant and give them written notification.

That is not to say that the police will not seek to ensure that an informant is told of the cancellation as soon as possible. The code of practice sets out that as soon as the cancellation has taken place, the police must seek immediately to inform the informant that the authorisation has been revoked.

Phil Gallie mentioned my July letter, and I am happy to confirm that I stand by the specific statements in that letter. I hope that that provides some comfort to him.

10:15

Ben Wallace: To assist Phil Gallie, and in response to the minister, I must say that I have concerns about sending a letter that says, "Thanks very much for working for us. You are now terminated." Source handling is all about face-to-face meetings. It has been known for sources to receive payment for which they sign a receipt. When a source is terminated, especially if that source has been in a dangerous position, some form of relationship is required, not just a telephone call. Usually, that would be a meeting, at which the person would be told, "Thank you very much. Your services are no longer required. Could you sign to confirm that you have received that information?"

The minister should consider introducing in the guidelines a receipt or certificate to be signed so that there is no doubt. I agree with the minister that a letter cannot be sent. Handling is about meetings and, in those meetings, it would not be hard to introduce some form of receipt system.

Phil Gallie: I acknowledge that the minister's written intimation was carried over from a previous occasion. I started by saying that my objective was to get the minister to put on record that his letter provides the cover that I seek. I believe that the letter does that. I am much comforted by the fact that the *Official Report* will now record that the letter stands. I therefore seek to withdraw my amendment.

Amendment 30, by agreement, withdrawn.

The Deputy Presiding Officer: Amendment 31 is grouped with amendments 33, 35 to 41, 43 to 51, 53, 55, 56, 58, 60, 61, 66, 68 and 72. The minister will move amendment 31 and speak to all the amendments in the group. I remind members that the debate must be concluded one hour and 30 minutes after proceedings began.

Angus MacKay: The amendments seek to delete the National Criminal Intelligence Service from the list of public authorities that can authorise the use of surveillance or human sources under the bill. The reason behind the amendments is identical to the one that I gave in relation to the surveillance commissioners—whether it is competent for the Parliament to confer new functions on a class of bodies known as cross-border public authorities. Those cross-border public authorities include NCIS. Although, as I said earlier, we believe that it is competent to confer

such functions on such bodies, the matter has not been determined conclusively by the courts so there is the risk of challenge to the lawfulness of evidence collected in accordance with the provisions of the bill.

In the light of that, we seek to take the prudent step of removing the NCIS from the bill. I am advised that that will make little difference in practice to the NCIS, because it, in the main, is involved in intelligence assessment and analysis, rather than collection. Where the NCIS might require to conduct an operation that would require authorisation under the bill, it would be able to do so by working in co-operation with the relevant Scottish police force, which would be required to seek authorisation under the bill.

If the area of uncertainty is resolved and we take the view, at some future point, that it would be desirable to add the NCIS to the list of bodies that can authorise directed surveillance or the use of human sources, it would be relatively simple and straightforward to do so by means of an order under section 5(4) of the bill. At present, however, we consider it more prudent to remove the NCIS.

I move amendment 31.

Amendment 31 agreed to.

Section 3—Authorisation of directed surveillance

The Deputy Presiding Officer: We move to amendment 10, which is grouped with amendments 11 to 18.

Angus MacKay: The amendments are entirely consequential to the amendments that were made at stage 2. I am advised that, although there is no material difference in law between "believes" and "is satisfied", the effect of the stage 2 amendments is to upset the wording in other provisions of the bill. The intention of the amendments is to ensure consistency throughout the bill, to avoid any attempt in later interpretation to find a difference in intention where different words are used.

Although the consequential amendments are necessary and unavoidable, because of the amendment that was made at stage 2, I should indicate to members that they will result in some particularly inelegant language. Mr Matheson pressed the point at an earlier stage of the bill, so I am happy to lay responsibility for that at his door. In section 10(3)(a), for example, a commissioner will need to be

"satisfied that there are reasonable grounds for being satisfied that the requirements of section 6(2)(a) and (b) above are satisfied".

That is a not bad illustration of the unforeseen consequences of tinkering with the very careful construction of the bill as put together by the parliamentary draftsmen.

I move amendment 10.

Michael Matheson: I warmly welcome the amendments. I must respond to the minister's comments by saying that I was in good company. If my memory serves me correctly, Gordon Jackson supported me in committee in saying that "believes" should be replaced by "is satisfied".

Gordon Jackson: I should make it clear to Michael Matheson that I supported him out of a sense of mischief rather than out of principle. If there is inelegant language, that is where it comes from.

Pauline McNeill (Glasgow Kelvin) (Lab): I must respond to Gordon Jackson, because what he has just said is not entirely true. All the Labour members of the Justice and Home Affairs Committee supported Michael Matheson eventually as there was a serious point to be made, although the minister disagreed. That goes to show that committees are effective. Given the civil liberties issues that were raised by the bill, we felt that the wording "is satisfied" would be better than "believes" when it came to granting authorisations. The committee was quite united on that.

Phil Gallie: I feel obliged to say that Conservative members of the committee also supported the amendment in question. I am shocked by Gordon Jackson's levity when dealing with such a serious bill. Conservatives would never think of treating such matters so lightly.

We support the amendments in the minister's name.

Amendment 10 agreed to.

The Deputy Presiding Officer: Amendment 3 is grouped with amendment 4. Michael Matheson will move amendment 3 and speak to both amendments.

Michael Matheson: The minister will be aware of the background to the two amendments, as the issues to which they relate were debated at length in the Justice and Home Affairs Committee. There is concern about the section in the bill that amendments 3 and 4 seek to change. They would remove a catch-all provision that will allow ministers to make authorisations for direct surveillance on a range of issues. In evidence to the Justice and Home Affairs Committee, organisations such as the Association of Chief Police Officers in Scotland were unable to define why that power was required and for what reasons it might be used. When the minister defended his position before the committee, he was somewhat unconvincing in explaining why an all-encompassing provision was required.

The bill as it stands defines the grounds for authorisation of direct surveillance. I do not believe that the general power with which the minister would be provided is either desirable or healthy in a modern democracy. I hope that for that reason the minister will see fit to accept the amendments second time round, to ensure that ministers are not provided with wide-ranging powers that they have so far been unable to justify in debate.

I move amendment 3.

Phil Gallie: Michael Matheson used the term "catch-all provision", and he was absolutely right to do so. However, I would tend to use the word "flexibility". It is important that there should be a degree of flexibility in the bill.

I joked with Gordon Jackson a moment ago but, in all seriousness, the Regulation of Investigatory Powers (Scotland) Bill is needed to prevent hard-line criminals from abusing society. Circumstances, albeit difficult to define, could arise where urgent attention is needed. In the interests of society and democracy, it is right to give ministers that discretion.

I have not always got the greatest of confidence in the present bunch of ministers. However, they have been elected to a position of trust to look after the interests of society as a whole. On that basis, it seems reasonable to include flexible provision in the bill. Provided that the minister does not accept the amendment, we will support his position.

Gordon Jackson: I hope that the minister will accept the amendment, because on this occasion Michael Matheson is right and Phil Gallie is wrong. I agree that the provision raises a serious issue; it is one of the few matters that gave the committee real concern. The idea that the Executive should have such a catch-all provision did not appeal to members, even though it was made clear that it would be used only by positive resolution of the Parliament.

Phil Gallie's point about the "present bunch" of ministers is a fair approach. In future, there will be other bunches of ministers of various persuasions and this is a long-term provision. The idea that we would give a long-term power to any Executive to use such a catch-all provision was extremely worrying. I would have supported Phil Gallie on the question of flexibility if anyone could have provided one good reason why such flexibility was needed. I mean Angus MacKay no disrespect, and he will probably agree that although he tried to provide such a reason, it was not the most convincing argument that the committee heard. I see that he is raising his hands in acknowledgement.

When the committee sought to find out when the provision would be used, the examples that we were given made us more worried about the provision rather than putting our minds at rest. Eventually, most members concluded that the right course of action was to remove the provision. If, in future, something develops for which we need a further authorisation reason, no doubt the Parliament could act quickly to deal with it. I prefer to take that risk rather than to let the provision stand, because it would be so open to abuse—not by the present bunch, of course—that I do not want it to be included in the bill. I hope that the minister will accept Michael Matheson's amendment.

Euan Robson: Like Gordon Jackson, I hope that the minister will at least enlighten us as to why the provision is necessary. It is difficult to understand why a power should be granted without an example of the circumstances in which that power might be exercised. However, there is a fine balance to be struck. The minister said that such orders would be made through an affirmative procedure and that is a significant concession. If the minister could convince us that there are circumstances where the provision in question might be used, I would be prepared to reject the amendment. However, if no one can give any reason why the provision should be included in the bill, it would not be appropriate to grant such a power.

Mrs Lyndsay McIntosh (Central Scotland) (Con): This is the minister's last opportunity to come up with an example. He has had a long time to find such an example. Let us hear it.

Ben Wallace: I, too, support Michael Matheson on this point. I cannot think of any example where section 3(3)(d) would be appropriate, even given the markedly complicated interfaces between the police and other agencies. I urge the minister to accept the amendment.

10:30

The Deputy Presiding Officer: Mr Wallace will respond to groups 7, 8, 9 and 17.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I welcome the exchange of views that we have had today, which follows on from an intense debate in committee on an important issue. Giving ministers powers in such an area is not something that the Parliament should do lightly.

After taking into account the range of views that have been expressed across the Parliament and having given further careful consideration to the matter, I can inform the Parliament that the Executive is prepared to agree to the amendments in groups 7, 8, 9 and 17. There are arguments about flexibility, as Mr Gallie mentioned, but there would have been no intention to use the power in

the foreseeable future. Removing the power from the bill, therefore, should not cause any immediate difficulty.

It remains the case that it is impossible to predict what the future will bring. As Gordon Jackson said, this is a long-term provision. It may be that through some of the human rights jurisprudence that is emerging in the courts, there will be a need at some point in the future to add to the purposes that are already set out in the bill. We accept, however, that in such circumstances we would be obliged to return to the Parliament with a short bill—primary legislation—to do so. I apologise prospectively to the Justice and Home Affairs Committee for overloading it, should that happen.

Phil Gallie: Could the minister describe the status quo of the UK legislation?

Mr Wallace: The UK legislation contains the provision that we are agreeing to eliminate, so there will be divergence between the Scottish and UK legislation. I understand that the Subordinate Legislation Committee reflected on that issue and on section 5(3), which gives ministers powers to add or remove relevant public authorities for the purposes of sections 3 and 4—that is, for the authorisation of directed surveillance or covert human intelligence sources. That power is subject to affirmative resolution, so Parliament would have to approve the resolution before any group could be added.

It is interesting to note that, despite there being the best will in the world when the legislation was drafted, the Home Office has already been advised that the Financial Services Authority should be added to the list of bodies that can carry out surveillance. It is likely, therefore, that the Home Secretary will seek to add to the purposes by means of a power that is equivalent to that which we are debating. We would not seek to do that here because the functions of the FSA are reserved, but it is interesting to note how soon after the Westminster legislation hit the statute book that one overlooked authority has emerged. With regard to that particular power—not the one that is the subject of Mr Matheson's amendments 3 and 4—that flexibility has already had to be activated. However, for the reasons that I have outlined, it is the Executive's intention to agree to Mr Matheson's amendments.

Michael Matheson: I thank the minister, and congratulate him on showing such humility in accepting the amendments and denying himself such wide-ranging powers. The purpose of the bill is to strike a balance between the need to undertake surveillance and the protection of individuals' civil liberties. By removing section 3(3)(d) we will maintain balance and ensure that the civil liberties of individuals in Scotland are upheld. I welcome particularly the fact that—given that the amendments were lodged by the SNP—our legislation will be altered so that the powers that will be available will be different from those that are available under the Westminster act. On that basis, once the bill is passed I believe that our act will be better than theirs.

Phil Gallie: Given what has been said, I repeat that we are changing the status quo. I go along with the judgments of the ministers, but remind them that when it came to the serious situation that developed regarding the Ruddle bill, it took time to get that legislation through Parliament. In the kind of circumstances that I have in mind, it might be that that time would not be available to those on the ground who wanted to carry out a particular surveillance exercise.

That said, the Conservatives will not oppose the amendments that have been lodged by Michael Matheson and Christine Grahame.

Amendment 3 agreed to.

Section 4—Authorisation of covert human intelligence sources

Amendment 4 moved—[Michael Matheson]—and agreed to.

The Deputy Presiding Officer: We come now to amendment 32, which is on its own.

Phil Gallie: The amendment, which was submitted to me by the Law Society of Scotland, seeks to protect the source of information. It would ensure that before authorisation is granted, the person who considers the application must be satisfied that arrangements have been put in place to protect the source in the event of cancellation of the authorisation.

It is essential at the time of granting an authorisation that measures are put in place to protect the source not only during the course of the authorisation but on its cancellation and immediately thereafter. The security and welfare of the source should be protected at all times. That is why the amendment has been lodged.

I move amendment 32.

Ben Wallace: I speak in support of amendment 32. When a source is taken on, not only should the individual be taken on but the risks run by the source should be taken on. The amendment goes a good way towards ensuring that that problem is well thought through before a source is authorised. I urge the minister to agree to the amendment.

Mr Jim Wallace: I have heard Mr Gallie and Mr Wallace and have considerable sympathy with the sentiments that underlie the amendment. We would all agree that it is important to ensure the security and welfare of a covert human intelligence source. Sources should be protected even after

they have ceased operating as such.

We have considered the matter since it was raised at stage 2, but it is considered more appropriate that such provisions should be covered in the code of practice for the use of covert human intelligence sources rather than be included on the face of the bill.

I draw members' attention to sections 3 and 4 of the code, which is available on the Scottish Executive website. The sections contain a number of measures that relate to the security and welfare of covert human intelligence sources. For example, they ensure that sources should have designated handlers and controllers and that

"a risk assessment is carried out to determine the risk to the source of any tasking".

The code goes on to state that

"the ongoing security and welfare of the source after the cancellation of their role should . . . be considered at the outset."

Security of a source is not an afterthought; that must be provided from the outset.

Mr Gallie might like to note that section 3.37 of the code, which relates to the cancellation of authorisations, includes a further stipulation that

"the safety and welfare of the source following cancellation should continue to be assured."

Those points are very much to the fore in our considerations and in the considerations of those who use covert human intelligence sources. The question is not, therefore, being ignored; rather it has been judged that the matter will be better dealt with in the code than it would be by inclusion in the face of the bill.

As Angus MacKay indicated, a similar amendment was debated at stage 2. There is a problem with the amendment, as it refers to

"the person authorising the conduct"

as being the individual with responsibility for reviewing the continuing security and welfare of the source once the initial authorisation has been cancelled. It will sometimes be the case that it is necessary to continue to offer protection and security to a source for many years after their use has ended. It is inevitable that in some situations the person who authorises the source's conduct will have changed jobs or retired during the period between authorisation and cancellation. If the amendment were agreed to, it would be unclear in those circumstances upon whom the duty that is provided for would fall. However, there is no doubt in the code of practice that that is a continuing responsibility of those who have used or are using covert intelligence sources.

I hope that, in the light of that explanation of where we consider the issue to be best dealt with, Mr Gallie will be prepared to withdraw his amendment.

Phil Gallie: I am grateful to the minister for his comments and for putting the codes of practice on record. Codes of practice can change over the years, but as the Regulation of Investigatory Powers (Scotland) Bill passes through Parliament today, the comments that are made are recorded in the *Official Report*. They become part of the philosophy behind the bill and will be examined should matters go to court in future.

The minister's words more than covered the issues that I aimed at. On that basis, I am happy to seek to withdraw my amendment.

Amendment 32, by agreement, withdrawn.

Section 5—Persons entitled to grant authorisations under sections 3 and 4

Amendment 33 moved—[Mr Jim Wallace]—and agreed to.

After section 5

The Deputy Presiding Officer: We now come to amendment 34, which is grouped with amendments 42, 52, 54 and 57. The minister will move amendment 34 and speak to the other amendments in the group.

Mr Jim Wallace: The purpose of amendment 34, and of the amendments that are grouped with it, is to ensure that the bill covers the activities of the Scottish Crime Squad. I should explain that, from the outset, the Executive has been aware of the need for the bill to cover the Scottish Crime Squad. However, questions were raised about how that could be done best, given that the Scottish Crime Squad is not established by statute, but by collaborative agreement under section 12 of the Police (Scotland) Act 1967. Those questions have been resolved and that resolution is reflected in this group of amendments.

Amendment 34 provides for officers of the Scottish Crime Squad to authorise directed surveillance and the conduct and use of covert human intelligence sources. It also provides that the Scottish Crime Squad will be able to use intrusive surveillance by applying to the chief constable of the relevant police force for the area in which that intrusive surveillance will take place.

It is intended that the Scottish Crime Squad will become the operational arm of the Scottish Drug Enforcement Agency and so will fall within the category that is provided for in amendment 34, which provides for that development to take place.

I hope—indeed, I am sure—that members will agree that the work that is undertaken by

specialist teams in combating drug trafficking and other serious crime in Scotland is very valuable. We recognise the need to ensure that the legislative framework is in place to enable such teams to function efficiently.

I move amendment 34.

Michael Matheson: I take on board the minister's comments, although I confess that when I saw amendment 34 I was somewhat surprised that it should have been lodged at such a late stage, given the level of debate that has taken place. I do not know whether the lodging of the amendment was a result of the way in which the legislation has had to be rushed through Parliament. Will the minister indicate why it was lodged at stage 3, given the consideration of the bill that was undertaken at stage 2?

Mr Jim Wallace: As I indicated, we knew from the outset that the Scottish Crime Squad had to be covered by the bill and that there was a conceptual difficulty because that body was not established by statute. It was not easy for the draftsmen to take that off the shelf, as it were, and slot it neatly into the bill. One could not say, "The Scottish Crime Squad, as defined in section whatever of the Police (Scotland) Act 1967", because that squad was constituted by way of a collaborative arrangement.

This provision is necessary and must be in place by 2 October—amendment 34 is a result of the fact that we knew from the outset that the position of the Scottish Crime Squad had to be ironed out. We have managed to work out the way in which the amendment can be slotted into the bill properly to ensure that such important work is covered.

Dennis Canavan (Falkirk West): Can the minister advise members how many officers serve in the Scottish Crime Squad?

Mr Jim Wallace: No—I am sorry that I cannot do so off the top of my head. However, I am sure that I will be able to give Mr Canavan that information before the end of the debate.

Ben Wallace: On three occasions, I raised my concern about where the Drug Enforcement Agency was covered in the bill and was given assurances that the agency was catered for. However, these substantial amendments have been lodged at the last minute. I ask the Deputy First Minister to expand on that.

Mr Jim Wallace: I have little to add to my comments. The Scottish Crime Squad will be the operational arm of the Scottish Drug Enforcement Agency. The provisions that the amendments seek to insert in the bill will create the legislative framework in which the Scottish Drug Enforcement Agency and the Scottish Crime Squad, acting as the agency's operational arm, will be able to carry out important modes of inquiry.

10:45

There is a distinction between the three categories. Intrusive surveillance, which is the most intrusive category, would require authorisation by the chief constable of the area. Directed surveillance and the conduct and use of human intelligence sources would be overseen by senior officers of the Scottish Crime Squad. As I said, the Scottish Crime Squad does not have a statutory basis and requires collaboration between police forces in Scotland. That is why it has been important to work out the proper statutory way in which its activities can be covered.

In response to Mr Canavan's question, I can now inform him that there are more than 100 officers in the Scottish Crime Squad.

Amendment 34 agreed to.

Section 6—Authorisation of intrusive surveillance

Amendments 35 and 36 moved—[Mr Jim Wallace]—and agreed to.

Section 7—Rules for grant of authorisations

Amendments 37 to 44 moved—[Mr Jim Wallace]—and agreed to.

Section 8—Grant of authorisations in cases of urgency

Amendments 45 to 51 moved—[Mr Jim Wallace]—and agreed to.

Section 9—Notification of authorisations for intrusive surveillance

Amendment 11 moved—[Mr Jim Wallace]—and agreed to.

Section 10—Approval required for authorisations to take effect

Amendment 12 moved—[Mr Jim Wallace]—and agreed to.

Amendments 52 to 54 moved—[Mr Jim Wallace]—and agreed to.

Section 11—Quashing of authorisations etc

Amendments 13 to 16 moved—[Mr Jim Wallace]—and agreed to.

Section 12—Appeals against decisions by Surveillance Commissioners

Amendments 55 and 56 moved—[Mr Jim Wallace]—and agreed to.

Amendments 17 and 18 moved—[Mr Jim Wallace]—and agreed to.

Section 14—Information to be provided to Surveillance Commissioners

Amendments 57 and 58 moved—[Mr Jim Wallace]—and agreed to.

Section 15—General rules about grant, renewal and duration

The Deputy Presiding Officer: We now come to amendment 59, which stands on its own. Phil Gallie will speak to and move amendment 59.

Phil Gallie: We were on a nice run. I would be very happy if we just said, "Agreed" and carried on.

Amendment 59 refers to the general rules about grant, renewal and duration of authorisations. It has been drawn to my attention by the Law Society of Scotland. To a degree it is a dotting the i's and crossing the t's amendment. It insists that all authorisations must be signed and dated and that the designation of the person who is signing is applied to the authorisation.

The Law Society of Scotland is of the view that authorisations must be in writing, subscribed and dated. It is also essential that the capacity in which the granter is acting is specified on the authorisation. The aim is to enable those who act on the authorisation to ascertain whether the authorisation is ex facie valid. Those conditions apply currently to the granting of common law search warrants in Scotland and should therefore be extended to the granting of authorisations in this matter.

It seems to be a minor but authentic point, which I ask the minister to take on board.

I move amendment 59.

Michael Matheson: I have some sympathy with Phil Gallie's amendment, because it is similar to the amendment that I lodged at the Justice and Home Affairs Committee during stage 2.

I would like reassurance from the minister, because I recall that he stated at stage 2 that the provision to which he referred would be made under the codes of practice. I will be grateful if he will confirm that that will be the case.

Angus MacKay: I know that extensive amendment swapping in one shape or form has taken place between Mr Gallie and Mr Matheson in regard to different parts of the bill.

I am aware of the arguments that were put forward at stage 2 that the authorisation process under the bill should be brought into line with authorisation for search warrants. However, there is an important difference between the two situations. The information on a search warrant exists for a specific reason—so that it can be scrutinised by the owner or resident of the property that is to be searched. It is clearly important in such circumstances that the person understands who has authorised the search warrant.

The situation regarding an authorisation under the bill is different. This has been the subject of extensive debate during consideration of other sections. It is clear that, for very good reasons, most subjects of surveillance will not be aware that they are under observation. There is not, therefore, the same requirement for an authorisation to be presented to and readily understood by the subject of that authorisation—it would be incredible if it was. I cannot envisage the circumstances in which undercover officers or agents would run up to surveillance targets to show them the authorisation to survey them covertly.

However, that is not to say that there is any intention under the bill to hide the identities of authorising officers. The bill specifies that that and any other information must be provided to the surveillance commissioners, to enable them to carry out their duties. The Regulation of Investigatory Powers Act 2000 also provides that it shall be the duty of specified persons, including all police forces, to disclose or provide to the tribunal all such documents and information that the tribunal may require to exercise its jurisdiction, which is pretty all-encompassing. As members know, that will include cases brought by the public under the bill.

As I said at stage 2, the contents of notifications of authorisations for intrusive surveillance will be set out in a Scottish statutory instrument—I think that that answers Mr Matheson's point—to be laid before the Parliament after the bill receives royal assent, while authorisations for directed surveillance and the use of covert human sources will, in practice, contain the name and rank of the authorising officer.

I therefore ask Mr Gallie to withdraw amendment 59.

Phil Gallie: I thank the minister for that. I do not understand why we need a statutory instrument to address this issue. I recognise that the person who is under surveillance will not be aware of that fact, but we could be talking about a chain of individuals involved in the surveillance activities.

Basically, it is a protection—under civil law perhaps—that people carrying out their job should be fully aware of the terms under which they are working. That is why the Law Society suggested this amendment. I still have some sympathy with

that view. If the minister will address the issue by statutory instrument, I suppose that, somewhere along the line, all our objectives will have been met. I seek leave to withdraw the amendment.

Amendment 59, by agreement, withdrawn.

Section 16—Cancellations of authorisations

The Deputy Presiding Officer: We move now to amendment 19, on authorisation for cancellation by deputy.

