MEETING OF THE PARLIAMENT

Wednesday 21 March 2001
(*Afternoon*)

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Scottish Parliament

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

Time for Reflection

The Presiding Officer (Sir David Steel): I welcome Gelongma Lhamo, a nun from the Samye Ling Buddhist monastery in Eskdalemuir.

Gelongma Lhamo (Karma Kaghu Order, Samye Ling Monastery, Eskdalemuir): Good afternoon. I would like to share with you what for Buddhists is the most important thing: altruism, based on compassion and love. That is expressed in a short prayer that we use a lot, and which goes like this:

> May all beings have happiness and the causes of happiness.
>
> May they all be free from suffering and the causes of suffering.
>
> May they all enjoy true happiness which is free from even the slightest suffering,
>
> And may they all develop equanimity without preference for loved ones and aversion towards others.

The feeling of compassion is important whether you believe or do not believe, because everybody shares or feels the value of love and compassion. If we are able to practise compassion, we feel much better inside: more calm and more peaceful—and other people reciprocate that feeling. If we are angry, real peace, friendship and trust are impossible but, through love, we can develop understanding, unity, friendship and harmony. So kindness and compassion are the most important things.

Showing kindness to others, we can learn to be less selfish; sharing the sufferings of others, we will develop more concern for the welfare of everyone. However, we need to balance compassion with wisdom. A good brain and a good heart should work together. The two should be developed in balance. When they are, the result is material progress, accompanied by good spiritual development. Heart and mind working in harmony will yield a truly peaceful and friendly human family.

We human beings have a sophisticated brain. As a result of that, we have developed much material progress. We certainly are not lacking in terms of the development of science and technology, but still we lack something in the heart: a real inner warm feeling—a good heart.

Deep down, we must have real affection for one other. As we have to live together, why not do it with a positive attitude and with a good mind?

If we really analyse how our lives work, we see that things and events depend heavily on motivation. If we have a real sense of appreciation of humanity, compassion and love, and if we develop a good heart, then whatever our field is—be it science, agriculture or politics—as motivation is so very important, those will all improve. A good heart is both important and effective in daily life.

If we have such a good mind, we will be comfortable, and our friends, family, colleagues and others will be happy as well. If we do not have such a good mind, the opposite occurs. The reason why people, from nation to nation and from continent to continent, are unhappy is just that. Therefore, in human society, good will and kindness are the most important things. They are very precious, and are necessary in our lives. It is worth while for each of us to make some effort to develop a good heart.

I would like to leave you with another very short prayer, which sums up the feeling of openness and willingness to take on anything, no matter how difficult, if it will help our fellow human beings:

> As long as space endures,
> As long as sentient beings remain,
> Until then, may I too remain,
> And dispel the miseries of the world.

Thank you.

Points of Order

14:35

Richard Lochhead (North-East Scotland) (SNP): On a point of order, Presiding Officer. May I have your guidance on how we may obtain an emergency statement from the Deputy Minister for Rural Development, given that the fishing crisis has worsened in recent days? Last week, the Government turned down the request from the Parliament and the industry for a compensated tie-up scheme and offered an alternative short-term aid package, which it quite clearly cannot deliver. Over and above that, it has implemented technical measures that—

The Presiding Officer (Sir David Steel): Order. I am sorry to interrupt you, Mr Lochhead, but we really cannot have a speech on a point of order. I take your point. A request was made for a statement, but it has not been granted. It is not a matter for me whether we have a statement.

Mr Alex Salmond (Banff and Buchan) (SNP): On a point of order, Presiding Officer.

The Presiding Officer: However, before Mr Salmond raises his point of order, I will say that I have selected a question from him on this subject for tomorrow afternoon, so there will be an opportunity to discuss it then.

Mr Salmond: I am indeed grateful for that, Presiding Officer, but I have a point of order to make on the protection of Parliament. In her speech last week, the minister clearly made statements that went beyond the usual cut and thrust of debate, which have been refuted both by those experienced on the sea and by her own scientists. What protection does the Parliament have against a minister who unwittingly or through lack of knowledge misleads it?

The Presiding Officer: The member is an old hand at these affairs. That is not a point of order for me; it is a point of argument between the members and the minister. If I am not greatly mistaken, that argument will continue tomorrow afternoon.

Convention Rights (Compliance) (Scotland) Bill: Stage 1

The Presiding Officer (Sir David Steel): We now come to the main item of business today, which is motion S1M-1526, in the name of Jim Wallace, on the general principles of the Convention Rights (Compliance) (Scotland) Bill. It would be helpful if those who wish to take part in the debate indicated that now.

14:37

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I would first like to thank two committees of the Parliament for the work that they have carried out during stage 1. In particular, I thank the lead committee, the Justice 1 Committee.

I have valued the input of committee members in highlighting particular issues and concerns on this occasion, as on others. We have the common aim of producing workable legislation.

I welcome the committee's report and its broad agreement to the general principles of the bill. There are some points of concern in the report, which I will address and on which I hope I will reassure members.

The bill follows the Executive's European convention on human rights audit and addresses issues on which the Executive feels that action is necessary to remedy an actual or potential incompatibility with the convention. The Executive is committed to human rights as part of our devolution settlement and has a clear responsibility to take early action where such issues are identified.

The committee has expressed concern that there was insufficient consultation on our proposals. We were unable to carry out a full consultation because of the need to take legislative action as soon as possible once the relevant ECHR issues were identified. However, certain proposals are based on discussions with key interests. In addition, in September, we published some information about the contents of the bill, although the detail of our proposals was not finalised at that stage. I recognise that that is not ideal and accept that wider consultation would have been welcome. I am therefore grateful to the committee for the extent of the evidence that it has taken in drawing up its report. In considering my response, I have taken careful note of the points that have been raised by interested parties.

The bill is divided into six parts, which I will go through reflecting on the points that the committee made about them. Part 1 deals with adult

mandatory life prisoners. The Executive considers that there is a risk that the present arrangements for the release of such prisoners would be found incompatible with the ECHR. The proposals in the bill will bring the release arrangements for those prisoners into line with the release arrangements for other life prisoners in Scotland. In future, a judge, in passing a mandatory life sentence, will be required to set the "punishment part"—the specific number of years and months that the prisoner will be required to serve to satisfy the requirements of punishment and deterrence. At the expiry of that period, the prisoner will be entitled to have his detention reviewed by the Parole Board sitting as a tribunal. The board will base its decision whether to release the prisoner on risk to the public. We believe that those proposals will satisfy the ECHR.

We also believe that it is right to remove ministers from taking decisions on the release of all life sentence prisoners. Ministerial discretion has already been removed in relation to the release of murderers aged under 18 and discretionary life prisoners. In all cases, it should be for the judiciary to decide the minimum period that life prisoners should serve in custody and for an expert body with the relevant expertise in assessing risk—the Parole Board—to take the decision on release.

Our proposals have other clear benefits for justice in Scotland. From the outset, there will be far greater clarity about the meaning of the life sentence, in relation to the minimum part of that sentence during which the prisoner will be detained in prison. That will remove the existing uncertainty faced by victims' families and will enable the Scottish Prison Service to manage such prisoners more effectively. There will also be greater transparency: rather than ministers deciding behind closed doors on the timing of the first review, the review will take place following the expiry of the period set by a judge in open court.

Committee members agree with the Executive that it would not be appropriate to specify in the bill the factors that a judge should take into account in setting a punishment part. That is a sentencing function and judges already have extensive experience and case law on which to draw. However, the committee urges the Executive to ensure that the judiciary is assisted in carrying out that function and particularly stresses the importance of training. The Judicial Studies Committee for Scotland has already been in contact with my department about training for the judiciary on the implications of the bill and I confirm that we will provide any assistance that is requested by the Judicial Studies Committee.

The Justice 1 Committee also considers that a requirement should be placed on judges to give reasons when setting punishment parts. We do not consider the imposition of such a requirement to be necessary. The courts must comply with the ECHR in the same way as must any other public body, which means that, in compliance with article 6, the reasons for the length of the punishment part that is set must be apparent from a court's decision.

In practice, judges set out the principal aggravating and mitigating features of an offence when passing a sentence, and we fully expect them to continue to do so when setting a punishment part.

The committee also considered the role of the victim in relation to the sentencing of adult mandatory life prisoners. Although generally content with the present position regarding written representations from victims' families, the committee recommends that the court should have a duty to contact next of kin in writing to inform them of the length of the punishment part and of the opportunity, on the expiry of that part, to make their views known to the Parole Board.

We would not favour placing a duty on the courts to provide that information in all instances as, from experience, we are aware that not all victims or next of kin want to be told about the progress of the case. However, the Executive's strategy for victims, which was launched in January this year, aims to increase the ability of the criminal justice system to respond to the needs of victims, including providing victims with better information about the progress of their case. The work that is being developed on the strategy will consider ways in which victims can be better informed about all stages of their case and will take careful account of the committee's point.

Part 2 of the bill deals with the Parole Board. We believe that the procedures for the appointment and removal of Parole Board members are at risk of challenge under article 5.4 of the ECHR, as the board, when sitting as a tribunal, must satisfy the ECHR requirements of independence and impartiality.

