

# **MEETING OF THE PARLIAMENT**

Wednesday 10 January 2001  
(*Afternoon*)

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## **SCOTTISH MINISTERS AND DEPUTY MINISTERS**

FIRST MINISTER—Rt hon Henry McLeish MSP  
DEPUTY FIRST MINISTER—Rt hon Jim Wallace MSP

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MINISTER FOR JUSTICE—Rt hon Jim Wallace MSP  
DEPUTY MINISTER FOR JUSTICE—Iain Gray MSP

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DEPUTY MINISTER FOR EDUCATION, EUROPE AND EXTERNAL AFFAIRS—Nicol Stephen MSP

### **Enterprise and Lifelong Learning**

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DEPUTY MINISTER FOR ENTERPRISE AND LIFELONG LEARNING AND GAELIC—Mr Alasdair Morrison MSP

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DEPUTY MINISTER FOR SPORT AND CULTURE—Allan Wilson MSP

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DEPUTY MINISTER FOR FINANCE AND LOCAL GOVERNMENT—Peter Peacock MSP

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DEPUTY MINISTER FOR HEALTH AND COMMUNITY CARE—Malcolm Chisholm MSP

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DEPUTY MINISTER FOR PARLIAMENT—Tavish Scott MSP

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Transport and the Environment	Mr Andy Kerr	Nora Radcliffe

10 January 2001

# Scottish Parliament

*Wednesday 10 January 2001*

*(Afternoon)*

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

## Time for Reflection

**The Presiding Officer (Sir David Steel):** We welcome to lead our time for reflection today the Reverend Sheila Blount, the minister of Falkirk Old and St Modan's parish church.

**Reverend Sheila Blount (Minister of Falkirk Old and St Modan's Parish Church):** The gospel of John, chapter 1, from verse 1, tells us:

"Before the world was created, the Word already existed; he was with God and he was the same as God. From the very beginning, the Word was with God.

Through him God made all things; not one thing in all creation was made without Him.

The Word was the source of life, and this life brought light to all mankind. The light shines in the darkness, and the darkness has never put it out . . .

The Word became a human being and, full of grace and truth, lived among us. We saw his glory; the glory which he received as the Father's only Son."

Amen. Thanks be to God.

Those words speak to us at the beginning of a new year, a reminder that we are not the beginning and the end of all things. Yesterday evening witnessed the first total eclipse of the moon in the 21<sup>st</sup> century. I caught sight of it as I was driving back to Scotland from down south. By the end of my journey, the anticipated reddish haze was present, evidently the remnants of volcanic activity in the earth's atmosphere. Compared with last year's millennium events, it was still quite striking—and no one here arranged it.

For a few short moments, we lift our eyes and our awareness and perspective changes. The light shines in the darkness and the darkness has never put it out. Like an eclipse, things can get in the way. Sometimes they can appear quite colourful, but mostly it is the shadow of darkness. The shadow can become so deep that we begin to believe that there is no light.

Let us pray.

Lord God of all creation, enrich our perception of your world. Create in us an awareness of the variety and wonder of this planet. In this land of Scotland, encourage us to care for all that is entrusted to us. We pray for this Parliament and for the business of the week ahead, that we may listen

to one another with respect and openness, not only in this chamber, but in the streets and on the streets. Awaken in all your people a fresh desire for justice, a deep concern for all victims of violence and the powerful realisation that we have gifts to share that can and will make a difference in places of darkness, division, pain and sorrow. Together, may we know your blessing in the light of your love, revealed in Jesus, our saviour.

Amen.

## Parliamentary Bureau Motion

**The Presiding Officer (Sir David Steel):** We come now to consideration of Parliamentary Bureau motion S1M-1514, in the name of Tom McCabe, on the designation of lead committees.

*Motion moved,*

That the Parliament agrees the following designation of Lead Committee—

The Health and Community Care Committee to consider the Fresh Meat (Beef Controls) (No 2) Amendment (Scotland) Regulations 2000 (SSI 2000/449) and the Feeding Stuffs (Scotland) Regulations 2000 (SSI 2000/453)—[*Tavish Scott.*]

## Teachers' Pay and Conditions

**The Presiding Officer (Sir David Steel):** We come now to a statement by Jack McConnell on progress on implementing the McCrone report in respect of teachers' pay and conditions. There will be questions at the end of the statement.

14:35

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** I welcome the opportunity to report to Parliament the progress that we are making in finalising an agreement that will bring stability to Scottish education for the first time in a generation.

The past 20 years have been characterised by demoralisation and growing mistrust among our teaching profession. Teachers have felt undervalued and overworked while their status has diminished. Crucially, that has affected their relationship with pupils. It is therefore time for change.

There has been constant concern over pay and conditions. I recall my early years as a teacher and the bitter disputes of the 1980s, which left the profession feeling embattled and unrewarded. The legacy of years of political dogma and of Government tinkering with schools was a culture of protectionism and mistrust. Wars of attrition broke out and angry words were exchanged. The protracted negotiations, dispute and disruption produced nothing but increasing dismay. No one won—not the teachers, not the employers and certainly not Scotland's pupils.

That situation cannot continue. Every parent, every teacher and every pupil knows that the real learning in our schools—the spark that achievement brings to each child—is won through the hard work of teachers and students. That is the central relationship that produces results and gives us young people who are confident, motivated and excited about learning and who leave school ready to take their place in adult life and to contribute to their own future and Scotland's prosperity—young people who leave school with ambition.

We are taking the first steps in changing the atmosphere in our schools and in building a new culture based on mutual respect, shared responsibility and trust. In May, Sam Galbraith made it clear that we would begin that new approach by involving all the main parties in the discussions and dialogue necessary to implement the recommendations of the McCrone report. We have done precisely that. It is a measure of the progress that we are making and the changes that we are securing together that, since September,

all those involved have committed time and energy to the discussions. They have stuck with the process through the inevitable disagreements and difficulties. It is no exaggeration to remind ourselves that, only a few years ago, the first disagreement would have ended the discussions in bitterness and acrimony. That is an important indicator of how far we have come.

We set up an implementation group to take the work forward. For the first time, we worked collectively to address the challenge that we faced. The Association of Head Teachers in Scotland, the Educational Institute of Scotland, the Headteachers Association of Scotland, the National Association of School Masters/Union of Women Teachers, the Professional Association of Teachers, the Scottish Secondary Teachers Association and local authority employers represented through the Convention of Scottish Local Authorities all worked as equal partners, bringing together the experience and expertise of local authorities, teachers and the Scottish Executive. Our shared commitment to addressing the problems of the past and to building a new approach was as clear then as it remains today.

The implementation group met every month from September last year. Its work was informed by the weekly meetings of smaller groups, each of which drew on the practical experience of daily work in schools and education authorities. Since September, more than 45 people have applied their energy and their intellect weekly, sometimes daily, to more than 40 recommendations that were made in the McCrone report. Between the end of September and Christmas, those groups came together on more than 50 occasions. Each month, we worked through the detail of the McCrone recommendations, worked out practical ways in which to take them forward and developed new ideas to go even further than we had first thought possible. Each month, we moved closer to reaching agreement.

In November, we recognised both the progress that we had made and the amount of work that we still had to do. The job that we were doing was too important to rush and we agreed to keep working through the festive period. That was not due to crisis or panic; it was a calm, clear decision, because what we were doing was too important to lose through haste. That was a new way of working to create a new, revitalised approach to the problems that have dogged us for too many years. The result of that effort is the prospect of an agreement put together through discussion and agreed by consensus. I am convinced that that agreement offers us the prospect of a new beginning for the improvement of education and an increase in the achievement of our schools.

In recent days, there has been a great deal of

speculation in the press about what the agreement might contain. From the beginning, we have worked together in the implementation group on the basis that we would create a whole package and that no single element could be agreed until all was agreed.

As members know, our discussions continue; they will understand that, at this point, I cannot provide the detail of the agreement in prospect. Members would not expect me to break the commitment that ministers gave to the local authorities and to the teacher organisations when we began our work in September.

I believe that the agreement that we have in prospect offers the following opportunities: for each teacher to be recognised and rewarded for the professional skills that they bring into the school; for each teacher to have a genuine opportunity to develop those skills and knowledge in order to keep pace with the changing demands made of them; for the skill of teaching to be recognised as more than just the work that is done in the classroom; for teachers to be relieved of the burden of bureaucracy and given the time to teach; for excellence in the classroom to be recognised; for us to attract and retain the best of our young talent in the profession; and for local authorities to be recognised as the managers of education.

We can end the feast-or-famine approach to teachers' pay that marred recent years and we can have a period of genuine stability in our schools. We can allow teachers to concentrate on the job that they do well and our young people to learn and grow. We are close to completing our task. As soon as an agreement is secured, I will place a copy of it in full in the Scottish Parliament information centre for members to consult. In the meantime, I have offered to brief the convener of the Education, Culture and Sport Committee and Opposition spokespersons on a bilateral basis.

To make and sustain the fundamental improvements that we have been working on over the past few months is no easy task. That is why we have taken the time to work through all the issues and it is why everybody involved is still committing the time needed to ensure that every t is crossed and that every i is dotted.

This afternoon, I wish to take the opportunity to make some important points clearly and on the record. This is about more than pay and conditions; it is more important than either of those. We are putting together a package of fundamental modernisation, which will place teachers at the heart of schooling and children at the heart of education.

The talks are going well, but carrying them out well takes time. Everyone involved and those

whom they represent must feel confident and sure of the final package that we settle on. Everyone has to feel that their concerns and aspirations have been addressed and understood.

On pay, the offer that we have made with COSLA will deliver a 21.5 per cent increase in salaries over three years, in addition to the other investment that we will make. Such a settlement goes beyond the McCrone package.

On funding, our commitment could not be clearer. The Scottish Executive will fund all the additional burdens that arise from implementing the final agreement. Local authorities will not be asked to fund any more than they already do in supporting school education.

The education of our children is at the heart of our commitment to the people of Scotland. However, we will not be able to deliver on that commitment until we have recognised teachers for the professionals that they are and rewarded them as such.

All of us—not only ministers and members of this Parliament—are keen to reach agreement. In the teacher organisations and in the local authorities, the commitment to making this work is clear and has been demonstrated once again over the past weeks.

We have a unique opportunity before us. We have an independent report, which tackled the issues seriously and offered a way forward. We have the shared commitment and sheer hard work of all those who were involved in building on the report's recommendations. We have the hopes of parents and pupils for an end to uncertainty. We also have the prospect of an agreement that goes beyond McCrone and that offers us a way to redress the damage of the past and to build relationships now and for the future, which will restore stability and excellence to our schools.

The time for change has come. Our challenge—and our responsibility—is to keep our eye firmly on the prize before us. We have the opportunity of stability and progress, the opportunity to make a step change in the culture and achievements of our schools and the opportunity to restore the professional recognition that our teachers deserve. Those are opportunities that this Parliament was created to deliver.

I hope that we all want a modern education system and a teaching profession that is equipped and ready for the challenges of the 21<sup>st</sup> century. I hope that we can all support these last efforts to deliver just that.

**Michael Russell (South of Scotland) (SNP):** I thank the minister for delivering that statement on behalf of what I am happy to call the Scottish Government.

Does the minister accept that Scottish National Party members are happy that McCrone is coming to a conclusion and that we share a wish for a comprehensive, just settlement in Scotland's schools, which will usher in a period of peace and stability?

Does not the minister find it incredible, as do the teaching unions and many parents, that—after almost four years of discussion and negotiation; after the review that was set up in May 1997 under the Scottish Joint Negotiating Committee for Teaching Staff in School Education; after the negotiations that started in September 1998; after the failure of those negotiations in September 1999; after the establishment of the McCrone committee following a statement made in this chamber by the minister's predecessor, also in September 1999; after the report of the McCrone committee in May 2000; after 18 December 2000, when groups were meant to reach a conclusion and write up their reports; and after two weekends so far this year during which there has been speculation, spinning and doubt—he is still unable to come to this chamber and tell us anything at all?

All that the minister has told us—in the closing paragraph of his statement—is that he wants

“a modern education system and a teaching profession that is equipped and ready for the challenges of the 21<sup>st</sup> century.”

That is not progress; it is a truism. When will the minister be able to tell the unions and the people who really matter—the teachers, the parents and the children—what is on offer and how much it costs? When will he be able to tell the local authorities whether they will be funded? When will he be able to come to the chamber to put an end to four years of discussion rather than telling us nothing at all?

**Mr McConnell:** I wish Mr Russell a happy new year, too. I welcome our joint approach to the improvement of Scottish education.

It is incredible that, after four years of difficulties, we have made so much progress in four months. After those four months, it is worth taking four more days to reach a positive agreement. I do not share Mike Russell's dismay at the situation. Efforts have been made over recent months to reach an agreement. It is important that that agreement is transparent and understood by all the parties to it, and that it does not fall apart in six months' time because we did not take two or three days to agree the costings and the detail that will reassure individual teachers that the package will ensure the professionalism in the classroom that they want.

I confirm that the details that I have always believed the unions would require will be provided

to them for their committee meetings over the next week. I also confirm that I have written to Norman Murray, the president of COSLA, spelling out the financial provisions in some detail. I hope that that statement will be clearly understood on both sides and that we proceed on the basis of it. I hope that the arrangements will be put in place this week. I am confident that the time that we have taken has been very well spent.

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** I have already given the minister my best wishes and tidings for a happy new year. He knows that he will not get such a frosty reception from me at this point.

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** Is that Brian Monteith's new year's resolution?

**Mr Monteith:** Indeed—well spotted.

I thank the minister for making a copy of the statement available in advance.

I do not want to dwell on the minister's embarrassment at being unable to give us the details of his proposals or tell us that the negotiations have concluded. We wish the minister well in concluding the discussion. It is important that a resolution is achieved that will build a modern education system and restore morale to teachers.

However, the lack of detail in the statement raises a number of questions, which I will run through quickly. If the minister cannot give the detail today, I hope that he will do so in a statement when the negotiations are concluded. I wonder why no details are available to us, given that they have already appeared in the *Daily Record* and other journals and that the minister is able to quantify the cost of the agreement and say that he can meet that cost. There is surely something that we could discuss, although it is not before us today.

Will chartered teacher status involve any assessment of teachers or simply their attendance? How will the replacement for the SJNC be an improvement on that body? Finally, how can the morale of teachers be restored if the deal is portrayed, as some people are already doing, as a cut in the hourly rate for teachers? Those are questions to which we should receive answers. I accept that negotiations may mean that it is difficult for the minister to give answers today, but I would appreciate a further ministerial statement on which there would be a real purpose in asking questions.

**Mr McConnell:** As ever, I will be happy to report to Parliament in whatever way that the parliamentary authorities agree that I should—I have always been happy to work on that basis.

Much as it may please Scotland's largest-selling newspaper to get the credit for publishing the report, I believe that it was one of our broadsheets that published its version of the report. However, the report is not yet agreed or complete and people should be cautious about accepting everything that appears in the public print at this stage.