Angus MacKay: Amendment 19 is a tidying-up amendment. Section 16(3) provides that an authorising officer's deputy is under an obligation to cancel an authorisation for surveillance if he or she believes that the authorisation no longer satisfies the requirements of the bill. At present, the section does not qualify that obligation by indicating that the necessity to cancel arises only in the absence of the deputy's superior who granted or renewed the authorisation. The purpose of the amendment is to qualify the obligation.

I move amendment 19.

Amendment 19 agreed to.

Amendments 60 and 61 moved—[Angus MacKay]—and agreed to.

Section 17—Functions of Chief Surveillance Commissioner

The Deputy Presiding Officer: We now come to amendment 20, which is grouped with amendments 62, 21, 65 and 70.

Angus MacKay: This is a group of technical amendments to the provisions that relate to the tribunal that was established by the Regulation of Investigatory Powers Act 2000, which that act specifies will be the forum for complaints arising from authorisations under the bill. As with the commissioners and the National Criminal Intelligence Service, for the avoidance of doubt we seek to make it clear that we are not seeking in the bill to confer functions on the tribunal.

Amendment 62 makes it clear that the bill does not seek to specify what assistance the tribunal may require of the commissioner. Amendment 65 aims to remove any doubt that the right to complain to the tribunal is conferred by the Regulation of Investigatory Powers Act 2000, rather than by this bill. Amendment 70 makes it clear that the bill does not require the tribunal to take account of the codes of practice.

The other two amendments in this group, amendments 20 and 21, insert a missing "the" into the text, and correct the numerical reference to the section of the Regulation of Investigatory Powers Act 2000 that deals with the tribunal.

I move amendment 20.

Michael Matheson: I will speak to amendment 62. I understand what the minister said about these being technical amendments. However, I see that the amendment would introduce a change to the terminology in relation to how the chief surveillance commissioner will give information to the tribunal. As it stands, section 17 states that the chief surveillance commissioner shall give information to the tribunal

"as the Tribunal may require."

The amended section would state that the chief surveillance commissioner shall provide such information as "is appropriate".

I could envisage a situation in which one chief surveillance commissioner thought that certain information was appropriate to pass to the tribunal and another thought that it was not. I am concerned about whether guidance will be issued to chief surveillance commissioners or whether guidance on what should be considered appropriate will be included in the codes of practice, so that there is consistency in what chief surveillance commissioners think is appropriate for the tribunal process. Does the minister think that the amendment could impede the role of the tribunal if there is no guidance in the codes of practice or elsewhere?

Christine Grahame: It seems that there has been a shift in the balance of power. As section 17 stands, the tribunal determines what it may require. Under amendment 62, which is more than technical, it is the chief surveillance commissioner who decides what is appropriate.

11:00

Angus MacKay: Michael Matheson and Christine Grahame raised one or two issues there. The debate about whether the terminology should be "may" or "is appropriate" is interesting, because neither is a terribly precise form of language. "May" is an enabling term, whereas "is appropriate" is perhaps more a term of judgment.

I appreciate the point that Michael Matheson seeks to make, but the Executive is not persuaded that the amendment would make a material difference to the way in which the tribunal operates or that it would hamper the tribunal's capacity to fulfil its purpose. I am happy to consider the possibility of addressing the issue in part when we consider the code of practice and any final guidance to be issued. I can give that undertaking, but I cannot at this stage give an undertaking that we will bring forward anything specific or concrete. However, I will ensure that we approach the matter with an open mind.

Amendment 20 agreed to.

Amendment 62 moved—[Angus MacKay].

The Deputy Presiding Officer: The question is, that amendment 62 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

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

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

ABSTENTIONS

Gallie, Phil (South of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 76, Against 28, Abstentions 1.

Amendment 62 agreed to.

Section 18—Co-operation with and reports by Commissioner

The Deputy Presiding Officer: We move to amendment 63, which is grouped with amendment 64. I invite Angus MacKay to move amendment 63 and speak to both amendments.

Angus MacKay: Section 18(3) provides that the chief surveillance commissioner will make an annual report to Scottish ministers on the discharge of any functions under the Regulation of Investigatory Powers (Scotland) Act. The bill is currently worded so that this report should be

produced

"As soon as is practicable after the end of each calendar year."

At present, the chief surveillance commissioner writes his report on part III of the Police Act 1997 at the end of the financial year, and the intention is that his or her report on the UK Regulation of Investigatory Powers Act 2000 will also be produced at that time of the year. It makes sense for the chief surveillance commissioner's report on the discharge of functions under the Regulation of Investigatory Powers (Scotland) Act to be produced at the same time as reports by the commissioner under the 1997 act, because the same person might well hold the post under the two acts.

The chief surveillance commissioner under the 1997 act has requested that the bill might be amended to make that possible. As a result, this amendment is designed to meet his request and is relatively straightforward, although I am looking somewhat nervously at Michael Matheson as I say that.

I move amendment 63.

Amendment 63 agreed to.

Amendment 64 moved—[Angus MacKay]—and agreed to.

After section 18

The Deputy Presiding Officer: We now come to amendment 8, which is grouped with amendments 8A, 8B and 9. I ask Christine Grahame to move amendment 8 and to speak to all the amendments in the group.

Christine Grahame: I hope that members will bear with me, as I have a lot to say about this amendment. I have battled long and hard and have gone through many hoops for Angus MacKay. I should at least get brownie points for persistence. I think that this is my third draft and, like Topsy, it has growed and growed. It has done so, however, in response to matters of concern that the minister raised about the main point of my amendment.

I should make it plain from the start that my amendment does not give carte blanche to inform all and sundry who have been under surveillance that such surveillance has happened. Although I will see what Phil Gallie has to say about his amendments, I think that they are in the same spirit of mischief that he deplored in Gordon Jackson earlier. I have a feeling that Phil is not going to vote for my amendment anyway.

Members should bear with me as this is a long and complex amendment about civil liberties, which is a very serious matter. I will go through the amendment in some detail, as I know that members are all very busy people and will not have had the time to consider its various parts.

Subsection (1) of the amendment makes it mandatory to inform surveillance subjects. Perhaps members think that that will happen once a certificate has been quashed, ceases to have effect or is cancelled. Indeed, alarm bells might be ringing that all and sundry will be told. However, that is not the case. Subsection (3) of the amendment lists a whole lot of safeguards, including, in subsection (3)(d), the much-maligned catch-all safeguards that we have just got rid of in an earlier section.

Let us examine subsection (3). The recommendation to inform a former surveillance subject that surveillance has ended would not be given if it carried

"a significant risk of prejudice to any ongoing or future operation;"

if it carried

"a significant risk of compromise to the techniques used in ongoing or future operations, or the general capabilities of the police or the National Criminal Intelligence Service to carry out such operations;"

if it carried

"a significant risk to the personal safety of—
(i) any person authorised to carry out surveillance;
(ii) any covert human intelligence . . .; or
(iii) any person from whom information is obtained or access to information gained by such a source;"

which might be the casual person to whom Ben Wallace referred; or the catch-all: if it did not pass

"any further test set out in regulations made by the Scottish Ministers."

That leaves the matter subject to positive affirmation by this Parliament.

Angus MacKay should be fair. I have tried to do everything in this amendment to build in protection for surveillance systems. However, I still think that there is room in this legislation to tell the wholly innocent party about surveillance.

Subsection (4) builds in a timetable for informing the person, which might not be of such significance. Subsection (5) introduces a method of informing a person that they have been under surveillance, and members will see that it is fairly restrictive. When it has been decided that a person ought to be told that they have been under surveillance because there was no reason for them to be under it, they are told

"(a) the period within which the authorisation had effect; and
(b) whether the authorisation was for intrusive surveillance, directed surveillance, or the use of a covert human intelligence source."

That is all that the person will be told.

Subsection (6) says that:

"It shall be the duty of any relevant public authority . . . to provide an ordinary Surveillance Commissioner"

with any information that he or she requires.

My amendment contains many safeguards to ensure that when the commissioner makes up his mind about whether to advise the party that they have been under surveillance, he must be fully informed of all the facts. He would be able to postpone the decision for a six-month deferment period to ensure that he is able to take his time about the decision. Those safeguards are built in to provide protection for the state and the rights of the community as opposed to the rights of the individual.

Subsection (8) provides regulations on which amendment 9 is consequential.

In all the circumstances that I can foresee in practice, my amendment would apply only to a few subjects of surveillance when the authorisation had come to an end. Because of the protective subsections (3)(a) and (3)(b), the amendment would not apply to known felons and drug dealers even if the instance of surveillance—over however long a period—had delivered nothing. It would also not apply to the innocent friend of a known dealer who had been put under surveillance and been found to be unaware of their friend's nefarious activities. Again, that would be because of the protection of subsection (3), with its references to situations such as

"any ongoing or future operation".

However, the amendment would apply to the person who has been wrongly placed under surveillance but who has no connection with wrongdoers. Even then, though, the tests under subsection 3 would apply.

It was interesting to see Jim Wallace rise to speak instead of Ben Wallace when the name "Mr Wallace" was called out. As the bill stands, if a similar cock-up occurred during a surveillance operation and a person with the same name as a suspect was targeted, that person would not be told that they had been under surveillance.

I do not know how much more I can do to accommodate the deputy minister's concern. In that case, why am I bothering? Simply, because it is plainly right for the state, if it has erred and infringed an individual's liberties and privacy, to tell that person what has happened. In support of that view, I enlist the aid of Gordon Jackson's comments in the stage 1 debate. I am not quoting him, but he will agree that he said that if something is right, it is plainly right to do it.

The other reason that I am bothering is that I believe that the bill, unless amended, could be challenged under the European convention on human rights. Article 8 states:

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

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

The key part in all of that is the word "necessary".

Subsection (2) of article 10, which deals with the exercise of freedom of expression, states:

"The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime".

Again, the test of what is necessary is important.

Professor Alan Miller of the Scottish Human Rights Centre said, in *Holyrood* magazine of 24 April 2000, that this bill is, in effect, the Scottish part of the UK Regulation of Investigatory Powers Bill that is currently proceeding through the House of Commons and attracting significant criticism regarding ECHR compatibility from within the legal profession and from human rights non-governmental organisations.

Giving evidence to the Justice and Home Affairs Committee, Professor Miller said:

"On the one hand, I do not think that the draft bill deserves excessive criticism."

I agree with that. He continued:

"It should be welcomed. Its stated aim is to provide a legal framework for police surveillance to attempt to achieve ECHR compatibility, so it will be an improvement on the present situation. I think that that is recognised by everyone. The draft bill tries to find a fair balance between individual privacy rights and the public interest.

On the other hand, we all know that, to all intents and purposes, this is a UK bill. We should be aware that the UK has a poor record on the issue of surveillance and ECHR compatibility. Members should also be aware that the ECHR is really only a safety net; it is the lowest common denominator among the states of the Council of Europe . . . Therefore, a certain amount of vigilance is required over the bill."—[*Official Report*, *Justice and Home Affairs Committee*, 10 May 2000; c 1208-09.]

11:15

The Law Society of Scotland has stated its concerns. A Law Society witness told the Justice and Home Affairs Committee:

"However, the right of privacy exists under the convention and if that right is invaded, there has been a violation . . . When that law comes"—

he was referring to the RIP bill—

"there will be a need for some analogue of the regulation of investigative powers legislation in order to cope with private investigations into fraud or whatever."—[*Official Report*, *Justice and Home Affairs Committee*, 15 May 2000; c 1247.]

I also quote Gordon Jackson, speaking during the stage 2 debate—this is his starring role. I warned him of this, as it was only fair. I have not been cruelly selective; I think that this gives a fair flavour. I do not think that everybody wants to hear everything that he said, but I quote him from the *Official Report* of the Justice and Home Affairs Committee's meeting of 4 July.

"The bottom line is that there will be occasions where people are wrongly put under surveillance. I do not say that because of some conspiracy theory, but because that is simply the nature of such things: whether it is a cock-up, a conspiracy, a simple mistake or bad faith, it will be clear that certain people, over the years, should not have been put under surveillance."

Gordon went on to say that

"there is no reason why, when it is clearly discovered that a person has wrongly been put under surveillance, that person should not be told. That seems to be a reasonable and fair safeguard for the rights of the citizen. The presence of such a provision is likely to focus the mind as to when it is appropriate to conduct surveillance operations."

He continued:

"My point is very simple. There should be a provision in the legislation so that where it becomes clear after authorisation has been given that, for whatever reason, a citizen should not have been the subject of a surveillance operation, the system is open about it . . . As I said in the chamber, that is the nature of the modern world. I am against secrecy whose only purpose is to cover up a mistake that has been made . . . There are several ways in which provision could be made—I will not teach my granny"—

I think that Gordon was referring to the Minister for Justice—

"to suck eggs. It could be done by spot checks, or the power to tell people could be given to the surveillance commissioner . . . There is any number of ways of dealing with this . . . I say that the purpose of such a provision is not to compromise operations or to help criminals, but to ensure that where someone has been put under surveillance wrongly, for whatever reason, they should be told that that has happened and it should go into the public domain. That would give the public the comfort of knowing that although the power of regulating serious powers is being given to law enforcement agencies, if someone is wrongly surveilled that fact will become public and will not remain a secret. I do not think that it is impossible to strike a balance here. I hope that the Executive will introduce such a provision before we have to argue this matter seriously in the chamber."

In correspondence with Angus MacKay, I have tried to achieve that, and I think that I have come to the bottom line. My view now is that the minister is simply opposed in principle to cases of wrong surveillance becoming public.

I also quote Scott Barrie, speaking in the same stage 2 debate. He said:

"I have a great deal of sympathy with what Christine Grahame has tried to do. I am not sure that I would have voted for her amendment, because it is too wide-ranging".

Well, it ain't wide-ranging now, Scott.

Euan Robson said:

"The minister will agree that there is a degree of cross-party concern on this point. Almost all of us are concerned that the tribunal will have very little work because people will not know that they have been the subject of surveillance."—[*Official Report*, *Justice and Home Affairs Committee*, 4 July 2000; c 1556-57.]

Those comments were made at stage 2, which is a much happier place than stage 3.

Pauline McNeill: I do not know whether Christine Grahame was going to go on to name me, but she has named several members of the Justice and Home Affairs Committee and has quoted them. Other than the points raised by the committee members, does Christine feel that strong evidence was given by witnesses to the committee on her points about amendments?

Christine Grahame: I do not think that the police witnesses were terribly interested in the line that I was taking, but we must remember that the bill does not just deal with criminal investigations and drugs; it deals with public disorder and other issues. As I said earlier, I foresee that notifying people of surveillance would be more likely to happen in those circumstances where entirely innocent individuals are also involved. The problems raised by the surveillance of known felons whose associates and families are unaware of their activities are provided for under my amendment. The police witnesses focused mostly on criminal activity, which is why I quoted Gordon Jackson at length.

A tribunal is referred to in section 19. However, I do not understand how a person who has been under surveillance can use that tribunal to make a complaint. The tribunal is concerned with procedure and is a creature of the UK, operating under UK regulations. I received a letter from Angus MacKay on 28 August, when I addressed this matter. He wrote:

"I do, however, continue to have a fundamental objection to the principle on which your amendment is based, namely that there should be a duty in each and every case, irrespective of whether the surveillance was properly authorised and carried out in accordance with the appropriate code of practice, to disclose the fact of that surveillance unless the authorising officer perceives a significant risk in doing so."

That is not fair to my amendment, and reduces considerably the number of people who might be notified.

In the same letter, he says:

"You say that your proposal would be more efficient than relying on the tribunal to disclose to people who had a suspicion that surveillance had taken place. Although the rules for the tribunal's operation have not yet been finalised, it is clear that the tribunal will not allow fishing expeditions. In other words the tribunal will not confirm to someone that surveillance had taken or was taking place unless there was a case to consider."

How on earth—apart from tumbling over the infamous binocular man in the lupins—will someone ever get a tribunal to find out about surveillance? A suspicion will not clear it. The tribunal is a red herring of democracy.

At the meeting of the Justice and Home Affairs Committee yesterday, I listened carefully to Jim Wallace's views on an open and democratic Scotland. He spoke about that in the context of the future freedom of information bill. This information on surveillance is not going to be available to anybody, and that does not reflect an open and democratic Scotland. I want the Liberal Democrats to consider that, as their party has a fine record on civil liberties issues.

This is a free vote for the SNP. I hope that it is a free vote for the other parties. These are serious arguments. I hope that it is not the case that we are not going to consider this issue seriously because the new English legislation does not consider it. I am not charging the Executive with that, but I hope that—as it did earlier, for the smaller but nevertheless important issue of the catch-all subsection—the Parliament will consider this matter in the context of Scottish democracy. Recognising the openness and all the safeguards that I have built into it, I ask the Parliament to give amendment 8 a fair wind.

I move amendment 8.

The Deputy Presiding Officer: I call Phil Gallie to speak to amendment 8A.

Phil Gallie: Amendment 8A will not be moved. I feel deeply chagrined by Christine Grahame's suggestion that I would be mischievous on this subject. However, I would be concerned about somebody receiving an epistle through the post that was sparse in information, telling them that they were under surveillance. That might do an individual more harm than good.

Amendments 8A and 8B not moved.

Angus MacKay: I want to make three comments, and begin by taking up the argument where Christine Grahame finished. I do not think that anyone could say that we are not going to have or have not had an appropriate and full debate on this issue. At each stage of the legislation it has been the most topical and salient of the issues the committee has wanted to discuss and I suspect that it will form the meat of the serious discussion in today's stage 3 debate. I do not think that anyone could say that we have not fully considered the issue.

I want to make clear that the Executive opposes Christine Grahame's amendments. I also want to make clear that I appreciate and understand that Christine has made a number of genuine attempts to bring forward an evolved amendment to address concerns raised by all parties in the course of considering the bill. At earlier stages I said that I am not hostile to the attempt to address those concerns, which are difficult to address because they are about a point of conflict between two things—the protection of civil liberties and the requirement that law enforcement agencies can properly and effectively carry out their work. Where those two things meet is a difficult point. I should also put on record the attempts made by members of other parties to wrestle with the issue in trying to develop an amendment that satisfies all the concerns. I am sure we will hear from other members in the debate.

The amendments in Christine Grahame's name are the latest in a series on the subject, each of which has been fully debated. I am aware that amendment 8 has been drafted to meet many of the practical objections that were raised to earlier versions, in particular the lack of safeguards, and I acknowledge that it is clearly an improvement in that respect. However, it remains the case, as Christine has highlighted, that it is based on a premise that the Executive cannot support. Beyond that, there are further practical defects that mean that it would be difficult to operate.

On the question of principle, Christine Grahame is familiar with the arguments, as I have corresponded with her over the recess. Nevertheless, the arguments should be on the record, as is Christine's viewpoint. The fundamental objection the Executive has is that the amendment specifies a duty in each and every case, irrespective of whether the surveillance was properly authorised and carried out in accordance with the appropriate code of practice, to disclose the fact of that surveillance unless the authorising officer perceives a significant risk in doing so. We believe that that would create an anomalous position when compared to other investigation techniques used by the police. The police have a duty to make all due inquiries about crime that could, for example, include seeking relevant details about suspects from other public authorities or financial institutions or perhaps putting in place a telephone intercept. In none of those cases are the police required to disclose the fact of their inquiries to the subject of them even if nothing untoward has been found. Furthermore, the police argue—we believe rightly—that to disclose in even limited circumstances how and when they might use particular techniques would, in the long run, work to the benefit of criminals

rather than society generally. The use of surveillance or human sources is not different in that respect, in our view, from other methods.

Secondly, it is inevitable, despite the safeguards put in place beforehand—and many have been built into Christine's amendment—that a requirement to disclose, unless in certain circumstances, will lead to cases where it will be seen in retrospect that disclosure has helped criminals to evade justice. That is because a police officer may well take the view that there is a risk to operations, but not a significant risk as required by the amendment. But of course, he or she cannot see into the future: the risk may subsequently materialise. In our judgment, the risk that operations could be compromised could also lead to other law enforcement agencies declining to work with Scottish police forces.

11:30

I have one final point on the principle. We believe that the amendments are unnecessary because we are putting into the structure of the bill a robust system of oversight to ensure that the powers in the bill are not abused. There is the system of chief, ordinary and assistant surveillance commissioners, who will all have judicial experience and who will all have staff to assist them as required.

I have described three reasons why we consider the principle of the amendments inappropriate. There are also, as I mentioned at the outset, some practical points that would make the amendments difficult to operate. First, amendment 8 provides for a number of circumstances in which disclosure should not be made; but, as I understand the reading of it, amendment 8 does not include the situation in which surveillance has uncovered evidence of wrong-doing. The situation could therefore arise where evidence of crime was found and arrests and charges were pending, but because no further operations were planned against the target, there might be a requirement to disclose the surveillance to the suspect. I appreciate that that defect could be fixed by means of the further test that is referred to in subsection (3)(d) in amendment 8; but that illustrates the difficulties in seeking to prescribe in legislation the time when it becomes safe to reveal the use of particular law enforcement techniques.

A much more serious difficulty arises with the use of the term "significant risk" in amendment 8. We are sure that that would give rise to problems in interpretation. It would be extremely difficult to define when a risk became a significant risk. Furthermore, I am unable to agree that the same test of significant risk should apply to the security of operations and to personnel. In the Executive's view, it is right to consider that even a slight risk to the safety of people who volunteer to work in dangerous circumstances should be avoided if possible.

There are a number of practical problems with this amendment. I am sure that we could have attempted to fix some of them, although we believe that this will always be an area where it will be difficult to anticipate, properly and effectively, all the possible circumstances that might arise. More important, we cannot, as I have already stated, support the principle that disclosure must be considered in every case where surveillance has been properly authorised and carried out. I therefore call—pointlessly, I think—on Ms Grahame to withdraw amendment 8.

Dennis Canavan: I support amendment 8. The bill purports to strike a balance between individuals' rights of privacy and the interests—including the security interests—of the wider community. If there is no further reason for surveillance of a particular person, that person should surely have the right to know that he or she had been under surveillance, provided, of course, that there is no risk to any other person. Christine Grahame's amendment contains sufficient safeguards to ensure that there is little, if any, risk to any other person.

There have been some famous—or infamous—cases of people who have been under surveillance by the state. It is reported that even the present Home Secretary and the present Secretary of State for Northern Ireland were under some form of surveillance in their youth, although it is very difficult for us now to comprehend how on earth Jack Straw or Peter Mandelson could be classified as left-wing extremists. Allegations were also made during industrial disputes in the 1980s—particularly during the miners' strike of 1984-85—that miners' leaders were under surveillance through telephone tapping. Even well after the event, we are entitled to an explanation. Some of the reports may have been false, some may have been true. Perhaps the minister could enlighten us this afternoon.

Is it a fact that during the miners' strike the telephone of the late Mick McGahey, for example, was tapped? Were the telephones of any of the other strike leaders tapped, either in their offices or in their homes? In retrospect, many of us can see that the strike was about an honest group of trade unionists trying desperately to save their industry from extinction, but at that time in Scottish and British industrial history many of them were classified as enemies of the state. The police and, perhaps, other security forces were using covert means to get information to break the strike.

Ben Wallace: I do not dispute some of Mr Canavan's observations, but—and the minister may be able to clarify this—what he is talking

about would be considered subversion and would be covered by the security services. Under security services legislation, people who have been under surveillance have a right to be informed of that. The period that has to elapse before that can happen is perhaps too long, but that can be changed. Such surveillance is not criminal and is not covered by this bill. Subversion comes under security service legislation, people have a right to be informed of whether they have been under surveillance, and the situation is reviewed on a 10-yearly basis.

Dennis Canavan: I read the bill as meaning that the authorities can authorise a surveillance order if they perceive there to be a threat of disorder. At the time of the miners' strike there were perceived threats, real or imaginary, of disorder. My fear is that this legislation could be used if similar circumstances ever arose. When the surveillance order is no longer applicable and the authorities admit that there is no further reason for it, the person who has been the subject of that order ought to have the right to know that he or she has been under surveillance.

In summing up, can the minister tell us who at ministerial level has access to information about people who were wrongly under surveillance some time ago during industrial disputes? At the time of the miners' strike, for example, I understand that the Secretary of State for Scotland was required to authorise telephone tapping. Where is that information now? Where is the list of people whose telephones were tapped? Is it in the Scotland Office or the Scottish Executive? Does the Minister for Justice have access to it? Does John Reid have access to it? Will the Scottish Executive be more forthcoming about telling us what went on at that critical time in Scottish industrial history?

The new Scottish Parliament is supposed to herald an era of openness, democracy and accountability, including freedom of information. We hear Executive ministers, particularly Liberal Democrats, trumpeting the desirability of freedom of information. Innocent people should have the right to know whether, why and how they were under surveillance. The state is the servant of the people and, if it makes an error, it should be big enough to admit to that and to inform the people who were wronged.