Our proposals introduce statutory tenure for members of the Parole Board. Appointments will be made by ministers in accordance with procedures specified in regulations, and removal of board members will be handled by an independent tribunal. Committee members are generally content with our proposals in relation to the ECHR, but have expressed a wish to see the draft regulations on appointment and removal. I can confirm that my officials are working on the draft regulations and aim to provide a first draft of both sets of regulations by stage 3.

The committee has also suggested two amendments to part 2 of the bill. It suggested that

the six-year gap between the first and second appointment to the board—in other words, the gap between the end of a board member's first appointment and the time when they are permitted to take up a second appointment—should be reduced to three years. The committee also recommended that the bill should specify clearly that the third member of the tribunal for the removal of Parole Board members should be a lay person who is not legally qualified. I am happy to confirm that I am content to lodge amendments on both issues at stage 2, to reflect the points made by committee members and interested organisations.

Ms Margo MacDonald (Lothians) (SNP): Is the minister in a position to say whether, at this stage of the bill, he has taken into account the age of those who are eligible for appointment to the Parole Board? There has been some discussion as to there being an upper age limit.

Mr Wallace: I am not in a position at the moment to make any further comment on the question of age. Undoubtedly, as it is Margo MacDonald who has raised that matter, I will ensure that it is given consideration before stage 2. I am not promising anything, but I will reflect on it.

Part 3 of the bill deals with legal aid and contains three proposals in that respect. The first is an amendment to the fixed payments scheme for summary criminal legal aid, which will give the Scottish Legal Aid Board discretion to exempt exceptional and complex cases from the scheme, where an accused would otherwise be deprived of the right to a fair trial.

The second proposal is an amendment to the powers of Scottish ministers that would enable the Scottish Legal Aid Board to make civil legal assistance available for certain proceedings before tribunals and other bodies, where that is necessary to ensure compatibility with the ECHR.

The third proposal is technical amendments to part V of the Legal Aid (Scotland) Act 1986, which will allow the Scottish Legal Aid Board to employ solicitors to represent accused who are otherwise unable to obtain representation. That will fulfil Scottish ministers' obligations under article 6 of the convention.

The committee expressed concern that it did not have sight of the draft regulations. The matters are complex and require further detailed discussion with interested parties before regulations can be drafted. However, in relation to our proposals on the extension of civil legal assistance, in recognition of the committee's concerns, my officials have now started work to identify the bodies to which we would propose to extend legal aid. I have already given a commitment, which I reiterate, that a list of those bodies will be available in time for the stage 3 debate on the bill.

I also note that the committee raised a general concern about the lack of formal consultation with the Scottish Legal Aid Board. I emphasise that my officials have been involved in detailed discussions with board officials on the practical details of our proposals. That contact will continue in the context of preparing draft regulations and will also involve the Law Society of Scotland. We have also written to the Scottish Legal Aid Board to suggest a discussion with the full board of its evidence to the committee.

I am obviously anxious to ensure that what we propose is both practical and straightforward to operate. I am confident that we can take account of any concerns about the practicality of our approach in advance of regulations being placed before the Parliament.

Part 4 of the bill makes one change in relation to homosexual offences. We propose to repeal section 13(2)(a) of the Criminal Law (Consolidation) (Scotland) Act 1995, which makes it an offence for more than two consenting adult males to take part in homosexual acts in private. That is the direct result of a decision by the European Court of Human Rights in the case of ADT v the United Kingdom on the parallel provisions in the English legislation. The committee has indicated that it is content with our proposals.

Part 5 of the bill makes provision in relation to the power to appoint the procurator fiscal to the Court of the Lord Lyon—I am sure that that engages members regularly. The committee has asked the Executive to make available the terms and conditions of appointment. I confirm that the relevant information has been sent to the clerk to the Justice 1 Committee. The committee has also recommended that, as suggested by the Faculty of Advocates, the bill should specify that the procurator fiscal should be legally qualified. As it is our intention in practice to appoint a legally qualified person, I confirm that I have no difficulty with the suggestion and will lodge an appropriate amendment at stage 2. I am sure that everyone can rest in peace on that account.

Part 6 of the bill proposes to introduce a new general remedial power which will extend the circumstances under which Scottish ministers can use subordinate legislation to remedy actual or potential incompatibilities with the ECHR. The power is essential because our courts can immediately strike down Scottish legislation or functions of Scottish ministers which they find to be incompatible. There is no period of grace for us to get it right after a court has made a decision. The legislation or function in question would therefore become inoperable, with potentially far-

reaching consequences. I am sure that the Parliament will remember that, following the Starrs and Chalmers decision, it was necessary for me to come to the Parliament to announce the immediate suspension of the use of temporary sheriffs.

UK ministers are, of course, in a significantly different position. There has been considerable discussion in committee on the general remedial power. Both the Justice 1 Committee and the Subordinate Legislation Committee have expressed concerns about the proposed scope of the power. I have listened carefully to those comments and I appreciate the force of the points made. To address those concerns, I have already undertaken, when giving evidence to the Justice 1 Committee, to lodge an amendment at stage 2 that will introduce a higher test, along the lines of the test that appears in the Human Rights Act 1998, such that ministers will require to have compelling reasons for using the remedial order route.

In response to the committee's report, I am happy to give the following assurances about the use that Scottish ministers intend to make of this power. First, primary legislation will still be the key route for bringing provisions into line with the ECHR and the Executive will make every effort to ensure that we are aware of areas where we are at risk of challenge and plan accordingly. Secondly, we do not intend to use the power as a general rule but will instead limit its use to cases where the changes proposed would be of such a scale that they would be more suited to subordinate legislation and to cases that are urgent and exceptional, as recommended by the Justice 1 Committee.

Thirdly, I can confirm that there is no intention to override parliamentary scrutiny. The bill makes specific provision for the Parliament's role in scrutinising remedial orders. That follows the procedure laid out in the Human Rights Act 1998. In all except the most urgent cases, ministers will be obliged to lay a copy of any proposed order before the Parliament, together with a statement of their reasons for wishing to make the order, and to invite comments. Ministers will be further obliged to have regard to any comments made before formally laying the order.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): This matter has caused concern across the parties. Will the minister confirm that—no matter what he says—he cannot bind his successors in office? We have already heard Lord Sewel say in a House of Lords debate that a particular procedure would be very seldom used, yet it has already been used almost 20 times in this Parliament. Is not one of the main problems the fact that, no matter how much consultation and pre-publicity there is, it will not be within the scope of Parliament to amend orders, but it will be able only either to accept or to reject them? That often puts members in an impossible situation.

Mr Wallace: I can give undertakings for this Administration but, following the usual constitutional rules, I cannot bind a future Administration. However, I point to the provisions and safeguards that I believe are in the legislation. It would not simply be a case of introducing a copy of the proposed order and then proceeding regardless. Reasons would have to be given, and Parliament and others would have to have an opportunity to comment. Ministers would have an obligation to have regard to those comments before formally laying the order. Of course, ministers can be subject to judicial review if they have clearly acted unreasonably.

A further safeguard is that, on laying the order, ministers must also lay a statement summarising the comments made and specifying the reasons for any changes made in the draft order. There are therefore a number of stages that, I believe, mean that ministers cannot act capriciously. I repeat what I said to the Justice 1 Committee—that I should be more than happy to appear before the committee to discuss any proposed remedial order to assist members in their scrutiny role, if ever such an occasion were to arise.

Phil Gallie (South of Scotland) (Con): I hear what the minister says about the orders, but will he tell me how many orders have gone through this Parliament since it was brought into being? How many have been challenged?

Mr Wallace: I cannot give that information, but I think that there is a world of difference between the kind of order that we are proposing here and the kind of order that perhaps goes through on the nod because it contains nothing controversial. I have signed orders within the past week—which are possibly still to be laid—in connection with the amount to be charged for liquor licence applications. The liquor trade has agreed to them and they will probably go through. If I remember correctly, they do not even need parliamentary approval.

Once part 6 of the bill is implemented, approval will be an event—we will not try to slip an order through. It will be up to members of the Parliament to engage in scrutiny. I have already indicated the willingness of ministers to appear before committees to discuss orders, answer questions, be scrutinised and be held to account for the exercise of the power. That is the proper relationship. As Mr Gallie well knows from his long experience in another place, many orders attract no controversy at all, but we recognise that remedial orders are important and should be used

only in exceptional circumstances when there are compelling reasons to do so. In such circumstances, ministers would fully expect to be held to account for their use of the remedial power.

I emphasise again that there is no intention for the power to replace primary legislation or the full scrutiny role that primary legislation allows for the Parliament. I appreciate that this is an important issue. There will be opportunities to consider it in detail at stage 2. Iain Gray and I will be happy to elaborate further during today's debate and once the provisions of the bill come before the Justice 1 Committee for more detailed scrutiny.

I thank the convener and members of the Justice 1 Committee for their report. I hope that I have indicated that we take the points made in the report seriously and that we have addressed them. Iain Gray, who will wind up today, will be happy to offer further clarification on any issue that arises during the debate.