I repeat what I said in my statement: as soon as an agreement is reached, it will be available in SPICe and members will be able to access it. I will be happy to answer questions on it at any time thereafter.

In response to the two specific points that Brian Monteith raised, I want to make it clear—although it is not a great secret—that the new negotiating machinery will improve the situation in our education system. At a national level, the machinery will involve the Scottish ministers and their representatives as well as the local authorities and the teacher organisations. Local and national negotiations will be split and there will be local responsibilities to be negotiated between the local authorities and the teacher organisations. That can only be good for Scottish education locally and nationally.

My view is that the vast majority of Scotland's teachers already work in excess of the hours that will be in their contracts. It is right and proper for professionals to work such hours—I did so when I was a teacher. However, the pay scales and contractual arrangements that we are proposing and the conditions and support that will be available in schools will, at last, recognise those excess hours and will ensure that people are rewarded for the professional efforts that they put in. I hope that teachers will welcome those measures when they see the package that will emerge, I hope, over the next few days.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** I welcome the minister's positive tone, his commitment to succeeding in the negotiations and his recognition of the massive importance of the negotiations. Success is vital for the future of our education system.

For Liberal Democrats, almost nothing that we do in this first parliament session will be more important than securing for our pupils the services of a highly paid, well-motivated and well-resourced teaching profession. As the minister will recognise, the Liberal Democrats have constantly made it clear that the package must be properly and fully funded by the Executive.

**Michael Russell:** That is, by the member.

**Ian Jenkins:** No, as I am not in the Executive, although I am a member of an Executive party.

Mr McConnell was right when he said that this is

not a straightforward pay deal—it is the start of a modernisation process that will not be delivered overnight. The process is more long term than that.

Although I accept that the minister cannot go into details about the negotiations, I seek from him an assurance. I ask him to make it clear that, over and above the 21.5 per cent salary increases that he alluded to, the Executive will pay, in the long term and on a continuing basis, for the extra good things that are in the conditions package, such as the extra teachers who will eventually be involved, bursars, additional classroom assistants and continuing professional development. The Executive must recognise that the package requires a continuing commitment on a larger scale than a simple salary agreement would. The Liberal Democrats expect to hear him say that the package is to be fully funded.

**Mr McConnell:** I welcome the importance that the member attaches to education. On the specific point on long-term funding, I made it clear today in my correspondence with the president of COSLA that, in addition to agreeing—I hope—the costs for the first three years today or later this week, we will monitor those costs as the agreement is implemented in a phased way, in order to ensure that the original costs were correct. I also made it clear that, before the end of this year, we will agree the costs that would fall as additional burdens on the Executive in year 4 and beyond. We are determined to get this right. We do not want the agreement not to work in practice because the initial costings were wrong. We will get it right, and COSLA and the Executive will work closely together in order to achieve that.

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** I welcome the minister's positive contribution. He spoke about the burden of bureaucracy. In recent years, many teachers have indicated concerns not only about pay and conditions but about the massive increase in bureaucracy and form filling, which acts against much of the work of the classroom. Will the minister expand on how he will deal with bureaucracy as part of the overall package of addressing issues of motivation in the education sector?

**Mr McConnell:** That is an important point, which Donald Gorrie raised when we first discussed the McCrone report during the debate in Parliament last June. I do not consider that it is necessarily part of the pay and conditions package, so I hope that colleagues on the implementation group will not mind if I say clearly that the Executive is firmly committed to implementing the bureaucracy audit that was recommended by McCrone. In fact, we will go further: we have agreed with teacher organisations and local authorities that the

bureaucracy audit will be organised in the schools rather than being organised from our perspective at the centre. We will measure not the material that we send to the schools, but the material that appears in the schools—we will measure to whom it is going, from whom it is coming, the time scales for its appearance and whether those time scales are appropriate. I am absolutely determined to reduce the amount of paperwork and bureaucracy that schools and teachers have to endure week in and week out. The bureaucracy audit will be a major step towards achieving that.

**Irene McGugan (North-East Scotland) (SNP):** The minister will be aware of the growing problem of teacher shortages; I believe that a further 685 teachers were lost to the profession this year. That means that some pupils are not receiving teaching in the basic and fundamental elements of their education. An allied problem is that the average age of members of the teaching profession is getting higher—only 29 per cent are under 40. Given that and given that no comprehensive offer is yet on the table, what kind of message does the minister think that he is giving to young graduates who, I suspect, will remain reluctant to enter the profession because of the continuing uncertainty?

The minister has twice mentioned his correspondence with COSLA. Does he intend to make that correspondence publicly available?

**Mr McConnell:** I am happy to make the letter that I sent to Councillor Murray available to SPICe this afternoon; I suspect that he is already handing it out down the road at Rosebery House.

The Executive is concerned about the recruitment and retention of teaching staff. One of the reasons why we are working so hard to get the details of the pay scales right is that it is vital that the starting salaries are right, so that we can recruit people to the profession. It is also vital that the salary scales at the top of the grades are right, so that experienced people feel able to continue their careers and believe that they are being properly rewarded for doing so. The details are important, which is why we have spent extra time on them.

I believe that the package will reward people in a way that not only improves recruitment and retention but attracts some people who left the profession back into it. The additional parts of the package—the extra support staff, the clarification of hours and so on—will help to improve the working conditions of teachers and the working conditions of schools as a whole, to ensure that teachers can teach and that, when they are rewarded, they are rewarded for doing the right sorts of things. On that basis, I hope that the potential for recruitment in the years to come is strong enough to secure the extra numbers that the package will promise.

**Mr Murray Tosh (South of Scotland) (Con):** I share the minister's aspirations for a permanent settlement to these issues. I was a young teacher in the late 1970s and I well remember the bitterness against Labour Governments.

Without going into details, as I do not read the papers as assiduously as he obviously does, could the minister tell us whether the talks that are under way cover the so-called rule of 85, which in principle gives teachers the same rights as other local government employees—to retire not with enhancements but with the entitlements that they have earned up to the point when their combined age and period of service reaches 85?

**Mr McConnell:** That is asking for a very specific detail—the kind of detail that might land me in problems with colleagues if I was reported as giving it.

Early retirement is not the right phrase, but it is important that we create opportunities for people either to leave the profession at a certain age or perhaps to move gradually out of the profession in a way that means that their skills, experience and expertise is not completely lost to the school. Again, it is no great secret that we have been discussing how older teachers can, rather than taking full early retirement at an age when they still have much to contribute, perhaps move to part-time work and use their skills in the classroom and with young teachers as mentors and in helping with classroom management. More of that will come out as the agreement—I hope—is signed off. I think that Mr Tosh will welcome what we are suggesting and I will clarify the specific point on the rule then.

**Bill Butler (Glasgow Anniesland) (Lab):** I welcome the minister's ambition, as shown in his statement, for an agreement that leads to motivated staff and pupils. As someone with recent classroom experience, I know that that is very important.

I have a specific question that I will ask in a general way and perhaps get a general answer. Will the minister confirm that a successful agreement, if it is reached, will lead to a significant increase in preparation time? That is sometimes known as non-class contact time but, as the minister knows from his days in the profession, it is preparation time and it is vital.

**Mr McConnell:** That should be the case. I do not want to comment on specific hours, but the proposal is for more time to be available for preparation and marking, particularly in primary schools, outwith the time when a teacher is with a class. The efforts that we must make to reduce the burden of other administrative duties on teachers to free up time for preparation are also particularly important. That is why the whole package is

important. It is not just about hours, the contract, conditions and pay, but about everything that is going on around that to make schools the kinds of places where people carry out the duties for which they are really responsible, with teachers teaching and others carrying out other duties that give teachers the space to teach.

**Tommy Sheridan (Glasgow) (SSP):** The minister made a number of references to the need for transparency and fairness. Would he accept that if he were back in the classroom now he would find it less than satisfactory that the way in which the current discussion has been promoted has been less than honest on the 21.5 per cent wages deal? What is being talked about over three years is really a settlement of around 7 per cent. Would it not be more appropriate in terms of transparency and fairness for the Scottish Government to talk about that settlement, rather than parading the 21.5 per cent as though teachers are going to receive that in the next 12 months?

**Mr McConnell:** No. I do not think that anything that I or anybody associated with the talks on any side has said since Friday would imply that, if the deal is reached, there will be 21.5 per cent over any time scale other than the three years. If anything, people have perhaps got the impression that the pay deal may not be 21.5 per cent and that the 21.5 per cent refers to the increase in the total budget, including all the other things in the package as well as the increase in teachers' pay. That is why I made it clear in my statement that the pay deal is 21.5 per cent over three years and that the other costs will be additional to that and will be funded separately by the Executive or, in cases where those costs are already part of local authority budgets, by local authorities.

**Donald Gorrie (Central Scotland) (LD):** Frank McAveety asked about bureaucracy. The minister's reply was very welcome and I look forward to his putting his talents and political will to work on his own department, which produces a great deal of the bureaucracy that was referred to. We may in due course be able to anoint him anti-bumf tsar. Bureaucracy is one aspect of the way in which teachers feel *hauden doon* by over-regulation. The national department and local government keep producing more and more regulations and teachers feel that they are not treated as adult professionals who can get on with the job. Will the minister tackle the over-regulation of teachers as well?

**Mr McConnell:** I have been called many things, but not until now an anti-bumf tsar. I welcome the challenge.

The regulation of what teachers are doing in the classroom is not part of the discussions or the agreement, as members will know. However, the

discussions that I have had with teachers since I was appointed Minister for Education, Europe and External Affairs have shown me that the level of guidance and demand that is placed on them in relation to the curriculum and assessment—now stretching into primary schools as well as into secondary education—at times competes with their professional judgment on the interests of the children whom they teach. I will continue to discuss that issue with teachers over the coming months.

**The Presiding Officer:** That concludes the statement and questions. I thank the minister and all those members who participated for keeping within the set time—a practice that the Presiding Officers are keen to establish. It is a good start for the new year.

## **Leasehold Casualties (Scotland) Bill: Stage 1**

**The Presiding Officer (Sir David Steel):** The next item of business is motion S1M-1367, in the name of Adam Ingram, on the general principles of the Leasehold Casualties (Scotland) Bill.

15:06

**Mr Adam Ingram (South of Scotland) (SNP):** I am delighted to move the motion to approve the general principles of the Leasehold Casualties (Scotland) Bill. The bill will remove an anachronism from Scots law, which, through recent exploitation by certain landlords, has caused a great deal of distress to tenants in specific parts of Scotland.

I would like to thank the sponsor of the bill, Pauline McNeill, for the help and support that she has given me in introducing the bill to Parliament. Indeed, I have received support and encouragement from a broad range of colleagues, not least from the Executive. I am grateful to ministers for assistance in drafting the bill and other related matters. I hope that the bill will prove to be an example of how non-controversial legislation with wide, cross-party support can be dealt with quickly and effectively in the Scottish Parliament. I would like to thank the Justice and Home Affairs Committee for the careful consideration that it gave to the bill. I am pleased to say that the committee's stage 1 report welcomed the bill and recommended that its general principles be agreed to.

It might be useful to members who are not familiar with the subject if I begin by explaining what leasehold casualties are and the difficulties and injustice that they have caused.

For centuries, the vast majority of property in Scotland has been held under feudal tenure. Members will be aware that the feudal system will be abolished in due course, following the passing of the Abolition of Feudal Tenure etc (Scotland) Act 2000. However, there are pockets of non-feudal tenure in various parts of the country. Leasehold tenure—although rare in Scotland in comparison with the situation south of the border—is quite common in parts of Lanarkshire, Renfrewshire, Ayrshire and Clackmannan. Instead of feuing building plots, landowners in those areas would let vacant land under very long leases, sometimes for as long as 999 years. That might have been done because there were prohibitions on feuing or for other reasons. Such long leases of residential property are now prohibited, following the passing of the Land Tenure Reform (Scotland) Act 1974. However, to all intents and purposes,

those leases were the equivalent of a feudal grant and legal practitioners in the relevant areas have been, for practical conveyancing purposes, treating those long leases as feudal property.

At this point, I should make it clear that the bill would affect only one aspect of leasehold tenure: leasehold casualties. The Scottish Law Commission will review the law relating to residential long leases more generally as part of its sixth programme and will publish a discussion paper in due course. I know that my colleague Fergus Ewing is interested in such matters. I hope that the commission's final report will lead to a more wide-ranging bill on residential long leases, which will reform the law on that form of tenure. It is possible, however, to deal with leasehold casualties ahead of more general reform because the commission has already reviewed that subject, and provided in its 1998 report a bill which I have been able to adapt.

A leasehold casualty is a payment, additional to rent, that a tenant must pay to a landlord if a lease so stipulates. Casualties can be, for example, payments based on one year's net rental value of a property, which fall to be paid upon the entry of a new tenant. They can also be duplicands, which are extra ground rent payments payable typically every 19 years. While some casualties are low, say less than £2 a year, and for that reason may not be worth collecting by the landlord, leasehold casualties based on the annual rental value of a property may be substantial, and it is that sort of casualty that has been responsible for the distress caused to tenants in certain areas.

It is worth noting that it also used to be possible for feudal superiors to impose equivalent feudal casualties on feudal properties. Feudal casualties were abolished by the Feudal Casualties (Scotland) Act 1914, which contained provisions to allow the Court of Session, if it wished, to apply the effect of the legislation to leasehold casualties by passing an act of sederunt. Some years ago, the Law Society of Scotland and the Keeper of the Registers of Scotland made a joint approach to the Lord President of the Court of Session to ask him to make such an act. However, the Lord President of the day took the view that the matter was too controversial to be dealt with by an act of sederunt, and should be dealt with by primary legislation. That moment has finally arrived.

I mentioned already that, until recently, leasehold casualties have largely remained dormant and the payments uncollected. Last century, the landlord with the largest leasehold interest was the former National Coal Board, which acquired the landlord interest upon nationalisation. The cost of collecting lots of fairly nominal casualties would have far exceeded the income, so no casualties were collected. That, and

the fact that leasehold titles, and therefore leasehold casualties, are uncommon except in areas such as Lanarkshire, and are couched in unfamiliar terms, led to leasehold casualties being overlooked by some solicitors when they were advising clients who were in the process of purchasing properties held under very long leases.

However, over time, and particularly when the nationalised industries came to sell off non-core activities, estates including landlord interests in leasehold properties were acquired by land speculators. Although they may have been unaware of the existence of leasehold casualties at the outset, close examination of the titles alerted some new landlords, or their legal advisers, to the potential for financial gain offered by the long-neglected clauses. That applied in particular to casualties based on annual rental value.

In the mid-1990s, some incoming buyers—who, remember, become tenants under a long lease—particularly in Lanarkshire, were asked to pay an unexpected sum, which in some cases amounted to several thousand pounds. In one case, an individual payment in excess of £20,000 was demanded. In addition, landlords may succeed in attempts to show that incoming tenants are liable for past unclaimed casualties against previous tenants.