The Deputy Presiding Officer: I have no wish to curtail debate on this important subject, but if we finish by 12 o'clock I will take the full half-hour debate at that point. About five or six members have indicated that they wish to speak.

Scott Barrie (Dunfermline West) (Lab): I am glad that I pressed my button to speak before I was named, and perhaps shamed, by Christine Grahame for what I said at stage 2. Her quotes from the *Official Report* are quite accurate. She might have gone on to say that I made similar comments in the stage 1 debate.

Christine Grahame should be congratulated on introducing a series of amendments on this important subject. She did not press her previous amendment to a vote in committee because she agreed to take it back and consider it further. Members have said that these issues strike at the heart of the bill, which is concerned with the civil liberties of our citizens versus the duties and responsibilities of the state to detect and prevent crime.

The Deputy Minister for Justice has already indicated the Executive's desire not to impede the detection and prevention of crime. Although Christine Grahame has moved a long way from the position of her original amendment, including many caveats, the new amendment does not go far enough.

I approached the subject clear in my own mind—I thought that it would be relatively straightforward to include the provisos that Dennis Canavan has just mentioned. At the beginning of the summer I intended to lodge an amendment to that effect but, unlike Christine Grahame, I was unable to come up with a form of words. As I thought through the matter it became increasingly difficult. In essence, it is something that most of us would want to do, but in reality it is something that is very difficult to achieve. That is why I think that it would be better to support the comments that Angus MacKay made this morning.

However, Christine Grahame pointed out that if the amendment was not accepted, we might be open to a challenge under the European convention on human rights. I ask the minister to make explicit what legal advice has been given, whether we are open to such a challenge and whether the Executive is totally confident that the measure is robust.

Gordon Jackson: Christine Grahame has quoted my comments at stage 2 at some length. I neither depart from those comments nor apologise for them. I said that where a surveillance operation has been wrongly carried out, the person who had been under surveillance should be told. A very strong part of me believes that; in an ideal world, that is what I would like to happen. Secrecy should not be used to hide mistakes made by the state. Given that perspective, I was anxious to achieve something in this legislation that would bring that ideal into practice. I made that clear in the committee and I have made it clear to Angus MacKay and Jim Wallace on several occasions.

No one could have tried harder than Christine Grahame—I hope that she will accept this comment in the spirit that it is given—to achieve

that end. However, that is where the problem lies. Having wanted to achieve that end, one had to turn the coin in this balancing exercise and recognise that there are reasons for not doing so.

I am not here to repeat what the minister says, but some of those reasons are very powerful. The amendment would create an anomalous situation. The police carry out all sorts of investigations every day. They do not have a policy of telling the subjects of those investigations what they are doing. I accept that that is different, but it is not that different. There are practical difficulties raised by the amendment. Every authorisation for surveillance would need to be reviewed in detail retrospectively. The fact that it would create a huge mountain of work is not a reason not to do something, but it would certainly place a tremendous burden on the system.

However, most important, there are some very serious and very bad people out there—

Dennis Canavan: There are some in here, too.

11:45

Gordon Jackson: Unlike the people in here who are bad, the bad people out there are also very sophisticated. Inevitably, such people will make use of the provision created by Christine Grahame's amendment. They will take comfort from it. Whenever the authorities are forced to reveal details of their operations, people who have a bad agenda will use that for their own purposes. That is why, not without reluctance and with a great deal of hesitation, and having made my position clear at stage 2, I have come down on the side of saying that Christine Grahame's provision is not workable. I say to her that, in fairness, I did say at stage 1 that I had no concluded view and that it was a difficult matter.

It is a question of balance, and we have done well in striking it. For example, with the Executive's agreement we took out the catch-all provision. That was important. Dennis Canavan talked about surveillance situations that people should now know about, but what we have tried to do is stop those situations happening in the first place. It may be said that we will not be successful in that, but we have tried. We have made sure that we have Scottish judges as Scottish surveillance commissioners. The balance has to be that these operations take place and are not revealed thereafter. Part of me does not like that, but in this world we live in these balances have to be struck. I have come to the view that we should proceed in the way in which the Executive is suggesting.

Dorothy-Grace Elder (Glasgow) (SNP): I counsel caution—from the way in which the minister has presented this matter, that seems sensible. The proposal in the bill is dangerous, which is why I commend Christine Grahame's amendment. The concern involves the grey areas where state security services can claim that serious criminality is behind something, when it is not that at all, but just red meat politics. People may be snooping and spying on those on whom they should not snoop and spy, such as trade unionists.

Like Dennis Canavan, I would like to know the truth about telephone tapping of the late Mick McGahey, whom I knew. He was an honest man who stood up for his miners. There have been umpteen stories over the years about McGahey's phone being tapped—and, indeed, the phones of other trade union leaders in Scotland. We do not accept that that should happen just because of a person's position, which is why we must know the truth, even from the past.

Mr Canavan mentioned Jack Straw, whom he said could hardly be regarded as a great left-wing threat. Of course, at one stage Jack Straw was regarded as such. Some of us remember when he was a rebellious student leader. That was at a time of rampant paranoia about people getting their phones tapped; everybody in student circles was alleging it. I remember saying that the ultimate humiliation would be if we found out that our phone was not tapped because we were not that important. We all remember what Mr Straw was like. Of course, he changed his coat when he acquired a high position in Mr Blair's Government—a Government that has allowed more phones to be tapped than any other Government in recent decades.

Pauline McNeill: I, too, want to put on record my feelings about the history of the 1970s and 1980s, phone tapping and civil liberties issues. There is a long list of people, such as Campbell Christie, who took their cases to the European Court of Human Rights. I want clarification on how Christine Grahame's amendment would give rights to this Parliament or allow Mick McGahey to know whether his phone was tapped, given that we are not dealing with telecommunications.

Dorothy-Grace Elder: Unfortunately, the late Mick McGahey and many of his generation are not around to know the truth. However, retrospectively, even a long period afterwards, revelations should be made about the phone tapping of people who have not faced criminal charges. The minister's proposition is dangerous, and I support Christine Grahame, who eloquently and sensibly put a case that upholds civil liberties.

Mr John McAllion (Dundee East) (Lab): Dorothy-Grace Elder must be older than she looks if she can remember the time when Jack Straw was a left-wing threat to anyone. I have been in

the Labour party a long time, but I am not that old.

I ask the minister to assure us that there is no disagreement in principle with what the amendment seeks to do. If the Executive and the Parliament have learned anything from their first year, surely they have learned that mistakes will be made and errors will occur. It is a fact that people who are wholly innocent will be subjected to unjustified official surveillance. We have to accept that that will happen. I want the Executive to make it clear to the Parliament that it thinks that it is wrong for that to happen. If practical, such people should have the right to know that they have been subjected unfairly to surveillance.

I realise that the important words there are "if practical". The minister outlined the practical objections, some of which I agree with. However, the fact that there are anomalies—people have the right to know about this technique but not that technique—is not an argument for not extending the right to know. The right should be extended to cover all the techniques that are used by the police forces in this country.

I take on board the view that, if the exercising of such a right represents a risk to operations in any way, it would be unwise for the Parliament or the Executive to allow that to happen. However, I hope that at the end of the debate the minister will say that what is perceived to be a risk to operations will be under continual review and that, if someone comes up with a way of guaranteeing the security of police operations while giving people the right to know that they have been under surveillance, we will ensure that that happens.

It is important that the Parliament understands the implications of the European convention on human rights. If a challenge is made to what the Parliament is enacting this morning, we should be aware of what the chances are that the European Court of Human Rights will uphold an appeal made by someone who has been denied the rights that we are discussing. I hope that the minister will deal with that.

Finally, I was interested in Christine Grahame's reference to Professor Miller's comment that the UK's record on disclosure and human rights is weak and one of the worst in Europe. Will the monarchists among us reflect that that may be the case because, unlike the residents of other countries in Europe, we are not citizens but subjects of a constitutional monarchy? Perhaps the fundamental change that the Parliament should be considering, possibly in liaison with the Parliament south of the border, is how we can move to become real citizens—like people in the rest of Europe—instead of subjects.

Euan Robson: This is potentially the most difficult area in the bill. I suspect that, when we vote that the bill be passed—as I hope we will later today—there will be some omissions. We cannot get everything right in one go, because—as I understand it—this is the first time that such a framework covering investigatory authorities and powers has been introduced.

There is a tension between the need to survey criminals and the rights of the individual, but the amendment does not deliver what is necessary. If someone has been wrongly surveyed, ideally they should be told. However, there is another element to this. I have yet to make up my mind whether, if surveillance has taken place but there has been no harm or prejudice to the person involved, it is sensible or relevant to alert them to the situation.

My key objection to the amendment, however, is that the wrong person has been identified as triggering the process that would lead to disclosure to the individual concerned. The authorising officer would be told to review what they had done and, if they had done something wrong, they would have to institute a process that would lead to the disclosure to the individual. Surely the person who should take that action is the surveillance commissioner, who should act in a regulatory capacity, as it were, in order to review the actions of the authorising officers. Members would have welcomed the incorporation of such a provision into the bill if we had been able to find a proper mechanism for so doing. Had we done so, the focus—the fulcrum—would have been the surveillance commissioner, who should have undertaken those duties and who should have been given those responsibilities. As I understand the amendment, the person who made the mistake in the first instance is the one who is being asked to trigger the process. Perhaps the authorising officer would take that action quite readily if a genuine error has been made. However, if there has been duplicity or connivance on the part of the authorising officer, is it likely that that officer would refer himself or herself to the surveillance commissioner?

I believe that this well-intentioned amendment is seriously defective in that regard, as well as in terms of the practical points made by Angus MacKay. Although a mechanism for protecting the individual would have been welcome, had we been able to find one, I do not think that the amendment delivers what members want.

Pauline McNeill: Like other members, I support the aims that Christine Grahame is trying to achieve with her amendment and I congratulate her on the work that she has done. However, on balance, a number of factors lead me to believe that I cannot support the amendment.

Emphasis must be placed on the importance of granting authorisation and on the rigorous tests

that should take place before authorisation is granted in the first place. Both Dennis Canavan and Dorothy-Grace Elder mentioned telecommunications; it is important to stress that we are not dealing with telecommunications today—there has been some confusion on that point. Christine Grahame's amendment, even if we were to accept it, would not give any of us the right to know that our telephone had been tapped. Perhaps that is a debate for another day.

I want the minister to respond in the strongest terms to a number of points. The question that must be asked about the cases to which Dennis Canavan and Dorothy-Grace Elder referred is why authorisation was given in the first place. I draw members' attention to other issues that the bill raises, which the Justice and Home Affairs Committee examined in great detail, including our concern about civil liberties. Alan Miller pointed to the categories for surveillance, such as public order and public safety. In particular, he drew our attention to the bill's inclusion of the category of people who gather together for a "common purpose", which could include trade unionists. The granting of authorisation must be of the highest order for everything else to fall into place.

Phil Gallie mentioned informing people that they had been under surveillance. That raises the question whether people should be told why they had been under surveillance. An individual would certainly want to know more than the simple fact that they had been under surveillance. That leads me to believe that informing people is a difficult issue to resolve in legislation. Should people be told why? Should they be told what kind of surveillance they were under?

I still wonder whether the bill should include the category of "wrong person". By that I mean the circumstances in which surveillance is granted for person A but is, in fact, carried out on person B. However, amendment 8 does not address that issue. Records on anyone who has been placed under surveillance wrongly must be destroyed. Any individual would want to know that that had been done. Euan Robson made the point in committee that such action should not be discretionary—it should be an absolute must.

Although the minister does not accept Christine Grahame's amendment, it would be useful if, in replying to the debate, he would explain how the bill balances the rights of the individual with the needs of the state. All members of the Justice and Home Affairs Committee showed a great willingness to try to find a solution to that problem, as did the minister. There is only a tiny difference between us, but we do not think that such a solution can be reached.

12:00

The Deputy Presiding Officer: Of course, it is not the minister who will be responding; Christine Grahame will have the last word, because amendment 8 is her amendment. Nevertheless, I shall allow the minister to have another cut before asking Christine Grahame to respond.

Angus MacKay: Thank you, Presiding Officer. I would like to reply briefly to a number of concerns that have been raised by members from all parts of the chamber.

Throughout the passage of the bill, we have attempted to be sympathetic on this issue. I am on record as stating my willingness to listen to arguments about how we might be able to proceed in this area. I have met any member who wanted to meet me to discuss face to face the substance of the issues and the detail of the amendments, and we have engaged in detailed correspondence.

The problem is that nobody has, as yet, found a satisfactory way of addressing in legislation the concerns that have been raised that does not run counter to the other concerns that I have outlined. It is with regret that the Executive has arrived at this position but, having tried to satisfy those concerns, we find ourselves unable to do so. For the reasons that I outlined, we believe that Christine Grahame's amendment does not satisfactorily do so either.

The Executive, the Parliament and the Presiding Officer's office are required to ensure that any legislation, policy or practice that we pursue is ECHR compliant, and we believe that we are in that position. Ultimately, that compliance can be tested only by the courts, but we believe that what we are proposing is ECHR compliant.

As Pauline McNeill has pointed out, the bill does not cover telephone interception, so I ask members to focus on what this legislation is intended to enable police forces to do rather than on wider issues.

Members must bear in mind the fact that today we are setting in statute for the first time procedures that are already routinely used by law enforcement agencies, but without the force of statutory regulation. The whole bill is precisely about protecting civil rights and about ensuring that the enforcement agencies, when they use surveillance techniques, do so in compliance with legislation, codes of guidance and the ECHR. In formulating the legislation, we must strike a balance between what constitutes appropriate civil liberties and what constitutes appropriate law enforcement. We have sought to do that at every turn and I genuinely believe that we have struck a balance that we can be confident will serve us well in the future.

Christine Grahame: I knew which way the wind would blow from the moment I stood up to speak. It may not be the point of the exercise, but I shall be interested to see how many members will break ranks and vote for my amendment.

Angus MacKay raised the issue of significant risk. The test of significant risk rests with the authorising officer, so a disclosure will not get past him if he thinks that there is a significant risk.

John McAllion made some valid points. Of course the wrong people will be put under surveillance for the wrong reasons, but they will not be told about it. There is no way of compromising on this. If John wants people who have wrongly been put under surveillance, and who should never have been put under surveillance in the first place, to be told about it, he must vote for the amendment. This is not something that he can fence; the Executive has never been prepared to move further on the matter.

The provision in my amendment to notify surveillance subjects would be triggered only when surveillance has been quashed, ceased or cancelled, and then only if no other investigations into criminal operations would be imperilled. It is nonsense to suggest that people would be notified otherwise.

Dennis Canavan mentioned political figures, and his point was quite right. It is a bit of a red herring to keep talking about serious criminals, felons and heavy-duty drug dealers in relation to the bill. Of course the bill deals with the activities of such people, but it also deals with what might be considered criminal activity in relation to public order as defined by the authorising agencies. He is right to say that other activities such as industrial and political activity or demonstrations could come within the remit of the bill.

I do not know what else I could have done to satisfy Scott Barrie's concerns. I have put everything possible into my amendment, including a catch-all and all the safety guards that I could have included, to ensure that the state is not imperilled at all and the community's rights are given as much protection as possible.

Gordon Jackson will wait a long time if he wants to legislate in an ideal world. We are legislating in the real world. I shall quote the words that he used at stage 2. He said:

"There is any number of ways of dealing with this . . . I do not think that it is impossible to strike a balance".—[*Official Report, Justice and Home Affairs Committee,* 4 July 2000; c 1557.]

What has happened between stage 2 and today that he now finds it impossible to strike a balance? At stage 2, he said that he would not teach his granny to suck eggs and that he could think of all manner of ways of dealing with this problem. Did he put those suggestions to the Executive? Was he asked to do so? I have not seen any constructive attempt to bring forward an Executive amendment.

Gordon Jackson: Does Christine Grahame accept that we found it impossible to come up with a solution? There are occasions on which one says, "I believe that we can achieve this." We tried to do so in good faith. Angus MacKay would say that we tried to the point of trying where we could try no more. Other people tried—Scott Barrie tried and Pauline McNeill tried. Christine Grahame should not suggest that this was not an exercise in good faith on our part. We came to the genuine conclusion that the balance lay the other way. Sometimes people have to admit that they cannot achieve what they had hoped to achieve.

Christine Grahame: I take it Gordon Jackson is saying that there are not any number of ways of dealing with this, which was his position at stage 2. It is not his position any more. I cannot argue if he has changed his mind.

Euan Robson used the word criminals again, which I think is misleading. The amendment is not directed at the real criminality that is under surveillance. He also, intriguingly, asked what the problem was if somebody had been under surveillance and no harm or prejudice had come to them. If my privacy has been invaded, I consider that harm or prejudice has been done to me. I do not want people opening my mail, listening to my telephone conversations and looking through long lenses at me and my cats. I have real problems with that.

Euan Robson: Those are circumstance where definite harm is being done to someone. In some circumstances, it is difficult to say that any distinctive harm has been done to someone as a result of them being followed or watched.

Will Christine Grahame also address the point about the authorising officer being the person who triggers the process?

Christine Grahame: If Euan Robson would not be unhappy that people had followed him without him knowing, that is okay for him. I would be unhappy about it.

Euan Robson's other point is that the wrong person would be making the decision. Why did he not discuss that with me, if that is his major objection to the amendment? I was open to listening to people's arguments and he never discussed that with me. The amendment is fine as it stands.

I will ask Angus MacKay a final question. Who on earth will apply to the tribunal if they feel that there is a complaint about procedure? I would like

an example—we failed to get an example on the miscellaneous and the catch-all.

Angus MacKay: Anybody who is being brought before a court of law in which evidence is being used that was gathered under the provisions of the bill.

Christine Grahame: So it would not be somebody who had been under surveillance and did not know about it—they would not be able to come before the tribunal?

Angus MacKay: Any other person who is concerned that they have been the subject of surveillance, as provided for under the bill, can raise the concern with the commissioners and the tribunal and every complaint will be examined. That is not to say that information will be disclosed, but every complaint will be examined.

Christine Grahame: That does not satisfy me. Angus MacKay has already said that there will be no fishing expeditions, so it will always be in the hands of the authority to say that there has not been surveillance. The person will never know.

Angus MacKay: There will be no fishing expeditions for criminals who might seek to clarify whether they have been the subjects of surveillance. If a criminal in that circumstance applies to find out whether they have been under surveillance improperly, the appropriate structure would examine that complaint and report back that the complaint was either founded or not founded. We will not allow fishing expeditions through records, which would tell criminals whether they have been the subjects of surveillance and, if so, how.

Christine Grahame: I am grateful for that clarification, because that was not in the minister's letter to me. The letter states:

"Although the rules for the tribunal's operation have not yet been finalised, it is clear that the tribunal will not allow fishing expeditions."

It does not say "for criminals", just "fishing expeditions".

I will press my amendment.

The Deputy Presiding Officer: The question is, that amendment 8, in the name of Christine Grahame, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnston, Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)

McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McLetchie, David (Lothians) (Con)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, Mr John (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Ben (North-East Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 30, Against 79, Abstentions 0.

Amendment 8 disagreed to.

Section 19—Complaints to the Tribunal

Amendments 21, 65 and 66 moved—[Angus MacKay]—and agreed to.

The Deputy Presiding Officer: I call Michael Matheson to speak to and move amendment 6.

Michael Matheson: If one found oneself before the tribunal, which—given the debate we have just had—is unlikely, one might choose to have some form of legal representation. However, under the bill at present, one would have no entitlement to legal aid to pay for that representation. Very few people are likely to be able to go before the tribunal, as they will not be informed if they have been under surveillance, so I assume that the Executive would not refuse the amendment on the grounds of cost to the Legal Aid Board.

I believe that anyone who is before a tribunal should be provided with the legal representation they require. However, in the light of information that was presented to the committee this week about action that is currently being taken in court, I do not intend to move the amendment.

Amendment 6 not moved.

Section 20—Issue and revision of codes of practice

Amendments 67 to 69 moved—[Angus MacKay]—and agreed to.

Section 22—Effect of codes of practice

The Deputy Presiding Officer: I call Angus MacKay to move amendment 22 and to speak to amendments 22 and 24.

Angus MacKay: These are technical amendments. Amendment 22 corrects an incorrect cross-reference. Amendment 24 corrects cross-references in section 24(3)(a) on order-making powers that are contained in the bill. It appears that those references became false following the insertion at stage 2 of requirements for certain orders and regulations to be subject to affirmative procedure.

I move amendment 22.

Amendment 22 agreed to.

Amendments 70 to 72 moved—[Angus MacKay]—and agreed to.

Section 24—Orders and regulations

Amendment 24 moved—[Angus MacKay]—and agreed to.

Amendment 9 not moved.

Section 25—Financial provision

Amendment 73 moved—[Angus MacKay]—and agreed to.

Section 27—Interpretation

Amendment 74 moved—[Angus MacKay]—and agreed to.

12:15

The Deputy Presiding Officer: I call Michael Matheson to speak to and move amendment 7.

Michael Matheson: Amendment 7 refers to section 27 on interpretation. The bill provides no definition of what should be classed as a large group when a warrant is issued. As the bill stands, one of the tests for serious crime is

"that the conduct involves the use of violence, results in substantial financial gain or is conduct by a large number of persons in pursuit of a common purpose."

In committee, we had a wide-ranging discussion as there was concern that the bill did not provide a definition of a large group. A large group could be considered to be three people, standing outside Faslane, demonstrating on nuclear disarmament. I also understand from my colleagues on the committee that, in criminal law, a mob is classed

as a group of between two and three individuals. To ensure that we remove the arbitrary aspect of the bill, we should provide a definition of a large group.

The minister will say, I am sure, that six is an arbitrary figure, but the bill is arbitrary in providing no definition. That arbitrariness would be removed by stating a figure and it is reasonable to state that a large group consists of six or more individuals.

Several members of the committee were sympathetic on the issue, in particular Gordon Jackson, who highlighted the fact that a situation could arise in which after a warrant has been granted, the matter goes to court and a serious argument ensues about whether the warrant should have been issued for a large group of people. Courts could be delayed as a result. That is why we should remove the arbitrary nature of the bill by including a definition of the number of people that constitutes a large group. If the Executive refuses to accept the amendment, we may have to wait for case law to determine what constitutes a large group. I see no harm in defining in the bill the number of people at which a group is considered to be large.

I move amendment 7.

Mr Jim Wallace: There are a number of points to make in relation to amendment 7, which was discussed at stage 2 when the figure proposed by Mr Matheson was, I believe, 10.

It is important to track the matter back. The figure relates to the definition of serious crime, which is outlined in section 27(7) of the bill. Where serious crime arises, no authorisation for intrusive surveillance—which is about the highest category of surveillance and includes bugging devices in a residential property—will be granted under section 6(2)

"unless the chief constable or the Director General granting it is satisfied—

(a) that the authorisation is necessary for the purpose of preventing or detecting serious crime; and

(b) that the authorised surveillance is proportionate to what is sought to be achieved by carrying it out."

The example that Michael Matheson mentioned—of three, or 33, people protesting outside the Faslane facility—becomes unlikely given both the test of proportionality and the definition of serious crime.

Mr Matheson also said that we might have to wait some time for a court case to come up in order to define the term "serious crime". However, it is important to note that the definition of serious crime that is contained in the bill has existed for the 15 years since the Interception of Communications Act 1985 came into force. In that time, a court case has not been needed as a result of how that act has operated. The definition is also contained in the Police Act 1997 and the Security Services Act 1996. It makes sense for the same test to be applied for similar activities carried out by different bodies involved in investigating serious crime.

During the stage 2 debate, it was suggested that the definition of serious crime might be open to challenge as it is arbitrary. However, who might challenge it? The bodies that will be responsible for the oversight of the application of the definition of serious crime contained in the bill will be the surveillance commissioners. The chief surveillance commissioner has assured us that he is happy with the current definition. Furthermore, it should be noted that on no occasion since 1985 have any of the three distinguished members of the judiciary who have held the post of interception commissioner ever found any difficulty with the definition of serious crime, nor have any of the other commissioners who have considered cases where this definition has been used.

As the Parliament knows, complaints brought in relation to conduct under the bill will be dealt with by a tribunal that is to be set up. The tribunal will replace the security service, the interception of communications and the intelligence services tribunals, none of which has ever queried the definition of serious crime. That suggests strongly that the definition of serious crime that is contained in the bill has been found to be perfectly workable by those who have had to apply it under similar legislation. Changing the bill along the lines that have been suggested would introduce an element of inflexibility that would not serve the public interest.