I commend the motion to members.

I move,

That the Parliament agrees to the general principles of the Convention Rights (Compliance) (Scotland) Bill.

14:57

Roseanna Cunningham (Perth) (SNP): I again welcome the concept of the European convention on human rights and, by extension, the Convention Rights (Compliance) (Scotland) Bill, which will ensure that the people of Scotland benefit from participation in the convention. There is a temptation to think that the measures in the bill have been forced on the Scottish legal system, but a great deal of what is proposed enhances our system and should probably have been introduced even if we had not had the impetus provided by the need to comply with the ECHR. To me, that underlines the importance of the fact that we signed up to the ECHR in the first place.

Last March, out of interest, I asked the Crown Office how many devolution issues had been raised in the Scottish courts since the incorporation of the European convention. Although it took until 9 January this year to get a reply, which might be some kind of record, it turned out that between 20 May 1999 and 29 October 2000 just under 1,000 such issues had been raised. Eighty-five per cent of cases raised matters under article 6 of the convention, which deals with the requirements for independence and impartiality, particularly in our justice system.

Only 37 cases against the Crown were successful. We should regard that as a good result for the Scottish justice system, which has shown itself to be robust. Given that our justice system derives from principles that were laid down centuries ago, we should be extremely proud that it stands up to 21st century scrutiny from a human rights perspective. I am sure that we have not exhausted the changes that are likely to be required to be made—for example, there is widespread agreement that the age of criminal responsibility is likely to require examination—but no doubt other changes will surface in more appropriate legislation.

The Justice 1 Committee should be commended on the clarity of its report. I commend my successor as convener on keeping up the good work of the committee. I have no doubt that those who came to the bill without much prior knowledge of the issues will have had no difficulty in getting to grips with its general thrust and the justification for the proposed changes.

I want to consider some of the key areas briefly in turn, although I will not try to be exhaustive. On existing prisoners and the setting of the punishment part of the sentence, I note that the minister has claimed that judges are better placed than ministers to decide how long a prisoner should serve as a punishment and a deterrent. That is certainly true. Having himself been an Opposition justice spokesperson in the past, the minister will understand that I regularly get phone calls from journalists asking me to comment on one court case or another in which the sentence, in the journalist's view, has been particularly lenient—or particularly harsh, although that is usually the case in only a minority of calls.

Phil Gallie: It is one thing to say that judges set the sentence for punishment and deterrence, but the fact is that they do not make known the release date for life-serving prisoners; the Parole Board for Scotland does that.

Roseanna Cunningham: I am not sure what point Mr Gallie is making. A judge sets the punishment part of the sentence and the Parole Board for Scotland will consider a potential release date, but the period served cannot be less than the punishment part of the sentence.

I am always loth to comment on particular cases. My view is that the judge was there listening to the evidence and I was not, and neither was the Minister for Justice or anyone else who gets such phone calls.

The Faculty of Advocates and the Law Society of Scotland have taken different approaches to the lack of opportunity for parole before the expiry of the punishment period. The faculty takes the view that, under the bill, instead of being faced with hopeless uncertainty, prisoners will be faced with hopeless certainty. The Law Society of Scotland prefers to focus on the fact that, hopeless or not, prisoners will have greater certainty about their

eventual release date. There is merit in both points of view and the issue would benefit from further investigation.

What was more interesting when the implications of the bill dawned on the press was the great fuss about what the proposals might mean for existing life prisoners. I recall some typically sensational headlines about how up to 500 lifers could be released. We can all be assured that that will not happen but I am concerned about the fact that, because all those cases will have to be reviewed, there is a huge potential problem in terms of court timetabling and the impact that the added work load will have on our justice system. Our courts and the Crown Office are already under massive strain. The minister must address the resource implications, even if those are time-limited—the end point will be when all the reviews are done.

While I am on the subject of sentencing, let me say that, whether we like it or not, the public have concerns about consistency. I plead for consideration to be given to the creation of some form of national sentencing review commission, which would be an independent advisory panel to provide support, guidance and information to judges. Such a panel exists in England and Wales and, although we may not want to copy exactly the remit and membership of the panel that operates down south, we should recognise that it has an important function and includes lay membership, which would be welcomed in Scotland.

Elaine Smith (Coatbridge and Chryston) (Lab): On that point, does the member think that such a review commission should focus on gender issues? Has she come across gender issues in relation to harsh sentencing?

Roseanna Cunningham: There are concerns about gender issues in sentencing, as there have been for a long time. Such a panel would be useful as a sounding board that would be able to reflect more generally society's feelings about what may or may not be considered to be appropriate at a particular time. That would not bind the hands of judges and sheriffs, but it might give them more information and a greater understanding of where society is coming from on such issues.

In the main, the proposals on the Parole Board for Scotland are uncontroversial. There is only one issue that needs to be clarified—the make-up of the tribunal to decide on the removal of Parole Board members. The argument centres on whether one of the tribunal members should specifically not be legally qualified. I appreciate the minister's apparent reluctance to insist on the requirement for one non-legally qualified member of the tribunal, and I share his puzzlement that lawyers do not seem to be highly regarded in society. However, for the sake of public perception, he may wish to examine that issue more closely.

Mr Jim Wallace: Unless we are speaking at cross-purposes, I indicated that I will be lodging an amendment at stage 2, which will clearly specify that the third member of the tribunal will be a lay person who is not legally qualified.

Roseanna Cunningham: I thank the minister for that clarification. I had not picked up that detail from his speech. I now consider all the Parole Board issues to be fairly non-controversial.

The review of the position of convicted criminals raises the question of legal representation and how it is to be funded. I do not think that the minister dealt with that in his speech, but I am not entirely sure. I have questioned the abuse of the legal aid system by some prisoners who sued the Scottish Executive on what seemed to be spurious grounds, but this is a different matter. The Justice 1 Committee's report makes it clear that the Scottish Legal Aid Board and the Executive have not yet reached consensus on the issue. The question must be resolved as soon as possible and before those cases start to head towards the courts; if it is not, we will be in a mess and I do not want us to be caught on the hop again, unprepared for what might be considered a foreseeable eventuality.

I opposed the introduction of fixed fees and I remain convinced that they were the wrong way of tackling the legal aid bill. The bottom line should be that the legal aid system ensures a level playing field in the representation that is available to all. I am extremely concerned that the changes have introduced some serious inequalities into the system. The implementation of the convention will bring a positive benefit in the relaxation of the fixed-fees system to allow for exceptional cases, but there is uncertainty and confusion about the practicalities of the change. I hope that the minister will elucidate what progress has been made on what the Justice 1 Committee describes as unresolved issues.

Civil legal aid has long been the poor relation in the legal aid system, so I concur with the concerns that the Justice 1 Committee expresses in paragraphs 77 and 78 of its report on the Executive's failure to provide a list of the tribunals or other bodies that will be considered for legal aid. The Executive could not even define the criteria to be used to define what would be exceptional; it could provide only a list of likely criteria. We need to know what those criteria will be. We need that information before stage 2, not at stage 3 as the minister suggested. Otherwise—unfortunately for the minister—more than just the Faculty of Advocates may smell a rat. The sooner that we receive that information, the better. Stage 3 is way too late.

As for the use of SLAB solicitors, I ask only whether it is the intention that SLAB should use in-house solicitors for the situations that are envisaged in paragraphs 82 and 83 of the committee's report. I have no difficulty with SLAB's instructing solicitors, but I would be concerned if it began to use in-house solicitors, because that would raise more long-term issues than have been canvassed at stage 1.

I will deal now with the vexed question of remedial orders. There is concern about the proposal to confer a new power on Scottish ministers to make remedial orders and about the consequential lack of opportunity to amend the orders. Many will consider that a means for the Executive to bypass Parliament. In recent days, we have seen how people need little encouragement to think that that is happening.

Professor Gane of the University of Aberdeen hit the nail on the head when he said to the Justice 1 Committee that

"just because something needs … done quickly does not mean that the Executive will necessarily get it right with its proposed solution."—[*Official Report, Justice 1 Committee*, 14 February 2001; c 2154.]

I note that the Executive could not easily suggest an example of how the provision might have been used in the past. It is all very well for the Minister for Justice to assure us that the powers would be used only in extreme or compelling circumstances, but if he cannot give examples of when they might have been used in the past, it is difficult for Parliament to know what he means by that.

In the Parliament's short history, I can think of two examples that might have fallen into that category. The first was the Mental Health (Public Safety and Appeals) (Scotland) Bill—the so-called Ruddle bill—which went through Parliament in six days. The second was the Bail, Judicial Appointments etc (Scotland) Bill, which was also passed quickly. It is significant that the Executive had to take on board changes to that bill when its original proposals did not comply with the ECHR.

Both those bills passed full stages of the legislative procedures. One was passed in considerably less than 60 days. The other was also passed in less than 60 days, which is the period for which the orders would have to be laid before they could be passed. Therefore, I am not sure why we cannot rely on the existing standing orders for some of the apparently compelling cases. An e-mail, which arrived this morning but which I have not had time to look at properly, suggests a way around the perceived dilemma through the use of the existing standing orders.