In pursuing claims for outstanding leasehold casualties, some landlords have taken legal proceedings against tenants for present or accumulated casualties. If the tenant had not been advised about the casualties at the time of purchase, he might have a negligence claim against the solicitor who advised him when he acquired the property. Of course, such insurance claims are not settled quickly. The solicitor would enter into negotiations with his insurers, and the tenant against whom the claim of casualties had been made would inevitably suffer stress and worry until the matter was settled.

Although the issue has died down at present, it could resurface at any time, since the sale of any house held under a long lease and which is subject to a casualty clause might provoke a claim from a landlord against the incoming tenant, in other words, the new owner. We simply do not know whether the potential for commercial gain from leasehold casualties has been exhausted. Unless the bill is passed, it is possible that further hardship will occur.

The matter was raised in the Westminster Parliament as long ago as November 1996 in an adjournment debate that was instigated by Jimmy Hood, the member of Parliament for Clydesdale. The Scottish Law Commission was not due to consider the problems associated with residential long leases until it had completed its work on the

abolition of the feudal system. In view of the hardship that was being caused to tenants, the Secretary of State for Scotland in February 1997 asked the commission to accept a reference

“to consider the law on leasehold casualties and advise on possible reforms”.

The commission published its report in April 1998. I take the opportunity to pay tribute to the commission not only for the care and diligence that it took in formulating its recommendations, but for the speed with which it did that. In little more than a year, the commission issued a discussion paper and analysed the responses from a wide cross-section of interested parties, including landlords, before producing a carefully considered final report. Given the speed with which the commission dealt with the matter, it is greatly to be regretted that the report has not been implemented by legislation before now. That is another example of how difficult it was to have purely Scottish legislation dealt with in the Westminster Parliament.

The commission recommended that leasehold casualties should be abolished and provided a draft bill to give effect to that basic recommendation. The bill that is before Parliament differs from the original bill on three main aspects.

First, the commission proposed that rental value casualties, which yield the largest sums to landlords and have therefore caused tenants the greatest distress, should be abolished without compensation to landlords. Tenants will have to pay compensation to landlords for the abolition of all casualties other than rental value casualties, but only if landlords request it by a written notice that is given no later than one year after the abolition date. The compensation sums are likely to be small and not worth seeking in most cases.

The commission believed that rental value casualties should be treated differently because they are in the nature of a tax or charge by the landlord on the value of buildings that the tenants had built, paid for, maintained and improved themselves, rather than on the rental value of the ground alone. Such casualties allow the landlord to benefit from a value that derives from the tenants' expenditure over the years, when the landlord has provided only the ground. I have been advised that the bill would be less open to challenge if it included some provision for compensation for the loss of rental value casualties. The relevant case law makes it clear that compensation need not be proportionate, so my bill provides compensation only on the basis of the ground rent.

The second change to the commission's bill will reduce the window of opportunity for further exploitation of the existing law. The commission

proposed that irritancy provisions in pre-1914 leases, which allow the landlord to repossess a property for unpaid casualties and which cause the main difficulty, should be void. It also proposed that current tenants should cease to be liable for casualties that were due in the past from previous tenants. It was proposed that those provisions should come into effect on royal assent and apply to any court action that had been commenced but not concluded by that date. That would have meant that landlords could still pursue irritancy actions effectively, provided that they obtained final decrees before the bill received royal assent, and that they could seek to evict tenants who were unable or unwilling to pay casualty payments. However, the bill that I have introduced has been drafted so that those provisions will come into effect from its date of introduction, which was 10 May 2000. Irritancy clauses will be void from that date and landlords will be unable to claim casualties from current tenants that were due from previous tenants.

The third change to the commission's draft bill concerns claims for indemnity against the Keeper of the Registers. It would be wrong if someone who was entitled to indemnification by the keeper for mistakes in the Land Register of Scotland lost that entitlement as a result of the bill or any other legislation. Regrettably, it has happened that clauses in leases containing obligations to pay leasehold casualty payments have been erroneously omitted when some properties have been registered in the Land Register. That may have been because they were mistaken for feudal casualties, which, as I mentioned, were abolished in 1914.

It is not possible, under the relevant legislation, to rectify the register to the prejudice of the proprietor in possession—in other words, the tenant—so the keeper becomes liable to a claim from the landlord, since such an obligation is only enforceable if it is on the face of the register. If it is omitted, the landlord is no longer able to enforce the casualty. The saving in the bill will apply to claims for indemnity in respect of omitted leasehold casualties commenced but not finally disposed of before the date of abolition.

It might be helpful if I briefly run through the provisions in the bill.

Section 1 of the bill will abolish leasehold casualties automatically from the date of introduction of the bill, 10 May last year. That will not affect arrears of casualties that have fallen due before the introduction of the bill. Relevant leases are defined as those granted before 1 September 1974, for a period of not less than 300 years. That avoids inadvertent application to modern commercial leases.

Under section 2, compensation will be payable

in respect of all casualties abolished by the bill, but will only be due if requested by the landlord by a written notice not later than one year after the date on which the bill receives royal assent. The compensation will be payable by the person who is the tenant at the date on which the bill is introduced. The notice must stipulate the amount of compensation as calculated by the landlord.

Section 3 sets out the rules for calculating the compensation payable by tenants. The guiding principle is that, except in the case of rental value casualties, the landlord should be awarded a sum of money that, if invested, would have yielded the same amount at the due date. An appropriate rate of interest has been assumed. It is therefore the intention to award full compensation to landlords. However, in reality most casualties yield little return, so in most cases the compensation will be very low and in many cases it will not be worth claiming. The level will depend on the amount of the casualty and the length of time the landlord would have to wait to receive it.

Schedules 1 and 2 to the bill contain, respectively, a table of multipliers and a method for calculating the multiplier in cases involving casualties of fixed amount payable at fixed and regular intervals. Other rules are stipulated for other kinds of casualties. In relation to rental value casualties, section 3 makes it clear that the landlord will be compensated for the casualties based on the ground rent, without taking account of buildings or improvements that the tenant or his predecessors may have carried out on the ground.

Under section 4 of the bill, the obligation to pay compensation will prescribe after five years, beginning with the date of the notice served by the landlord.

Section 5 abolishes the power of a landlord to terminate a lease by virtue of an irritancy clause triggered by the tenant failing to comply with any provision of the lease.

**Phil Gallie (South of Scotland) (Con):** To go back to section 4, will Mr Ingram explain what happens to someone from whom a payment has been demanded but who has adamantly refused to pay once the five years have lapsed?

**Mr Ingram:** In that situation, the tenant would not pay. The landlord may pursue that person, but if the tenant does not pay after five years, the landlord cannot continue to pursue.

Section 6 will ensure that, in future, tenants will no longer be liable for casualties unpaid by former tenants following an assignation of a lease. As I mentioned, some tenants have been subjected to claims for arrears of casualties run up by former tenants. A tenant will be liable only for his own arrears, but the landlord will retain the right to proceed against previous tenants for their arrears.

Section 7 makes it clear that sections 5 and 6 apply to actions that have not reached the stage of final decree. That is to prevent landlords from seeking to preserve irritancy rights and rights to recover previous tenants' arrears from the current tenants by commencing actions before the bill comes into force.

As I explained, the bill will not affect any claim against the indemnity of the Keeper of the Registers that was commenced but not completed before the introduction of the bill. Section 8 confirms that.

Section 9 is the interpretation section and section 10 makes it clear that the bill will apply to the Crown.

The bill is long overdue and, in advance of more general reform of the law relating to long residential leases, it will remove from Scots property law an antiquated element that has recently been used to oppressive effect. During the hearing of evidence by the Justice and Home Affairs Committee, it was clear that the bill commanded wide support. It was welcomed by those giving evidence on behalf of the Law Society of Scotland and the Keeper of the Registers. Even Mr Brian Hamilton, representing the landlords' interest, conceded that laws have to change as society itself changes.

It is therefore with great pleasure that I move,

That the Parliament agrees to the general principles of the Leasehold Casualties (Scotland) Bill.

15:26

**The Deputy Minister for Justice (Iain Gray):** I am happy to welcome Adam Ingram's bill on behalf of the Executive and to express our strong support for the policy that the liability to pay leasehold casualties and arrears of leasehold casualties should be abolished. The bill complements the Executive's programme of property law reform, based on recent reports by the Scottish Law Commission. We are pleased that it has found sponsors in Adam Ingram and Pauline McNeill.

Like Adam Ingram, I acknowledge the work carried out on leasehold casualties by the Scottish Law Commission. It is worth noting that the commission described leasehold casualties as

"an archaic, anachronistic and undesirable feature of Scottish property law"

a fairly clear-cut judgment. As was so often the case, no time could be found at Westminster for a small piece of Scots law reform. However, this is precisely the kind of detailed, Scotland-only legislation that this Parliament is ideally placed to expedite, as we are doing today.

Many leasehold casualties involve small sums of money payable at fixed periods. In many cases, the sums are so small that it is not commercially viable to collect them. Although they are not onerous, they are outdated obligations that clutter up the titles of properties and they deserve to be swept away. As Mr Ingram has pointed out, however, we are doing more than simply tidying up an untidy and archaic piece of law.

The problem that has given rise to most concern and caused most distress to householders who own houses held under very long leases is rental value casualties. The tenants, as they technically are, have suddenly and unexpectedly been faced with demands for large sums of money by landlords claiming payment of outstanding and long-neglected rental value casualties. Those landlords have taken a lawful opportunity to extract money from others, but the effect has been oppressive.

**Phil Gallie:** Roughly how many such individuals have fallen foul of leasehold casualties?

**Iain Gray:** I am less interested in how many people have fallen foul of the current law than in the potential for others to fall foul of it in the future. It is difficult to make an estimate. As Mr Ingram said, there are four counties in Scotland where that type of property tenancy is quite common, so there is the potential for more people to suffer in the future. The key issue is the oppressive nature of the landlords' actions, and the legislation that we are considering today will ensure that no one faces such consequences and demands again.

It is a frightening thing suddenly to be faced with a demand for up to £20,000. Tenants do not know whether the demand is valid and have to seek legal advice, usually from the solicitor who acted for them when they bought the house. Not all solicitors in the areas where leasehold casualties are prevalent have been negligent. Some will have advised their clients as to their potential liability. Some, on discovering that they have overlooked a valid and enforceable casualty, may have accepted responsibility and taken action at their own expense. In some cases, however, a tenant may be being threatened with legal action by a landlord while his solicitor denies or is reluctant to admit professional negligence. During such a period of uncertainty, the owner may face the threat of eviction if he or she does not pay up. That is an oppressive and difficult situation and it is right that we should take action to ensure that no one faces it in future.

The Scottish Law Commission's report on leasehold casualties is one of a number of reports on property law that the Executive intends will be implemented by legislation. The commission's report on the abolition of the feudal system has already been put into law by the Abolition of

Feudal Tenure etc (Scotland) Act 2000. We are now preparing to consult on the commission's report on real burdens and title conditions.

The final item in the Executive's current programme of property law reform concerns the law of the tenement. Although the commission published its report on the law of the tenement in 1998, it subsequently advised ministers that the logical sequence in which to reform the law would be to deal with abolition of the feudal system first, followed by reform of real burdens and title conditions and, finally, the law of the tenement. We intend to follow that sequence.

The Scottish Law Commission is also undertaking a review of the existing law relating to residential long leases as part of its sixth programme of law reform. It is hoped that that area will be the subject of further legislation. Taken together, the reforms amount to a comprehensive restructuring of Scottish property law, which we hope the Scottish Parliament will pass within the next few years. Today's debate is a contribution to the package.

In the course of the review of residential long leases, the Scottish Law Commission has obtained data on more than 2,500 such leases. The research has led the commission to suggest a number of amendments to the bill that is currently before Parliament. Those suggestions are intended to improve the coverage of the bill. The Executive will lodge appropriate amendments at stage 2 to give effect to them. I will summarise briefly the intended changes.

First, the bill as introduced will affect only leases granted for periods of not less than 300 years so as to avoid inadvertently catching other provisions in modern commercial leases. The survey of long leases has revealed very few commercial leases of longer than 125 years, but has found a small number of leases of less than 300 years that contain leasehold casualties. We will therefore propose at stage 2 that the bill should apply to leases of more than 175 years, which reflects the longest period of lease permitted under the Abolition of Feudal Tenure etc (Scotland) Act 2000.

Secondly, section 5 of the bill removes the landlord's right to irritate an ultra-long lease for non-payment of a trivial amount of rent. At present, section 5 is confined to leases granted for a period of 300 years or more with a ground rent of not more than £100. The Scottish Law Commission has discovered some leases with a rent of just over £100. We will therefore propose at stage 2 that the rent limit in section 5 should be raised to £150.

Thirdly, we will propose that section 5 be amended to provide that all rights of irritancy

which allow the landlord to terminate for breach of the lease by the tenant will be void. That will put beyond doubt the fact that the provision covers the landlord's common-law right to irritate a lease for non-payment of two years' rent as well as conventional irritancy clauses.

Last, in order to put beyond doubt whether certain leases with renewal or break-option terms fall within the scope of the bill, the commission has suggested that the provisions that define the length of relevant leases for the purposes of the bill should be amended appropriately. We will propose at stage 2 that renewal periods should be included when calculating the length of leases. In the case of leases with break options, the length of the lease will be treated as the full term and not the period to the next possible break option.

The changes are intended to improve the coverage of the bill and I hope that, when the time comes, the committee will give the proposed Executive amendments a smooth passage.

For the purposes of rule 9.11 of the standing orders, I advise the Parliament that Her Majesty and His Royal Highness the Prince of Wales as Prince and Steward of Scotland, having been informed of the purport of the Leasehold Casualties (Scotland) Bill, have consented to place their prerogatives and interests, so far as they are affected by the bill, at the disposal of the Parliament for the purposes of the bill. [MEMBERS: "Oh."] The Executive believes that this bill is a necessary and desirable reform—as the previous paragraph was a necessary and desirable paragraph, whatever it might mean.

I commend the bill to members.

15:35

**Phil Gallie (South of Scotland) (Con):** Adam Ingram will understand that this bill has been on the lips of everyone in Ayrshire over the Christmas holiday. I do not know whether that sense of excitement will come into the chamber today. There is certainly excitement on the Tory benches. [Laughter.] Honestly.

Michael Forsyth initiated this bill in 1997, as Adam Ingram graciously conceded. I am sure that Michael Forsyth will be pleased that the bill has come before this Parliament. Perhaps if he had remained as secretary of state, it would have been done and dusted by now and the bill would have been part of our law. All credit to Adam Ingram for grabbing the initiative and introducing this bill. He will certainly have the support of the Conservatives.

Iain Gray suggested that this bill is part of the land reform programme. We recognise the necessity for wider land reform but we are

concerned that, given that Parliament passed the Abolition of Feudal Tenure etc (Scotland) Act 2000 a few months ago, progress does not seem to have been made on the date of commencement. I commend Adam Ingram's bill, as the date of its commencement is May 2000, when it was first laid before Parliament.