The stage 2 debate illustrated clearly that it is difficult to quantify in the abstract the number of persons who might be in pursuit of a common criminal purpose that will be regarded as constituting a serious crime. It is arbitrary to pluck a figure out of the air; indeed, Mr Matheson proposed 10 people at stage 2 and now proposes six. What if five people were conspiring seriously to defraud people of their savings? Under Mr Matheson's amendment, law enforcement agencies would be shackled. They might not be able to carry out the surveillance that would be necessary for the protection of the public, as the situation would no longer fall within the definition of serious crime.

Each situation must be examined case by case, which is what has happened in the past 15 years. There will be occasions on which five people acting with a common purpose will be serious enough to justify the use of intrusive surveillance. On the other hand, seven people acting in another criminal context might not be considered sufficiently serious to warrant intrusive

surveillance. The bill and the codes of practice emphasise that proportionality is an important concept in determining the application of the provision; we should not set an arbitrary fixed number of persons.

For those reasons, we will resist the amendment. Indeed, we hope that Mr Matheson might even have been persuaded that there are good reasons for withdrawing it.

Phil Gallie: During stage 2, I lodged an amendment that attempted to define a large number as six or more. That was based on my fear that cases brought before the court might flounder through a lack of certainty about the definition of a large number. Criminals who have been found guilty have walked free recently because of technical difficulties with their convictions. I would hate to think that, somewhere along the line, someone who has had the finger pointed at them and been found guilty might evade any consequences through some spurious argument about what constitutes a large crowd.

Dennis Canavan: Does the Scottish Tory party constitute a large number of people in pursuit of a common purpose, or is it a minuscule number of people in pursuit of no purpose?

Phil Gallie: The Scottish Tory party represents a smaller presence than in the past, but one that will grow and blossom in the future, as it did in the Ayr by-election when John Scott showed the way.

The minister should consider the issue again and, if nothing else, he should give definite guarantees that never will a criminal escape the consequences of his actions because of a failure to define a large crowd.

Michael Matheson: I take on board the minister's comments on the definition of serious crime. However, I do not know whether he is aware that a number of experienced individuals misinterpreted this section of the bill, in particular section 27(7)(b), which they thought might apply to a large number of people not committing a serious crime but acting politically or in some other way. Concern was expressed about the need to tighten up this section of the bill.

The minister referred to the fact that a case-by-case approach would be used. The problem with that is that we would end up with a succession of arbitrary figures, as each case might result in a different number being used: a large group for one case might be 10, while for another case it might be seven. The amendment provides a figure for the definition of a large group and removes, rather than creates, any problem relating to making the judgment more arbitrary. I hope that the minister will be persuaded of the need to set such a figure in the bill. On that basis, I press my amendment.

The Deputy Presiding Officer: The question is, that amendment 7, in the name of Michael Matheson, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Harper, Robin (Lothians) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnston, Nick (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Ullrich, Kay (West of Scotland) (SNP)
Wallace, Ben (North-East Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Galbraith, Mr Sam (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)

Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, Mr John (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 44, Against 63, Abstentions 0.

Amendment 7 disagreed to.

The Deputy Presiding Officer: We have made good speed and delivered fair scrutiny. That concludes the consideration of amendments to the bill.

12:30

Meeting suspended until 14:30.

14:30

On resuming—

The Presiding Officer (Sir David Steel): Before we begin this afternoon's business I advise members that if, as is likely, the afternoon's business concludes early, I understand that Mr Tom McCabe will seek the Parliament's leave to move a motion to bring forward decision time. Members should be aware that decision time may take place a lot earlier than 5 o'clock.

Secondly, I am sure that members would wish to welcome the third of the Westminster leaders to visit us in this Parliament, the Rt Hon Charles Kennedy MP, leader of the Liberal Democrats. [*Applause.*]

Question Time

SCOTTISH EXECUTIVE

Ferry Services

1. Tavish Scott (Shetland) (LD): To ask the Scottish Executive when it expects to name the preferred bidder for the northern isles ferry services and when a formal contract is to be issued. (S1O-2159)

The Minister for Transport and the Environment (Sarah Boyack): The preferred bidder will be decided shortly. The formal contract will be concluded as soon as negotiations with the preferred bidder are finalised.

Tavish Scott: In passing, I would like to welcome to the visitors' gallery today the convener of Shetland Islands Council, who has a not inconsiderable interest in this issue.

Does the minister accept that there is deep concern in the northern isles over the delay in awarding this contract, and particularly among ferry staff, who at this time are uncertain about the future of their positions? Does she also accept that, if the contract is awarded from this time of year in 2002, it will lead to difficulties for a smooth transition, not least because this is the middle of the livestock season and because of the larger number of fish and salmon exports that occur at this time of year? When can we expect to hear a decision on this important matter?

Sarah Boyack: Shortly. The issues that Tavish Scott raised give members some sense of the complexity that is involved in making sure that we get this decision right. It is important to us that we do so. On the question of when we move to the next contract, we have had discussions with the current contractor with a view to agreeing an extension of its existing contract to ensure that the

whole process is managed smoothly, so that island residents' and visitors' use of the services is not interrupted.

Dr Winnie Ewing (Highlands and Islands) (SNP): If the consortium, which includes Caledonian MacBrayne and the Royal Bank of Scotland, were to succeed with the tender, where would the discussions that CalMac is currently having on the options on the west coast and the Clyde stand? Would that option be part of a single franchise, or would it stand alone? What about the assets, including the boats? If the option of a ship-holding company is introduced, how does CalMac tie in in the northern isles if it succeeds with the Western Isles and the Clyde?

Sarah Boyack: There would be no tie-in procedure, because we have a clear process for the northern isles ferry contracts. We have been through that process and we are nearing its end, therefore there would be no direct link in the way that is suggested.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): The minister will be aware that there is some concern in my constituency also regarding possible pier sizes, the installation of new ferries in 2002 and so on. What measures will she take to address those concerns in the Scrabster and north Caithness area?

Sarah Boyack: Jamie Stone is correct; there are a number of issues that we must ensure we get right. When I visited Scrabster this summer it was useful to see the condition of the existing facilities. The facilities and the ferries are currently under discussion, and we hope to be able to move forward shortly.

Creative Industries

2. Allan Wilson (Cunninghame North) (Lab): To ask the Scottish Executive how the effectiveness of the £25 million strategy to develop the creative industries in Scotland as drawn up as part of the Scottish Enterprise clusters plan will be measured. (S1O-2184)

The Minister for Enterprise and Lifelong Learning (Henry McLeish): The strategy will be monitored against the targets that Scottish Enterprise has set to increase the sector by 30 per cent over the next five years and to raise its export performance to 15 per cent of the Scottish total. Individual projects will be monitored on a regular basis to ensure that strategy targets are met.

Allan Wilson: As the minister will know, Scottish Enterprise predicts that the creative industries are set to grow significantly faster than the economy as a whole. Does the minister recognise that many employees in the creative sector have unstructured and unconventional career patterns? How does the Executive plan to support those individuals and sustain that employment growth?

Henry McLeish: I recognise Allan Wilson's point. It is important that, for an industry of almost 100,000 people that contributes £5 billion to the Scottish economy, we make special efforts to ensure that the choice and flexibility that Allan Wilson has suggested is in place. The spirit of the question is very much in the spirit of lifelong learning: that people have real choices and that those choices are suited to the type of skills, ambitions and aspirations that are found in the creative economy.

Dental Services

3. Lewis Macdonald (Aberdeen Central) (Lab): To ask the Scottish Executive what steps it is taking to improve emergency dental services in Aberdeen. (S1O-2172)

The Deputy Minister for Community Care (Iain Gray): It is for Grampian Primary Care NHS Trust to make arrangements for emergency provision in its area. Dentists in the Grampian area who have patients registered with them under national health service capitation or continuing care arrangements are required to provide emergency cover to those patients under their NHS terms of service. In addition, the trust has arrangements in place to provide emergency dental services for unregistered patients and is currently discussing with the Executive the development of a more comprehensive emergency dental service for Grampian.

Lewis Macdonald: I thank the minister for his reply and welcome the fact that those discussions are taking place.

Does the minister recognise that dentists in Aberdeen provide more out-of-hours care for dental patients than is provided anywhere else in Scotland? Grampian doctors on call service offers an excellent out-of-hours medical service at the new primary care resource base at Foresterhill health centre. Will he take this opportunity to extend the principle of that kind of out-of-hours service to providing dental treatment of the same high quality?

Iain Gray: I acknowledge Mr Macdonald's interest in that area—I have answered questions from him before. I agree that the out-of-hours general medical practitioners service in Grampian and Aberdeen is particularly good. I asked my officials to speak to the primary care trust and it has assured me that it is considering that service, with the intention of establishing whether it can build out-of-hours emergency dental services in a similar fashion.

Mrs Margaret Ewing (Moray) (SNP): Does the minister agree that part of the problem is that

fewer than 50 per cent of patients in the Grampian area are registered with national health service dentists, which is the result of successive Governments' policies on charging? What action is being taken to improve that situation in the Grampian area?

This issue is particularly important in my constituency, where visiting consultants are crucial. If we had the correct number of orthodontists, we could avoid some of the emergencies to which the minister has referred. The Minister for Health and Community Care promised me action on 6 March. Is the Deputy Minister for Community Care satisfied with the progress that has been made to ensure that we have the correct number of orthodontists to serve the area?

Iain Gray: We have begun to make some progress. Progress could always be faster—we would always like it to be faster. We recently published "An Action Plan for Dental Services in Scotland", which contains some immediate measures that will be taken. The plan has been discussed and agreed with the British Dental Association. It includes a review of some of the issues that Mrs Ewing raises, for example access to NHS dentists. Measures are in progress—I hope that we will see the benefits of them soon.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): The minister will recall that I asked him about rural dental services in July. I lodged a written question on whether the Executive had any plans to introduce a dental strategy for rural Scotland. The reply referred me to the document he mentioned, in which there is only one reference to rural dental services. My question is still whether the minister has any plans to tackle the specific problems of providing an effective NHS dental service to rural Scotland.

The Presiding Officer: The question is about services in Aberdeen city. Does the minister have a reply?

Iain Gray: It is a fair comment from Mr Rumbles: access in rural areas in particular is not prominent in the document. However, improving access to dental services is part of the main thrust of our future work. I note his point that there are particular problems in rural Scotland—we must take cognisance of that.

National Health Service

4. Irene McGugan (North-East Scotland) (SNP): To ask the Scottish Executive whether the priorities for health boards and trusts of reducing waiting lists and improving service delivery to patients are compatible with meeting financial targets including, in many cases, recovering from a deficit. (S1O-2175)

The Minister for Health and Community Care (Susan Deacon): Yes. Sound financial management is key to the effectiveness of any organisation, including the NHS. Record additional investment, together with radical reform and effective management, will deliver improvements in service delivery to patients.

Irene McGugan: I thank the minister for her answer.

Will the minister give an assurance to the patients of Tayside, for example, that efforts by Tayside University Hospitals NHS Trust to reduce a waiting list of more than 8,000, while tackling a budget deficit of at least £14 million, will not be at the expense of the withdrawal of certain procedures, refusal to treat certain conditions or removal of patients from the waiting list? In short, can she guarantee that there will be no reduction in standards of health care or service delivery?

Susan Deacon: The guarantee that I can give, and that I have given in this chamber on many occasions, is that the Executive will continue to allocate record additional sums of money to the NHS in Tayside, just as it will to other parts of the country. We will continue to work through the measures that we have taken, such as the task force that is working in Tayside, in order to ensure that effective financial management systems are put in place. We will continue to drive effective change in services, as we have done in other parts of the country.

In order to provide the guarantee that Irene McGugan is looking for, an effective health care system must operate in Tayside for the benefit of patients. We are working in that direction and I hope that local management will continue to do so.

Mary Scanlon (Highlands and Islands) (Con): Will the health boards and trusts be allowed to spend the resources that are to be redistributed under the Arbuthnott report in line with their clinical priorities, or will the minister issue more guidelines, targets, aims and objectives? Will the drive to achieve efficiency savings be relaxed under the new guidelines?

Susan Deacon: It is interesting that many of the same members who look to the Executive to achieve change, set targets and drive forward improvements in waiting times seem to have difficulties when we put in place measures to ensure that those steps are taken in every part of the country.

Only today, we have seen in the Arbuthnott review major radical change in the way in which we allocate NHS resources across Scotland, ensuring that those resources are allocated on the basis of need. Of course it is for local health boards and trusts to take decisions that will meet local need, but we will continue to drive change at

a strategic, national level, to ensure that waiting times are reduced, that health inequalities are tackled and that clinical priorities—cancer, coronary heart disease and mental health—are also tackled effectively. It is our duty to do so.

Elaine Smith (Coatbridge and Chryston) (Lab): Further to the minister's comments on waiting lists and service delivery to patients, will she outline what measures, if any, to reduce waiting times for GP appointments are being considered, and whether performance targets are set and monitored for those appointments?

Susan Deacon: Tackling and reducing waiting times at every stage of a patient's experience is an absolute priority for the Scottish Executive and for the NHS in Scotland. I am pleased that the most recent figures show that steady progress is being made in reducing waiting times. An important part of that progress is a reduction in waiting times for GP appointments, but we want reduced waiting times throughout the system, from GP practice to outpatient clinic and from hospital to home. Our modernisation agenda for the NHS in Scotland looks at the patient's journey across all those areas.

Civic Government (Scotland) Act 1982

5. Michael Matheson (Central Scotland) (SNP): To ask the Scottish Executive what plans it has to review the Civic Government (Scotland) Act 1982. (S1O-2156)

The Deputy Minister for Local Government (Mr Frank McAveety): I am pleased to say that the Convention of Scottish Local Authorities has agreed to join the Scottish Executive in a task group, which will review the licensing provisions in the Civic Government (Scotland) Act 1982.

Michael Matheson: When I wrote to the Deputy Minister for Local Government earlier this year on behalf of a constituent who was attacked by a dog, he advised me that one of the pieces of legislation that could be used against dangerous dogs was the Civic Government (Scotland) Act 1982. I took his advice and pursued the matter with Central Scotland police, but the police's legal advice was that the relevant section of that act is not compliant with the European convention on human rights. Will the minister undertake a review of the relevant section of the Civic Government (Scotland) Act 1982, in order to ensure that there are proper provisions in place to deal with dangerous dogs and, in particular, that those provisions are ECHR compliant?

Mr McAveety: I am happy to say that that element of the legislation will be considered as part of the task force's work. If, in the interim, Mr Matheson would like me to encourage dogs to heed the ECHR, I shall be happy to do so.

Sutherland Report

6. Mr Duncan Hamilton (Highlands and Islands) (SNP): To ask the Scottish Executive what progress has been made regarding the implementation of the Sutherland report on long-term care for the elderly. (S1O-2192)

The Deputy Minister for Community Care (Iain Gray): We are implementing one of the two main recommendations on the regulation of care. The recommendations on charging for care are being considered in the spending review. We are making considerable progress in implementing other recommendations.

Mr Hamilton: Is the Minister aware of the 18-month delay in responding to the issue of charging? Does he accept that an irresistible coalition has been formed in this chamber to call for full implementation of the Sutherland recommendations? Does he know that members of every party in this chamber—including his coalition partners and most of his Labour back benchers—want full implementation? Will he support the key recommendation that nursing care and personal care should be free?

Iain Gray: There is no delay. The charging recommendation was always going to be part of the next comprehensive spending review process, which is now coming to a close. I made that clear on 2 December 1999, and again on 10 February, 2 March and 9 March this year. It does not matter how many times Mr Hamilton or his colleagues ask the question; that has been the clear answer, and there has been no delay. When the time comes, we will respond.

Lord James Douglas-Hamilton (Lothians) (Con): Will the minister explain why there appears to be a continuing delay if there is a decisive majority in this Parliament in favour of immediate implementation?

Iain Gray: I have already explained that there is no delay. The process that is being followed is the process that we have always described. I am puzzled by the contention that there is a demonstrative majority in this Parliament; I do not think that that contention has ever been tested.

Dennis Canavan (Falkirk West): Is the minister aware that some old people are literally worried sick about how they are going to meet the costs, if and when they are taken into residential care? Will the Scottish Executive therefore implement Professor Sutherland's recommendations in full, particularly the recommendation that personal care costs should be met from public funds? Will he do that and do it soon, rather than simply follow the shabby compromise announced by the Government at Westminster?

Iain Gray: I spend a great deal of my time

meeting older people, their organisations and those working with them, so I am conscious of their concern that the quality and extent of care for the elderly should be extended. Whether the Sutherland recommendation on personal care would be the best and most effective way of doing that is another question altogether, and one that we shall answer when we report on the spending review, as we have repeatedly undertaken to do.

Genetically Modified Organisms

7. Maureen Macmillan (Highlands and Islands) (Lab): To ask the Scottish Executive what consultation was carried out with the communities neighbouring Rosskill on the Black Isle before it was decided to conduct GM crop trials there. (S1O-2169)

The Minister for Rural Affairs (Ross Finnie): There is, I regret, no statutory provision for carrying out public consultation under the regulations and legislation governing this matter. I recognise that there is a real distinction to be made between proper consultation and public information and, in the absence of a proper consultative framework, I have taken steps to ensure that meetings will be held in the local communities where all the crop trials are to take place, with a view to increasing public access to information on the topic.

Maureen Macmillan: Does the minister accept that the communities in the Black Isle are extremely angry and frustrated? Given that Highland Council has tried unsuccessfully to have the trials halted, and given the concerns of the local MP and MSPs, does he agree that the situation is extremely unhappy? Does he further agree with the position of members of the European Parliament, who have called for measures to ensure that consultation procedures are conducted under clear rules of openness and transparency with full public access?

Ross Finnie: Let me reiterate an important point. The one thing on which the Scottish Executive and those in the Black Isle are absolutely agreed is that the prime concern is about danger to public health or to environmental safety. In discharging my responsibilities in this area, I take advice from the Food Standards Agency and from the Advisory Committee on Releases to the Environment. Unless I receive totally unambiguous advice that the trials will pose no risk to public health or to environmental safety, I would not and will not consider granting those trials.

I will deal with the second issue, which I regard as unsatisfactory, which is the fact that although EU directive 90/220/EEC refers obliquely to public consultation, there is no legislative framework for carrying that out. The Environmental Protection Act 1990, which gave rise to the implementation of that directive, is silent on that matter which makes it extremely difficult.

Public consultation must be a process in which the consultee believes he or she can influence the outcome. It would be an act of sheer hypocrisy for me to hold a meeting in public and claim that that was public consultation. That is why I have stuck to providing information because I would be misleading the public if I were to do otherwise.

After I have so satisfied myself in terms of the regulation, there are no powers within that regulatory framework that would allow me to defer or postpone a decision.

Mr John Munro (Ross, Skye and Inverness West) (LD): In view of the fact that the Scottish Natural Heritage northern board has now withdrawn its approval for the GM crop trials at Rosskill farm in the Black Isle, will the minister reconsider his position and stop this doubtful experiment?

Ross Finnie: I regret to advise John Farquhar Munro that that is not quite the case. The board has not withdrawn its advice to me. There is clearly a public dispute between members of SNH and its board, which is not in my domain. I have not received a withdrawal of its scientific advice; therefore it does not alter my position.

Alex Johnstone (North-East Scotland) (Con): Does the minister remember that we last heard a full debate on this subject on 23 March, when we debated GM science? That debate took place in the wake of the announcement of GM crop field trials in Aberdeenshire. He may remember that during that debate there was widespread support for the motion, which included—I notice on the list that I have in front of me—support from Maureen Macmillan and John Farquhar Munro. Does he acknowledge that in other chambers there has been a sudden change of heart on this issue? Does he agree that there is, in the fact that many of these members were willing to support crop trials in Aberdeenshire but speak out in this chamber against crop trials on the Black Isle, an element of the most cynical hypocrisy?

Ross Finnie: I have to say that Alex Johnstone is getting more like Geoffrey Howe every day. That kind of question is very much like being savaged by a dead sheep. I do not think that Alex Johnstone is reading or listening to what people are saying. The biggest single anxiety arising from this process is, without any doubt, the absence of a statutory framework for public consultation. It does not exist. I do not think that members would expect me, as a minister, to act unlawfully. We have every sympathy, in that there is all sorts of misleading and unhelpful information as to the nature of those trials. For example, the trials are

not to test safety in terms of public health or the environment; they are to test biodiversity in the locality of the trial site. If that public information were more widely available, I think that many of the concerns would dissipate.

Richard Lochhead (North-East Scotland) (SNP): I appreciate that the issue of GM crop trials is difficult for Ross Finnie. After all, Charles Kennedy, his UK leader, is against the trials and Ross Finnie here in Edinburgh is for the trials. John Farquhar Munro in the Highlands is taking on board local concerns, while Nora Radcliffe in the north-east of Scotland is ignoring local concerns.

Can the minister tell us exactly what Liberal Democrat policy is on consultation with local communities? Will he undertake to come to Daviot in Gordon in the north-east of Scotland, and to the Highlands, to appear in person at a public meeting and hear local concerns for the first time?

Ross Finnie: There are two matters of substance in this issue, which both John Farquhar Munro and Charles Kennedy have raised. The first matter, of paramount importance, is that of public health and the possible danger to environmental safety. Both my colleagues are concerned about it. I can only repeat that under no circumstances would I authorise any trial where I did not have independent advice from the Food Standards Agency and the Advisory Committee on Releases to the Environment—[*Interruption.*]

I have made it clear that under the legislation I do not have power to delay the trial.

The second issue is public consultation. One can hold a meeting in which one seeks to inform, but one should not dress that up as an act of consultation, in which participants have a legal means of influencing the decision under the regulations. I am willing to hold public information meetings.

As Richard Lochhead is well aware, John Farquhar Munro and I have met the convener of the Highland Council and others. It was at that meeting that we agreed the timetable for such public meetings.

Liquid Petroleum Gas (Conversion Grants)

8. Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): To ask the Scottish Executive how many grants have been paid to convert motor vehicles to use liquid petroleum gas and whether it has set or will set a target for the number of such grants which are to be paid in future. (S1O-2178)

The Deputy Minister for Highlands and Islands and Gaelic (Mr Alasdair Morrison): Since 1997, 390 vehicles have been converted in Scotland with the assistance of grant under the Energy Saving Trust's powershift scheme. No numerical target is set for grants as the amount that is payable is dependent on the emission reductions that are achieved by the type of vehicle that is converted and the cost of each conversion.

Fergus Ewing: Does the minister agree that liquid petroleum gas is a matter of complete irrelevance for the overwhelming majority of motorists in the Highlands and Islands, who pay the highest fuel tax in the world? Now that we are approaching the £4 gallon and the £1 billion millennium dome, can new Labour and its Liberal colleagues say whether they will take or promote any action to end the discrimination against motorists in the Highlands and Islands? If so, in which millennium?

Mr Morrison: Whenever I hear Fergus Ewing talking about fuel, I am inclined to stand up and yawn, but I suspect that that is not an acceptable response.

The Highlands is now the place where one can access the cheapest fuel in the United Kingdom. I am disappointed that Mr Ewing cannot welcome a fantastic initiative by the UK Government, the Scottish Executive and the oil companies. I wish that he had the common sense of another Opposition politician, Mary Scanlon, who had the good decency to welcome the initiative and recognise its merits. I wish that Mr Ewing had employed a new speechwriter over the summer.

The Presiding Officer: The question is about LPG grants, and I call Rhoda Grant.

Rhoda Grant (Highlands and Islands) (Lab): Can the minister give an assurance that the Scottish Tourist Board will highlight the availability of LPG throughout the Highlands and Islands? Given that many European motorists use dual-fuel cars, that could give a much-needed boost to tourism in the area.

Mr Morrison: Mrs Grant raises a very important point. Two weeks ago at the opening of the first station in the Highlands, in Evanton, I was struck by the fact that it had sold 2,000 litres of fuel in two weeks without any pre-publicity or advertising. We have to appreciate that many motorists across the EU use bi-fuel cars. For example, about 1 million motorists in Italy, and 500,000 in the Netherlands, which are both important tourism markets for Scotland, use such cars. Sarah Boyack made that point to the Scottish Tourist Board at a meeting earlier this week, and I will be happy to reinforce that message next week when I discuss various matters with Lord Gordon, the chairman of the Scottish Tourist Board.

Water (Fluoridation)

9. Robin Harper (Lothians) (Green): To ask the Scottish Executive whether it intends to proceed with adding fluoride to Scotland's drinking

water supplies and what the exact status is of any preparations for such fluoridation. (S1O-2201)

The Minister for Health and Community Care (Susan Deacon): The Executive's programme for government promised a widespread public consultation on fluoridation as part of a wider package of measures to improve dental and oral health. That remains our position. Arrangements for the consultation will be announced in due course.