I note that the Subordinate Legislation Committee has also expressed concerns about the proposal. Professor Gane put the problem succinctly. He said:

"Using special procedures to remedy *demonstrated* conflicts between legislation and Convention rights is one thing ... but to use such powers in respect of *possible* conflict is quite another."

I heard the minister's comments, but he has still not given us any examples by which we might judge the proposal. We could still face a situation in which regulations cannot be amended. The length of time that regulations would lie before Parliament suggests to me that we should revert to the procedures that are already available to us.

Let me turn to a wider matter. For me, all these concerns underline the need for a Scottish human rights commission to advise the Parliament and the Executive, to issue guidance and to promote good practice. We have discussed a human rights commission before. It is not some strange, exotic beast. Many such commissions already exist—there is one in Northern Ireland—and the United Nations strongly endorses them.

The SNP wants a commission that would fulfil a wide range of functions. It should promote good practice in government and among public authorities. It should promote greater access to justice and advise on wider international human rights obligations. The commission should not only provide advice to the Executive, Parliament and other public bodies, but foster a wider awareness of human rights principles among the public.

Let me give an example of what a commission could deal with. A Crown Office human rights working group was set up in 1998. The Crown Office is greatly satisfied with that, because it is now in a better position than the defence in relation to human rights issues—presumably because it is rather better prepared. We are entitled to be concerned about how equitable that is. Public money is being spent on only one side of the equation. Let us be clear—that is what has been happening until now.

Any human rights commission should also provide a scrutinising function for draft legislation and policy. It is most frustrating for MSPs to be routinely refused detailed information about Executive advice on ECHR issues.

I know that the Executive, in the person of the Minister for Justice, has not ruled out setting up a Scottish human rights commission, but neither has the minister committed himself to the principle. I wish that he would do so and I hope that he does so today. I also know that we are to have consultation that will include a "should we or shouldn't we" question and that the consultation will also cover the detail of what a commission might look like, if we were to go down that road. However, I note that the minister did not want to be pressed on the time scale when he was before

the committee last month. I press him to give one now. We are four weeks down the line and there is as yet no word of when the consultation might come about. I would very much appreciate some comment on that when the deputy minister winds up. He should at least declare for a commission in principle, even if he remains uncertain about the detail.

The European convention on human rights is important for the people of Scotland. It is important not only for public bodies, such as the Parliament and local authorities, but for individuals. I respectfully hope that the minister will answer the specific questions that have been posed today, notwithstanding our general agreement to the bill.

15:13

Phil Gallie (South of Scotland) (Con): It would be hypocritical if the Conservatives were to welcome the bill, particularly given our long-standing arguments on the incorporation of the European convention on human rights and on how the convention has been made superior to Scottish law. It causes me some amazement that the nationalists and others, who have long wanted to keep Scottish law separate from United Kingdom law, are quite prepared to make Scottish law subservient to European law. The fact is, however, that the convention is a done deal; now we must look ahead.

Alasdair Morgan: Will the member give way?

Phil Gallie: Not just now. I will give way to Alasdair Morgan later.

We have frequently criticised those who are responsible for incorporating the ECHR for not looking at the impact that the convention would have. In recent times we have seen the debacle over Ruddle, the problems that the sheriff courts had over temporary sheriffs, to which the minister referred—

Roseanna Cunningham: Will the member give way?

Phil Gallie: I shall give way in a second.

The incorporation of the ECHR has also resulted in people claiming self-incrimination when they were charged with motoring offences; the shortening of times for which police can hold people for questioning; and the problems with the Hammond case and the concerns about entrapment and drug trafficking. It was also claimed that the security that is given to undercover police who give evidence would not be acceptable under the ECHR.

The Deputy Minister for Justice (Iain Gray): That was a string of poor examples—many of those cases were overturned on appeal. We can agree or disagree over whether the Ruddle case was a debacle, but we should agree that it was not a result of an ECHR challenge. It was the application of existing legislation—passed under the previous Conservative Government—that led to the necessity for amendment.

Phil Gallie: I accept that, but it was thought that the change induced by the measures that the minister wanted to take with respect to Ruddle would have come under the ECHR.

Roseanna Cunningham: Will Phil Gallie give way?

Phil Gallie: Yes.

Roseanna Cunningham: I thank the member for giving way; as always, I listen to his comments with interest. However, is he talking about the same European convention that the rest of us are talking about, which I believe was ratified by Winston Churchill in 1951?

Phil Gallie: We are talking about a convention that we observed; we did not make our law subservient to it. Therein is the difference. We were prepared to observe the convention, but not to have it incorporated into our law. We talk about devolution and looking after our own affairs, but there is an element of devolution in reverse in handing over to others the responsibility for the legal system in our country.

Mr Jim Wallace: Will Mr Gallie give way?

Phil Gallie: I will give way now, but not again.

Mr Wallace: Is Mr Gallie not missing the point? I think that I am right in saying that the Conservative spokesman in the House of Commons gave the Human Rights Act 1998 a fair wind. What the act, and its subsequent incorporation through the devolution settlement, does is to ensure that these issues are determined by Scots judges and sheriffs in Scottish courts. That means that people are not required to spend money and time going to Strasbourg.

Phil Gallie: I accept that, but that happens under rules set by others—that is the rub.

Alasdair Morgan: Will the member give way?

Phil Gallie: I will give way to Alasdair Morgan later, as I am sure that he will want to contradict me on a number of issues.

The bill does not cover serious issues that are being faced up to under European convention challenge, such as planning law—an example is the case of County Properties v the Scottish ministers, with respect to the right to protect listed buildings. The bill does not tackle the problems that could arise in the children's hearing system or, as Margo MacDonald suggested, issues to do with the criminal age of responsibility. I may be

wrong on that because, under part 6, which deals with the all-embracing powers for the Executive to make remedial orders, the bill may cover some of those issues. I will comment further on that later.

The bill was promised much earlier, and has been delayed. However, it seems that the Executive has been scrubbing around for content, of which the bill does not contain a heck of a lot. I recognise that it addresses some important issues, such as the appointment of the procurator fiscal of the Lyon Court. Every citizen has awaited that measure, as they recognise the importance of that appointment in the fight against violent crime, burglary and drug abuse. It is good to know that the Lyon Court is okay. However, between August last year and January of this year, the Crown Office and the procurator service have dropped at least 1,113 cases because they were timed out. A more important issue for the bill might have been to do something to improve that situation.

It is good to know that the interests of those who practise deviant homosexual activities have special recognition in the bill, part 4 of which condones group homosexual activity. After section 2A, it is not surprising that such an issue goes unchallenged in the Parliament. I feel that, to some extent, those matters demean the Parliament, but I recognise that the Justice 1 Committee could not opt out of an issue that had to be contained in the bill. It is noticeable that the committee sympathised with Christian Action Research and Education Scotland, which commented that the Executive is failing to prioritise its responsibility to protect the public morals of Scotland. The fact is, however, that that provision is needed to comply with the ECHR.

Alasdair Morgan: Will Mr Gallie give way?

Tommy Sheridan (Glasgow) (SSP): Will Mr Gallie give way?

Phil Gallie: I shall give way to Alasdair Morgan.

Alasdair Morgan: Despite Mr Gallie's earlier invitation, I shall raise only two points. Given that coats of arms are more likely to be found in the ranks of the Conservative party than in others, perhaps Mr Gallie will have more necessity to have recourse to the Lyon Court than others will.

I am sure that Mr Gallie does not want to confuse anyone, but he began by referring to European law. Let us be quite clear about this. European law is the law of the European Union. That is not what we are dealing with now. The ECHR has nothing to do with the European Union.

Phil Gallie: It has to do with laws that are set and agreed in other places and overseen by judges in Europe, and that is the point that I am objecting to.

The part of the bill that gives rise to most anxieties, and which seems to be its main strut, is part 1, which deals with adult mandatory life sentence prisoners. The bill does not need to cover that subject, as the Minister for Justice fully acknowledges. Jack Straw also accepts that fact south of the border—he has no intention of removing ministerial responsibilities on the issue. The Minister for Justice is passing the buck to the Parole Board to take final decisions on extremely dangerous individuals who could come back out into society and commit serious offences once again, with nobody being held responsible. The Parole Board is a nameless body, and the minister will have absolved himself—the case will be nothing to do with him. He will have removed any democratic responsibility for upholding the law in certain circumstances. I feel that that is not the right way forward.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Will Mr Gallie give way?

Phil Gallie: I am sorry, but I have only three minutes left, so I must move on.

I accept the principles that lie behind judges setting punishment and deterrence portions of sentences. That seems appropriate and transparent. The fact that judges will be able to set a minimum period of imprisonment, based on punishment and deterrence, will be welcomed by victims and others and will be a marker in the future for those who are prepared to commit crimes. However, the final release of some individuals should, I believe, be in the hands of the ministers. I believe that politicians are elected to ensure that society is protected—responsibility lies with them.