The date of commencement of the Abolition of Feudal Tenure etc (Scotland) Act 2000 is not envisaged to be in the months ahead, as we are again waiting for the law of the tenement bill and the title conditions bill to be introduced. Those are essential. I ask the minister to give us an indication of when those important bills will be introduced. I wonder whether, contrary to what Adam Ingram and Iain Gray have said, if Westminster had dealt with this matter, it would have put all the bills together in a package and we might have achieved the ultimate objective at a quicker pace.

Perhaps the Leasehold Casualties (Scotland) Bill does not have an impact on the lives of Scots across Scotland. However, as has been pointed out, it will bring relief in four counties of Scotland; it is much needed. It is right that this Parliament considers bills such as this that affect the lives of the few rather than the many. As Iain Gray rightly said, for those few this bill could be exceptionally important for the property that they live in or work from.

When we consider this matter, we are examining long lease conditions. Adam Ingram said that this matter should have been addressed many years ago. The Law Commission examined it in the early years of the previous century; it is only now in the 21<sup>st</sup> century that we are addressing the issues. It could be said that there was an oversight by politicians, the Law Commission and others in not pursuing this matter further.

It is also fair to say that there has been an oversight by many landlords, as they did not impose the entitlements that were available to them. Only since the early 1990s have some landlords—perhaps some might say opportunists—jumped into the sector, recognised the potential for making money out of leasehold casualties and taken the matter forward.

That brings me back to one of the reasons why Michael Forsyth asked the Law Commission to consider the matter again. The commission stressed two main reasons why change was needed. First, it pointed to the distress felt by tenants hit with large bills who did not know and were unprepared for the demands that were to be made on them. Secondly, it highlighted the fact that a number of solicitors could find themselves in deep trouble on this issue.

Although it could be argued that the Law

Commission was looking after its own, its points about solicitors were well made. The commission considered that those conditions were dormant and that people who now sought to implement them were unjustifiably exploiting the law as it stood. It felt that that situation was damaging and that such archaic arrangements had to be disposed of. Today's bill provides the solution.

The only contentious issue in the bill is compensation payments, which raises the question of the right to remove someone else's entitlements. I suspect that the reason that the issue is being addressed in the bill has more to do with compliance with the European convention on human rights than with other issues—I know that Christine Grahame would not expect me to get through a speech without mentioning the ECHR. The convention has played an important part in concentrating minds on compensation and it is probably quite wise that that element has been injected into the bill.

I have some concerns about Adam Ingram's response to my point about those who have received demands in the five-year period and who have deliberately delayed paying such demands to avoid payment in the longer term. That highlights an underlying principle of the bill that is not quite fair. Perhaps we can look at the issue again when the bill reaches stage 2.

**Alasdair Morgan (Galloway and Upper Nithsdale) (SNP):** Does the member accept that the landlord has the option of suing the tenant for the value of the casualty, and that the debt will be prescribed only if the landlord does not sue within the five-year period?

**Phil Gallie:** That is a fair comment, and represents a way forward. However, Mr Morgan is well aware of the present difficulties with civil law in the courts. That process is likely to leave the landlord feeling that it was inappropriate to expend such cash in pursuit of his rightful dues.

**Christine Grahame (South of Scotland) (SNP):** It is my understanding that the landlord simply has to raise the action and serve the writ to stop the prescription of the debt.

**Phil Gallie:** I would have accepted that explanation—I think that there is a slight difference between what Christine Grahame and Adam Ingram have said on this point.

That apart, as I have said, the only area of contention for us is the issue of compensation. However, we do not have particularly strong feelings on that matter; it is important merely to have covered the issues.

Perhaps the best reason for the Parliament to accept this bill expeditiously is that its architect in modern times was Michael Forsyth. He has yet

again been shown to be spot on in his judgment. I urge the Parliament to back Adam Ingram and accept the bill.

**The Deputy Presiding Officer (Patricia Ferguson):** Although this is the new year, old habits unfortunately seem to be dying hard. I am afraid that there are some technical difficulties with the Parliament's sound system this afternoon. I will have to suspend this meeting of the Parliament for five minutes so that the problems can be addressed.

15:44

*Meeting suspended.*

15:50

*On resuming—*

**The Deputy Presiding Officer:** We can now resume today's meeting. I call Euan Robson.

15:50

**Euan Robson (Roxburgh and Berwickshire) (LD):** I am pleased to take part in this debate and to add my personal support and that of my party to the bill. I congratulate Adam Ingram and his sponsor, Pauline McNeill, on their initiative. I believe that the Executive also deserves credit for backing the bill from the word go. That has been helpful.

No one has yet said that the Justice and Home Affairs Committee—I suppose that I should call it the former Justice and Home Affairs Committee—welcomed the bill without reservation, but the fact that it did indicates the cross-party support for the bill. I understand that roughly 15,000 properties across Scotland are subject to the burdens of leasehold casualties. As we have heard, they are concentrated in Lanarkshire and Renfrewshire and—to a lesser extent—in Ayrshire and Clackmannanshire. They are usually held on long leases.

I have not yet discovered a property in the Scottish Borders—the area that I represent—that is so affected, but it is possible that there are some, as Peeblesshire adjoins Lanarkshire and such leases may have existed in the western part of the Borders. The leases apparently predate the Land Tenure Reform (Scotland) Act 1974 and are, therefore, of an old type.

The Scottish Parliament information centre briefing, which I found particularly helpful, gives details of the number of properties and emphasises that not all leasehold titles include a requirement to pay a casualty. In Lanarkshire, for example, 290 out of 875 such leases contained a casualty clause. The figures for Renfrewshire are

lower, but it is fair to say that about 30 per cent of the long-lease titles appear to contain casualties of the three types that have been mentioned: the rental value, the ground rent and the fixed sum.

We heard, in evidence given to the Justice and Home Affairs Committee, that the rental value casualty is the most onerous of the three types. The rental value casualty requires a payment not just on the ground, but on the building and any improvements that the tenants have carried out. It is unfair to be, in effect, taxed on improvements that one has made. Casualties based on ground rent are perhaps less onerous as they exclude the buildings and improvements. The amounts involved in the fixed sum casualties seem to vary from lease to lease.

We should emphasise that casualties are payments in addition to rents. As the Justice and Home Affairs Committee report says, it would seem that the original purpose of the casualties was in some way to replicate the feuduties when 18<sup>th</sup> and 19<sup>th</sup> century landlords wanted to lease land for long periods. Colleagues will correct me if I am wrong, but as far as I can recall, we heard no evidence to justify the continuation of casualties.

Witnesses were hard put to find any justification other than the existence of the casualties. No service is rendered for the payment of the casualties, no task is performed and no facility is granted. That is what needs to be emphasised as the purpose of abolition—there is no longer any point in having them.

It was thought that the Feudal Casualty (Scotland) Act 1914 had abolished leasehold casualties; that was the working assumption for many years. As has been testified eloquently, that led to a number of difficulties for the legal profession in subsequent years. Effectively, the casualties lay dormant until the 1990s, when the small number of individuals colloquially known as the raiders of the lost titles bought up estates on a speculative basis and started to demand payments under the long-neglected casualty clauses. The fact that those individuals were entitled to demand payment is, as far as I am aware, not challenged. It is more a question of whether it is acceptable in the modern age to have, in the words of the Scottish Law Commission, the

“reactivation of archaic and dormant rights”.

I do not think it acceptable that such dormant, archaic rights should be reactivated. It is hard to dissent from the Scottish Law Commission’s view that leasehold casualties are an

“anachronistic and undesirable feature of Scottish property law”

and that they should therefore go.

For several leaseholders, the discovery of liability for substantial payments and a sudden demand for a four-figure sum under clauses in their leases must have provoked a distressing experience—not to mention the five-figure example Adam Ingram mentioned. To give the appropriate credit, I think it was Michael Forsyth who referred the matter to the Scottish Law Commission in February 1997. It is important to put on record our appreciation for the work that the Scottish Law Commission did on its report, which came out in April the following year. The clear recommendation then was for a legislative solution—not to attempt another form of solution. Indeed, as we are aware, the commission produced its draft bill.

As the Justice and Home Affairs Committee heard, Adam Ingram’s bill follows the SLC draft quite closely, but there are some interesting differences and I wish to comment briefly on two or three of them. The Leasehold Casualties (Scotland) Bill includes a right of compensation for extinguished casualties, which the SLC draft bill did not.

Compensation is appropriate and should be paid. It is a matter of striking the balance between a fair and reasonable extinguishing of the casualty and consideration of the European convention on human rights, including the rights of the person holding the casualty. We will need to return to that balance at stage 2.

There are appropriate safeguards in the bill, such as the proposed five-year limit on the right to demand compensation and the prevention of the liability to pay casualties being transferred to new tenants, thus ensuring that no new tenant is liable for arrears that were incurred by predecessors.

We will need to address other issues at stage 2, including that raised by Phil Gallie in his intervention during Adam Ingram’s speech. That was an interesting one, but I think that it can be disposed of.

In conclusion, I have no hesitation in commending the bill to the chamber and I will vote for it at stage 1, as will my Liberal Democrat colleagues.

**The Deputy Presiding Officer:** We now move to the open part of the debate. I ask members who wish to speak to press their request-to-speak buttons again now. I am afraid that we lost the information on who had requested to speak when the system crashed. I call Alasdair Morgan, who will be followed by Pauline McNeill.

15:59

**Alasdair Morgan (Galloway and Upper Nithsdale) (SNP):** Like other members, I

congratulate Adam Ingram and Pauline McNeill on getting the Leasehold Casualties (Scotland) Bill introduced. I believe that I am correct in saying that it is the first member's bill that seeks to implement Executive-supported—or even Government-supported—legislation ahead of the Government's own timetable.

The bill received widespread support from members and from the bodies that were consulted. That gave the Justice and Home Affairs Committee a potential difficulty: there is a danger that, if everybody supports something, the scrutiny given to a bill might be reduced. However, if members care to read the committee's report, they will see that we tried to ask the awkward questions and to get answers to potential problems.

It seems that on all sides there is little argument about the proposition that leasehold casualties should have been abolished many years ago. Indeed, it has been suggested that many people thought that that they had been abolished. Therein lies the root of some of the problems that we are trying to deal with.

As has been pointed out, casualties in general are an area that has long needed reform. As early as 1838, the Law Commission asked for feudal casualties to be abolished, so we are hardly in new territory here.

As has been mentioned, the Feudal Casualties (Scotland) Act 1914 abolished feudal casualties, but for some reason left leasehold casualties on the statute book, although section 23 of that act gave the Court of Session power to abolish other casualties. I have tried to find out the thinking behind that section, but no mention of it or the reasoning behind it is made in the Lords and Commons *Hansard* for that period. Unfortunately, before the first world war, no record was taken of what happened in standing committees at Westminster, so the thinking is forever lost to us.

The basic point is that leasehold casualties are an anachronism and, worse, an anachronism of which few people were aware until recently. It could be argued that because they are a legal provision there is nothing wrong in enforcing them. However, comparisons could rightly be drawn with the many criminal laws that remain on the statute book despite the best attempts of the criminal law revision process, but which of course are not enforced by the police and would be laughed out of court if they were. Such laws should be repealed as time permits. Precisely the same logic applies to this anachronism, and that is what we are doing today.

As the minister said, casualties, and in particular rental value casualties, are not just an anachronism but an unduly onerous provision in today's society. The landlord's casualty value does

not depend on anything the landlord has done, but rather on investment by his tenant.

A significant objection, with which committee members had some sympathy, was that to some extent the bill gets sloppy solicitors, who should have picked up on behalf of their clients the existence of this casualty, off the hook. It is certainly not my objective to get sloppy solicitors off the hook, but if that is a price that we have to pay as an incidental result of sparing many tenants much agony and grief, I suspect that it is a price worth paying.

It is most revealing that the most significant objector to the bill, Brian Hamilton, who gave evidence to the committee, was much more interested in the theory and practice of the system than in the bill. In response to a question from Mr Ingram, he said:

"You could say that I am here in an almost academic capacity. I have very little financial interest in casualties now. If they are abolished, it will not really affect me."—*[Official Report, Justice and Home Affairs Committee, 4 October 2000; c 1843.]*

If the main objector to the bill says that it will not really affect him, I submit that we can fairly safely proceed.

The Justice and Home Affairs Committee has welcomed the bill. It has had to strike some balances, especially with respect to compensation. In principle, the bill should be welcomed by the chamber.

16:03

**Pauline McNeill (Glasgow Kelvin) (Lab):** I, too, thank Adam Ingram for introducing the bill and for giving me the opportunity to sponsor it. I have felt strongly about this since I was a law student at Strathclyde University. I would like to mention Professor John Sinclair of Strathclyde University, who has highlighted the activities of such notorious landlords as Brian Hamilton over the years.

There have been several attempts to tidy up feudal law, which this Parliament has abolished. Unfortunately, a less well known attempt in 1954 to convert leasehold casualties to feudal ones had only a five-year life, so this little beauty for landowners has remained intact until the introduction of this bill.

The Feudal Casualties (Scotland) Act 1914 failed to recognise the distinction between feudal law and leasehold law. That is where confusion has arisen, particularly over the past 100 years.

As Phil Gallie said—although unfortunately his comments were not recorded, so I will repeat them—the great thing about this member's bill is that, since it was introduced in May 2000, further

leasehold casualties cannot be created. That is an important aspect of the bill.

The bill will abolish the system whereby people who hold properties on long leases are liable to make extra payments at regular intervals or on the occurrence of specific events. Even more startling, because the liability for unclaimed payments passes with the lease owners, some tenants were faced with large demands for large arrears, which they did not expect, for amounts that were payable by the previous tenant. That caused great distress to many ordinary Scots. Let us not be under any illusion about the ruthlessness of many landowners who seek to retain the rights to gain from this type of legal burden and the distress that it has caused.

How has this situation come about? We know that much of Scottish ancient law is complex and that attempts to alter it have been made over the years. In this case, Scottish lawyers thought that the casualty was abolished by the 1914 act, although we now know that it was not.

Why did we not see the casualty clause in the title deeds, which are the legal documents that stipulate all the burdens and obligations that pertain to land that is owned? We know that in Scots law true ownership of any heritable property—buildings and land—is determined by who has the title deed, which is the document that describes the thing that is owned in every detail and that is replicated each time property changes hands.

To make the administration of property titles a little simpler, the Land Register was introduced in 1979. The idea was to simplify the process by allocating a number to every title deed to identify it. The Land Register must reflect the originating description and contain a title deed cover, which means that the original title deed need not be examined. In the case of leasehold casualties, many of the casualty clauses were in the originating document but were not translated to the subsequent paperwork and thus were not picked up by lawyers or their clients—for lawyers, that interpretation was generous.