Robin Harper: Will the minister concede that tooth decay in children is mainly the result of poverty, poor diet and poor dental care and that fluoridating drinking water will only cover up those rather more fundamental problems? Will she pay attention to bullet point 3 on page 7 of "An Action Plan for Dental Services in Scotland"? Before charging ahead with fluoridation, will she consider properly cheaper and more effective alternatives, such as breakfast clubs, a huge expansion of the programme of providing free toothbrushes and toothpaste to children and ensuring access to fresh fruit and vegetables?

Susan Deacon: I am pleased to confirm that we have already moved forward on the examples that Robin Harper highlights. Only a few weeks ago, I announced our proposals—through the additional investment that we have allocated for improving health and taking forward our public health programme—for moving towards a massive expansion of the number of breakfast clubs in Scotland and to provide free toothbrushes and toothpaste to more than 100,000 Scottish children by 2001.

It is important to acknowledge that we recognise also that action across a broad range of fronts is required if we are to improve Scotland's dental health record. I hope that this is an area in which we can get agreement across parties, because I do not think that we disagree on the objective.

Let me also take this opportunity to remind members what we must tackle. More than 60 per cent of three-year-olds in disadvantaged areas of Scotland have experienced dental decay. Children in our poorest areas have three to four times the amount of dental decay of their counterparts in the most affluent areas. I am determined that we should take action right across the board to do something about that. I hope that colleagues will join me.

Mr Andy Kerr (East Kilbride) (Lab): Given that more than half of five-year-olds still have signs of dental disease and that 18 per cent of adults have no teeth, does the minister agree that improving children's dental health is an absolute priority? Will she reassure me that the Executive is making progress towards its target of 60 per cent of five-year-olds having no dental disease by 2010?

Susan Deacon: The measures to which I alluded a moment ago are evidence of the fact that we are committed to working actively towards that target. I am pleased by the constructive discussions that we have had with the British Dental Association and others to ensure that we move forward. Of course, there must be measures to improve dental and oral health, but we must also have measures to improve our children's diet. We are working across all of those fronts and will continue to do so.

Mr Brian Monteith (Mid Scotland and Fife) (Con): Does the minister agree that fluoridation of Scotland's water supplies would be mass medication without consent, which would severely violate civil liberties and individual choice and would be an example of the worst excesses of the nanny state that new Labour epitomises?

Susan Deacon: The short answer is no. However, I appreciate that people have different and very strongly held views on the issue, which is precisely why the Executive is committed to moving forward on the basis of consultation. That is the basis of the discussions that we have had in recent months with the BDA and others.

I have examined the evidence closely and believe that there is very strong evidence to suggest that fluoridation can have a dramatic impact on the health of our children's teeth. I repeat, however, that this is a matter to be decided on a cross-party basis in consultation with people throughout Scotland. That is why it is important that we have a well-informed and mature debate on the issue and I hope that Brian Monteith will raise his game in that respect in the months ahead.

National Health Service

10. Shona Robison (North-East Scotland) (SNP): To ask the Scottish Executive why the national health service waiting lists in Tayside have risen by over 35 per cent during the past 12 months. (S1O-2176)

The Minister for Health and Community Care (Susan Deacon): The waiting list increase in Tayside has been due primarily to the effect of winter pressures last year and shortages of staff in specific specialties. Today, a performance management team from the health department is meeting the NHS in Tayside to examine the plans for investment and action to reduce waiting in the months ahead.

Shona Robison: Today, I received a letter from Derek Maclean, the medical director of Tayside University Hospitals NHS Trust, which states:

"I share your concerns over funding pressures and possible impacts on future waiting lists."

Given the concerns that are being expressed by the medical profession, will the minister guarantee that the cutbacks resulting from the £14 million deficit will not lead to further increases in waiting lists in Tayside and will she further agree to allow the trust—as a bare minimum—an additional year in which to try to pay off the deficit in Tayside?

Susan Deacon: I repeat my earlier point—and will keep repeating it until members recognise the facts of the situation—that substantial increased investment has gone into Tayside, as it has into other parts of the NHS. It is important that that increased investment is effectively managed. Although we have already taken action by working with local trusts to ensure that that happens, we must ensure that local management in Tayside manages resources effectively to protect and improve services for people throughout the region. We will continue to do that.

Mr John McAllion (Dundee East) (Lab): Common sense suggests that having to reduce a £14 million deficit over two years must affect the trust's ability to deliver services and reduce waiting lists. However, does the minister accept that there is a national and a local responsibility for that deficit, because the management executive in Edinburgh approved the use of one-off capital receipts to fund recurring expenditure that was not included in the revenue budget of Tayside University Hospitals NHS Trust?

Furthermore, has not the time come to tackle the problem that is at the root of the trouble in Tayside, which is the problem of trying to run a major teaching hospital such as Ninewells on the basis of a population of only 400,000? If acute services in Scotland are being delivered through a network of four or five big teaching hospitals throughout the country, why do we need 15 health boards and why do not those health boards match the delivery of acute services across the country?

Susan Deacon: As ever, John McAllion raises a challenging range of issues, and I will do my best in the couple of minutes that are available to address each of them in turn.

First, in the report that was published by the task force that has examined the NHS in Tayside, there were a number of comments about systems within the health department. I am pleased to say that action is being taken in that respect. Changes to the structure of the department and in its personnel have been made and should be reflected in national improvements in performance management in the months ahead.

There was a practice—which was widespread in the NHS in Scotland under the Tories and the internal market—in which substantial sums of money were transferred from capital into revenue to the detriment of long-term investment in the service. We have changed the rules on that this year for the first time so that capital investment is precisely that and we reinvest in building the service.

On the wider questions that were raised by John McAllion, a core part of our agenda for the modernisation of the NHS in Scotland—as I set out in the debate on the last day before the recess—is to examine the structure, systems and governance of the NHS in Scotland to ensure that it is as effective as possible in the years to come. We will develop that debate in the months ahead.

Roads (A96)

11. Nora Radcliffe (Gordon) (LD): To ask the Scottish Executive what plans it has to improve road safety on the A96 between Inverurie and Huntly in the light of the five fatalities that have occurred on that stretch of road in recent weeks. (S1O-2166)

The Minister for Transport and the Environment (Sarah Boyack): As part of an on-going programme of works to improve safety on the A96 trunk road, two schemes between Inverurie and Huntly are being progressed.

A junction improvement scheme at Slioch crossroads will be constructed this year at an estimated cost of £370,000. In addition, it is anticipated that construction work on the Newtongarry climbing lane scheme will commence in spring 2001, at an estimated cost of £3 million.

The Scottish Executive is also preparing the Coachford alignment improvement and climbing lane scheme, which is approximately five miles north of Huntly, at an estimated cost of £3.5 million. It is expected that draft orders will be published in the summer of 2001 and—subject to the completion of the statutory procedures—construction should start in 2002.

Nora Radcliffe: Although those measures to improve the A96 are welcome, does the minister agree that they are only interim measures and that a major arterial route such as the A96 should be dual carriageway along its entire length?

Sarah Boyack: Although that has been considered, traffic flows meant that it was not justified as a priority at the time. However, I can assure Nora Radcliffe that we will continue to identify safety improvement schemes and programme them into the system. We will also review the experiences of last month—the accidents on that stretch of road—and will include the results of that review in our future programme of works.

Brian Adam (North-East Scotland) (SNP): How many more sets of flowers at the side of the road will I have to see before the minister starts

taking action on some of the roads in the north-east? Although I welcome the fact that there will be some improvements on the A96, will she conduct a safety audit on the road? Furthermore, will she publish the contents of that audit, which she failed to do with the safety audit of the A90?

Sarah Boyack: The purpose of identifying safety audits is to analyse the opportunities to improve stretches of trunk roads. That is an opportunity to make sure that we tackle those roads for the future. As I outlined in my answer to Nora Radcliffe, we are making significant improvements to the A96 and will continue to do so.

First Minister's Question Time

SCOTTISH EXECUTIVE

Cabinet (Meetings)

1. Mr Alex Salmond (Banff and Buchan) (SNP): To ask the First Minister what issues were discussed at the last meeting of the Scottish Executive's Cabinet. (S1F-504)

The First Minister (Donald Dewar): It is as though I had never been away. The Cabinet discussed several matters of significance to the Executive and to the people of Scotland.

Mr Salmond: I thought that the discussion might have been on education, education, education.

Is the First Minister aware of the terms of section 9 of the Education (Scotland) Act 1996? That section states that the Secretary of State for Scotland, whose responsibilities in this regard lie now with the Minister for Children and Education,

"may, after consultation with SQA, give SQA directions of a general or specific character with regard to the discharge of its functions and it shall be the duty of SQA to comply with such directions."

Given that that is in the act, why did the Minister for Children and Education try to persuade us yesterday that he did not have those powers?

The First Minister: The advice that I received is that ministers could not use their power of direction in any way that would have the effect of the Executive taking over any of the Scottish Qualifications Authority's functions. The power of direction refers to the SQA's substantive functions as conferred by statute; devising, accrediting and awarding qualifications and assessment. It does not apply to incidental matters such as staffing or allocation of responsibilities in the organisation. There is no way in which the SQA's functions could revert to ministers without primary legislation.

I assure Mr Salmond that the Executive is extremely interested in education, education, education. That is why—if he bothers to look at the statistics—he will see that we have more teachers in primary and secondary schools than we had a year ago, more classroom assistants, a better pupil to teacher ratio and a much more healthy educational outlook.

Mr Salmond: I noticed that the First Minister moved quickly away from discussing what is in the act. The act refers to the discharge of the SQA's functions and the power of compliance that is given to the minister. Given that, why did Mr Galbraith say the following to Mr Harper yesterday?

"As I think I explained, and as will now be clear to everyone, I have absolutely no powers to instruct the SQA to do anything."—[*Official Report*, 6 September 2000; Vol 8, c 30.]

Is that statement true or false, given what is in the act?

The First Minister: I have made that clear. Mr Salmond will appreciate the distinction between a departmental agency and a non-departmental public body. Of course we have a right in statute to lay down the terms and conditions in the terms of the—[*Interruption.*] It would help if Nicola Sturgeon would stop shouting. At times, the Scot Nat benches sound like a cliff of seagulls, which does not help the standard of debate.

Of course there is a power to lay down directions with regard to the objectives of the organisation and its task. However, it is an arm's-length body—it employs its own staff, it controls its own staff and we do not have the power to walk through the door and take over. It is important to recognise that.

The first thing that matters at this point is not a discussion about textual legal interpretation between Mr Salmond and myself—neither of us is expert in the matter. The first priority is to make sure that we get the matter put right. We must get the system in good order and in a situation in which we can tell parents, pupils and teachers that there will be no repeat of the difficulties that we have seen in the past few months. That is what Sam Galbraith is making sure of and I strongly support it.

Mr Salmond: As an explanation for Mr Galbraith telling us yesterday that he did not have those powers, I offer the fact that he was trying to shift the entire responsibility and blame onto the Scottish Qualifications Authority.

Will the First Minister accept what every parent, teacher and student in Scotland knows; that the man who has presided over this educational disaster should take responsibility for it?

Will the First Minister, with his considerable parliamentary experience, accept that an education minister who has been caught so blatantly dissembling to Parliament should not be in office at 5 o'clock this afternoon?

The First Minister: No, I absolutely reject the charge of dissembling to Parliament and I hope that Alex Salmond will regret it when he starts to think in retrospect about this particular exchange.

I repeat: the job of the chamber and of everyone in it is to ensure that we get the matter right and that we achieve a secure future for the pupils, teachers and parents in the Scottish educational system. I want the inquiries—set up by the Education, Culture and Sport Committee and other committees—to be carried through with thoroughness, integrity and balance. I hope that those inquiries analyse and inform and illuminate the chamber.

I am concerned about some of the things that have been said—Nicola Sturgeon provides an example. She stated:

"Through the education committee's inquiry, his role and culpability will be plain for all to see, and after that inquiry, there will only be one possible outcome - Sam Galbraith's removal from office."

I ask Mr Salmond to consider this: would not it be better to ask Ms Sturgeon to step down from the committee? If it were any sort of independent tribunal, she would certainly be barred from taking part on the ground of evincing malice.

Scottish Cabinet

2. David McLetchie (Lothians) (Con): To ask the First Minister whether he has any plans to reshuffle his Cabinet. (S1F-500)

The First Minister (Donald Dewar): No.

The Deputy Minister for Local Government (Mr Frank McAveety): You're no getting in, David.

David McLetchie: I can assure Mr McAveety that it would be a substantial improvement if I did.

Many candidates come to mind for a change of a position and Mr Galbraith is obviously among them, given the evidence of the past day or two.

I wish to pick up on a couple of the points that were raised initially by Mr Salmond, in particular the business about dissembling or misleading Parliament. Yesterday, Mr Galbraith was asked by Mrs Smith about his powers in relation to the Scottish Qualifications Authority. In answering, he omitted to mention that he has wide-ranging powers of direction, which are of a

"general or specific character with regard to the discharge"

of the functions of the SQA.

I put it to the First Minister that such convenient paraphrasing was misleading to Parliament and that that should be corrected by the Minister for Children and Education. The minister should stop hiding behind semantic distinctions between an instruction on the one hand and a wide-ranging power of direction on the other.

The First Minister: That is not the information and advice that I have been given. I put it in those terms because I do not pretend to be a constitutional lawyer.

I repeat to Mr McLetchie the point that I made to him earlier: that there is clearly a power to lay down in statute the aims, objectives and remit of the SQA. The point of the authority is that it is an arm's-length organisation. That is the point of a

non-departmental public body, as distinct from a public body that has some sort of remit that lies within the Executive itself, or a next-steps agency. There is a gradation and the authority is, as a non-departmental public body, at the far edge of it.

I know that it is convenient to argue—I understand this—that we could just ignore the statutory basis of the organisation and that we could ignore the rules. However, if we had done so, we would have been in considerable difficulties, and I hope that Mr McLetchie will consider that carefully. It is an interesting area that will have to be considered by Mr McLeish and Mr Galbraith—no doubt many other people will want to help them—when they examine the review of the relationships between the Executive and that non-departmental public body.

It is a serious issue, because there have always been seen to be real advantages in independence of action and impartiality and in removing relevant matters from direct political control. I do not think that Mr McLetchie in particular—if I may say so, given the political traditions from which he comes—should simply ignore that and sweep the matter to one side.

David McLetchie: It is not a question of ignoring the matter; it is a question of interpretation of the powers that are available to ministers. I think that the First Minister will acknowledge that I would never endorse breaking of the law by any representative of the Scottish Executive in his or her ministerial capacity.

Will the First Minister confirm for the record that no action could have been taken by the Scottish ministers in exercising their powers under section 9 of the Education (Scotland) Act 1996 which would have corrected the situation that existed until 13 August? Will he confirm that there is no action that could have been taken by Scottish ministers in exercising their statutory powers that Mr Galbraith omitted to take?

The First Minister: If Mr McLetchie follows closely—as I am sure he will—the investigations of the committee of inquiry, he will discover that a great deal of action was taken in terms of the advice that was offered, continuous contact and the efforts that were made to unscramble an increasingly difficult situation. It would be sensible to wait until the story has been told—until it has unfolded and has been investigated with, I hope, the kind of impartiality that the chamber expects.

I hope also that Mr McLetchie will take pleasure—as I do—in the figures that Sam Galbraith announced yesterday, which show that 23,694 Scottish students have definitely been allocated university places. That is 2.6 per cent more than had been accepted at the same stage in the process last year, and the figure is well above the much smaller increase in the number of English acceptances.

Drugs

3. Ms Margaret Curran (Glasgow Baillieston) (Lab): To ask the First Minister what measures are being taken to ensure that Scotland works together with the rest of the United Kingdom in tackling drug trafficking and drug dealers. (S1F-514)

On behalf of my Labour colleagues, I welcome the First Minister back to question time.

The First Minister (Donald Dewar): I thank Margaret Curran for her welcome. It is with mixed feelings that I find myself standing here, but I am looking forward to the future.

There is an enormous amount of co-operation across and between the agencies north and south of the border. The Scottish Drug Enforcement Agency is well placed to co-ordinate its activities with those of the UK law enforcement agencies, including the National Criminal Intelligence Service and HM Customs and Excise.

Ms Curran: I thank the First Minister for that reply and welcome the determination behind those concerted efforts.

Does he agree that the most effective way in which to pursue the drug dealers who so ruthlessly exploit our communities—as is graphically demonstrated in my constituency in the east end of Glasgow—is to use assertively the powers of Parliament and to work in partnership and constructively across borders as a devolved Scotland within the framework of the United Kingdom?

The First Minister: Drug dealers do not respect national or administrative boundaries—it is important to remember that. I do not want to end with a flurry of statistics, but there is no doubt that the work of the police has been impressive. Between 1990 and 1998, seizures of drugs rose from 5,900 to 27,000 cases. That reflects increasing efficiency, but sadly, it also probably charts the increasing difficulties, danger and spread of the misuse of drugs. I agree that we will have to make our contribution and learn from other places. There is much talk about the seizure of assets and we are trying to find the right way to hit the pockets of the people who have been dealing drugs. Of course, we are also leading the way on the enforcement side with the Scottish Drug Enforcement Agency, which the Prime Minister visited the other day.

Mr Keith Raffan (Mid Scotland and Fife) (LD): What assurance can the First Minister give to the chief constable and deputy chief constable from different Scottish police forces who, in meetings

with me, have questioned the need for the Scottish Drug Enforcement Agency and the difference that it will make? They have expressed concern that they might lose some of their senior drugs officers and feel that the money that is being spent on the SDEA would be better spent on cutting demand, through further increased provision for treatment, rehabilitation and aftercare.

The First Minister: I understand that local people will often feel that way. However, I believe that the Scottish Drug Enforcement Agency has an important role to play. It will bring in 100 new police officers, who will develop special expertise in dealing with sophisticated drug dealers. It has been regarded widely as a helpful and progressive development in the enforcement field.

Keith Raffan will know that in May, I think, £8.9 million of additional money was allocated to police forces and it is expected that that will mean an additional 300 police officers. That will, I hope, help. We keep the situation under review always and I look forward to being able to help the police to maintain a really efficient service in this area.

We have been talking about enforcement, which takes about 45 per cent of the budget. We spend about 55 per cent on treatment and it is very important that we do not forget how vital preventive measures are in trying to help people who are the victims of drugs as certainly as are those who suffer from drug users' predations.

Less Favoured Areas Scheme

4. George Lyon (Argyll and Bute) (LD): To ask the First Minister how the Executive will ensure that farmers and crofters in the Highlands and Islands get an adequate level of compensation for high transport, fuel and ferry costs under the new less favoured areas scheme. (S1F-513)

The First Minister (Donald Dewar): The immediate priority is to secure early European Commission agreement to Scotland's rural development plan. That will enable LFA payments to be made to Scotland's farmers and crofters next March. Where the switch from headage to area payments results in claimants receiving less than they will this year, individuals are guaranteed payments that are equal to at least 90 per cent of the current year's support.

George Lyon: Thank you. Is the First Minister aware that the new less favoured areas scheme is designed to compensate farmers and crofters for permanent and severe climatic and geographical disadvantage? That means compensation for the high transport and fuel costs experienced by farmers in the Highlands and Islands, which would put them on the same competitive playing field as their counterparts in central and lowland Scotland. The First Minister should be aware that farmers in Kintyre made a comparison between identical farms in Kintyre and in Lanarkshire. The difference per year in Kintyre because of extra costs was £8,000. I ask for the First Minister's assurance that the new scheme will take those extra costs into consideration and deal with it when it is finalised.

The First Minister: As George Lyon of all people knows—with his background and the offices he has held—we cannot alter arbitrarily payments that are made under the auspices of the European Union, even if we were so minded. It is important that we have a Government that has shown, during the past two or three years of crisis, that it is prepared to release substantial sums of money to help agriculture. It has also—with the rural transport fund, the public transport fund, vehicle excise duty remissions and the extent to which livestock exports from Orkney and Shetland are helped by a rebate—tried to tackle the other problems that people in rural areas face. A whole range of measures are being undertaken. Of course we are always under pressure—and rightly so—to do more and to do better, but we will do everything we can to maintain the industry. We have made that clear repeatedly and, more important, we have put our money where our mouth is.

Mr Jamie McGrigor (Highlands and Islands) (Con): Is the First Minister aware of the scale of the collapse of hill-farming and crofting incomes since his party came to power? What comfort can he give to crofters and farmers in the Highlands and Islands that the less favoured areas scheme will be enough to sustain agriculture in the hills in future?

The First Minister: I do not know where Mr McGrigor farms or how he farms—

The Deputy Minister for Rural Affairs (Mr John Home Robertson): Or on what planet.

The First Minister: Perhaps fortunately, I did not catch that agricultural remark from another farmer.

Of course we understand that it has been bad, that it has been tough and that there has been a substantial drop in farm incomes. I am glad to say that conditions seem to have improved in the beef sector. There has undoubtedly been a revival in lamb prices. I think it is also fair to say, although I look to greater experts than myself, that there has been some recovery in pork prices as well, which has helped the very hard-pressed pig industry.

I do not think anyone of fair mind would deny that we have been able to supplement substantially the £0.5 billion European support payments for farmers in Scotland. I do not apologise for that—we were glad to do it—but the real task now, in which Ross Finnie is playing a distinguished role with excellent co-operation from

the National Farmers Union of Scotland, is to try to see how we can move to a sustainable rural economy that has farming at its heart.

It will be not easy to do that, but we must do it. We cannot continue indefinitely on the present basis.

Local Government (Pay)

5. Mr Kenneth Gibson (Glasgow) (SNP): To ask the First Minister what steps the Scottish Executive is taking to resolve the local government pay dispute. (S1F-498)

The First Minister (Donald Dewar): Local authority pay is, of course, a matter for the local authorities and the unions to resolve. That is undoubtedly true. The Executive is not represented in the negotiations. Obviously, we have an interest in those negotiations—everyone has—but we will have to wait until a negotiated settlement emerges.

Mr Gibson: Is the First Minister aware that the Convention of Scottish Local Authorities has stated categorically that the much vaunted extra resources that his Government has allocated to local authorities this year do not even cover new burdens? Is he also aware that Scottish local government employees have had pay rises below the rate of inflation for six of the past seven years and now earn approximately 17 per cent less than their counterparts south of the border? Does he believe that local government employees in Scotland should earn 17 per cent less than their counterparts in England and Wales? If not—as he is not going to put in any extra resources from his own budget—does he believe that council tax payers should meet the costs of additional pay rises for local government workers? I want a direct answer. Are workers in Scotland worth less than those south of the border? Should council tax payers pay more?

The First Minister: Demanding direct answers or shouting, in a rather ludicrous fashion, "Yes or no!" never leads to a great advantage. Mr Gibson is guilty of both on occasions.

This is a matter for negotiation. I have no doubt that Mr Gibson has been looking, as I have, at the Unison material that has been issued in connection with the dispute. He will have seen that Unison is making the point—very powerfully—that Government-supported expenditure to local authorities was 3.6 per cent. It suggests that the settlement last year and the promised settlements above the rate of inflation over the next two years leave proper room for negotiations between the parties. That is the traditional way in which such matters are settled.

We will have to wait to see what emerges from the 2000 spending review. If Mr Gibson is pledging—and I think that he is a front-bench spokesman—that the SNP will simply meet the bill for any settlement that is negotiated, he is not in the world of practical government.

Tommy Sheridan (Glasgow) (SSP): Does the First Minister recall his position of seven years ago, when the Tory Administration introduced responsibility for local government pay as a function of the central Government settlement? I recall that his party opposed that move. Did the First Minister oppose that move seven years ago?

In the *Sunday Mail* last Sunday, it was reported that nursery nurses who had worked for 32 years are now earning £12,000. Does the First Minister think that Unison members are justified in taking industrial action?

The First Minister: I thought that Mr Sheridan was going to tell me what my views were seven years ago and I was going to be very flattered that he had followed my career in such detail. I believe strongly that the settlement of pay disputes is a matter for negotiation between the employers and those who represent the workers. That is the simple way and the best way of doing it. There are, of course, exceptions—for the teachers we have the pay review body.

There is a legitimate argument over whether that idea should be expanded. However, that is not the position just now. We will try to do all we can to create economic circumstances that allow the negotiations to take place in a reasonable atmosphere. However, those negotiations must be a matter for agreement between the sides. It cannot be a matter of our simply agreeing to underwrite the gap and saying that we will pay for the gap, whatever it is.