I have a concern about section 3, which deals with transferred life prisoners. The proposals could cause problems for people who have been sentenced under other jurisdictions and who want to return home. The fact that we have got to accept the ECHR could prevent those prisoners from being returned to this country. I note that, when the Justice 1 Committee made that point, the minister undertook to look at the issue further—no doubt he will address it later.

I have no real comments to make about part 2, which deals with the Parole Board. There needs to be a change, simply because the ECHR demands it—that is what necessitates the bill.

I have no other comments on the legal aid provisions, on which I agreed with much of what Roseanna Cunningham said, although I ask the minister to take note of the comments made in the Justice 1 Committee report, which referred to the lack of consultation with SLAB on point after point. The minister must ensure, when he introduces future bills, that people with something to offer are consulted.

I find myself in alignment with the minister on part 6, which is about powers to make remedial orders. I welcome the assurances that he gave to me today about the way in which such orders will be treated. The fact that the bill lacks substance will necessitate the use of the orders. It will be useful for Parliament to have the facility to ensure that, when anomalies are found, justice is administered in a way that will comply with the ECHR.

The Conservatives will not give the requested support to the motion, but we will not reject it, as there is a little merit in parts 2, 5 and 6 of the bill.

15:26

Scott Barrie (Dunfermline West) (Lab): I was going to start by saying that the provisions in the bill were relatively uncontroversial and should be welcomed throughout the chamber. I scribbled that down, because I thought that it would be the case.

I find it strange, having listened to Phil Gallie's speech—he has left the chamber already, perhaps to reconsider what he said—that we have yet again heard from the Tories that they observe the convention but do not think that it should be incorporated into domestic law. That should be exploded. Are they for it or against it?

The convention has been around for 50 years, has been incorporated into domestic law and we have had numerous debates on it in committees and in the chamber. It is the overwhelming view of the chamber that the convention is a good thing, yet we hear the same old ranting from the Conservatives.

David McLetchie (Lothians) (Con): Does Scott Barrie think that it is right that an act of the democratically elected Parliament of the people of Scotland should be struck down on the say-so of one judge?

Scott Barrie: Any democratically elected Parliament should take into account whether the laws that it passes are equal and apply to all people equally. We should listen to the ECHR on that.

I will discuss the four main issues that are contained in the bill: a tribunal system for adult mandatory life prisoners; statutory tenure and appointments procedures for Parole Board members; equalising sexual offences with regard to gay men; and minor changes and extensions to the legal aid system.

The amendments to Scots law are not only necessary under the ECHR, but are desirable from a basic human rights perspective. I would have thought that they were largely uncontroversial. It would be better if we concentrated on what the amendments to Scots law do, rather than listen to Mr Gallie's twisted interpretation and, at times, alarmist and misleading comments about what he believes they will do.

The Scottish Labour party is determined to build and maintain a Scotland that is safe, fair and open. We have a responsibility to protect human rights and to be prepared to pass new laws to safeguard them. We must do so in ways that protect the individual and the community.

As I said, we have had a full-scale parliamentary debate on the incorporation of the ECHR. The proposition was supported both by a substantial majority of members who spoke in the debate and by a substantial majority of members of the Parliament. It is unfortunate that Mr Gallie, in his speech, entered into a rerun of the previous debate. I put on record, yet again, that I support incorporation, as I believe most people do.

It was a Labour manifesto commitment in 1997 that the ECHR should be incorporated into UK law and a Labour Government's decision to do so. It is an incontrovertible part of the Scotland Act 1998; and it is a Labour-Liberal Democrat Executive that is ensuring that Scots law is fully compatible with it.

Previously, the Executive has been criticised for not anticipating challenges to our domestic law under the convention and for not undertaking a sufficient audit of possible challenges. The Convention Rights (Compliance) (Scotland) Bill must be seen against that background. It makes amendments to certain parts of Scots civil and criminal law that, in the Executive's view, are incompatible with the convention. Members cannot have it both ways: either the Executive introduces amendments to our laws that it feels are incompatible or it awaits challenges and acts accordingly. I am glad that it is looking forward and hope that it does so in future.

However, I am also glad that the Executive is not simply trying to achieve the minimum required. Earlier, I said that Government had a responsibility to protect human rights, but that it must do so in ways that protect the individual and the wider community. We should therefore consider what the bill is actually proposing. It is not a charter to release murderers earlier from their sentences, as has been suggested. The bill will remove from politicians decisions about the release of adult mandatory life prisoners, which is a proposal that has the support of many individuals and organisations that operate in the criminal justice system and is certainly something that I welcome.

The Law Society of Scotland has stated that it welcomes these provisions as

"They introduce greater clarity for prisoners as to their eventual release date, while allowing the prison service to focus on rehabilitation within clearer time frames. At the

same time, the public interest in punishment and deterrents is met by the imposition of a specified period of imprisonment that must be served before a risk assessment can be carried out and considered".

I would have thought that that was self-evident and should be welcomed.

As a result, this system is potentially better not just for the offender but, more important, for the victim's relatives and family. Crucially, when judges sentence adult mandatory life prisoners, they will be required in open court to set a punishment part, which is the period to be served for punishment—in other words, imprisonment—before the Parole Board can consider release. Most victims' families will welcome such a statement. Nothing in these proposals will mean that murderers will serve shorter sentences. To suggest otherwise is simply scaremongering or electioneering or both.

I note from the Justice 1 Committee's stage 1 report that, although the committee does not feel that specific factors should be taken into account when judges impose the punishment part of the sentence, it does urge the Executive to ensure that the judiciary is assisted in carrying out this new function, and insists that some form of training is essential. I therefore ask the Deputy Minister for Justice to tell us in his summing-up whether he accepts that conclusion and, if so, what sort of training should be undertaken.

As for the question of the Parole Board, the crucial issue in ECHR terms is that the reappointment and removal of board members is not at the discretion of Scottish ministers. Although I see little difficulty with that, I draw members' attention to the annexe report from the Equal Opportunities Committee.

I whole-heartedly support the Executive's current process of opening up the area of public appointments; however, as the Equal Opportunities Committee pointed out, ministers should clarify the measures that will be taken to ensure that the Parole Board reflects the diverse nature of society in Scotland. In echoing that statement, I in no way denigrate the hard work and professionalism that current Parole Board members exhibit; instead, I do so to emphasise the need to ensure that the board in future reflects contemporary Scottish society.

Turning to part 4 of the bill, I am totally dismayed by Phil Gallie's statements about homosexual offences. I will have to consult the *Official Report* to find out what he said, but I believe that he used the phrase "deviant practices". I thought that this part of the bill would be totally straightforward. As the Minister for Justice has said, the European Court of Justice has, not for the first time, ruled against the UK in an English case, and it is clear that Scots law is incompatible with that ruling. The proposed amendments are straightforward and eradicate yet another example of the current law's blatant discrimination against personal consensual sexual activity. I am pleased that the Executive is remedying such an area of discrimination and welcome this move to further equality.

I am sorry that the measure did not receive the unanimous backing of the Justice 1 Committee. As I am not a member of that committee, I do not know what objections were expressed in private, although I can certainly make a guess. However, it is significant that paragraph 91 of the report mentions the fact that the whole committee acknowledged that such a provision was necessary to ensure compliance with the ECHR, which makes it clear that the Parliament should not necessarily be involving itself in personal morality.

I turn briefly to the question of remedial orders. The Justice 1 Committee's report highlights its concerns, and I am heartened that the Executive has agreed to reconsider them. It should perhaps take a further look at those orders in view of the support that Phil Gallie gave to them.

I agree with the basic amendments that the bill will make to Scots law. I also agree with Roseanna Cunningham's comment that we should not subscribe to the view that the Executive is introducing the bill only because the ECHR has been incorporated into our domestic legislation. The changes that the bill will make are being proposed because they are right. I support the general principles of the bill and welcome the changes that it introduces.

The Presiding Officer: We now move to the open debate. Speeches during the debate will be limited to five minutes.

15:36

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): I welcome the minister's statement and the positive responses that he gave to some of the Justice 1 Committee's suggestions. I also thank the members of the committee and the clerks for the hard work that they have put into the consideration of the bill. I shall cover some of the more important aspects of it.

The committee suggests that the current adult mandatory life prisoner process in regard to sentencing does not breach the European convention on human rights. However, the involvement of ministers in the first consideration of potential release of the prisoners may breach that convention. The bill's provisions go further than simply remedying that breach, but we believe that the reform that it makes to the sentencing arrangements is valuable and sensible.

There is some confusion among the public about what a life sentence means. Many people believe that a life sentence is often short and a soft option. We should be clear about what the new punishment part means. If the punishment part is five years, it means precisely that: a minimum of five years will be served. If the punishment part is 30 years, a minimum of 30 years will be served, whatever happens. After that, it is up to the Parole Board to consider the risk of release to the public, but only after the passage of five or 30 years, or however long the sentence may be.

Nevertheless, we thought that the judiciary might need help in that new function, as judges have not been used to it. I am glad that the minister said that assistance and training would be provided where appropriate. It is vital for public confidence that the reasons for the length of a specific sentence are made clear, as we often hear doubts expressed about lengths of sentence. I heard what the minister said, but it was not clear whether he had gone far enough. Our justice system works only when the public believe in it, and clarity in the reasons for sentencing would help to build that public confidence.