Brian Hamilton said in evidence that the bill, which originated in the Scottish Law Commission, was just one bunch of lawyers protecting another bunch of lawyers, as many solicitors have had to compensate their clients for losses due to leasehold casualties. That point was addressed by Alasdair Morgan. We are clear that the purpose of the bill is to protect ordinary Scots, both now and in the future.

Members of the Justice and Home Affairs Committee had an interesting argument about compensation. We were urged by a number of prominent parties to the debate not to include the

award of compensation in the bill. Mr Hamilton in particular responded to a question from Gordon Jackson by saying that he was not aware of the existence of the casualty clauses when he bought land and, furthermore, that he did not factor in their worth when he was considering whether to purchase land. In other words, he did not pay for the value of the clauses, so why should the Parliament compensate him or anyone else if they simply got lucky by discovering the existence of a casualty clause in the title deed?

There are lots of reasons why we should not award compensation, but we should include such provisions in the bill because there has been confusion about leasehold casualties for nearly 100 years and we do not want that confusion to continue. Let us close the matter by applying the in-doubt argument, which is that the European convention on human rights applies in these circumstances. We should include the award of compensation in the bill so that we can put leasehold casualties where they belong—in the dustbin of history.

16:08

**Christine Grahame (South of Scotland) (SNP):** In what has been quite a dry debate, I have been longing to refer to the raider of the lost titles, because that is who we are talking about—although I was sure that someone would do so before me, I got to say that first.

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** You will not be the last.

**Christine Grahame:** I pipped Lyndsay McIntosh to it.

This is a serious matter. As I said, although the debate is dry—

**Gordon Jackson (Glasgow Govan) (Lab) indicated disagreement.**

**Christine Grahame:** Perhaps Gordon Jackson does not think it is a dry debate.

There has been a great deal of suffering and personal unhappiness behind leasehold casualties. Other members were right to address that fact.

I was interested in Professor Rennie's evidence on behalf of the Law Society of Scotland. He said:

"The rental value casualty is the most pernicious because it involves a calculation of the current market rental value. It can mean a bill for thousands of pounds coming out of the blue."—[*Official Report, Justice and Home Affairs Committee*, 11 September 2000; c 1696.]

People who thought that they were secure in their houses received such bills, although they may have a remedy somewhere down the line. Sloppy solicitors—I would rather call them

negligent ex-colleagues—can be sued and people do sue them. People can also sue the Keeper of the Registers of Scotland if he gives them a guaranteed title that is not what it ought to be. In reality, however, that takes years. Life goes on, and people are left paying expenses. Adam Ingram has just told me of someone who ran up a £20,000 court bill that had to be paid there and then. The person may get some of that money back, but that is a long way down the track. This is a serious and important piece of legislation for individuals and it deals with a feudal anachronism.

I would like to comment briefly on compensation. We should have been more robust about compensation and not included it in the bill. Perhaps it is not worth going to the wire on this bill, but it might be worth doing so with others, so that the Parliament can test things in court and see whether we are getting the balance right on ECHR compliance.

I would like to explain again to Phil Gallie the prescriptive period mentioned in section 4. The section amends the Prescription and Limitation (Scotland) Act 1973. What I said earlier about raising and serving an action stops that prescriptive clock running. Imagine that four years and 364 days down the line, a person manages to serve their writ on that 364<sup>th</sup> day. That person will have protected himself or herself and protected that right. I hope that that clarifies things.

**Phil Gallie:** Yes.

**Christine Grahame:** I would like to talk about the “relevant day”, which is mentioned in the bill. Few bills become acts retrospectively, but this one is interesting because it goes back to the day it was introduced. That is excellent. The legal advice that the Justice and Home Affairs Committee heard in evidence was that that was unusual but not improper in this case.

I would like to raise one issue with the minister. I may be nit-picking for the sake of it, because we have really had nothing to get our teeth into. The point concerns final decree. I have raised this point before in debates. Section 7(3) provides:

“For the purposes of this section ‘final decree’ means any decree or interlocutor which—

- (a) disposes of an action; and
- (b) is not subject to repeal or review.”

That last part is okay, but I would like clarification that the phrase “disposes of an action” refers to a decree for expenses as well. That may be the most substantial part of the whole court proceedings. We remember the lady with her £20,000 bill.

We want to thank Mr Brian Hamilton—I will say it again, the raider of the lost titles—for finding these buried treasures, because he has put the spotlight

on an injustice.

Finally, I need a footnote, Mr Gray, on the prerogatives at our disposal, granted by “our royal superiors”. I would be delighted to hear an explanation of that.

16:13

**Mr Keith Harding (Mid Scotland and Fife) (Con):** The abolition of leasehold casualties is long overdue. As Phil Gallie said, it was a Conservative Secretary of State for Scotland—Michael Forsyth—who initiated in 1997 the Scottish Law Commission review into leasehold casualties.

I commend Adam Ingram and his sponsor, Pauline McNeill, for pushing the bill through with such speed. It appears that he, like us, is a little weary of the Executive—or should I say Government—dragging its feet despite land reform being one of its flagship proposals. For example, even though feudal tenure was abolished last year, the “appointed day” on which it will actually end has yet to be appointed. In this case, if it were not for Adam Ingram, tenants who have suddenly found themselves liable for a fixed sum casualty, a casualty based on ground rent, or a rental value casualty, would not be relieved of that burden.

I fully support the bill. However, there are issues that today’s debate has not really addressed. Leasehold casualties might well have been abolished at the same time as the feudal casualties from which they were copied. Despite the Feudal Casualties (Scotland) Act 1914, leasehold casualties survived. Although they were treated in practice as if they had been abolished, they survived in a dormant form to be abused, years and years later, by the raiders of the lost titles, as Christine Grahame says. That should be a lesson for all of us in this chamber. The legislation that we pass—its competence or, in some cases, its incompetence—is written into history for good or bad. Those laws govern our country and, obviously, have effects stretching far and wide. In this case, people have suffered as a result of what the 1914 act omitted. Our responsibility should not be taken lightly. Each of us has a duty to consider possible unintended consequences even when supporting well-meaning legislation.

Landlords should not be condemned for simply enforcing their leases. Many of us find their actions against tenants unsavoury, but the real issue is that any exploitation was through a legally endorsed method. While we may pass judgment on the ethics of such behaviour, we cannot condemn them for enforcing the law. The fault lies with our predecessors, not with the landlords.

**Alasdair Morgan:** Does the member accept that

as individuals we have moral as well as legal obligations?

**Mr Harding:** I covered that in what I said, that I find the whole thing objectionable, but it was within the law and we cannot condemn someone because of that. The people who should be condemned are the legislators.

We are all, I think, united behind the bill. The only area of concern is compensation. In its 1998 report, the Scottish Law Commission recommended that limited compensation should be paid in respect of fixed sum casualties and those based on ground rent but it stated that none should be paid in respect of rental value casualties. The bill requires compensation to be paid for all casualties. I commend the good sense that has prevailed. I hope that it will also prevail when we work out the detail of that compensation. Will the level of compensation that is suggested meet the requirements of the ECHR? I ask the Deputy Minister for Justice to respond to that in his summing up.

Good sense must also prevail in any future considerations on land reform. The salutary lesson is that all possibilities—intended, omitted or otherwise—must be considered when passing legislation.

16:17

**Scott Barrie (Dunfermline West) (Lab):** During the technical hiatus, one of my colleagues asked whether I was going to say something jolly, uplifting and exciting because the debate so far had been dry. I will disappoint her in that I am not going to say anything particularly witty or insightful. However, that does not mean that the debate is unimportant or without merit. We have heard why we are in the position that we are in. It might or might not have to do with legislative incompetence in the past, but we are in this position and we are doing something to change it.

The bill appears to have wide support. Given the evidence to the contrary, it was disingenuous of Phil Gallie to suggest that the bill, along with a raft of land reforms, would have completed its passage by now if it had been left to Westminster. However, a point that was made in earlier speeches is valid. The bill is a good example of why a Scottish Parliament was needed—to deal with a Scottish anachronism that needs to be dealt with in a Scottish context.

It is a bill to remedy an historic anachronism. We have heard that most people assumed that leasehold casualties had been abolished with feudal casualties in 1914. That belief was borne out by the fact that leasehold casualties were largely unnoticed for 70 or 80 years and very few, if any, conveyancing solicitors appear to have

informed their clients that such casualties still exist. We also have examples of those casualties being omitted from the Land Register. It is significant that leasehold casualties are not the norm throughout Scotland, but are isolated to four historic counties. That might be another reason why they went unnoticed.

As other speakers have said, the bill must address two matters: whether we are, as Alasdair Morgan said, in danger of covering up for sloppy solicitors, and the question of compensation.

Having listened carefully to the evidence that was given to the Justice and Home Affairs Committee, I am clear that, in general, we are not covering up for sloppy solicitors and that it is not a case of the legal fraternity protecting its own. The reasons why the casualties have fallen into abeyance are well documented and we have to accept the point that Christine Grahame made, which was that in order to protect some people from such excessive demands, we might be overlooking some previous poor practice.

The question that the committee had to address was on compensation. It was slightly unfortunate that I missed the meeting of 11 September, at which Christine Grahame raised the question whether we should consider the Scottish Law Commission's recommendation to offer no compensation. Christine Grahame has said that that is not something that she is prepared to go to the wire for, but I admire the sentiments of her statement that day, which I read in the *Official Report*. Perhaps we can explore that issue at a later date.

It is true that we have to take the European convention on human rights on board. The convention now dominates much of our thinking in Parliament.

**Brian Adam (North-East Scotland) (SNP):** It seems to be a rather odd arrangement to be discussing rights, when the right that we are talking about is the right to rip people off. To imagine that that would be protected by the European convention on human rights is rather odd. I cannot understand the justification that could be given for compensation on those grounds. It is not really a right at all.

**Scott Barrie:** It seems to me, from what members heard in the Justice and Home Affairs Committee, that the point is that we are removing a right that certain people have—the question is whether they have some legal redress. It is a legal point. There are many people in Parliament who are better versed in such legal niceties and who, I dare say, earn a lot of money arguing about them. The important point is that the bill should not be held up and any doubt about the bill should not relate to whether that is a legal point. It is

necessary and we should do nothing to impede the passage of the bill.

The convener of the Justice and Home Affairs Committee—I cannot remember whether it was Roseanna Cunningham or Alasdair Morgan at the time—stated:

“the ECHR applies to everyone, whether we like them or not.”—[*Official Report, Justice and Home Affairs Committee*, 11 September 2000; c1693.]

That is something that we should bear in mind.

I thank Adam Ingram for introducing the bill. To a large extent it addresses unfinished business—business that Westminster may or may not have intended to complete in 1914. At long last, in the year 2001, it is business that we will see being done.

16:23

**Mr Lloyd Quinan (West of Scotland) (SNP):** It is very difficult to think of something that has not already been said, so I will begin with something that has been said by a lot of people: I congratulate Adam Ingram and Pauline McNeill on introducing the bill. We are addressing an anomaly. Rather than depending on another place to make addenda to its own legislation, the Scottish Parliament gives us the ability to address the issue directly. Although the matter does not affect every person who lives in our country, it affects a large number of people. It is a matter of redressing an injustice that has been lost among the dust and cobwebs of old papers.

I welcome several suggestions that the minister raised for consideration at stage 2, in particular the shift from £100 to £150 as the basis for compensation. In many cases where a figure is chosen, the person who is a pound over or a pound under that figure can suffer badly. It is excellent that the Executive has chosen to address that issue.

I have little more to say other than that it is exceptionally pleasant to be part of a debate where there appears to be unanimity across the chamber. It also, however, throws up the suggestion that when we have such consensus, maybe we should have the ability to limit the time for debate, and certain things could be nodded through.

As members are probably aware, I really have little else to say other than to congratulate Adam Ingram.

**Christine Grahame:** You could thank Michael Forsyth.

**Mr Quinan:** I would rather not

We should remind ourselves that members' bills will be some of the best legislation that Parliament

will produce, and that they will address the smaller problems—which are not small to the individuals who suffer because of them—that are unlikely to be covered by broader legislation.

I am truly making this up as I go along, so I shall sit down.

**The Deputy Presiding Officer (Mr George Reid):** In view of that, here is a challenge to Gordon Jackson. If you could manage seven to eight minutes, Mr Jackson, it would be helpful. [*Laughter.*]

16:26

**Gordon Jackson (Glasgow Govan) (Lab):** I will start by sympathising with Lloyd Quinan. Three minutes ago, my spirits were rising, and I thought, “I will not be called in this debate.”

Like almost everybody, I am in favour of the bill. Almost everybody who gave evidence to the Justice and Home Affairs Committee agreed, but for the rare exception of Mr Brian Hamilton who, as a landlord, objected to the bill. Oddly enough, I found what he said to be well presented. He was a man who knew—I should say this—very well what he was talking about. His argument that the proposed bill was intrinsically unjust and unfair had at first blush, to me at least, a kind of superficial attractiveness and logic to it. I understood what he was talking about. On one hand, the landlord had purchased an asset that had contained within it a particular benefit. Every so often, he would be entitled to receive a large payment, based on the annual rental value. That is what he had bought. On the other hand, the tenant, who had paid for the assignation and had acquired it, had at the same time acquired a liability. From time to time, the tenant would be required to make that payment to the landlord.

Mr Hamilton said that that is all in the paperwork. It is there to be seen—tenants should have been aware of such liabilities when making the purchase and they should have paid a price with that in mind. The fact that in almost every case the tenant did not have a clue what was happening is not the landlord's responsibility.

**Mr Ingram:** Would Brian Hamilton acknowledge that he did not know that he had those rights when he bought the estates in the first place?

**Gordon Jackson:** Absolutely, and I will come to that. At the moment, I am simply pointing out what, at first blush, is an argument. I do so for a number of reasons. Mr Hamilton says that the responsibility lies with the legal profession. He says that the lawyers missed those rights, the Keeper of the Registers misled certain people and that we should not pass legislation under the guise of protecting the unfortunate tenant, the real

purpose of which is to look after and cover up for what has become known in this debate as the sloppy solicitor. There is a remedy—one could sue the solicitor and the Keeper of the Registers, so one was not robbing a landlord of something that he had bought and paid for.

I must say that at first, that view did not seem unattractive and it raised in my mind problems about the ECHR. I am glad that the Deputy Minister for Justice has been asked to deal with that, because when the Justice and Home Affairs Committee asked the Scottish Executive justice department officials about it they were less than convincing. I am sure that the minister will wish to deal with that point.

Despite Mr Hamilton's argument, I came to the conclusion, along with everybody here, that the bill is entirely appropriate. While what Mr Hamilton says has superficial logic—the Justice and Home Affairs Committee saw that—it is, at the end of the day, disingenuous and artificial for a number of reasons. As we all now know, such payments should have disappeared a long time ago. Feudal casualties went in 1914. I was interested in the search that Alasdair Morgan carried out—I was not as diligent—because we do not know why leasehold casualties did not disappear at the same time as feudal casualties.

**Alasdair Morgan:** I am sorry to interrupt Mr Jackson—he was speaking so eloquently that one might almost think that he was, in his previous existence, paid to do so by the minute.