Dorothy-Grace Elder (Glasgow) (SNP): Does the First Minister accept the disgraceful principle that council workers in Scotland are paid something like £17 a week less than their council worker counterparts in England? Is he telling me that we in Scotland cannot afford even to pay our public authority workers a living wage while £1,000 million has been squandered in Greenwich on the symbol of Mr Blair's megalomania—that dreadful dome?

The First Minister: I will not swap insults with Dorothy-Grace Elder about megalomania. I think that she has me well beaten on the Richter scale.

Last year the local government settlement was higher in Scotland than in England. No doubt we would have been rather annoyed if there had been protests about that. Of course I want good wage rates in Scotland and I want negotiations conducted speedily to produce results that are accepted by both sides as fair. However, if Dorothy-Grace Elder is inviting me to endorse the principle that every time there is a stand-off we

should come in rattling the money bags, I cannot do that.

The Presiding Officer: That concludes question time.

Michael Russell (South of Scotland) (SNP): On a point of order, Presiding Officer. There appears to be a conflict between what we have just heard in question time and what the Minister for Children and Education said at column 30 of yesterday's *Official Report*. I ask for your advice on what procedure should be followed by the chamber if a minister appears to have misled it. I think that it is appropriate to ask you for that advice.

The Presiding Officer: That is certainly not a point of order, but I am always willing to give advice. You will simply have to continue the argument.

Regulation of Investigatory Powers (Scotland) Bill

The Presiding Officer (Sir David Steel): We now move to the debate on motion S1M-1136, in the name of Jim Wallace, which seeks agreement that the Regulation of Investigatory Powers (Scotland) Bill be passed. I invite those who would like to take part in this debate to press their request-to-speak buttons now.

15:36

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): The Parliament has considered a very important piece of legislation at all its stages, particularly in committee at stage 2. I am glad that the constructive examination to which Parliament has subjected the bill during its various stages has countered some of the misleading media coverage of what the bill entails.

For the avoidance of doubt, I will make clear again what the bill is about. It places on a statutory footing the investigative powers currently used by the police and other agencies, carefully regulating their use and offering safeguards to the public. The bill underlines the Executive's commitment to a secure Scotland—a Scotland where individuals and communities are free from crime and the fear of crime—while at the same time furthering our commitment to an open and fair society.

This legislation will protect Scottish citizens. The bill safeguards the use of valuable techniques already used by public authorities for the security and protection of our community. Unfortunately, modern Scotland has modern criminals. As Gordon Jackson said this morning, there are a lot of bad people out there. As he also pointed out, they are sophisticated bad people, using sophisticated criminal methods. Often surveillance techniques and the use of informants or undercover police officers offer the only realistic means of successfully tackling serious crime. The Regulation of Investigatory Powers (Scotland) Bill will play a vital role in safeguarding the use of those important techniques.

It is important just for a moment to reflect on the types of crime that the police are dealing with here: crimes such as drug trafficking, which was mentioned at question time, extortion rackets and murder. As I said in the stage 1 debate, surveillance last year played a key role in 109 arrests by Scottish police forces, 99 of which related to drug trafficking. Surveillance continues to play an important role in police operations. Surveillance operations have led to Scottish police forces and the Scottish Crime Squad making a total of 147 arrests so far this year, 119 of which

were for drug offences.

Just as important, the bill represents a significant step forward in the protection of civil liberties and human rights. It will ensure that the use of covert surveillance techniques is compatible with the European convention on human rights. In doing so, it will for the first time provide a legislative framework for the use of surveillance techniques in Scotland. It will protect Scottish citizens' rights to respect for their private and family life, their home and their correspondence.

Despite what some of the more lurid newspaper articles have suggested, the bill is not a statutory embodiment of Big Brother—far from it. It will ensure that surveillance techniques are used only for specific and necessary reasons, that they are proportionate to the criminal activity in question and that they are properly authorised. Furthermore, for the first time, the use of such techniques will be subject to independent oversight and there will be access to a tribunal for those who believe that they have wrongly been the subject of investigation.

As members will be aware, the bill is the Scottish counterpart to the UK Regulation of Investigatory Powers Act 2000. There are clear operational advantages in having similar regimes north and south of the border. The similarity between part II of the United Kingdom act and the Regulation of Investigatory Powers (Scotland) Bill is no coincidence. There are occasions on which a similar approach throughout the United Kingdom is both sensible and practical—this is such an occasion.

As we know, criminals pay no heed to national borders. Therefore, it is important that the UK act and the Scottish bill fit together in order to provide a UK-wide framework. We can be sure that criminals would be quick to utilise any gaps or loopholes in the legislation. The Home Office and the Scottish Executive have worked closely to co-ordinate and formulate joint policies in this respect. Those policies reflect Scottish interests as well as those of England and Wales.

As well as ensuring compatibility between the UK act and the Scottish bill, we had to resolve certain complex legal issues of legislative competence. As a result, the bill was delayed and had to proceed through Parliament quickly for it to be in force in time for the full commencement on 2 October this year of the Human Rights Act 1998.

I record my thanks to Roseanna Cunningham as convener of the Justice and Home Affairs Committee and to the other members of the committee. Today and during stage 2—Angus MacKay advises me—the committee members have shown considerable interest in and knowledge of the matters under discussion. They have helped to ensure that the bill has proceeded in such a way as to meet the requirements and hopes that we hold for it. I thank the committee clerks and officials for their co-operation in reacting to short deadlines. I realise that, at times, the bill has diverted the Justice and Home Affairs Committee from its own business and I would like to thank everyone involved for their patience.

I must also express my gratitude to my colleague Angus MacKay. My role as Deputy First Minister, particularly during the absence of the First Minister, meant that I was unable to lead the bill through all its parliamentary stages. I thank Angus MacKay for the work that he has done in that respect.

I would also like to thank the officials in the justice department, who have done a considerable amount of work—not least in liaising with the Home Office—to ensure that the bill meets the pan-United Kingdom approach needed to ensure its effectiveness.

The Regulation of Investigatory Powers (Scotland) Bill is an important piece of legislation. It protects the safety of Scotland's citizens as well as their freedom and privacy. It strikes the proper balance between crime prevention and safeguarding the rights of individuals.

I move,

That the Parliament agrees that the Regulation of Investigatory Powers (Scotland) Bill be passed.

15:43

Michael Matheson (Central Scotland) (SNP): As a member of the Justice and Home Affairs Committee, I would like to begin by thanking the clerks for their tremendous efforts in assisting the committee and in ensuring that the bill proceeded on time.

I have some concerns about the way in which the bill was rushed through Parliament, as that limited the amount of time that we had to consider various of its provisions. As the Deputy First Minister has said, the need for the rush was to ensure that the legislation was in place for 2 October. However, several members have raised concerns about the timetable. During the stage 1 debate, Robin Harper told us that several organisations were unable to give evidence to the committee because the time scale for evidence taking was too short to allow them to be fitted in. That is a matter of regret.

When the bill was first introduced, like many members I was rather suspicious of it. I am on record as saying that any bill that has the abbreviation "RIP" should be treated with suspicion—particularly when it deals with

surveillance. However, as the Deputy First Minister has outlined, the intention of the bill is to achieve a balance between civil rights, human rights and the ability to carry out surveillance. The bill achieves that to some extent, although I have reservations about several areas.

Before I started to consider the bill, I had no knowledge of the process of undertaking surveillance. I have been on a steep learning curve over the past couple of months, particularly in relation to how the legislation applies to the surveillance world. I am not sure whether that has reduced or heightened my suspicion of the way in which surveillance is undertaken. I regret that it may be the latter.

The Deputy First Minister mentioned the constructive manner in which members of the Justice and Home Affairs Committee and the political parties acted in dealing with the bill to ensure that it was passed on time. The SNP has acted constructively in ensuring that the bill passes with the best scrutiny possible within the limited time that we have had. The Executive has not experienced the same problems that its counterparts in Westminster did during the passage of the UK Regulation of Investigatory Powers Bill.

There is general recognition that this bill regulates an area that was formerly unregulated. That is to be welcomed. As I outlined to the minister, there are concerns about aspects of the bill. I regret that amendment 8, moved by Christine Grahame, was not accepted. At some point in the future, there is likely to be a case against the bill regarding compliance with the European convention on human rights. Time will tell.

As I said, the SNP supports the bill. We do so in the spirit of creating a more open and accountable society.

15:47

Mrs Lyndsay McIntosh (Central Scotland) (Con): The Conservative position on the bill has not altered greatly over the summer months. Once again, I thank the convener of the Justice and Home Affairs Committee, Roseanna Cunningham, for her stewardship of the evidence presented to the committee, and of course I thank our marvellous clerking team, the hardest worked in the Parliament.

The introduction of statutory guidance on the policing of investigatory powers has received cross-party backing. Today, we have stated our position on many of the issues of contention, particularly those involving the police. Let me restate it: as Conservatives, we are prepared to give the police whatever they require to do the job responsibly.

There was a need to introduce the bill to ensure a consistent statutory regime throughout the United Kingdom in relation to investigatory powers when ECHR becomes applicable next month. Scotland's position will be decided today. We recognise that a commonsense approach to the complex issue of organised crime, which recognises few if any borders, is required and that, as part of a United Kingdom, Scotland must play its part in the fight against such activity. We must focus our attention on the organised networks of serious criminals if we are to make a difference in our communities.

Organised crime continues to flood our streets with drugs, challenging the ability of our police to keep order. Any regulation of investigatory powers must therefore put the right of the individual and society to be free from fear of intimidation and drugs before the rights of any individual involved in illegally disrupting lives through the pursuit of organised criminal activity.

Police representatives want the bill in order to ensure compliance with ECHR. In implementing the bill, we should, as far as possible, eliminate the imposition on the police of time constraints that do not currently exist. After all, we must not inhibit their ability to act quickly on our behalf, particularly in this information technology age. Criminals have been quick off the mark in using computer technology to their advantage and, as many members who have served in a variety of legal capacities will know, computers can do an awful lot in the time that it takes to get a warrant signed.

We must all ensure that, when time is of the essence, ordinary investigating officers are empowered to conduct their inquiries as they see fit, without reference to senior officers; otherwise, situations may arise where the criminals are home and hosed by the time an investigating officer has tracked down a senior officer to obtain authority to approve covert surveillance.

Covert activities are highly expensive and the police will not be enter into them lightly. 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 of Scotland—that, far from increasing covert surveillance operations, the bill will restrict police activity in that field.

What we hope to clarify today for the police without any dubiety is a definition of what constitutes a crowd. As things stand, every time I meet other members for a cigarette at the back of the office—and one meets a very entertaining type of person there—collectively we could constitute a crowd that may cause serious concern. Rather than transferring state secrets or quantities of drugs, we exchange pleasantries and share lighter

moments, some of which spilled into our consideration of the bill this morning. Who would have thought that this bill could have caused so much laughter? People will be queueing up to get on our committee soon.

Of course, the Justice and Home Affairs Committee was subject to time constraints when considering the draft bill. The Association of Chief Police Officers in Scotland assured us that the legislation would not incur an additional administrative burden. I hope that, if that proves not to be the case, the Executive will be sympathetic.

Our democracy is based on a parliamentary structure that ensures that expert advice is given to parliamentarians so that amendments can be lodged to improve legislation. We are indebted to those who sought to guide our thoughts. Compliance with the European convention on human rights is desirable—the bill will be of assistance. I look forward to supporting the bill at decision time.

The Deputy Presiding Officer (Mr George Reid): In view of the significant airing of the bill this morning, I ask members to keep their remarks tight.

15:52

Scott Barrie (Dunfermline West) (Lab): I do not intend to take up too much time, as much of what needs to be said has already been said.

Although the bill is serious, I would like to pick up Lyndsay McIntosh's point about levity in the committee. My abiding memory of the stage 2 debate is Michael Matheson's admission that 10 is a large crowd for Firhill these days. However, Partick Thistle seems to have fallen on hard times, as his amendment this morning suggests that the number is down to six.

It should be remembered that the bill and the parallel UK legislation are primarily aimed at ensuring that we are ECHR compliant. However, the bill should not be passed because of that; it should be passed because it is a good thing.

The most important aspect of the bill is that it does not provide any new powers for the police to carry out surveillance on members of the public or to conduct entrapment operations. Moreover, it does not give new powers to any other public authority. It simply puts into a statutory framework what is already happening. I welcome that.

The bill attempts to bring covert surveillance out of the shadowy world that it inhabits, to create an environment where surveillance is subject to statutory regulation and to allow anyone who feels that they have been the subject of unwarranted surveillance the right of appeal to a newly created tribunal. We had extensive debate this morning on how someone who had been blissfully ignorant that they had been the subject of surveillance might try to take matters up with the tribunal.

As I said morning, I acknowledge the considerable efforts of Christine Grahame, who, over a long period, has tried to address the difficult issue of how we balance the civil liberties of our citizens with the need of the state to detect and prevent crime. However, as I also said, the more I considered the implications of the issue, the more I could accept the Executive's position, which was articulated clearly by the Deputy Minister for Justice.

I sincerely hope that the bill is ECHR compliant. Given the work that has been put in not only by members of Justice and Home Affairs Committee but by a number of other members who have taken an interest, I believe that the bill achieves what it set out to achieve: it protects the civil liberties of our citizens while ensuring that the state can carry out legitimate operations.

15:55

Euan Robson (Roxburgh and Berwickshire) (LD): The Regulation of Investigatory Powers (Scotland) Bill is an important piece of legislation—it is probably more significant than is generally realised. For the first time, there will be a statutory framework for the regulation of the powers and activities of investigatory authorities. It is the sincere hope of the Scottish Liberal Democrats that the bill is compatible with the European convention on human rights; the work of the Justice and Home Affairs Committee has gone a long way towards ensuring that it is.

I echo the tributes that have been paid to the convener of the Justice and Home Affairs Committee, to members of that committee, who put a great deal of effort into scrutinising the bill and, in particular, to the clerks, without whose efforts the bill would not have progressed so effectively.

I appreciate that the bill was introduced with a challenging timetable, but it was important to get it on to the statute book before October, when the Human Rights Act 1998 comes into force.

The bill has been improved today, particularly by the removal of the catch-all power for ministers to authorise surveillance, which was an important and welcome concession by the Executive. I congratulate Michael Matheson on lodging that significant amendment.

In time, we will need to come back to this legislation—perhaps it was too ambitious to think that we would get everything right first time. I am sure that, in the course of future events, we will

find some deficiencies in the bill. As was apparent in committee, I have reservations about two sections in particular.

First, I have reservations about section 26, on the saving for lawful conduct, as I fear that some people might use that provision as an excuse not to apply the act as they should. However, if that should occur in practice, we would soon find out and we could revisit that section.

Secondly, I had, and continue to have, considerable concerns about the limitations on civil liability in section 2. I understand and accept what the minister said to me in his letter, but I still suspect that the limitations imposed in section 2 make it more difficult to claim civil liability when injury or loss to a third party takes place. Ranged against an individual who may wish to make a civil claim is the apparatus of the state. In those circumstances, to restrict or limit liability in the way that has been suggested is unwise. However, I am prepared to wait and see whether there are problems when cases are brought. If there are, I hope that we will revisit section 2.

Overall, it is important that we pass the bill. It is a good piece of legislation and brings into a statutory framework what has been custom and practice for some time. If problems exist with the bill, they lie in the area of complaints and redress. The codes of practice contain sections on complaints and redress: there is a process for complaints, but precious little discussion of redress. If at all possible, Parliament should consider that area when draft orders or statutory instruments are introduced on the codes of practice.

However, I welcome the bill. I hope that the Parliament will pass it; certainly, my party will vote for it. I commend the bill to the chamber.

15:59

Gordon Jackson (Glasgow Govan) (Lab): I agree with Euan Robson that the bill is a good piece of legislation. At the risk of another bout of Justice and Home Affairs Committee members patting ourselves on the back, I will say that I think that we have done a good job on the bill. We questioned, we pushed, we queried and, I suspect, at times we annoyed. At the end of the day, we improved the bill.

From the beginning—this has been said over and again—the debate on the bill has always been about trying to strike a balance, which has not been entirely easy. I come back to what was said at stage 1. We heard evidence from Professor Alan Miller, who represents the civil liberties lobby, and from the police. Both conceded that the bill is, by and large, a good piece of legislation—that unanimity also exists in this chamber. That suggests to me that, although nothing is perfect, we have managed to strike a balance.

Like Euan Robson, I am particularly grateful to the Executive for taking out the catch-all provision. We did not like it, as it was open to abuse. We were conscious of the point that Christine Grahame was making—very well—about disclosure, and one way of trying to improve the balance was to do what the Executive did and remove the catch-all provision.

I am particularly interested that that means that we have followed a different pathway from the one followed at Westminster. In some ways, I see that as a good thing, but not because we should be trying to do things differently from Westminster for the sake of it. It is worth making it clear that, although certain matters may be agreed elsewhere, we have our own views and have insisted on acting on them. That is a good example of how the process of devolution is meant to operate and, on this occasion, has been seen to operate.

The bottom line is that the bill is not about giving draconian powers to law enforcement agencies. Some weeks ago, I read a newspaper article suggesting that it was some kind of Big Brother snooping exercise; it is the very opposite. It is taking what has happened since police surveillance operations began and saying that now is the time to put it into a proper statutory framework. It is now time to legislate and to ensure that surveillance is properly governed and controlled by security commissioners appointed by the Scottish Executive. That is a good development, as the framework will give protection to the citizen rather than draconian powers to the law enforcement agencies. The bill strikes a balance between civil liberties and the need to deal with the sort of things that the law enforcement agencies come up against. Along with almost everyone in the chamber, I would commend the bill to Parliament.

16:02

Donald Gorrie (Central Scotland) (LD): In the stage 1 debate, I made a liberal—with a small "l"—speech expressing concern about some of the civil liberties aspects of the bill. I still have some of those concerns, although I accept that the Justice and Home Affairs Committee, of which I am not a member, has worked hard, as have the ministers, and I accept that the bill is probably okay.

I am still concerned that a chief constable up whose nose the Campaign for Nuclear Disarmament, or some radical group of socialists or liberals, gets might be induced to use the bill's powers wrongly. I was assured at stage 1 by the Minister for Justice that the powers would not be

used against people like me, but there is still an issue to be considered.

I have a positive suggestion that might apply to this and other bills. We should have a routine system whereby, every two years after a bill such as this has taken effect, we should study how well it has done and see whether it can be improved. I have no doubt that the committee did very well, but none of us can entirely foresee the future or how the courts will interpret our efforts at legislation. It might therefore be useful to build into this sort of bill an administrative procedure for re-examining every now and then how well the legislation is doing.

Nevertheless, on the basis of all the reassurances that we have received, I am willing to vote in support of the bill, although one always has one's liberal worries.

Mr Jim Wallace: I am sure that Mr Gorrie accepts that the surveillance commissioner has to make an annual report to the Westminster Parliament and to this Parliament. That will ensure that not only is there oversight but that oversight is reported on.

The Deputy Presiding Officer: Atypically, Phil Gallie has been slow to press his request-to-speak button, but I shall allow him to make a final point before I call the minister to wind up.

16:04

Phil Gallie (South of Scotland) (Con): Thank you very much, Presiding Officer. I apologise for my failure to push the button.

In visiting hostelries around the country, I have never found regulation of investigatory powers to be the key issue of the day, but we politicians get our enjoyment in the strangest of ways—believe it or not, I have enjoyed taking this bill through the committee and through the Parliament.

I add my compliments to those that have been passed to others. The passage of the bill has been serious, but it has had its fun moments. The bill was forced on the Parliament through incorporation of ECHR and it runs in parallel with the UK bill. I feel sure that the bill will receive the approval of Parliament. I would like the minister to inform the chamber when he expects the bill to be implemented. Will it be implemented after the bill south of the border goes through Westminster, or will it be implemented immediately?

Euan Robson talked about legislation being right first time. This Parliament—from Henry McLeish's point of view—looks to industry and business to get things right first time, so there is a duty on this Parliament to get things right first time. When legislation is rushed through, there is a risk that we will not get it right, and we have to accept that this bill has been rushed. However, the Justice and Home Affairs Committee has had a fair amount of time to examine the issues. Donald Gorrie suggested that we should come back to reconsider the bill. With bills such as this, which have been rushed, it may be worth looking back and reflecting.

16:07

The Deputy Minister for Justice (Angus MacKay): I perennially seem to end up at the end of such debates having the role of saying, "Thank you for coming, good night and have a safe journey home." Members will be pleased to hear that my speech will not be much longer than that, but I will briefly pick up one or two points.

As has been acknowledged, the bill has had to proceed through Parliament very quickly in order to meet the deadline of 2 October. In direct answer to Phil Gallie's point, the UK act is already enacted—it has passed through the Houses of Parliament. Our deadline is 2 October so that we comply with the requirements of ECHR and the Human Rights Act 1998. That is why we have moved so quickly on the legislation.

It is genuinely and truthfully thanks to the hard work of the members, clerks and officials of the Justice and Home Affairs Committee and the Subordinate Legislation Committee that the bill has, despite the pace at which we have moved, received proper scrutiny at each of the parliamentary stages. That scrutiny is an essential part of the legislative process. I want to place on record my gratitude to the members of those committees—especially the Justice and Home Affairs Committee—for their hard work and tolerance. I am sure that the bill has been improved by the changes that have been made—for example, the Executive's withdrawal today from its position on the catch-all power.

On behalf of the Executive, I also thank the 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, all of whom offered their advice as witnesses during the stage 1 consideration of the bill.

The bill has had proper consideration, notwithstanding the odd comment about the pace at which it has moved through and the need to address seriously the issues raised. At each stage, we have comprehensively covered all the issues. Not all members may be satisfied with all the outcomes, but we have given the issues a thorough airing.

As Phil Gallie rightly pointed out, we have had our lighter moments. I was amused by Dennis Canavan talking about a small number of people

trying to do bad things—that was quite interesting coming from Dennis. We have witnessed the repeated appearance of Euan Robson's nasturtiums, which members of the Justice and Home Affairs Committee will recall from stage 2. Today, we had the spectacular introduction from Christine Grahame of a new form of superhero—the binoculars-in-the-lupins man. I am not quite sure how he would get that on the front of his vest, but he represented a moment of light entertainment.

All in all, I think that at the end of today, when—as I hope—Parliament approves the bill, we will have done a good job of work and produced a good piece of legislation, which will, when all is said and done, balance civil rights with the requirements for law enforcement in a way with which we can all be comfortable. I ask members of the Parliament to support the motion to pass the bill.

The Deputy Presiding Officer: We have made good progress on the bill today, so I am looking to the Minister for Parliament to see whether he can help to move business forward.

The Minister for Parliament (Mr McCabe): I seek permission to move a motion without notice.

The Deputy Presiding Officer: I am minded to accept such a motion. Is it agreed that we accept a motion without notice?

Members: Yes.

Motion moved,

That decision time be moved to 16:10.—[Mr McCabe.]

Motion agreed to.

Decision Time

16:10

The Deputy Presiding Officer (Mr George Reid): We move to decision time. There is only one question to be put as a result of today's business.

The question is, that motion S1M-1136, in the name of Mr Jim Wallace, which seeks agreement that the Regulation of Investigatory Powers (Scotland) Bill be passed, be agreed to. Are we agreed?

Motion agreed to.

That the Parliament agrees that the Regulation of Investigatory Powers (Scotland) Bill be passed.

Scots and Gaelic

The Deputy Presiding Officer (Mr George Reid): The final item of business today is a members' business debate on motion S1M-1111, in the name of Irene McGugan, on the programme of action for Scots and Gaelic in the European year of languages. The debate will be concluded without any question being put after 30 minutes.

Motion debated,

That the Parliament notes that 2001 is to be the European Year of Languages; notes that European Union funding support will extend to projects including regional and minority languages which member states designate as eligible; urges the Scottish Executive to make representations on behalf of Scots and Gaelic to Her Majesty's Government in order to ensure that Scotland's indigenous languages are proposed for inclusion, and believes that the Executive should support a programme of action for both languages as part of the European Year of Languages.

At the Pairliament taks tent at 2001 is ti be the European Year o Leids; taks tent at siller fae the European Union wull rax the lenth o projecks for regional an minoritie leids at memmer states allous as eligible; asks the Scottish Executive ti mak representations on behauf o Scots and Gaelic, til Her Maijestie's Guivernment for ti mak shuir at Scotland's hame leids is proponed for inclusion, an trowes at the Executive shuid gie a heize ti baith leids as pairt o the European Year o Leids.