The Justice 1 Committee discussed the age and health of the accused and whether, under certain circumstances, that might mean that a length of sentence would effectively mean life without the chance of parole. We decided that that was an inevitable consequence of making the punishment part fit the crime, and that we were happy that, even in those circumstances, the crime should determine the length of the punishment part.

We also discussed the so-called 20-year rule, whereby certain categories of murder mean that the murderer will spend a minimum of 20 years in prison, by virtue of ministerial involvement. Clearly, that would fall foul of the European convention; however, we feel that judges can be trusted to take into account the circumstances of each case and pass an appropriate sentence. Interestingly, the evidence that we received was mixed on the issue of whether there might be a decrease or an increase in sentences in relation to such cases.

We believe that relatives of victims have a right to be made aware of what the punishment part means at the time when it is handed down. Whether relatives should subsequently be notified of events in a prisoner's case is a much more difficult issue. One must come up with a procedure that balances the right of those who want to continue their involvement in the case to know what is going on with the right of those who want to forget all about the case, not be reminded of it.

Part 6 of the bill deals with wide order-making powers. Despite the various checks that are in the bill, the Henry VIII powers—a particularly inappropriate term in Scotland—allow ministers to make new laws by order. It is not clear that the order-making procedure is necessarily quicker than our legislative procedure, particularly given the provision for emergency legislation, the provisions in the Scotland Act 1998, which all members of the justice committees have been e-mailed about, and the potential to introduce new procedures. The major problem is that, despite consultation and the obligation of ministers to take account of that consultation—whatever that means—MSPs can either accept or reject the order.

Last week, an order went through the House of Commons under the Terrorism Act 2000 which proposed to ban a list of organisations. Many MPs felt that one of the organisations was not a terrorist organisation but a legitimate Iranian opposition organisation. However, the MPs were faced with a choice between not proscribing a number of terrorist organisations or voting for something in which they did not believe. I know that the current Scottish Minister for Justice is much more liberal—and Liberal—than the current Home Secretary, but we cannot rely on that always being the case.

Although I believe that we need to consider that provision carefully, I welcome the provisions of the bill in general.

15:41

David McLetchie (Lothians) (Con): I have said on a number of occasions that the Labour Government made a major mistake when it passed the Human Rights Act 1998 without considering fully its implications for Scotland and the rest of the UK. We know of occasions on which the consequences of the act have been detrimental to the operation of our legal system, laws, conventions and institutions, most apparently, of course, in relation to temporary sheriffs. The Scottish Parliament has already been compelled to legislate to remedy incompatibilities in relation not only to shrieval appointment but to bail, the justice of the peace system and the district courts.

The bill that we are debating today is intended to address some of the additional problems that have now been identified by the Executive, presumably as a result of the ECHR audit that was initiated by the Lord Advocate, and to provide machinery for rectification by way of statutory instrument rather than by way of primary legislation in this Parliament. Although, as Mr Gallie has indicated, we support the introduction of such machinery in part 6 of the bill as a necessary alternative, I thought that Roseanna Cunningham and Alasdair Morgan made a fair and valid point about the fact that the Scottish Parliament has already shown itself to be more than capable of effecting

amending legislation when need requires it to do so on issues of ECHR incompatibility.

The bill raises an interesting question about the difference between the approach to the issue of the release of mandatory life prisoners that is being taken by the Home Secretary in Westminster and that being taken by our Minister for Justice. While Mr Wallace is required to bend the knee to what is the perceived position on compatibility with the ECHR, it appears that Mr Straw is free to take a far more robust approach and retain a ministerial discretion on issues of release where he considers release to be contrary to the public interest or to public policy.

Mr Rumbles: I am not clear whether the Conservative party believes that people in our prisons have human rights or whether they should be entitled to a fair and impartial hearing. Down south, if they are not subject to the fair and impartial hearing that the bill suggests that they have, they will be subject to ministerial overlordship.

David McLetchie: I do not accept the proposition that people in our prisons have not had a fair and impartial hearing. That is what they got when they were convicted by the courts and rightly sentenced to life imprisonment. Thereafter, decisions relating to release, remission, parole or whatever should be taken by a responsible, accountable, elected politician exercising a ministerial function.

Ms MacDonald: Will the member give way on that point?

David McLetchie: Sorry. I must move on.

Some people may see the differences north and south of the border on this matter as a reflection of the different political attitudes towards human rights and the criminal law on the parts of Mr Straw and Mr Wallace. Mr Straw still likes to pretend that he is tough on crime; Mr Wallace makes no such pretence, as is evident from his appalling record as Minister for Justice to date.

There is a much more significant difference between the Home Secretary and the Minister for Justice, however. It comes about from the way in which the Human Rights Act 1998 defines primary and subordinate legislation and defines how Executive actions are regulated under it and the Scotland Act 1998.

Mr Rumbles: David—

David McLetchie: Sorry. I must move on to this point.

Acts of the UK Parliament are deemed to be primary legislation, whereas under the HRA, acts of the Scottish Parliament are subordinate legislation. Although both primary and subordinate legislation must be read and given effect to in a way that is compatible with convention rights, there is a clear difference in the consequences for legislation that is deemed by the courts to be incompatible.

A declaration of incompatibility does not affect the current validity, operation or enforcement of UK primary legislation to which it applies; it merely signals to the Government that, in the opinion of the court, a remedial order is necessary. However, acts of the Scottish Parliament that are found to be incompatible with convention rights are subject to sudden death in regard to the offending provision or provisions, because they are deemed to be outwith the legislative competence of the Parliament.

I ask myself why the proposed asset confiscation bill is to be enacted at Westminster as UK legislation. Is it because, if it was to be an act of the Scottish Parliament and was deemed by a court at some future date to be contrary to convention rights, it could be struck down as being outwith the legislative competence of the Scottish Parliament, and subject only to the power of limitation, as referred to in section 102 of the Scotland Act 1998? If that proposed bill was subject only to judicial determination of incompatibility under the Human Rights Act 1998, however, the law would still stand, and Her Majesty's Government at Westminster would retain a discretion as to whether it should be remedied and, if so, how.

It is clear that an act of the Westminster Parliament is far more ECHR-fireproof than an act of this Parliament. It is also apparent that we will only get the tougher laws on criminal asset confiscation that the Scottish public demand if those are enacted on a UK basis, even though the area in question is devolved.

The Presiding Officer: Please wind up now.

David McLetchie: There are bound to be other areas where proposed measures—

Mr Jim Wallace: Will Mr McLetchie give way?

David McLetchie: I think that I have to wind up. I am sorry, minister.

The Presiding Officer: Yes, he has already been told to wind up.

David McLetchie: There are bound to be other measures for which there is public demand in Scotland, for the public interest. However, we cannot act because we will have to wait until Westminster agrees to passing the required law, for fear of falling foul of the ECHR.

This is a measure of devolution in reverse. It is ironic that Mr Wallace and Mr McLeish, two of the architects of devolution, have allowed this situation

to occur. It is yet another example of the failure of the Labour Government to think through the consequences of the incorporation of the ECHR and of its relationship to the Scotland Act 1998. The Human Rights Act 1998 and the Scotland Act 1998 represent a botched job, which reflects no credit on the Labour Government and very little credit on the Scottish Executive, which has repeatedly been caught short in the past.

The provisions in part 6 of the bill are a step in the right direction. However, the differing ECHR impact that I have identified raises serious questions as to whether legislation, even on devolved matters, should be enacted here or at Westminster.

15:49

Maureen Macmillan (Highlands and Islands) (Lab): I am very proud that ECHR compliance was part of Labour's 1997 manifesto, and that it was a Labour Government that enacted the Human Rights Bill. That was done so that UK citizens would not have to trail across to Strasbourg, at great expense in time and money, to raise human rights issues, but could instead access their rights in their own country, here in Scotland.

I believe that we have a responsibility to protect and safeguard human rights, by legislation if necessary. The changes proposed in the bill are necessary to ensure that our legal procedures are not challenged on ECHR grounds. Compatibility with the ECHR is a good end in itself. Justice is promoted by respecting human rights and, contrary to what the Tories say, respecting human rights does not mean being soft on crime.

I will discuss the proposed change in sentencing for adult mandatory life prisoners. A definite and immutable number of years will be set as the punishment and deterrent element of the sentence. That will give certainty both to the convicted criminal and to the public, as long as the reason for the length of the sentence is made clear. Such sentences might be longer than the criminal's remaining natural life span and it will be possible to appeal them.

Consideration of the victim or the victim's family is crucial in such cases. The victim or the victim's family will know at the time of sentencing when release on licence will be up for consideration, and it is important that they should know that. If they still have strong feelings about the possible release, they can have their views put before the Parole Board. I am content that the onus will be on the victim's family to instigate such action—if the trauma has been put behind them, let it rest. I am content that victims will be clearly informed in writing at the time of sentencing that they will have to be proactive in approaching the Parole Board in future and will not be informed automatically at the time of the parole hearing.