Given that the issue stems from an anomaly that occurred in 1914 when the Government was Liberal, cannot we just blame the Liberal party for it?

**Gordon Jackson:** Attractive as that proposition might be, we simply do not know why the provisions went wrong in 1914. Undoubtedly, leasehold casualties should have disappeared way back then.

**Euan Robson** *rose*—

**Gordon Jackson:** Aw no, Euan.

**Euan Robson:** The reason why they did not disappear was almost certainly that the Liberals would not have been able to get the measure past the Tory House of Lords.

**Gordon Jackson:** I subscribe to the cock-up theory over the conspiracy theory. I think that the problem was merely the result of a mistake.

By and large, nobody knew about the payments. People speak about lawyers missing the issue. I suspect that, until recently, hardly any lawyers in the country would have known a leasehold casualty if they found one in their soup. No one had heard of them. Even those in the legal

profession who had a very vague idea about them thought that they had, by and large, disappeared and they treated them as such.

In that context, the distress that is caused to tenants who are faced with such demands is unacceptable. It is of little comfort to most people to tell them, "Don't worry, you can sue your lawyer or someone else." They will worry and worry and no amount of telling them that they can sue their lawyer will take that away.

Finally, I will deal with the point that Adam Ingram wanted to make to me. It is most important to note that landlords such as Brian Hamilton did not buy leases with such payments in mind. To be fair to him—as Pauline McNeill said—he admitted frankly that the price that he paid was not based on any such entitlement. Brian Hamilton was asked whether

"the price you paid for the estate, and therefore the amount that the person you bought it from received, took no account of the value of the casualties".

To his everlasting credit, he replied:

"Correct."—[*Official Report, Justice and Home Affairs Committee*; 4 October 2000, c 1841-2.]

At no time did he pretend otherwise.

However, his position is gone. The argument that he, or others like him, have been robbed is difficult to sustain in relation to an asset that was not bought for the leasehold casualty, which no one knew existed and which should have ceased to exist almost 100 years ago. There might be a superficially attractive legal case for more compensation. Adam Ingram is right to allow for some compensation, but Alasdair Morgan was right to say that there is a strong moral argument that there should be no entitlement to such money. Like everybody else in the chamber, I congratulate Adam Ingram and support the bill.

**The Deputy Presiding Officer:** Thank you, Mr Jackson. Your speech was helpful and instructive. We are back on schedule.

16:33

**Donald Gorrie (Central Scotland) (LD):** Before I go into my main spiel, I will deal with 1914. I suggest that the then Liberal Government depended on the support of the Labour party—which was much smaller—and the Irish. Perhaps we can share the blame with Labour or the Irish—one can usually blame the Irish for anything. However, I am sure that Euan Robson's proposition about the House of Lords is better.

When—as an enthusiastic team player—I volunteered for what seemed to be the graveyard slot of speaking second for the Liberal Democrats on an issue on which everybody agreed and which

would therefore not produce a very exciting debate, I asked my staff to think up a joke that was relevant to leasehold casualties. One cannot get the right quality of staff nowadays. However, I was saved. Walking up the Lawnmarket from the Liberal Democrats' office, I met a colleague on the pavement, who was groaning with pain. I said, "Ho ho! You must be a leasehold casualty." He said, "No, I was mugged by a member of the Westminster Parliament who was angry at my use of the word 'Government' for the Scottish Executive." I am sorry, that was not a very good joke.

It is a great testimony to Adam Ingram and Pauline McNeill that there is so much agreement on the bill, but that might be what makes the whole thing so unexciting to people. However, they deserve great credit for introducing this excellent bill. Despite what Phil Gallie said, it is a measure of the value of a Scottish Parliament that we are now dealing with the matter. He might think that Michael Forsyth would have introduced a bill at Westminster, but that is stretching credulity a long way, even for a Tory.

The issues that seem to be bubbling under are compensation and whether solicitors are a useless bunch. There are attractive arguments for offering no compensation and there might be arguments for having significant compensation. It is therefore a good Liberal position to offer modest compensation. The solution in the bill is probably the right one. There is a slight parallel—I do not know whether it is a worthy one—in the fact that sometimes juries that have found somebody guilty of libel award the victim one penny or £1 of compensation, because they think that the person who was libelled is a complete creep. Various members have raised the issue of the moral aspects versus the legal aspects of the issue. Despite the fact that there is a legal basis to what those raiders do, there is no moral basis, so to give them derisory compensation is not such a bad idea.

It might be right that it is all the fault of the solicitors. I am happy to add solicitors to my list of hate figures, along with Liberal members of 1914 and so on. It is a false argument that tenants should take the matter up with their solicitors. Leasehold casualties impose ridiculous and excessive burdens on tenants. Even if an incoming tenant knows about them, the burdens are still excessive. Therefore, the argument that it is all down to lawyers does not stand up.

This is an important issue and it is an example of the value of the Parliament that we can get stuck into such issues that are of great importance to a small number of people. It is good that the Executive—or Government—supports the members who are promoting the bill. I hope that it

might do that for bills that other members come up with.

16:38

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** As colleagues will have ascertained, the Scottish Conservatives support the bill. We congratulate Adam Ingram on his achievement and for taking forward the plan of former Secretary of State for Scotland Michael Forsyth, who asked the Scottish Law Commission to consider the issue.

We are grateful to Adam Ingram for the explanation of what exactly a leasehold casualty is. The number of examples might be small and the amount of money that is involved might be minimal, but the opportunity for speculators to make a legal windfall gain of, say, £20,000 has caused untold misery to unfortunate tenants. We welcome Mr Gray's comments, the support of the Executive and the fact that amendments will be lodged. I can assure members that one or other of the justice committees will scrutinise the legislation closely.

We are all charmed by the news that Her Majesty and His Royal Highness the Prince of Wales have intimated their consent to forgo their interests or prerogatives. The reaction of SNP members to that intimation was a sight to behold, as was their reaction to the mention of Michael Forsyth. Phil Gallie stated our support and a concern regarding compensation. Members can imagine his discomfiture in treading so close to the boundaries of the ECHR.

Euan Robson kindly gave us the common title of the bill and its associations when he raised the question of the raider of the lost titles. My fear—which Christine Grahame beat me to—was that we might confuse it with the film and call it "Raiders of the Lost Ark"—not for us the glamour of Hollywood. Our purpose was to peruse and to consider a welcome piece of legislation.

We are grateful to Alasdair Morgan for giving us historical advice about the records of Westminster standing committees, all of which was before my time, of course. We offer our congratulations to Pauline McNeill, sponsor of the bill, and thank her for the technical explanation of what were described as "sloppy solicitors", or "negligent ex-colleagues", as Christine Grahame preferred to call them.

Christine beat me to the gag about the raiders of the lost titles and the "Raiders of the Lost Ark". She also referred to Professor Rennie of the Law Society of Scotland. The Conservatives are of the same school of thought as was Professor Rennie when he said in evidence:

"We support unconditionally the abolition of casualties of all types."—[*Official Report, Justice and Home Affairs Committee*, 11 September 2000; c 1695.]

Keith Harding and Scott Barrie both commented on the rights and morals of the present beneficiaries and former legislators. Lloyd Quinan acknowledged the unanimity in the chamber, but could not bring himself to record Michael Forsyth's part in matters. We can understand why he might have had a difficulty with that.

Gordon Jackson commented skilfully on the expertise of Brian Hamilton, the chief witness in defence of retaining the current law, and on the remedies in law to those who fell foul of his Gordon Brown impression. We are grateful to Gordon Jackson for his humorous speech—it is easy to see why he was pre-eminent in his former occupation. The courts' loss is our gain.

I cannot confirm whether a career on the comedy circuit awaits Donald Gorrie, but he was very brave in raising the question of compensation. What a move it was to say that lawyers would be added to his list of hate figures—it is certainly more than my life and position are worth to do such a thing.

The Conservatives gladly welcome the bill and wish it all speed when it comes to stages 2 and 3.

**The Deputy Presiding Officer:** We have plenty of time left, minister, so perhaps you can use some of it to wind up for the Scottish Executive. You have up to nine minutes, Mr Gray.

16:42

**Iain Gray:** I cannot promise to take nine minutes, but I shall endeavour to do my best—and I promise not to tell any jokes as bad as Mr Gorrie's.

I have listened to the debate with great interest; members from all parts of the chamber have made interesting contributions. A feature of this Parliament that is always a source of great wonder to me is that members can rapidly become conversant with relatively obscure aspects of our law. That skill seems to have been particularly prevalent on the Justice and Home Affairs Committee, and it can be extremely frightening for ministers, particularly when they are relatively new to a topic, to have to face members with such expertise.

**Mrs McIntosh:** Surely we did not frighten Mr Gray during his few appearances before us.

**Iain Gray:** Indeed not, but the nine-minute time limit has certainly done so.

It is pleasing that the motivation for becoming so conversant with our law has been clearly demonstrated this afternoon. Members want to

end the possibility of more Scots facing unexpected and oppressive demands for what can sometimes be significant sums of money. That is why so many members have taken an interest in the subject and have contributed to today's debate and to committee examinations of the proposed legislation.

When Phil Gallie intervened during my earlier speech, I replied that we do not know how many properties are likely to benefit from the bill and that to find that out would involve a long and time-consuming examination of leasehold titles in areas of Scotland where they are prevalent. However, we had the benefit of a five-minute suspension during this afternoon's business, and I took that opportunity to nip out and count them as far as I was able. The Scottish Law Commission carried out a sample survey of titles and discovered that about a quarter of them contained provision for leasehold casualties. On that basis, we could estimate that 1,000 to 1,500 properties in Scotland could be affected by the bill. That is not an insignificant number of families and households where, were we not to pass the legislation, selling the property might invoke the situation that members have described.

Several members raised the issue of compensation for the abolition of rental value casualties. As a matter of policy, we do not believe that rental value casualties have any place in modern property law. Indeed, the Scottish Law Commission has described rental value casualties as

"unreasonably onerous and unjustifiable in current conditions".

Rental value is based on the value of buildings as well as the land, as many members pointed out. As in the case of ground leases, under which buildings were invariably erected and paid for by the tenant, rental value casualties amount to a levy by the landlord on the value of developments on the ground carried out by successive tenants. That cannot be justified in a modern society. It may be legal under the law as it currently stands, but it seems quite improper.

**Phil Gallie:** I am interested in the minister's comments, although I perhaps diverge just slightly. Given his comments about rental values and the increase in value on a plot of land because of improvements made by someone to a house, how does the minister feel about the current system of local government finance, in respect of which there might be a parallel?

**Iain Gray:** I would be being dishonest if I said that I completely understood the question. Perhaps Mr Gallie would like to intervene again to clarify it for me.

**Phil Gallie:** If a householder improves their

property, the assessor can go back, revalue the property and raise the valuation level. The individual then has to pay more council tax. I was striking a comparison with the minister's comments.

**The Deputy Presiding Officer:** Before the minister responds, I advise members that if we are under pressure to plug the gap until 5 o'clock, I will suspend the meeting for three or four minutes.

**Iain Gray:** The difference is that we are talking about the owner of the land benefiting from an improvement in the building that is placed on the land, not from an improvement to the property itself.

As a number of members have said, tenants with long leases—perhaps 999 years—rightly regard themselves as owner-occupiers, or did. They are then confronted with demands for large sums simply because the title to their property was originally granted under one form of tenure rather than another. The commission described the current landlord as

“claiming a return on tenants' capital because of a conveyancing device used by a distant predecessor”.

**Alasdair Morgan:** The minister rightly draws attention to a problem created by long leases, such as those that last 999 years. However, that is not the only problem that such leases can create. The fact that after that period the ground reverts back to the original owner's successors is a problem in itself. Will the minister confirm that the Scottish Law Commission will consider that in future so that that situation, too, can be reformed?

**Iain Gray:** Indeed, I can. As Mr Morgan knows, the general thrust of property law reforms in recent years has been to remove any continuing interest in the property on the part of the seller once the buyer has title to the property. That is the direction in which we expect this type of tenure to move as well.

Because of the anomaly of the landlord getting something for nothing from a rental value casualty, the bill offers only nominal compensation based on ground rent. As a number of members guessed, we believe that some compensation should be provided under the bill to ensure that any challenge under the European convention on human rights can be successfully resisted. Article 1 of protocol 1 of the convention requires that a balance be struck between the greater public interest and the disproportionate impact that the legislation might have on an individual who is prejudiced. Compensation must be proportional to the loss, but it is clear from case law that it does not have to reflect the actual loss. A number of factors must be considered, for example, the price paid for the landlord's interest in an estate, his expectations and his input in return for payments,

as well as the interests of the tenants.

The landlord gets something for nothing from rental value casualties as he benefits from investments made by tenants over the years, although he provides only the ground on which the buildings are erected. As Pauline McNeill and Gordon Jackson reminded us, Brian Hamilton admitted in evidence to the Justice and Home Affairs Committee that he acquired estates including leasehold interests in ignorance of the potential value of leasehold casualties. Such income as he has enjoyed from rental value casualties might well be considered to be a windfall.

In addition, although someone might derive an income from rental value casualties, the income stream would not be sufficiently reliable to give it a large market value. The prospect of abolition could act to drive down the value of casualties generally. Even so, the nominal compensation offered in the bill clearly does not reflect actual loss, but we believe that that is defensible under the convention in view of the public interest argument.

A point has been made on several occasions about the Abolition of Feudal Tenure etc (Scotland) Act 2000. I return to the fact that there is a package of land reform. It was clear when that legislation was passed that it would not be enacted until the title conditions bill was also enacted. I hear the criticism about the time that the process has taken, but this will add up to a comprehensive reform within the first session of this Parliament. We can be pleased about that.

Christine Grahame raised a couple of specific points. One was on the clarification of final decree in section 7. We should consider whether clarification is needed. We agree with the principle of that point. Christine Grahame also asked about the royal prerogative. I will again end on that charming note. The meaning of the paragraph that I read out is that Her Majesty and the Prince of Wales own property in Scotland as individuals. We do not know whether they own any landlord interests, but they have indicated that they are content to be subject to the provisions of the bill.

That seems to be as good a note as any on which to end my speech. Credit and blame for the bill have been spread across parties and professions. We should now give the floor to Adam Ingram, who gets most credit for this excellent legislation.

**The Deputy Presiding Officer:** Thank you. We are indebted to the minister for a valiant effort.

16:52

**Mr Ingram:** I am encouraged and gratified by the support that the bill has attracted from all

parties in the Parliament.

Solicitors and their clients who relied on the apparently established practice of non-enforcement and non-payment of rental value casualties have learned a bitter lesson.

Although other casualties that are covered by the bill do not cause the same problems in practice, the Scottish Law Commission commented that their existence, even in dormant form, would make it more difficult to introduce reforms to convert very long leases into absolute ownership. The SLC also said that even if no hardship or distress had been caused to existing tenants, there was still a strong case for abolishing leasehold casualties as soon as possible. The bill does that job.