Gun toir a' Phàrlamaid an aire gur e Bliadhna Eòrpach nan Cànain a bhios ann an 2001; gun toir i an aire gum faodar taic-airgid an Aonaidh Eòrpaich a bhuileachadh air pròiseactan a ghabhas a-steach mion-chànainean is cànainean roinneil a tha air an sònrachadh le Stàitean a tha 'nam ball; gun iarr i air Riaghaltas na h-Albann tagradh a dhèanamh do Riaghaltas na Rìoghachd as leth na h-Albais agus na Gàidhlig a dhèanamh cinnteach gun tairgear cànainean dùthchasach na h-Albann le Riaghaltas na Rìoghachd airson taic-airgid an Aonaidh Eòrpaich agus gun cuir Riaghaltas na h-Albann, mar phàirt de Bhliadhna Eòrpach nan Cànain, a làn-thaic ri pròram gnìomha airson an dà chànain.

16:12

Irene McGugan (North-East Scotland) (SNP): I will start by declaring an interest, in that I am the very recently appointed preses of the Scots Leid Associe.

The first part of the motion calls on the Executive to ensure that Scots and Gaelic are eligible for inclusion in the European year of languages. I can confirm that they are. I would have been prepared to give credit where it was due, if their inclusion had been the result of vigorous lobbying by the Executive, as the motion urges the Executive to do. However, that was not the case. The Department of Education and Employment in London decided to adopt an inclusive approach and to include all languages, so Scotland's minority languages are eligible only by default.

The European year of languages is a joint initiative by the Council of Europe and the European Union, with further support from the United Nations Educational, Scientific and Cultural Organisation. It involves more than 40 countries across Europe, many of which—in particular Iceland, Luxembourg and Portugal—are making detailed plans. The twin slogans are "Languages for Life" and "Languages Open Doors".

On one level, the benefits to Scots and Gaelic from the programme could be considered small. Minority languages will be bidding against the bigger languages, which have better resources. The process will be extremely bureaucratic and there is a small budget—an estimated £200,000 in total for the United Kingdom. It is probable that only 10 projects across the UK can be supported. The Centre for Information on Language Teaching and Research in England will co-ordinate the programme and act as a filter for project applications, and I understand that it intends to bid in its own right for a project.

Despite the programme's bureaucracy and limited budget, I anticipate that the European year of languages will be a success in Europe, but for the smaller languages and their communities to gain, we must have some help. At the very least, the initiative gives the Scottish Executive an opportunity to highlight the languages and to kick-start a programme of support.

The motion and the European year of languages give Scots and Gaelic equal treatment. Although the status and needs of the two languages are very different, they are equally important as bedrocks for many kinds of cultural expression.

The Irish, by promoting their culture, have demonstrated clearly the link between cultural tourism and inward investment and economic growth. Investment in action to promote Scots and Gaelic would undoubtedly fortify and enhance approaches to overseas companies and organisations and make our Scottish goods and services more attractive worldwide. Ishbel MacAskill, the well-known Gaelic singer says:

"We would be mad not to take advantage of this immensely valuable marketing tool".

It is wonderful to have the Deputy Minister for Highlands and Islands and Gaelic here to respond—in his own language, I believe—but where is the minister for Scots? We now have a Gaelic officer for the Scottish Parliament, which is tremendous, but when will we have a Scots officer for the Parliament? Despite assurances of support, the Executive has failed to give proper support to the Gaelic language and has given even less to Scots. We have not forgotten the promises that were made after the census debate.

In June last year, the minister stated publicly that secure status was top of the agenda for the Executive and that legislation to achieve that would be put on the fast track. Earlier this week, we learned from the First Minister that legislation has in fact been fast tracked off the agenda. That is shameful. My colleague Mike Russell has a great deal more to say on that matter.

The First Minister (Donald Dewar): Really.

Michael Russell (South of Scotland) (SNP): It is something to look forward to.

Irene McGugan: Indeed.

In relation to Scots, there is a loss of confidence as a result of lack of official and public use and a loss of its vocabulary and distinctive grammar due to lack of teaching. I count myself as a casualty of that. Yet most of us in lowland Scotland are not far away from the language, in the sense that most adults can still tell the difference between effective and authentic Scots and haivers, and can enjoy the work of Burns and other Scots authors with a directness of appreciation due to the fact that we have heard or may still speak the language ourselves.

There is an issue of prejudice, which needs to be overcome. Often Scots is considered as neither proper nor correct and, in consequence, as less worthy. Such prejudice could be overcome to a large extent if the Scottish Parliament set a positive example. Public signage in Scots and recognition of Scots as an official language alongside English and Gaelic would help greatly.

Education is the key. There must be better opportunities for children to access their languages and to get a firmer grasp of Scottish history. Those elements should be integral to the curriculum and should permeate all subject areas. Among the Scottish teaching profession there are many enthusiasts for Scots and many with a substantial knowledge of Scots, but we do not use them to best effect because we do not make available professional development and a meaningful role based on what they know and could teach.

The study of Scots language and literature is now beginning to be undertaken at the end of the school curriculum, which is good. However, it is a modest start, which lacks educational logic in being built on nothing substantial in prior study. It makes Scots an academic afterthought to an education entirely airted at English; something to be howked up from a dictionary and painfully reconstructed, on a par with texts in Anglo-Saxon or Old French. Basic Scots is the birthright of everyone in Scotland and should be present from early school.

I was most impressed to learn that the BA course in Scottish music at the Royal Scottish Academy of Music and Drama teaches both indigenous languages, and all students sing in Scots, Gaelic and English.

There is a body of opinion that holds that discrimination against speakers of a language is in breach of international protocols, namely the International Covenant on Civil and Political Rights, the Universal Declaration of the Collective Rights of Peoples and the Oslo recommendations regarding the linguistic rights of national minorities. How embarrassing it would be for the Executive to defend its action or inaction in international courts during the European year of languages.

We need to use the opportunity that will be afforded by the year of languages to set out a programme of action, not only for next year, but on an on-going basis. The Executive must be proactive. There are plenty of language enthusiasts in all parts of Scotland who would be more than willing to help out.

As the newly published cultural strategy supports the languages, this would be a fine chance for the Executive to put its money where its glossy documents are. Let us have constructive policy development and affordable measures for both languages. Let us see the intelligent beginnings to an official support system and priorities on immediate need to ensure that Scots and Gaelic are transmitted to the next generation. Political direction lies with the Executive, where the responsibility for action also lies.

It fair behoves us ain an a tae gie muckle steer tae this Pairlement tae mak shair baith oor hame leids are gien a heize in the year o Leids in 2001.

The Deputy Presiding Officer: That wis a braw wee speech, Maistress McGugan. An we wish ye weel as the newly eleckit preses o the Scots Leid Associe.

As 13 members have asked to speak and we are 90 minutes ahead of when we would normally start our members' business, I am exceptionally minded to entertain a motion to extend business by up to 30 minutes.

Motion moved,

That the meeting be extended by 30 minutes.—[Mr Russell.]

Motion agreed to.

The Deputy Presiding Officer: We have up to an extra 30 minutes; if members can keep to three-minute speeches, we can get everyone in.

16:21

Cathy Peattie (Falkirk East) (Lab): If we take away people's language, we take away their voice. Not so long ago, children were punished for using

their mither tongue. Bairns spoke their mither tongue, but when they went to school, they were not allowed to speak it. Indeed, many of us have grown up being told that our mither tongue was either slang or unacceptable.

There were no role models speaking Scots; in fact, Scots on television or radio was often met with ridicule and shame. I remember my granny—who was, and still is, a Glaswegian—saying of someone being interviewed on Argyle Street, "Listen to her. Who does she think she is? Does that no sound terrible?"

I am happy that things are changing. Scots is the language of Burns and Fergusson. It is alive in our songs, tradition and literature, and in our communities the length and breadth of Scotland. I am pleased to hear that there is a growing trend of encouraging the use of Scots in our schools.

I also welcome the work that is happening in our communities, because communities cannot find their voice unless they feel confident to stand up and say what is important to them without feeling the need to use someone else's language. In promoting and encouraging active citizenship, we should encourage people to use their own language. Furthermore, it is important to support the agencies that are involved in working at community level.

The European year of languages is important but it provides only a small amount of money that will fund a good party or one or two projects. I am not trying to undermine those projects, but we all believe that more than that is needed. We must continue the work of Scots, and celebrate and promote our language. I am pleased that the cultural strategy recognises the importance of Scots and our indigenous languages, and look forward to the day when the folk of Scotland can stand up and feel confident and proud to use their mither tongue.

I agree with Irene McGugan—as a lallans Scots, I want to come into the Parliament and see Scots signage. If people see their Scots language written, they will start to believe that it is their language and that they have every right to use it.

I thank Irene for today's debate, and look forward to strengthening our indigenous languages in many more debates in the Parliament.

16:24

Mr Jamie McGrigor (Highlands and Islands) (Con): I welcome the debate and the opportunity once again to pledge Scottish Conservatives' support for Gaelic and to urge the Scottish Executive to do all that it can to ensure that the Gaelic and Scots languages really benefit from the extra funding from Europe. That funding must be seen as a bonus to existing funding. We must take advantage of the European year of languages.

I have never doubted Alasdair Morrison's commitment to Gaelic. Indeed, the Scottish Parliament information centre's research note of 2 March states that, shortly after his appointment, the Deputy Minister for Highlands and Islands and Gaelic said that secure status for Gaelic was the Executive's main priority. I was a little surprised, therefore, to read in *The Scotsman* yesterday that our First Minister refutes that statement and does not appear to want that status at all. Perhaps the minister can clear up the confusion for the benefit of the chamber and the 70,000 Scottish Gaelic speakers, many of whom live in his constituency. I am sure that he will be asked to clear up the matter when he attends tomorrow's Gaelic conference in Nairn.

Recently, I visited Sabhal Mòr Ostaig, the excellent Gaelic college in Skye whose extension was opened by our party's chief whip, Lord James Douglas-Hamilton. That establishment offers teacher training to Gaelic teachers. Along with Lews Castle College in Lewis, it forms the nucleus of higher Gaelic education. Both establishments are essential parts of the new University of the Highlands and Islands, which was started by Michael Forsyth.

On 7 February, the Deputy Minister for Children and Education acknowledged the need to increase the number of Gaelic-medium teachers by 150 in the next seven years. I ask Alasdair Morrison to reaffirm that commitment and to give as much support as possible to giving parents the choice to educate their children in the Gaelic medium if they so wish.

Education is the key to sustaining the impetus that has been on-going for nearly 20 years. In the Basque country, teachers are taken out of schools and coached in the Basque language until they become fluent. That could be done in Scotland with Gaelic.

We are still awaiting an announcement on a fast-track teaching solution for Gaelic. That is in the pipeline and I urge the Executive to back it up when the Gaelic playgroups association eventually produces it. I urge the Executive to increase funding for local authorities to enable them to employ more nursery nurses and pre-school staff who can run Gaelic nurseries, thus ensuring that children can enter school fluent in the language. I urge the Executive also to continue to support Gaelic broadcasting and the much-mentioned Gaelic unit in Tollcross Primary School. That would be a sign of the confidence of our capital city in our Highland heritage.

16:27

Mr John Munro (Ross, Skye and Inverness West) (LD): At the outset, I must say that I am disappointed that the Scottish Parliament, and particularly the Executive, has not seen fit to achieve secure status for the Gaelic language. After the announcements last year in Portree, it was expected that secure status would be with us in a short time. I am disappointed at the comments this week that make it appear that that is not likely.

However, next year is the European year of languages and I am delighted to participate in the debate. I congratulate Irene McGugan on bringing an important issue to the attention of the Scottish Parliament. I hope that, as a result, minority languages will be given the support and resources of which they have been deprived.

I do not need to tell anyone here that many minority and lesser-used languages exist in the member states of Europe. They have survived the difficulties of war and oppression simply because of the will and determination of the minorities who cherish them. We in Scotland are equally determined to protect our language and culture and are justly proud of them. We will endeavour at all times to promote, sustain and retain our languages for the benefit of generations to come.

I do not need to tell anyone here that my mother tongue is Gaelic—

The Deputy Presiding Officer: If you wish to speak Gaelic, simultaneous translation facilities have been arranged.

Mr Munro: I think that the occasion would be better served by my continuing to speak in English, although I welcome the opportunity to use Gaelic. I will say something on that later on.

When I went to school, I learned English. It is remarkable that I was not belted for learning Gaelic but I was belted for not learning English. I had the best of both worlds, because I had a Gaelic-speaking teacher. I was quite fortunate.

I am delighted that our Scottish Parliament has again agreed to use Gaelic in the chamber, and I hope that, in the months and years ahead, many more members will take advantage of that opportunity.

I acknowledge the support for and advances made in Gaelic over the past 20 years. I have been involved in promoting the Gaelic language and culture and, from small beginnings, we have achieved quite a lot—in fact, it has been quite remarkable. That includes advances in broadcasting, teaching, music and cultural events, festivals and fèisean, to mention just a few areas.

Last Saturday, I attended a festival at Eden Court Theatre in Inverness. Young people from all over Britain who had won linguistic and musical events in their areas were there. We were told that the competition had started out with 1 million participants, stretching from Devon and Cornwall on the south coast, through Wales, taking in Ireland, Northern Ireland and Scotland, to the northern isles. The event at Eden Court was marvellous, and demonstrated the close co-operation that exists between peoples and communities through language, music and culture.

We must keep up the good fight to sustain and promote the language and culture that we all appreciate and enjoy so much. I suggest that we support Irene McGugan in her noble attempt to encourage the Scottish Executive to support a programme of action for Scotland's indigenous languages as part of the European year of languages.

16:32

Dr Winnie Ewing (Highlands and Islands) (SNP): As Cathy Peattie said, language is a precious thing. We have watched our country treating our two languages with utter contumely. However, it is not too late in my opinion, and we have heard from Jamie McGrigor about some of the improvements that have been made. I am glad to welcome what Irene McGugan said, and her new appointment.

My grandparents spoke only Scots, and my mother and father spoke it when they did not want us to know what they were saying—so they thought. We kept quiet, because we knew perfectly well, and we wanted to hear what they were saying.

Having that double tongue was something that went with me without my full realisation until I attended a play in Scots at the Citizens' Theatre as a teenager, and I found out that my fellow classmates did not understand it, whereas I did. I experienced a delight at knowing that I had two tongues. I had accepted it as part of life, with Scots phrases and words jumbled in.

The first time that I spoke at the House of Commons, I had to prune my language of Scots words. If someone used a Scots word, it produced a totally bewildered look around the place, for example when I used the word "swither". The members all stopped and said, "I don't understand." I wondered what the English word for "swither" was, and they shouted, "prevaricate" and "hesitate". Neither of those words is exactly the same as "swither". After analysing it, I found that the word is untranslatable into English except by the phrase "hesitating between two courses of action". That illustrates part of the strange experience of speaking Scots.

Scots, as has already been said, is the language

of many kids in the playground. I instance the example given by a Dundee poet whom I met at a Burns supper in Luxembourg. He got an appointment as a roving teacher of Scots in the Borders. He told the tale about a little boy who said to him, "Please, sir, does oor real teacher ken whit you're daein?" In a way, that highlights what I am saying about the confusion over the two tongues. It is very good that we are trying to sort out that confusion.

We have a vast amount of literature, culture and songs in Scots, and we have the same from the Gaelic. Scots is one of the Germanic family of languages, but Gaelic is very difficult to learn. I speak with some feeling: even though I recently spent a week at Sabhal Mòr Ostaig, along with Fergus—in class 3—I am still finding conversation difficult, although I can read and write the language. But what a treasure trove of culture the Gaelic language offers us—the music, the songs and the history.

I was disappointed and shocked to read in yesterday's edition of *The Scotsman* that Labour's manifesto promise has been broken. I did not like the First Minister's arguments—at least, the arguments that were attributed to him. He said:

"We do not want to go down the Welsh road and end up with a situation where public bodies in Scotland would have legal obligations to conduct their business in Gaelic"

and to have bilingual road signs. Why on earth can we not have bilingual road signs? Tourists love them, as they make them feel that they are in a distinct country. There will be no complaints from tourists about bilingual road signs. Is not it also a bit fanciful and childish to suggest that East Ayrshire Council will suddenly want to conduct its debates in Gaelic? That is extremely unlikely.

I say to the First Minister, by way of reassurance, that, in the European Union, the Irish language has a semi-official status and that causes no one any difficulty, as it is used with decency and reasonableness. If Irish members want to speak in Irish, they can do so. They give notice, so that there can be proper interpretation—they do not abuse that right. If they want any European document to be translated into Irish, they can have it translated. If a "reasonable demand" was made by the locals for education in a certain language to be made available—as it was referred to in the SNP amendment 34 to the Standards in Scotland's Schools etc Bill, which was wrongly disagreed to by the Lib-Lab Government coalition—I do not imagine that a lack of reasonableness would break out in East Ayrshire.

We need positive discrimination. Although there is active support for the Welsh language, it is still up against the most dominant language in the world: English. English is so dominant that almost everybody in the European Union speaks it, along with two or three other languages. We must recognise that there should be positive nurturing to ensure the secure status for languages that we were promised, and the demands of parents must be met.

16:37

Rhoda Grant (Highlands and Islands) (Lab): I congratulate Irene McGugan on securing the debate; I agree with the sentiments in her motion. Having our native languages included in those European projects would give them a great boost.

Although funding has been invested in the Gaelic language, there is always the need for more—for example, to provide education not only for young people but for parents in the areas where Gaelic has skipped a generation. Not many people have been as lucky as John Farquhar Munro in having a teacher who spoke Gaelic. Winnie Ewing mentioned the ploy that was used by her parents of speaking the Scots language when they were trying to keep a secret from her. Imagine the plight of the parents when the children reverse the roles and speak Gaelic to keep secrets from them.

Our languages would benefit not only from the increased resources but from the increased status that European Union funding would bring. It would help promotion of the languages, by encouraging innovative projects. For example, we should encourage Scottish companies to greet callers in one of our native languages: that would raise awareness of our culture.

Many people want Gaelic and Scots to flourish, and it is essential that all the groups that want that to happen unite in a common cause. I urge the Executive to do all that it can to ensure that those languages are designated for European funding.

16:38

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I congratulate Irene McGugan on securing this important debate and I endorse what has been said about the idea of cultural tourism. The involvement of music, dance and storytelling is hugely important, and that approach works. I add my tuppence to that argument.

I also make a slightly broader appeal. Whether or not Gaelic is underpinned by statute, I appeal against the use of a broad brush. The Scots that is spoken in Caithness is very different from the Scots that Irene McGugan might recognise, and includes words such as scorrie, meaning a seagull, and semmit, meaning a vest. Because of the Herculean efforts of a few individuals, that language survives and is promoted. It is not easy. By moral support at least—it would not cost much

money—we should encourage that diversity.

That is equally true for Gaelic. The language map of Scotland is much more complicated than people think. As Mike Russell knows, Gaelic varies. Where I live, we have the last vestiges of Easter Ross Gaelic, including some words that are not recognised by the likes of John Farquhar Munro or by people who live in Skye. One example is the word tùchan, meaning a slight cough, which I have spoken about with John and with Alasdair Morrison. It is not classical Gaelic, but it is good old Balintore Gaelic.

Therefore, when we approach Gaelic and Scots, I appeal for a fine rather than a broad brush. Remember that our languages and the variations in them are Scotland's jewellery and that the diamond is multifaceted. I have talked about that to Rhona Brankin, and she and Alasdair Morrison have been more than receptive on the matter. It is desperately important to remember the variety and the danger of getting rid of it—it is like biodiversity; it risks damaging the fine detail of our culture.

16:41

Alex Johnstone (North-East Scotland) (Con): I too would like to thank Irene McGugan for the debate. It is significant that she has been given a position in the Scots Leid Associe at this time. It is well timed, given that 2001 is to be the European year of languages, that we should have someone in such a distinguished position as a member of the Parliament. It will be even more significant during 2001.

It has been my pleasure to support Irene in the past. Unfortunately, I could not support her on the census order and I apologised to her at the time. I promised then that I would take the opportunity to speak again in support of what she is trying to do.

The motion states that the Parliament

"believes that the Executive should support a programme of action for both languages as part of the European Year of Languages."

The record of successive Governments on Gaelic is fairly good. We need not rest on that record—we need to do more work—but my concern is with Scots and how it is treated in relation to Gaelic and the other languages in Britain and western Europe. My concern particularly is the attitude held by a significant number of people in the Parliament, that there is no such language as Scots. When Irene McGugan was making her opening remarks, I heard a chirp coming from my left, where the First Minister was sitting at the time, suggesting that very thing.

Michael Russell: Shame.

Alex Johnstone: The member may say shame. I could not criticise that because my culture spokesman, Brian Monteith, might well say the same thing. That is probably one of the few similarities between the First Minister and Brian Monteith. At least, hearing that chirp in my ear, it was nice to have the First Minister back.

I am concerned that we do not make the mistake of treating Gaelic and Scots as two arms of the same policy. Gaelic is a clearly identifiable language. While I believe that there is a Scots language, I do not believe that it is necessarily a single language. A very different language is spoken in Glasgow from what I hear spoken in Buchan. There is more than one culture that needs to be preserved.

Michael Russell: I wonder whether Alex Johnstone will reflect on the same difference in the English language. Perhaps he should go to Newcastle, then Aberdeen, Cornwall, Glasgow and Norwich. His argument is fallacious because in every language there are variations, but that does not make them different languages.

Alex Johnstone: I am delighted to accept that, but we are talking about Scots, and what concerns me is that we might allow ourselves to lose something that is extremely important. The most important thing that we need to remember when we consider Scots during the European year of languages is that so much of our culture depends on that language being understood by our young people.

We have already heard at some length from Cathy Peattie about the cultural aspects of language. Others have touched on that, too. The Gaelic language is an essential element of retaining Gaelic culture; the Scots language is an essential element of retaining Scots culture, as it has existed for hundreds of years and continues to exist to this day. That is why I am delighted that the Deputy Minister for Culture and Sport is here, so that I can express to her my concern that unless during the year of languages we make an effort in this Parliament to ensure that the Scots language continues to exist to some degree with our young people throughout Scotland and not just in the pockets where it remains a traditional language that survives in the way that indigenous languages tend to survive in other places, we will, if we lose that language, ultimately lose our culture.

The ancient Egyptians were well able to write and put their culture on to the walls of the tombs that exist to this day. Unfortunately, there is no one who can enjoy that culture by living it and reading it. That is my concern—that the great written and singing culture that exists in Scotland, in spite of the fact that it is preserved in books, may ultimately die because there is no one to understand it.

I hope that we can take the opportunity to work together throughout 2001 to ensure that the Scots language is recognised and developed, and continues to be taught in our schools.

16:46

Colin Campbell (West of Scotland) (SNP): I can recall in infants 1 in Paisley grammar school, a very long time ago, the teacher pulling up a child who referred to "doing your wilkies". The teacher asked, "What is the correct word for 'doing your wilkies?'" My mother was from Stornoway—she was an English-speaking Leodhasach with a smattering of Gaelic words—so eagerly I put my hand up and gave the only word that I knew. I am sure that Alasdair Morrison will correct my pronunciation afterwards—I said, "Caran a' mhuiltein." That was met by a kind of astonished, blank expression on the face of the teacher, who proceeded to search round the class for further elucidation. An Anglo child said, "Somersaults." That seemed to satisfy everybody, but I went home, much distressed, to get it all sorted out.

On reflection during the past 1,000 years, I have worked out that I was a stranger in my own country, as indeed was the child who had referred to "doing your wilkies". On the premise that the motion might go some small way to preventing anyone from feeling like a stranger in their own country, I have much pleasure in supporting it.

16:48

Maureen Macmillan (Highlands and Islands) (Lab): I would like to thank Irene McGugan for initiating this most interesting debate. I hope that the European year of languages will provide an opportunity for us to celebrate language in all its diversity in Scotland. We are extremely lucky to have so many languages and dialects that reflect the historical and cultural diversity of the Scottish people. We should celebrate that diversity and not treat it as a nuisance, as we often do.

Because of my historical and cultural background—I did caran a' mhuiltein and not wilkies—I believe that Gaelic should be nurtured. The Executive has a good record in its policies for Gaelic, delivered, for example, through education and support for Gaelic broadcasting. I get two kinds of letter about Gaelic—one demanding that we stop wasting money on it, the other haranguing me for not making Gaelic education compulsory over the whole country. I wish both sets of people would be more relaxed about Gaelic. Gaelic should be no threat to non-Gaelic speakers, who should be glad to learn a phrase or two. Kate MacLean and Cathy Craigie are busy practising hard for the cross-party Gaelic group's ceilidh on Wednesday night. I am anxious to see how they get on and whether they remember the coaching that I was giving them—I will not say where—last night.