We must not forget that prison itself is the punishment. Deprivation of liberty is the punishment. Programmes of rehabilitation should and do take place in prison. Tremendous work is being done in prisons to rehabilitate offenders, and those who carry out that work must be properly respected and rewarded for what they do. When the Moderator of the General Assembly of the Church of Scotland came to speak to the Justice 1 Committee, he stressed the need for rehabilitation and aftercare.

I believe in the ability of people to change—for example, to learn to control their violence—and to make a new start. The proposals for a mandatory punishment element and a definite end date give prison staff a definite time frame in which to work for the rehabilitation of serious offenders.

Phil Gallie: Does Maureen Macmillan agree with the comment in the Justice 1 Committee report that part 1 of the bill does not have to be implemented to comply with the European convention on human rights, and that the measures that she wants will be legislated for by the Parliament in any case?

Maureen Macmillan: Yes, I agree with that comment in the report, but I think that this is a good end in itself.

I am pleased that the bill proposes an end to any political input into the decision whether to release on licence. I would not dream of implying that Ministers for Justice or First Ministers now or in the future might make parole decisions on the basis of political expediency in high-profile cases in which the offender has been demonised, without having proper regard to whether the offender is still a danger to the public. However, I believe that it is of the utmost importance that parole decisions are made, and are seen to be made, without any taint of populism. I welcome the provision for security of tenure for members of the Parole Board, so that it is seen to be independent of the Executive and its decisions cannot be open to ECHR challenge.

The bill also deals with the provision of legal aid. I found the evidence that was given on this to the committee very confusing. There seemed to be a lack of consultation between the Scottish Legal Aid Board and the Executive over legal aid for representation for convicted prisoners and no very clear idea from the Executive of which kinds of proceedings might attract civil legal aid. There is scope for messy challenges over whether a dispute with the Department of Social Security, for example, involves matters of civil right. I note that the minister has said that that problem will be remedied by stage 3.

The Deputy Presiding Officer (Patricia Ferguson): Please wind up.

Maureen Macmillan: It is essential that such questions are clarified very soon and that funds are made available to SLAB to cope with increased demand.

A further area of contention was over the use of remedial orders by the Executive. Much has been said about such orders this afternoon and I will not go over the arguments again, but we need much more discussion on this matter before we reach a conclusion.

The Deputy Presiding Officer: Come to a close, please.

Maureen Macmillan: We need to build a fair, just and equal society. The bill will facilitate that.

The Deputy Presiding Officer: Before I call the next speaker, I remind members that the time limit for speeches is five minutes. It would be helpful if members would stick to that limit, as that would allow me to call all members who wish to contribute to the debate.

15:55

Ms Margo MacDonald (Lothians) (SNP): For the benefit of Phil Gallie and anyone else who is interested, the ECHR is an international treaty. It is not that someone is taking over our law—we agreed that the treaty was a good thing and therefore we signed up to it. What has been said about making the ECHR more accessible to people in Scotland is both perfectly obvious and entirely reasonable, and I would have thought that that would be accepted throughout the chamber. The remarks from the Conservatives therefore came as a bit of a surprise, because, as far as I am concerned, so far, so good. I will mention a couple of exceptions to that comment later.

Like most members, I welcome the proposed change in the treatment of adult mandatory life prisoners, which the bill brings into line with the sentencing of designated life prisoners and is the correct way to go about sentencing. The Minister for Justice jumped before he was pushed, and I hope that he will complete his answer, now that he has started, to the question about the length of mandatory life sentences. He must be aware that strong voices will be raised in favour of allowing the punishment element of any future sentencing policy to be lengthened beyond the period during which a prisoner might hope to return to the community—that applies even to prisoners who have committed crimes that are judged most harshly by the public.

The Scottish Consortium on Crime and Criminal Justice reports that there is no evidence that tougher or longer sentences have a deterrent effect on serious crime. We must examine the effect of any changes on deterrence, as that is what the public is interested in. It is important that we stress that, in order to reassure the public. When the bill becomes law, there is no doubt that there will be media interest in how it will affect different categories of prisoner, or even individual prisoners. It is in everyone's interests to show that the bill does not soften the existing system of punishing murderers and the like. Rather, it introduces a more consistent and effective way of dealing with prisoners—both as individuals and as members of the prison community—that is much more likely to produce the sort of regime that will make our prisons more satisfactory places.

I could not agree more with Maureen Macmillan's comments on the proposed changes to how information is relayed to victims. The victims of crime should be informed, after sentence has been handed down, about when release will be considered. However, after that, the onus should be on the victims to seek further information should they wish or require to.

It is absolutely excellent that Jim Wallace is prepared to do what Jack Straw—who is being pulled by his back teeth by the more liberal consensus north of the border—is not. Far from the Parliament and Scots law being subservient to UK law, I suggest that by taking the approach that is proposed in the bill, we may be showing the way forward for UK law and taking a properly responsible role in building international law.

The task of making sentencing policy must be removed—and be seen to be removed—from ministers. Such policy must be left to an independent parole board. I urge the minister to take note of the evidence of the Law Society of Scotland to the Justice 1 Committee. The number of members of the Parole Board must rise and more resources must be allocated to the board, as my colleague Roseanna Cunningham pointed out.

To distance the Executive further from the day-to-day operation of compliance with the ECHR, an independent human rights commission seems to be the best way of ensuring that justice is seen to be done. We had much debate about the bill's provisions on subordinate legislation and about how the remedial orders are envisaged and would be introduced. However, if a continuing independent audit and monitoring process were to be provided by an independent commission, many of the difficulties associated with the ECHR compliance would be overcome.

David McLetchie said that he thought that the bill was a lot of nonsense, because a properly accountable and responsible politician could take remedial action and decide whether there should be remission of sentences. I have news for David McLetchie: not all politicians are accountable and

responsible—some of them are absolute rogues. I am not prepared to leave such decisions to politicians and would prefer to have an independent parole board and to give its members security of tenure.

Phil Gallie: Will Margo MacDonald give way?

Ms MacDonald: Briefly, as I want to mention something else that is dear to Phil Gallie's heart.

The Deputy Presiding Officer: You are close to the five-minute limit, Ms MacDonald. This must be the last intervention that you accept.

Phil Gallie: How can members of the Parole Board be held accountable to society when, say, a horrendous crime follows the release of a serial killer?

The Deputy Presiding Officer: I remind Ms MacDonald that she must come to a close.

Ms MacDonald: The case that says that politicians are any more accountable to society is not proved. Politicians have already made mistakes; their track record on this issue shows that they are not absolutely essential.

I crave the indulgence of the Presiding Officer. The big omission, which I want to refer to before I close, is the minister's lack of reference to slopping out. Why is the minister not taking his courage in both hands? Why is he not anticipating the fact that prisoners are waiting to take that issue to the court in Strasbourg? The minister should say now that it is embarrassing to find ourselves past the deadline that the Executive had hoped to meet. Let us put our hands up and say that we will do it now.

16:01

Mr John Home Robertson (East Lothian) (Lab): The debate brings back happy memories of long sessions of the House of Commons Scottish standing committees, listening to Donald Dewar and Nicky Fairbairn debating obscure points of Scots law. For Roseanna Cunningham, David McLetchie and others, they are a hard act to follow. Indeed, I heard it said once that Donald Dewar's idea of heaven would be a never-ending committee stage on a law reform entitled the miscellaneous provisions (Scotland) bill. Possibly that is where Donald Dewar is now. I am sure that he is keeping a close eye on us as we consider the bill.

Those of us who are not lawyers tend not to notice flaws in the law until something goes wrong. We notice only when aggrieved constituents ask us to explain why we voted for what later turned out to be dodgy legislation. Like most people, I have always understood that human rights legislation is intended to protect the rights of human beings. It is therefore perplexing to find that that legislation can be manipulated in attempts to safeguard the assets of drug dealers and that it can be exploited by lawyers acting for well-heeled troublemakers. However, the fundamental principle of the ECHR must be right and still holds good. The objective must be to ensure that Scottish citizens have the means of access to that form of justice so as to protect their basic rights.

I understand that the bill will make the system work better and that it will ensure that cases can be dealt with in the Scottish courts without the need for Scottish citizens to go to Strasbourg to protect their rights. The bill aims to revise those features of Scots law that may conflict with the ECHR. By incorporating the convention into domestic law, via this legislation and the UK-wide Human Rights Act 1998, we are, in effect, establishing for the first time a bill of rights for Scots.

I strongly support the Minister for Justice in seeking, as he said, to ensure that human rights are woven into the fabric of Scottish public life. That must be right.

As other members have said, the UK played a major part, in the aftermath of the second world war, in drafting the ECHR as a means of enshrining human rights in law following the evils of the Nazi era. The UK Government ratified the ECHR as long ago as 1951. Alasdair Morgan—I think—reminded us that Winston Churchill played a part at that stage. It really is perverse that 21st century Scots are expected to journey to Strasbourg to avail themselves of rights that have been enshrined in our law for that long.