I will address some of the points raised in the debate. In responding to Phil Gallie on section 4, I indicated that if the tenant did not pay within five years of a notice, the obligation to pay would fly off. That is the case only when the landlord takes no enforcement action to enforce the debt within the five-year period, as both Alasdair Morgan and Christine Grahame pointed out.

Euan Robson praised the SPICe paper, which was produced for the benefit of members and others who were trying to understand the issues. I heartily concur with his estimate of it. I do not know whether I am allowed to mention Fiona Killen as the author of that excellent paper.

Pauline McNeill, my sponsor, mentioned the ruthlessness of landlords in pursuing people for these purposes. She commented on the fact that Mr Hamilton had—as it were—got lucky in finding the clauses that he could exploit. Although Mr Hamilton's behaviour was entirely legal, it was wholly unjust and immoral. Christine Grahame's use of the sobriquet "raiders of the lost titles" is inappropriately romantic, which is why I have not employed it. I can assure members that residents of Boghead in Lanarkshire who have suffered at his hands have a few more couthie and accurate epithets for Mr Hamilton.

Scott Barrie and Alasdair Morgan said that the legislation would cover up for sloppy solicitors. Indeed, Mr Hamilton himself justified his actions by indicating that tenants could and should sue their solicitors to recover their expenses after having been misdirected. However, Gordon Jackson's eloquent speech totally demolished that argument.

As most of the other arguments have been well rehearsed, and given the fact that my opening speech lasted 20 minutes, I will now wind up. Although leasehold casualties affect a relatively small number of people in Scotland, they have undoubtedly been used to oppressive effect. It is unacceptable that such clauses should continue into the 21<sup>st</sup> century; the bill will abolish them. I

commend it to members and hope that they will approve its general principles.

**The Deputy Presiding Officer:** In view of the general agreement on the bill, I will now suspend this meeting of the Parliament for two minutes.

16:57

*Meeting suspended.*

16:59

*On resuming—*

**The Presiding Officer (Sir David Steel):** Perhaps I can use the few seconds before decision time to inform members that I am to visit Budapest on 25 January to speak at a Burns supper; to pay a call on the Speaker of the Hungarian Parliament in return for his call here; and to fulfil other engagements on the Friday. The two Deputy Presiding Officers have agreed to chair proceedings on the Thursday and I trust that the chamber will grant me leave of absence.

## Decision Time

17:00

**The Presiding Officer (Sir David Steel):** We now come to decision time; there are two questions to be put. The first is, that motion S1M-1514, in the name of Tom McCabe, on the designation of lead committees, be agreed to.

*Motion agreed to.*

That the Parliament agrees the following designation of Lead Committee—

The Health and Community Care Committee to consider the Fresh Meat (Beef Controls) (No 2) Amendment (Scotland) Regulations 2000 (SSI 2000/449) and the Feeding Stuffs (Scotland) Regulations 2000 (SSI 2000/453).

**The Presiding Officer:** The second question is, that motion S1M-1367, in the name of Adam Ingram, on the general principles of the Leasehold Casualties (Scotland) Bill, be agreed to.

*Motion agreed to.*

That the Parliament agrees to the general principles of the Leasehold Casualties (Scotland) Bill.

## Scottish Borders Labour Force

**The Presiding Officer (Sir David Steel):** The final item of business is a members' business debate on motion S1M-1500, in the name of Euan Robson, on the Scottish Borders labour force.

*Motion debated,*

That the Parliament notes the recent studies which have shown that a skills shortage is likely to develop in the labour force in the Scottish Borders in the next few years, creating particular challenges for traditional industries such as textiles and also for the construction industry, and therefore urges all relevant agencies to develop plans for training, retraining and upskilling, which will also assist in attracting high technology inward investors to broaden the base of the Borders' economy and in expanding attractive job opportunities for young people near their home localities.

17:01

**Euan Robson (Roxburgh and Berwickshire) (LD):** I am grateful for the privilege of initiating the first members' business debate in Parliament this year. I express my appreciation to the Parliamentary Bureau for allocating this debate on a subject that is especially important to my constituents and to the Scottish Borders.

The difficulties that the Borders economy faced three to four years ago taught us several lessons. The first and most important of those was that we must always work in partnership to address our problems. The culmination of the Borders working party, which was set up in 1998, was the report, which was published in March 1999, entitled "Rebuilding the Borders Economy". That report and the subsequent new ways economic development strategy for the Borders are the foundations of the success that there has undoubtedly been in recovering from the crisis that we faced in 1997-98.

The new ways economic strategy has four interrelated strands: establishing thriving organisations; getting people to their full potential; ensuring a connected place; and creating vibrant communities. The new ways economic strategy is the template for Borders organisations working in partnership to deliver on the new ways objectives. The Scottish Borders Economic Development Forum, which is now well established, is a key driver in delivering the strategy.

Another vital lesson that was learned through the painful experiences of a few years ago was that we should always try to look over the horizon, to see what difficulties or opportunities might develop. We should try to protect ourselves against looming difficulties; hence, much effort has been put into lobbying for a settlement of the banana war and an ending of the threat of the US

trade carousel act. We should, equally, look for opportunities, and we have been successful in securing the restoration of regional selective assistance for a large part of the Borders as well as European Union objective 2 status. That status was removed from us as long ago as 1982, as the Presiding Officer will remember, but it is now, thankfully, available again.

I shall concentrate on the new ways strand, or theme, of getting people to their full potential. As the new ways strategy says,

“real success will indeed be driven by the energy and talents of people in the Scottish Borders”.

It is worth quoting the new ways strategy document at length.

“Future success depends upon the willingness and ability of people in the Scottish Borders to compete. Skills, know-how and creativity will help promote individual and business success and wellbeing so skills development and learning are critical to helping people reach their full potential. This theme aims to raise people’s ambitions and to help them see that learning leads the way to new opportunities and benefits. The partners will work with people to help them to obtain these benefits and will also work with local institutions to help them deliver the learning services material that will meet people’s needs. This means that new partnership approaches must be created.”

It is especially instructive to consider some of the key findings of the Warwick University institute for employment research’s April 2000 update of its original 1997 report on the labour market prospects for the Scottish Borders. The unemployment rate in the Borders is just under 3 per cent—happily lower than the rate in Scotland as a whole, but with certain pockets of higher unemployment. Further, unemployment in the Borders has decreased by only 1.5 per cent over the past four years, a slower decrease than has been the case overall in Scotland. In April 2000, average earnings in the Borders were £326 a week, which is 14 per cent lower than in Scotland as a whole. The Borders region also has an aging population, and it has a higher percentage of jobs in manufacturing and a lower percentage in service industries than do other parts of the country.

It is the population characteristics over the period from 1998 to 2010 that give cause for concern. There will be a reduction in the number of children and an increase in the population of pensionable age. It is predicted that, although there will be an increase in young adults aged between 16 and 24, that will be insufficient to offset the out-migration of young people in the 1980s and 1990s. Key in terms of the economy of the Borders is the fact that there will be a reduction in the population aged between 25 and 44 and an increase in the 45-and-over category—a category to which I am personally sorry to have added.

Scottish Borders Enterprise and the careers service estimate that, between 1998 and 2010, more than 20,000 people will be required to meet the needs of industry in the Scottish Borders. School leaver figures demonstrate that there has been a great success in the attempt to encourage more young people to go into higher and further education, which is obviously a good thing. However, that means that only about 300 a year go directly into employment.

A simple calculation shows that too few young people will be going directly into local employment to meet the need. Of the 1998-99 school leavers, only three took up jobs in the key textiles industry. School leaver destination information for 2000 demonstrates that there is a 3 per cent increase in entry into higher education, a 4 per cent increase in people leaving the area and a 1 per cent decrease in entry into employment. School population projections show that, throughout Scotland, there will be a decline in the school population by 2010. My understanding is that the pattern is similar locally.

The Borders faces a decline in the number of young people entering the labour market, a decline in the number of people aged between 35 and 45 but an increase in the availability of the over-50s. In addition, if we are to expand our economy, we will need to attract inward investment and promote indigenous growth. In so doing, however, we will increase the demand for labour.

Part of the solution will be to offer attractive opportunities for people to relocate, for example, by encouraging native Borderers to return home. That will require considerable investment not only in our transport infrastructure, but in our housing in particular. For example, the availability of executive housing in certain Borders towns is small or negligible. We must address that issue. That raises a number of planning issues that we cannot discuss tonight, but the forthcoming structure plan and the local plans must take into account the need for housing development of a sensitive and environmentally sustainable nature that will meet the demands of the local economy.

It is vital that training, retraining and upskilling opportunities are readily available to young and old people in the Borders. We will encourage more young people to stay if they can see a local career structure that is accessible to them because they have the skills to advance through that structure. There is a growing awareness of such necessities in the Borders organisations.

The recent case of Mainetti Technology demonstrates ways in which to tackle the issue. The company, which is the UK’s largest manufacturer of telecommunications ducting systems, yesterday announced a £1.9 billion

expansion at its Hawick headquarters on the 12-acre site where the new purpose-built factory was completed in 1998. The investment will allow Mainetti to double output at Hawick. The expansion is phase 2 of a three-stage development of the site that will mean an increase in the work force from the present 100 to 200 when the process is completed. There were options to go elsewhere—overseas in particular—but the keys to success were long-term product development and, critically, staff training. Those factors kept the company there and allowed expansion.

The figures for training at the start of December 2000 were encouraging: there were 238 skillseekers out of a target figure of 250 for the year; there were 530 trainees, which is up from 416 in April; 440 skillseekers were in employment; and the number of apprentices increased during the year. However, we should note that, behind all of those figures, there was an imbalance in the proportion of male participants to female participants.

How can the Scottish Executive help? It is important that ministers understand the position. I am grateful for the opportunity to discuss these issues in front of the Deputy Minister for Enterprise and Lifelong Learning and Gaelic. Across Scotland, there is a lack of local labour market intelligence, which his department could consider. There are other positive actions that he could take, such as ensuring continued funding of the enterprise network. Because local enterprise networks are not on three-year budgeting cycles, it is difficult for them to dovetail with local councils. I hope that, in cases where local enterprise companies are taking a lead nationally, Scottish Enterprise will devolve adequate funding.

I wish to address several training issues, and intend to do so in correspondence to the minister. Those concern in particular the flexibility of training structures. Some lead organisations are inflexible in their requirements, which are sometimes not addressed to local needs.

It is important for Borders colleges to obtain access to rural social inclusion funds. One figure springs to mind: whereas Borders College received £900 to address social inclusion issues last year, certain Glasgow colleges received six-figure sums.

One of the issues requiring attention that I have been unable to cover in detail is that of the housing stock transfer. There will be a massive new investment in the Borders housing stock if the transfer goes ahead, but we need to train the work force in order that that investment may be used in meeting the opportunities ahead.

I could have covered a lot more. I thank the

Deputy Minister for Enterprise and Lifelong Learning and Gaelic for attending and listening, and we look forward to welcoming him and Wendy Alexander to the Borders at the end of the month.

The old adage that there are nae jobs in the Borders is soon to be proven untrue, whether for good or less positive reasons. There are challenges ahead. Among them, the training of the work force is particularly important.

**The Presiding Officer:** I call the convener of the Enterprise and Lifelong Learning Committee, Alex Neil.

17:11

**Alex Neil (Central Scotland) (SNP):** I want to concentrate on three points. What is happening in the Borders is happening in other parts of Scotland, but the Borders is a classic case: 20 or 30 years ago, it was a relatively prosperous economy. Since then, it has experienced a substantial decline relative to the rest of Scotland.

First, and ironically, a skills shortage is emerging side by side with a fairly high level of unemployment. It would be naive to suggest that we can simply match the unemployed people to those areas and sectors where there are skills shortages. Life is not as simple as that.

One area in which the minister, Scottish Enterprise and Scottish Enterprise Borders could take some initiatives is that of promoting the concept of a skills ladder, so that incentives are provided to companies and to local colleges to train people in the skills in which there are shortages. At the same time, they would be encouraged to provide assistance for recruiting unemployed people into the workplace. Scottish Enterprise used to run a successful training and employment grant scheme, which was aimed at encouraging the long-term employment and training of unemployed people, in particular long-term unemployed people. The re-creation of a similar scheme in the Borders, perhaps as a pilot, might be a useful exercise and an idea for the minister to take up.

The second issue is depopulation, whose importance we should not underestimate. When the population of an area is lost, that reinforces unemployment, because, as people leave the area, they take with them purchasing power. Less purchasing power in the area means fewer jobs and employment opportunities, which in turn feeds the depopulation. A cycle develops, where depopulation feeds unemployment, which in turn feeds depopulation. We need to recognise the importance of depopulation. Its other major effect is to increase the relative size of the dependent population. That has major implications for social services and other public services in the area.

Thirdly, there is a need to examine the local infrastructure. One of the problems in the Borders, as is also the case in Dumfries and Galloway, is that the labour market is relatively self-contained. One of the reasons for that is that the road and rail links—more relevantly the road links—with the rest of Scotland, notably to the Edinburgh area, require a substantial upgrade. If we had better road and rail links, it would effectively increase the size of the labour market, and would make jobs in Edinburgh and the surrounding area much more accessible to people living in the Borders. There is an overheated economy in Edinburgh side by side with high unemployment and depopulation in the Borders.

Although I recognise that road and rail investment is outwith the remit of the Deputy Minister for Enterprise and Lifelong Learning and Gaelic, I hope that he will raise with his colleague the Minister for Transport the need to improve the road network in the Borders—we have already had a substantial discussion on railways in the Borders. There are initiatives that we can take on skill shortages, to encourage employers to take on unemployed people, and to create the skills ladder concept. We can improve the infrastructure to allow the people of the Borders to share in the general prosperity of the east of Scotland.

17:15

**Mr Murray Tosh (South of Scotland) (Con):**

We have to congratulate Euan Robson on the selection of his motion for debate this afternoon, which, as he said, is the first of the new year and, to those pedants among us, of the new century and the new millennium. This is the second occasion on which he has managed to have a debate selected only days after it was lodged. There are probably 100 MSPs who would like to know what his secret is and would welcome a tutorial on how to achieve that.

I endorse what Euan Robson said about the new ways strategy and about the general objective of tackling the skills shortage in the Borders. I am aware from visits to the area that even when the textiles industry was shedding labour, there remained critical skills shortages and a genuine concern among some of the most important employers in the region that the education system was not sufficiently geared to encouraging young people to see that there was a job for life in textiles, albeit one that demanded increasing levels of skill, ability, retraining and flexibility. I hope that the minister will ensure that that point is addressed.

I will focus my speech on the point about housing that Euan Robson made at the end of his speech. In the Borders labour market there is a loss of population and an increase in the

proportion of the population in older age groups. I do not think that the Borders is unique in having shortages of skilled tradesmen, but it is perhaps unique in having those demographic profiles and in being in such close proximity to the booming Edinburgh construction market.