We cannot ram Gaelic down people's throats: that is counter-productive and turns people away from the language. More than anything else, I want Scots people who are non-Gaelic speakers to come to Gaelic as a natural choice when they want to learn a second language. I want them to feel that it is part of their culture too. I would like the European year of languages to be used as an opportunity to make people from all over Scotland feel comfortable with their own native community tongue. That, of course, means Scots.

I want to say a word about the complexity of Scots. Scots is not one language, but neither is it simply a collection of dialects. It is more complicated than that. Robert Burns wrote in three languages, depending on the register in which he was writing. He used Scots English, Scots and Ayrshire dialect. To a certain extent, many of us do the same sort of thing, depending on who we are speaking to. Some of us use more Scots words than others. However, as Alex Johnstone pointed out, the very diversity of the dialects in Scotland is an obstacle to having an official language. Hugh MacDiarmid came up against that problem, and the poetry that he wrote was in a manufactured Scots, rather than a live language. If we want to have Scots translations in Parliament, we must go about that with great care.

There are two serious problems for Scots that we must address. The first is that much Scots vocabulary is being lost from the Scots English language that most of us speak. I would like Scots vocabulary to be reinforced through the primary school system. We must have Scots texts in primary school, rather than wait until secondary school as happens at the moment in many areas.

The second problem is that the dialects of various areas of Scotland are under pressure from the media, from the increased mobility of the population and sometimes, I am afraid to say, from pre-school education. In education we must be protective of a young child's language and not try to correct them so that they speak standard English. As Cathy Peattie said, we must ensure that those who speak a Scots dialect are proud of how they speak, not embarrassed by it.

In the summer I was in Shetland, where people are proud of their distinctive dialect and culture. They celebrate it much as people in the western isles celebrate their Gaelic culture. I would like all communities to celebrate their culture, but to welcome everybody else's.

16:52

Michael Russell (South of Scotland) (SNP): I, too, congratulate Irene McGugan on securing this

debate and on her appointment. I am sorry that I will speak solely in English today. There are a variety of reasons for that, not least the fact that I hoped not to be at this debate. That was not because I did not support it, but because I hoped to be on my way to Nairn for the Comunn na Gàidhlig dinner and for the congress that is taking place tomorrow. However, after reading the interview with the First Minister published in *The Scotsman* yesterday, I decided that I would not attend, so that no one could argue that the battering that the minister may get there tomorrow, despite the civility of his reception, is politically motivated. It will be the result of the justifiable and enormous anger that exists in the Gaelic community about the betrayal of an election promise—a promise that the Labour party and Labour Governments have made more than once to the Gaelic community and that has still not been honoured.

I want to say one thing about Scots. Today we have heard here repeated the calumny that Scots is not one language. That used to be the argument that was made about Gaelic: that there was a Gaelic dialect here and a Gaelic dialect there, that there were words here and words there, but that it should not be treated as a language. Let us lay that calumny to rest here and now. Scots is a language—a language that needs help and assistance.

On 1 July last year, from the reporters gallery in this chamber, Tom Fleming read a poem by Iain Crichton Smith, which called Scotland a three-voiced nation. Scotland has many voices, and many languages are spoken in Scotland. However, there are three languages of which we must take particular care. The first is English, because we have a way of speaking and using English that is subtly different from that of other people. I do not say that with any pride. However, it was T S Eliot who observed that English was spoken properly in only two places in the world: one was Richmond, Virginia, and the other was Edinburgh.

Mr Stone: And Inverness.

Michael Russell: He did not mention Inverness, but if he had been there I am sure that he would have.

We must, therefore, have some fondness for English. However, we have two languages that we must treat with great care and love, because they exist only here. If we do not look after them, nobody will. That is what this chamber should remember. Responsibility for looking after the Scots language rests with nobody apart from the people who live in Scotland. Scots does not exist elsewhere. Responsibility for looking after Gaelic in Scotland rests with nobody apart from the people of Scotland.

We have a particularly grave responsibility for Gaelic. My friend John Farquhar Munro knows the statistics, as does the minister, but let me repeat them. All the expectations are that next year's census will show—I do not think that we will fall out over the figures—that the number of Gaelic speakers has halved in 30 years.

The pre-census estimates from Comunn na Gàidhlig suggest that about 7,500 children in Scotland speak Gaelic. Those figures show that the language is perilously close to extinction. The question that the minister with responsibility for Gaelic must address is how to save that language.

I admire Alasdair Morrison and I am fond of him—if I keep saying that, people will think that there is something going on. Alasdair has the language at heart. I am pleased to see Rhona Brankin at the debate. I do not think that there are any other ministers in the Government who have Gaelic at heart—Alasdair is ploughing a lonely furrow. I hope that we can give him the strength to meet the needs of Gaelic. However, we must recognise the reality of the situation: Gaelic is perilously close to extinction. Therefore, I must ask the minister what he will do to save Gaelic and to ensure that the language lives on into the 21st century.

When I asked the minister a question last month, I was shocked to discover that his department makes no estimate of the number of Gaelic speakers that there will be in five, 10 or 15 years' time. It is time that the minister's department treated the issue as a No 1 priority. Many things have been tried. We have discussed broadcasting, and tomorrow we will discover what the Gaelic task force says about that. The one thing that would make a difference, however, would be for the Executive to tell the Gaelic community, and the rest of Scotland, that Gaelic has the same parity and status in law as English—it is an official language of this country. We must build on that in the way that Comunn na Gàidhlig anticipated in its report: by ensuring that there is access to Gaelic-medium education, that one can speak Gaelic in a court of law and that public bodies must at least consider how they use Gaelic.

During the national parks debate, I asked Rhona Brankin about the Gaelic situation in national parks. She asked for a written question and the answer that I received was that the decision on how to use Gaelic in national parks is a matter for the national park bodies. There is no policy and no direction.

The First Minister has skived off this debate—I am sorry to use a Scots word. I am shocked that he made derogatory comparisons with Wales yesterday. I was on "Good Morning Wales" this morning and I was pleased to tell the people of

Wales the First Minister's comments.

The reality is that any Gaelic act will be a remedial one to overcome the damage that has been done over the past 100 years to the language and to those who speak it. It is essential that remedial action be taken. I have no doubt that the minister will talk about ways in which to achieve secure status for the language without legislation. I put to him the same proposition that I put in a letter that I sent him in July, when I published my proposal for a secure status bill. I will pursue my bill unless the Executive introduces one of its own, but if the Executive is willing to negotiate on the matter, I will take every action, without party politics—as, I am sure will my friend John Farquhar Munro—to ensure that we all co-operate to save the Gaelic language.

Gaelic is far more important than party politics. I ask the minister to take off his party political hat and to join all members in doing what is desperately needed. Let us save Gaelic by legislation in the Scottish Parliament; let us not destroy it by petty partisan politics.

16:58

The Deputy Minister for Highlands and Islands and Gaelic (Mr Alasdair Morrison): Tapadh leibhse a' Chinn-Chomhairle, agus tha mi toilichte cha rìribh gu bheil mi a' faighinn a' chothrom airson an treas turas mo chànan fhein a' chleachdadh a's a' Phàrlamaid a tha seo. Mar a tha cuimhne againn, bha deasbad againn agus ann an Gàidhlig agus mu dheidhinn na Gàidhllig, agus anns an deasbad mu dheireadh a bha a's a' Phàrlamaid a tha seo, deasbad dhe'n t-aon seòrsa, bha sinn cuideachd a'cleachdadh, chleachd mi faclan Gàidhlig.

Bha dùil agam dìreach togail an toiseach puingean a chaidh a thogail le grunn dha na buill a tha làthair. An toiseach bu toil leam a radh, agus tha mi a smaointinn gu bheil a h-uile ag aithneachadh an adhartas a thathas air a bhith air a' dheanamh 'sna tri bliadhna a dh'fhalbh agus cuideachd adhartas a chaidh a dheanamh fo stiuireadh an Riaghaltas a bha a staigh roimh'n seo. Bha mi toilichte a'chluintinn gu robh Winnie Ewing—a bhean-phosda Winnie Ewing agus a mac Fergus Ewing—gu'n robh iad an làthair aig cùrsa ann an Sabhal Mòr Ostaig, agus tha fios a'm gu bheil Winnie air mòran a ' dheanamh as leth chànan agus air beagan dheth ionnsachadh, ach tha mi cuideach an dòchas agus a' guidhe mas e agus gu'n fhaigh Fergus Ewing, gu'n fhaigh e ìre fileantachd 'sa chànan, gu'n tòisich e a' deanamh barrachd ciall 'nuair a bhios e a' bruidhinn 'sa Ghàidhlig na bhios e uaireannan a' bruidhinn 'sa Bheurla. Chuir e caran iognadh orm feumaidh mi a radh nach uh nach uh

Following is the simultaneous interpretation:

I am very glad to have a third opportunity to use my own language in the chamber in this debate in and on Gaelic.

First, I would like to take up a few points that were raised earlier. Everybody recognises the progress that has been made in the past three years and under the previous Administration. I am glad that Mrs Ewing and her son Fergus attended a course at Sabhal Mòr Ostaig. I know that Winnie has made a lot of effort in relation to the language, and if Fergus Ewing becomes fluent, I hope that what he says will be more sensible.

Dr Winnie Ewing: It will sound better in Gaelic.

Mr Morrison: Chuir e beagan iognadh orm a' Chinn Chomhairle nach do chleachd Iain Fearchar Rothach, nach do chleachd e a' Ghàidhlig, agus chan'eil mi a' tuigsinn fo thalamh carson a bha e a' cleachdadh, cleachdadh, cleachdadh na Beurla. Chaidh moran phuingean a' thogail agus bu toil leam cuideachd a' radh gu'm bi mise a màireach a' faighinn roi-innleachd airson structur, airson leasachadh a' chànain. Bi mi a' faighinn an aithisg sin madainn na màireach bho cathraiche na Buidhne Obrach a chaidh a chuir air chois—Seonaidh Ailig Mac a Phearsan—agus bi an làthair ann an Inbhir Nathairn, agus gu dearbh tha mi a' coimhead air adhart ris, ris , an turas sin.

Chaifh tòrr a radh an diugh mu dheidhinn a' Phriomh Mhinisteir Dòmhnall Dewar. Tha mi a' smaoineachadh mas e as gu leugh thu am bratach a bha 'san aithisg a tha sin, agus a' leughadh an aithisg, nach'eil cùisean buileach cho dubhach agus a bha cuid a deanamh a mach. Thuirt sinne mar Phàrtaidh agus thuirt sinn mar Riaghaltas gu'n oibricheadh sinn airson tèarainteachd fhaighinn dha'n chànan. Sin a tha sinn a' deanamh—tèarainteachd airson na cànain—agus a' màireach, feasgar am màireach, bi Dòmhnall Dewar an làthair aig Co-Labhairt Bhliadhnail, agus a toirt òraid bhliadhnail Shabhal Mòr Ostaig seachad, agus bi e a rithist a' dearbhadh, agus faodaidh mi seo a radh, a' dearbhadh an seòrsa taic a tha sinn a' toirt, a toirt dha'n chànain.

Thog Cathy Peattie grunn phuingean mu dheidhinn agus bhuail I air—

Following is the simultaneous interpretation:

It surprised me that John Farquhar Munro did not use the language; instead, he used English.

Several points were raised. Tomorrow, the strategy on Gaelic organisations will be announced. I will be present in Nairn, and I look forward to that.

Much was said today about the First Minister, Donald Dewar. If members look at the headline of the article in *The Scotsman,* they will see that the

situation is not quite as bad as has been made out. We have said, as a party and as a Government, that we aim to give security to the language. That is what we aim to do. Tomorrow afternoon, Donald Dewar will be present at the annual meeting of Sabhal Mòr Ostaig and once again he will state the support that we have been giving the Gaelic language.

Cathy Peattie raised several points—

Michael Russell: For the avoidance of doubt, will the minister make it clear whether the Executive will introduce legislation to achieve secure status, and if not, does he think that his statement in June, in which he said that such legislation was on the fast track, is tenable? Would he like to apologise for that and say that he was misinformed or misbriefed, or act in some other way to overcome the difficulty that it has created?

Mr Morrison: Uill. An uair a bhios mise a' bruidhinn an Inbhir Nathairn agus 'san Eilean Sgitheanach, bi mi a' deanamh gu math soilleir dè dìreach a tha sinn a' deanamh. Sin agad ag obair a dh'ionnsaidh ar h- amas agus sin agad an rud a gheall sinn a' dheanamh agus sin agad gu dearbh as tha sinn a' deanamh agus bu toil leamsa gu'm biodh sinn air chothrom barrachd agus barrachd a ' dheanamh ach tha sinn a' dearbhadh uair an deidh uair gur e sin a tha fainear dhuinn.

A tilleadh air ais gu beachdan a nochd Cathy Peattie, a nochd I a thaobh eachdraidh Albais, a bhrùidealacha a bh'ann o chionn bhliadhnachan a dh'fhalbh, tha gu fortunach a thaobh Burns, tha ball an seo Lewis Dòmhnallach—athar an t-Uramach Ruairidh Dòmhnallach nach maireann , dh'eadar-theangaich e a h-uile smid de sgrìobhadh Burns gu Gàidhlig.

Bu toigh leam a nis tionndadh gu prìomh chuspair an deasbad a tha seo agus cuideachd mar a rinn buill eile, taing a thoirt dha Irene NicGùgan airson an deasbad seo fhaighinn.

Tha mi an còmhnaidh a Chinn Chomhairle deidheil a bhith a' faicinn Gàidhlig agus Albais air an adhartachadh anns a h-uile suidheachadh 's aig a h-uile àm agus tha seo a' gabhail a-steach Bliadhna Eòrpach nan Cànan ann an 2001. 'S iomadh beachd eadar-dhealaichte a tha aig daoine mu na nithean a dh'fhaodar a dheanamh agus is docha gum biodh e na chuideachadh dhuibh nan toisichinn le bhith ag innse beagan dhuibh mun Bhliadhna agus a' phriomh amas a tha air a cul:

Tha 2001 air a bhith air a sonrachadh mar Bhliadhna Eorpach nan Canan leis a' Chomhairle Eorpach agus leis a' Choimisean Eorpach.

'S e priomh amas na bliadhna mothachadh a thoirt do shluagh na Roinn Eorpa gu bheil a h-uile cànan—chan e a-mhàin mòr-chànanan mar Beurla—airidh air ùidh agus airidh cuideachd air urram.

Tha An Comisean Eòrpach a' cur maoin ris a' phròiseact airson a' bhliadhna a bhrosnachadh tron Roinn Eòrpa. Theid am maoin seo a chleachdadh airson iomairtean fiosrachaidh agus airson pròiseactan co-mhaoinichte airson a' phoball a chur air chois aig ìre ionadail, roinneil, nàiseanta agus eadar-nàiseanta. Le còrr air 40 dùthaich a' com-pàirteachadh sa Bhliadhna, thathar a' sùileachadh gum bi farpais ann airson nan tairgsean maoineachaidh.

Chan ann direach airson aire a thogail mu chànanan a tha Bliadhna Eòrpach nan Cànan. Tha cuid de nithean cudromach mun Bhliadhna a thathar an dòchas a bhios na bhuannachd don luchd-com-pairteachaidh: a bhith ag adhartachadh tuigse eadar-nàiseanta; a bhith a' cur an ceill a' bheachd gu bheil a' Ghàidhlig a' fosgladh dhorsan; a bhith a' moladh sgil ann an cànanan eile mar bhun-sgil; agus a bhith ga dheanamh nas fhasa a bhith a' gluasad bho àite gu àite. 'S e sluagh-ghairm na Bliadhna "Fosglaidh Cànanan Dorsan".

Ach, tha a' ghluasad seo a' beantainn gu sonraichte ris an dòigh anns am bithear a' deiligeadh ris a' Ghàidhlig agus Albais sa Bhliadhna agus tha mi toilichte a radh nach bi sin na dhuilgheadas. Nuair bhathar a' beachdachadh air na h-ullachaidhean, bha oifigearan Riaghaltas na h-Alba ag iarraidh, agus fhuair iad cead air a shon, aonta gum biodh a h-uile cànan air a ghabhail a-steach. Mar thoradh air na co-dhunaidhean sin tha an Roinn Eòrpa air aontachadh sin a dheanamh. Cha deach liosta ullachadh agus chan eil cànan air fhagail as. Canaidh mi sin a rithist—chan'eil cànan air fhàgail as.

Following is the simultaneous interpretation:

When I speak in Nairn tomorrow I will make clear what we are doing, which is working towards secure status for the language. We aim to do more and more for the language.

Regarding Cathy Peattie's points on what happened many years ago in relation to Burns, Roddy Macdonald translated many of Burns's poems into Gaelic.

I thank Irene McGugan for making this debate possible. I am always keen to see Gaelic and Scots promoted wherever and whenever possible, and that includes the forthcoming European year of languages. Many views have been expressed and opinions shared on what might be done. It may be helpful if I begin by sharing with members some of the background to the year.

The year 2001 has been adopted as the European year of languages by both the Council of Europe and the European Commission. The

main objective of the year is to make European citizens aware that all languages—not just the widely known languages such as English—are equally deserving. The European Commission is providing a limited amount of funding to promote the year throughout Europe. That funding will be used for information campaigns and to co-finance a number of local, regional, national and transnational projects aimed at the general public. With more than 40 countries participating, it is expected that bids for funding will be competitive.

The European year of languages is not only about raising awareness of all languages. There are some important features of the year that, it is hoped, will benefit participants: the promotion of international understanding; the development of the theme that languages open doors; the promotion of foreign language abilities as a core skill; and the facilitation of increased mobility. In fact the slogan for the year will be "Languages Open Doors".

The motion relates directly to the involvement of Gaelic and Scots in the year, and I am pleased to say that that will not be an issue. When discussions on arrangements were under way, Scottish Executive officials pressed for, and gained, agreement that all languages would be eligible for inclusion. As a result of those discussions, the UK has decided to take an inclusive approach. No list has been compiled and no language has been excluded. All languages are included—

Mr Stone: The minister says that no language has been excluded. Does he recognise my plea that separate and distinct dialects such as that of Caithness must be underpinned and encouraged?

Mr Morrison: Tha mi a' cuir mo làn-thaic ris a bharail a tha sin agus tha a' smaoineachadh gu bheil mi feuchainn ri shoilleireachadh. Cha bhi cànan sam bith air a chumail a mach neo air fhàgail as anns a ghnothaich a tha seo.

Gu fìrinneach, tha Riaghaltas na h-Alba mar tha air tuilleadh 's a chòrr 's a thathar ag iarraidh an luib a' ghluasaid seo a choilionadh. Chan e a-mhàin gum bi a' Ghàidhlig is Albais air an riochdachadh aig ire Alba agus An Rioghachd Aonaichte, theid fàilte a chur air gach cànan ann am Bliadhna Eòrpach nan Cànan.

Ach a-nis gu na h-ullachaidhean airson dealbhadh agus rèiteachadh na Bliadhna san Rioghachd Aonaichte: Tha comataidh air a steidheachadh san Rioghachd Aonaichte a tha air a cho-òrdanachadh leis an Ionad airson Fiosrachadh mu Theagasg Cànain.

Tha cùisean Albannach air an riochdachadh air a' chomataidh seo leis an Ionad Albannach airson Rannsachadh is Fiosrachadh mu Theagasg Cànain (Scottish CILT).

Tha cliù aig an Ionad seo ann an raon teagasg agus ionnsachadh cànain agus tha eòlas farsaing aca air cùisean cànain ann an Alba agus tha ceanglaichean làidir aca ri buidhnean Gàidhlig agus Albais. Tha e air steidheachadh, le cuideachadh bho Roinn Foghlam Riaghaltas na h-Alba, buidheann obrach Albannach a bheir air adhart nam molaidhean mu cho-obrachadh na h-Alba le Bliadhna Eòrpach nan Cànan.

Tha Comunn na Gàidhlig agus Biùro Eòrpach nam Mion Chànan nam buill den bhuidhinn seo. Tha Ionad Stòrais a' Chànan Albannaich agus Comunn Faclair Nàiseanta na h-Alba cuideachd an sàs anns na h-ullachaidhean airson na h-ath bhliadhna.

Thog grunn dhaoine roi-innleachd airson cultar. Tha an Roi-innleachd Cultarail Nàiseanta a chaidh fhoillseachadh o chionn ghoirid a' togail cheistean cuideachd mu Albais, Gàidhlig agus mion-chànanan eile agus bidh iad sin air an comharrachadh anns a' Phlana Gniomh a thathar ag ullachadh aig an àm a tha lathair. Agus tha mi smaoineachadh gu'n aontaicheadh Rhona Brankin—tha mi'n dòchas gu'n aontaicheadh Rhona Brankin leam an seo. Tha mi a smaoineachadh ged a tha sinn a bruidhinn mu dheidhinn stòras bheag de airgiod anns a phròiseact a tha seo gu'm biodh sinn a sùileachadh gu'm biodh cus a bharrachd na tha sinn a deanamh neo leigeas sin leinn a dheanamh gu'm biodh sinn a sùileachadh a bhith a deanamh barrachd na tha a' phròiseact sin a mìneachadh.

Sa cho-dhùnadh ma tha a Chinn Chomhairle, bu mhath leam dearbhadh dhuibh gu bheil Riaghaltas na h-Alba airson leantainn air a' toirt taic do Ghàidhlig agus Albais ann am Bliadhna Eòrpach nan Cànan san aon doigh 's a thathar air a bhith a' deanamh san am ullachaidh seo. Cha chrion an taic a thathar a' toirt dhan Ghàidhlig agus do Albais ann an 2001, Bliadhna Eòrpach nan Cànan ach chan urrainn do Riaghaltas na h-Alba a bhith an sàs nan aonar san obair seo agus tha mi air leth toilichte gu bheil na buidhnean Gàidhlig agus na buidhnean Albais a' co-obrachadh leis an luchd-eagrachaidh gus dòighean a shonrachadh anns am bi e comasach do chànanan dùthchasach na h-Alba buannachd fhaighinn as na cothroman a thig an luib Bliadhna Eòrpach nan Cànan.

Tha mi gle mhisneachail mu Bhliadhna Eòrpach nan Cànan agus tha mi cinnteach gum bi na buidhnean cultarail a tha ag obair an luib na Gàidhlig agus Albais comasach air feum a dheanamh den Bhliadhna seo a chum am maith fhein.

Tapadh leibhse a Chinn Comhairle.

Following is the simultaneous interpretation:

I fully support that opinion—no language will be left out.

In essence, the Scottish Executive has already achieved what has been asked for in the motion—and more. Not only will Gaelic and Scots be fully represented at Scottish and UK levels, but all languages will be welcomed in the European year of languages.

A UK committee, co-ordinated by the Centre for Information on Language Teaching and Research, has been established to plan and organise the year in the UK. Scottish interests are represented on the committee by the Scottish Centre for Information on Language Teaching and Research.

Scottish CILT is highly respected in the field of language learning. It has a formidable knowledge of language issues in Scotland and strong links with Gaelic and Scots organisations. With the support of the Scottish Executive education department, it has established a Scottish working group to take forward Scotland's involvement with the European year of languages.

Membership of the group includes Comunn na Gàidhlig and the European Bureau for Lesser Used Languages. The Scots Language Resource Centre and the Scottish National Dictionary Association are also actively involved in arrangements for the year.

While the European year of languages is essentially a European initiative, it is one that the Scottish Executive will continue to support. I am sure that Rhona Brankin would agree that much activity is being planned for the year throughout the UK. We expect more and more on the project. I would like to stress that the Scottish Executive is giving support to Gaelic and Scots.

Support for Gaelic and Scots will not fade during 2001—the European year of languages. However, the Executive cannot work alone on that, and I am delighted that Gaelic and Scots organisations are working with the organisers to identify ways in which Scotland's heritage languages can benefit from the opportunities offered by the European year of languages. I am enthusiastic about the year and feel sure that our Scots and Gaelic cultural organisations can use it to their best advantage.

The Deputy Presiding Officer: Tapadh leibh, a Mhaighstir Moireasdan. Tha sin a' cur crìoch air an deasbad. Tha a' choinneamh dùinte.

Following is the simultaneous interpretation:

Thank you, Mr Morrison. That concludes our debate.

That feenishes oor debate. Ah noo close this meetin o the Pairliament.

Meeting closed at 17:08.

Members who would like a printed copy of the Official Report to be forwarded to them should give notice at the Document Supply Centre.

Members who would like a copy of the bound volume should also give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the bound volume should mark them clearly in the daily edition, and send it to the Official Report, Parliamentary Headquarters, George IV Bridge, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Thursday 14 September 2000

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5
Meetings of the Parliament annual subscriptions: £500

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies: £70

Standing orders will be accepted at the Document Supply Centre.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75
Special issue price: £5
Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178