There are already signs of overheating and of shortages of key, skilled workers in the building trades. I remember that before I became an MSP, a senior officer in a local housing association looked forward a couple of years to housing stock transfer, the whole point of which is to release substantial sums of money into the modernisation and repair of the former local authority housing stock, and expressed concern about where the tradesmen for that would come from, especially given that the Borders would be in competition with the much higher wages that Edinburgh has to offer.

One of the earliest questions that I lodged was to ask the Scottish Executive what it proposed to do in the event of housing stock transfer to ensure that there would be sufficient local training provision to address skill shortages in time. In answer to my question S1W-1201, Wendy Alexander advised me that the Scottish Executive would consult relevant bodies on employment and training opportunities, which I regarded as one of the less expansive or helpful answers that I have received from a variety of ministers.

I have returned to the matter in three supplementary questions since then and have ascertained in the most recent answer that I have received—there is one answer still to come—that consultations on this matter have been informal and that a seminar is being organised to consult people in the building trades on these issues. There may be a lot of work happening in the background about which I do not know, although I have asked four parliamentary questions to try to find out. In the absence of substantive answers, I remain concerned that the Executive has perhaps not thought through the implications of housing stock transfer.

This issue is not specific to the Borders but will arise in every area in which there are housing stock transfers. Will training in the trades be adequately resourced and will there be retraining opportunities? Will there be enough tradesmen or will we find that the new housing stock transfer strategy fails to deliver what we all hope that it will because there is an insufficient number of skilled tradesmen? It is important not only that the Executive examines that issue in general, but that it should do so in the Borders in particular, as we might all reasonably expect that the Scottish Borders Council will be the first authority that will go to ballot and be successful. Then there will quickly be tenants looking for plumbers, slaters,

painters, joiners and the whole range of trades. There will be immense frustration and, I suspect, much cynicism about the Executive's strategy and delivery mechanisms if the skills are not available.

I appreciate that the deputy minister is new to this particular brief and that I have raised these issues with Wendy Alexander. I hope that, with the enthusiasm and imagination that he has demonstrated often in the chamber, he will be able to assure us that these matters are in hand or, if not, that they will be soon.

17:20

**Christine Grahame (South of Scotland) (SNP):** I will touch on a few issues only.

The Borders has an aging population: the problem is to do with keeping in the Borders the young people who live there, rather than forcing them to move away. That problem is linked closely to the infrastructure in the Borders. As Alex Neil and other members have said, the road links are very poor and the Borders has no railway line.

As a matter of interest, I believe that my figures are different from those mentioned by Euan Robson. My information is that only eight school leavers went into the textiles industry last year, while 12 joined the army. Last year, out of 1,200 school leavers, only 300 went into employment, while the rest went into higher education or on to the dole. I got those figures from Scottish Borders Enterprise this morning, and we have great concerns about them.

On the textiles industry, which falls within the minister's remit, £10 million was announced in June last year to regenerate the industry across the UK. However, I have discovered that none of that money has been used yet. We are still having meetings in the Borders, and while a meeting has been set up for 31 January, that is not good enough. We are seven months down the road from that announcement of £10 million, but that money has not been applied to the textiles industry elsewhere, let alone in the Borders, although the industry needs urgent attention.

I also draw the minister's attention to the cashmere situation. Cashmere provides substantial employment in the Scottish Borders, as the minister is aware. Figures that I received indicated that, should anything happen to the cashmere industry, the loss to the Borders economy would be between £116,000 and £133,000 a week, with an indirect loss to the economy of an additional £26.8 million. I bring that information to the minister's attention because, with the change in the presidency of the United States, it is not unreasonable to be concerned about a possible change of policy towards the tariff and the US trade carousel act, to which Euan

Robson referred. While those matters were put on the back burner while President Clinton was in operation, we must start to anticipate a change, and I hope that the minister is addressing the situation as a matter of urgency with his Westminster colleagues.

Proper capital investment in the Borders is needed. Unfortunately, there is a bad smell about the conversion into a call centre of Claridge Mills in Selkirk at a cost of £600,000, as the call centre has not appeared. Worse still, £70,000 was spent on training people who then found that they had no job. Anything that is being done on capital expenditure or on training must be real—people cannot be led down a horrible garden path.

I must refer to the railway, which might bring trades to the Scottish Borders. At page 10, under "Direct Impacts", the Scott Wilson report says that

"Local contractors could carry out non-specialised parts of this task . . . boosting the local economy."

The report also says that there would be an impact on housing in the Scottish Borders. People would build on the fringes of the railway line, if they knew that they would have access to transport. Then people in the Scottish Borders could share in Edinburgh's economy.

On page 11, under "Directly Induced Business Impacts", the summary report says that 300 jobs would be created

"due to accelerated inward investment;"

that 135 jobs would be created

"due to expansion of existing firms;"

and that there would be 290 new jobs

"due to creation of more and more successful firms".

I believe that those figures are fairly restrained.

Before I conclude my comments on that report, I stress my concern at the references to tourism in the brief for the feasibility study. I have obtained the papers on tourism for the feasibility study and, to my horror, the submission by the Scottish Borders Tourist Board was dated 1996, predating the report by about two to three years. The submission did not address the southern part of the line, taking as its remit the reinstatement of the line from Edinburgh to Galashiels, yet the board admitted that the majority of tourists who visit the Scottish Borders come from the north of England. I would like the deputy minister and the Minister for Enterprise and Lifelong Learning to address that huge, glaring gap in the Scott Wilson feasibility study.

17:24

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** I thank Euan Robson for

securing this debate. It is time that we started saying positive things about the Borders and I am happy to say that lots of good things are happening: the new ways strategy is starting to work; we have achieved assisted area status across a large part of the Borders; we have had a better local government settlement; there is a stronger focus in the management of Scottish Enterprise Borders; and joint working in the economic forum is starting to produce results. Only this morning, I heard Tony Taylor on the radio saying that the textiles industry in Scotland is in better shape fundamentally than it has been for a long time. Of course, we are still under the threat of the cashmere-banana war, but we are working hard at Westminster to lift that threat.

There have been positive developments in Kelso at Plexus Corp (Kelso) Ltd, formerly Keltex Electronics. Moreover, in Hawick, we have Mainetti; in Selkirk, Signum Circuits Ltd; in Gala, Stewart Technology Ltd; and in Peebles, Glenrath (Farms) Ltd. Those are all local companies that are starting to expand. On paper, unemployment is not high; it is quite low. The rail project is also positive news. It is starting to look as if we can build on the proposals.

However, there are deep-seated problems in farming and tourism. If Alasdair Morrison and the Executive can do anything to help—perhaps involving the weakness of the euro—they will be doing many of us a great favour. The euro contributes to the problems in farming and tourism.

The Borders has a low-wage economy. Unemployment is not high, but low wages have an important effect. The transport infrastructure is weak. The social infrastructure is affected by, among other things, the threat to rural post offices. The economy is fragile, but there are signs of recovery. We need to improve our communications and our access to technology—not just down the main arteries, but spreading out like nerves to the real rural communities.

As Euan Robson has said and as everyone else has acknowledged, the demographics are worrying. I will not go into the details in the short time that I have. As I say, we have a fragile economy, but the seeds of recovery are there. At the heart of Euan's argument is the need to offer the people of the Borders opportunities for lifelong learning, starting by encouraging people in school to think about textiles and tourism as potential careers, as has been said, but then going far beyond that. That will enable people to equip themselves for new opportunities and changes in working practices.

Euan Robson and Murray Tosh have forecast skills shortages in the construction industry; I wanted to mention that, too. We know that there is

a need for training and an improvement of standards in the tourism industry. We must upskill and provide new opportunities. Nationally, we have to recognise the urgency of offering genuine opportunities for farm diversification.

In all those spheres, we must make it easier for the providers on the ground in the Borders and other places to put in place projects and courses that are accessible, affordable and flexible, in order to meet local needs and demands. Because of the nature of the Borders, that may involve numbers that would not seem viable in areas with a more concentrated population. We must facilitate applications for funding for skills training—funding from Europe and other sources—recognising that there can be real problems with match funding through the local agencies, which have relatively small budgets. We get opportunities, but we cannot always take them because of problems with match funding. I hope that the Executive can consider that kind of problem.

We must make it easier for further education colleges, such as Borders College, to offer courses, but we must not tie them down with unrealistic targets for hugely increased numbers before they can access the funding to provide such courses. We cannot put the cart before the horse. We must try to ensure that agencies such as the Scottish Borders Tourist Board and Scottish Enterprise Borders have stable and forecastable funding structures that allow them to plan ahead and engage in partnership with others. Borders College is having great difficulty because it has to apply to the Scottish Further Education Funding Council before it can commit itself to anything. There are structural problems with getting match funding.

I believe that the economy is turning the corner. It is important that we do not end up as victims of what is a measure of success at the moment. We have got to allow people to take up opportunities. What we need is foresight, planning, funding and a bit of joined-up thinking.

17:30

**The Deputy Minister for Enterprise and Lifelong Learning and Gaelic (Mr Alasdair Morrison):** I thank Mr Robson for initiating this debate on the important issue of ensuring that the people of the Scottish Borders have the requisite skills for the new employment opportunities in the area. I appreciate the heartfelt comments from many members. As a Highlander and an islander, I empathise with much of what has been said. Mr Neil spoke about depopulation and others spoke about the demographics, factors that we are trying to grapple with in many Highland communities. As an islander, the only thing that I could not

empathise with was the question of rail links. We have, to date, had no need for rail links in the islands.

The local economy of the Borders continues to make a necessary and successful shift from dependence on traditional industries such as textiles and manufacturing to a greater number of high-tech and service-sector jobs. Such diversification is welcome and we must ensure that the skills of the local work force are tailored to the new needs, as many members have said. The Executive is well aware of the challenges that have faced the area in recent years; that is why Scottish Enterprise Borders was allocated an additional £2.3 million in 2000-01 for its local action plan. This is the third year that additional funding has been provided to Scottish Enterprise Borders in recognition of the particular needs of the region.

As Mr Robson said, Wendy Alexander will visit the Borders at the end of next month to see for herself some of the new opportunities for employment in the area. The Executive continues to work closely with the Borders Economic Development Forum, which is taking forward the good work that has already been done in progressing local economic development.

Mr Robson mentioned regional selective assistance and other EU funding. To date, some £2.75 million has been made available to companies in the Borders, creating 691 new jobs and safeguarding a further 93 jobs. The European Commission recently approved in principle the south of Scotland's £46 million objective 2 programme, from which the Borders will benefit greatly. Moreover, the Borders has secured nearly £0.75 million under the objective 3 programme in the past year.

As I expected, a number of members dwelt on the challenges facing the textile industry. The important behind-the-label initiative led by Scottish Enterprise Borders is aimed at modernising local perceptions of the textiles industry. Successful awareness sessions have already been held with local secondary pupils. Christine Grahame raised a number of issues. The "Cashmere made in Scotland" label had a successful launch at London fashion week at the end of last year. As someone who represents a constituency that produces Harris tweed, I am well aware of the challenges and difficulties that could arise over the next few months in relation to the tariff.

Alex Neil and others referred to the importance of improved transport links. As will come as no surprise in this chamber, I confirm that Sarah Boyack is well aware of the challenges. The Scottish Borders recently received an additional £0.5 million for rural transport initiatives and £2 million for the Waverley link project. As part of the

£444 million to repair the motorway and trunk road network, schemes in the Borders have secured an estimated £40 million of funding.

**Christine Grahame:** I asked about the submission on tourism, which is in the minister's remit. Will he look into that? The paper is from 1996. I do not know whether the Government has looked at it carefully but I would like a minister to consider the quality of that submission, given that it is so outdated and the remit was narrow.

**Mr Morrison:** I am not sure whether the Government has examined it; however, the Executive is quite happy to look into the issue. I would be delighted if Mrs Grahame would correspond with me to follow up the issue that she has rightly raised.

**Mr Tosh:** The minister cited the figure of £40 million expenditure on roads. Will he confirm whether expenditure on the A1 was included in that total?

**Mr Morrison:** I cannot give specific details; as Mr Tosh will appreciate, the matter is outwith my remit. However, I would be happy to provide a written response as soon as possible.

Scottish Enterprise Borders has received in the region of £6 million over the past three years for its local action plan. Mr Robson mentioned the budget cycle for local enterprise companies. However, as he will appreciate, that is an operational matter for which Scottish Enterprise must answer. Perhaps the Enterprise and Lifelong Learning Committee, which is chaired by Mr Neil, will have something to say on that issue in the weeks and months ahead.

Training spending is an important issue. Scottish Enterprise Borders has spent almost £3 million on training programmes in the past year. That is part of a total of £30 million that has been spent on training by Scottish Enterprise Borders since 1991.

Given Scottish Borders Council's decision to transfer its entire housing stock to a newly formed housing association, there is great employment potential in the local construction industry. The local authority has estimated that, given a yes vote, the transfer will result in the creation of 450 construction jobs in the area. That is very welcome. In order to prepare for that, the council is working closely with the House Builders Federation, the Borders learning partnership, Scottish Enterprise Borders, the Construction Industry Training Board and Heriot-Watt University to ensure that supply will meet demand. All local players intend to make it a priority to tailor procurement methods in such a way that demand can be met locally wherever possible. There is huge potential for residents in the Scottish Borders.

Presiding Officer, I have absolutely no idea how much time I have left.

**The Presiding Officer:** You have about 15 seconds, but I will give you a little leeway, minister.

**Mr Morrison:** Given your empathy for the Borders, Presiding Officer, I have no doubt that you will be—

**The Presiding Officer:** Prejudiced.

**Mr Morrison:** Yes.

Euan Robson has allowed us to discuss issues of national relevance, such as how we equip people with the skills that they will need to be employable in the 21<sup>st</sup> century. The people of the Scottish Borders are responding well to the challenge. The effectiveness of the area's new ways strategy is now evident: diversification is spreading across the economy as the heavy reliance on traditional industries gives way to new and innovative businesses in a variety of fields. Indeed, as Ian Jenkins pointed out, the Borders has much to be proud of, as it creates more new businesses per capita than any other area of Scotland.

Much is going on to address the economic difficulties of the area. However, we must continue to ensure that the Scottish Borders remains a good place in which to live, work and—dare I say—play.

**The Presiding Officer:** In case anyone reads the *Official Report*, I should explain that I allowed the minister some injury time because he took several interventions.

**Mr Tosh:** On a point of order, Presiding Officer. Could you clarify whether the length of members' business debates has been extended to 45 minutes as standard?

**The Presiding Officer:** That is correct, Mr Tosh.

**Mr Tosh:** The time pressure on speakers was perhaps severe.

**The Presiding Officer:** If you check the *Official Report*, Mr Tosh, you will find that it was not severe. I was very generous and allowed almost every speaker more than four minutes. The minister had seven minutes in which to reply and he took about eight or nine minutes. I do not think that anyone has grounds for complaint.

*Meeting closed at 17:39.*



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