Incorporation of the ECHR into Scots law is bound to give rise to problems for public authorities, but we will end up with better standards of administration. That must be an advantage for all our citizens. As we all know, it is already possible for people to take cases to Strasbourg. The bill will make it possible to deal with cases in Scotland without having to settle Scottish problems on the other side of the channel. That must be a step in the right direction.

Phil Gallie: Will the member give way?

Mr Home Robertson: I am sorry, but I am short of time.

I am just coming to people such as Phil Gallie. I suppose it was inevitable that the usual Europhobic suspects would parade their prejudices in the debate—we have heard that, I am sorry to say—preach the Tory doctrine of isolationism and try to generate a myth that the ECHR is an example of the European Commission meddling in our lives. That is rubbish. The Council of Europe is responsible for the ECHR. If William

Hague has extended his paranoia about the European Union to include the Council of Europe, we should be told.

Phil Gallie: Will the member specify the issues in the bill that are so important to individuals that they are necessary to stop those individuals having to trail off to Strasbourg?

Mr Home Robertson: We are talking about principles. Principles are important. It is wrong that it is so difficult for Scots to access this form of justice.

The convention takes account of distinct national circumstances. The European Court of Human Rights has made allowances for differences in interpretation of the ECHR from country to country, to take account of cultural and social differences through the concept of margin of appreciation. There is reasonable scope for taking account of different national approaches.

Much attention has been focused on changes to the way in which life sentences are dealt with. For some time, life sentences have consisted of two elements: first, the element of punishment and secondly—and very important—the element that takes account of the risk of reoffending and the need to protect society. That will continue if the bill is passed. Under the bill, judges will set the punishment period and, once that expires, it will be up to an independent and objective parole board, rather than a minister, to decide when a prisoner can be released back into society. I agree strongly with Margo MacDonald: it is far better that an independent board should deal with that, rather than any politician.

I strongly support the principle of this bill—in spite of the fact that it has been introduced by a Liberal Democrat minister.

16:06

Euan Robson (Roxburgh and Berwickshire) (LD): I am grateful for the opportunity to make a brief and, at least for now, final contribution to a justice debate. The bill on compliance is especially important. Roseanna Cunningham was correct to say that the bill will enhance the legal system. I share her view that the legal system in Scotland has been shown to be extremely robust in coping with all the vicissitudes that it has faced over the years.

In part 1 of the bill, it is welcome that the release of adult mandatory life prisoners is put on the same basis as the release of discretionary life prisoners and of those under the age of 18. Rather than it being unfortunate that Jim Wallace has adopted a different stance to that of Jack Straw, I feel that it is a positive virtue. Many in this chamber—I include myself—believe that politicians should be kept away from matters of sentencing. The appropriate and responsible body for dealing with sentencing is, of course, the Parole Board for Scotland.

The issue of transferred life prisoners is especially interesting. It may be necessary to revisit some sections of the bill that deal with amendments relating to such prisoners, particularly those who are transferred from a jurisdiction that is not signed up to the ECHR. Those details will emerge in the months to come.

It is much better that there should be a clear punishment period within a sentence. That helps victims. Victims will know when the punishment part has ended and when they might expect a release. However, there is genuine difficulty with that. I recall the Justice 1 Committee wrestling with the difference between those who want to know and those who want to forget. We may have to give that more thought.

It is acceptable that the Parole Board for Scotland be brought into compliance with the ECHR—in fact, more than acceptable, it is essential. I also welcome the acceptance that amendments will need to be introduced on the two points that were raised during committee debates.

Part 6 of the bill includes the so-called Henry VIII clause. We know all about Henry VIII in my home town of Kelso, because of what remains—despite his worst efforts—of the abbey. The provisions in the Henry VIII clause needed to be modified. I heard what the minister said. The Justice 1 Committee will consider the amendments on that at stage 2. At first hearing, they sounded sensible to me and seemed to address the issues that were of particular concern.

On a personal note, let me say that I thoroughly enjoyed my time on the Justice and Home Affairs Committee and its two successor committees. I will be sad to miss the committee meetings. I pay tribute to the conveners of the committees on which I served—Roseanna Cunningham and Alasdair Morgan—for the work that the committees undertook. I enjoyed the experience and will listen with interest to future debates.

16:10

Kate MacLean (Dundee West) (Lab): I welcome the bill, which is not, as Phil Gallie suggested, a way to become subservient to Europe or to give up our legal system. Long before the Treaty of Rome or the European Union were twinkles in someone's eye, British lawyers were involved in drafting the convention, which at the time—as it is now—was hailed as the bedrock of rights for a new democratic Europe.

I want to address some of the remarks that were

made by the Equal Opportunities Committee. In opening, the Minister for Justice referred to the Justice 1 Committee's comments about the time scale. The Equal Opportunities Committee, too, felt that it did not have time to take sufficient evidence; as we were not the lead committee, the time scale for us was even shorter. I do not confine that comment to this bill—we tend to make it about every bill that we consider. We also felt that the bill should have had an overarching equality statement. I ask the minister to address that in his summing-up.

I support the broad range of proposals in the bill but, as convener of the Equal Opportunities Committee, I particularly welcome the repeal of section 13(2)(a) of the Criminal Law (Consolidation) (Scotland) Act 1995, to which Phil Gallie referred, which is necessary not only to comply with the convention. I felt that the Justice 1 Committee was rather grudging when it said:

"Whilst some members have sympathy with the views expressed by CARE for Scotland, the Committee accepts that this provision is necessary to ensure compliance with ECHR."

After hearing Phil Gallie, I realised that that comment was a fulsome welcome for the repeal of the section.

Phil Gallie said that the Parliament is demeaned by repealing that section. I think that the Parliament is demeaned by the odious comments that Phil Gallie made about ordinary people, who are made extraordinary only by other people's obsession with their sex lives. Not only did Phil Gallie make the comments, which were particularly offensive, but he then scurried off to be interviewed for television, not even bothering to listen to the members who were leading for other parties in the debate. I find it difficult to understand why some sections of the Parliament and of the media have to be dragged, screaming and kicking, towards a safe, fair and open society.

As has been said, the bill finally brings Scots law into line with an international convention that was signed more than half a century ago. It does not give citizens one single right that they do not already have; it simply means that they do not have to go to Strasbourg to have their rights enforced, which is to be welcomed.

I am happy to support the Executive.

16:13

Colin Campbell (West of Scotland) (SNP): I will deal briefly with the problem that is posed by part 6 of the bill, which gives Scottish ministers new powers that will extend the range of circumstances in which they can make remedial orders to eradicate real or perceived incompatibilities with the ECHR.

The fact that the bill makes provision for a remedial order having a retrospective effect, capable of changing legalities after the passage of time, seems strange. It goes against the grain for me, as a student of history, although I understand that the provision does not include the retrospective creation of criminal offences or the retrospective increasing of sentences.

One would not for a moment argue against the principle of modifying Scots law where it diverges from the principles of the ECHR. We want to aspire to the highest standards of human rights and it is right that we should do that in concert with our close neighbours in Europe—we are de facto Europeans.

It is good to learn that Jim Wallace is moving towards cast-iron definitions of the circumstances in which Scottish ministers can choose to move by remedial order, rather than by primary legislation.

There may be a case, as Professor Gane of the University of Aberdeen suggests, for utilising orders to remedy demonstrated conflicts between legislation and ECHR rights, as distinct from acting when there is only a possible conflict between existing Scottish practice and convention rights. Equally, there is probably a sustainable argument for pre-emptive remedial orders. On the other hand, if the conflict with the ECHR is that obvious, there should be ample time to resort to primary legislation.

I note that at stage 2 the Executive will say that it will use orders only when there are compelling reasons to do so, but—on a cautionary note—one person's compelling reason may be another's weak excuse. As Alasdair Morgan said, at some time in the future we may have a less perfect Executive than we have at the moment, if indeed it is perfect.

Provision is made for consultation with interested parties before a draft order is lodged in the Scottish Parliament, and arrangements will be made for interested parties to comment on it, but that is no substitute for primary legislation being introduced in the Scottish Parliament. The principle that Scottish ministers can bypass the normal legislative process by lodging remedial orders, rather than a bill, is not a good one to apply. That point has been made by Professor Gane and the Law Society of Scotland. There are also inherent dangers in Scottish ministers having to act quickly, because they may not get it right. We look forward to Jim Wallace lodging amendments that will minimise the number of situations in which Scottish ministers will utilise remedial orders in preference to primary legislation.

There has been mention of Henry VIII. I do not know what passes through everyone's minds

when they think of him, except perhaps obesity and a beard. According to the Scottish Parliament information centre, the power to amend primary legislation using subordinate legislation is known as a Henry VIII power. I do not know what springs to members' minds when they think of Henry VIII, but I think of a religious reformation prompted by his personal predilections, legal change to accommodate them, and a lifetime of moral turpitude. Should Scottish ministers eventually have the power to make remedial orders, I hope that they will understand that those are not necessary preconditions for applying subordinate legislation.

16:17

Dr Richard Simpson (Ochil) (Lab): I welcome the bill, and I recognise the difficulty for the Executive in pursuing ECHR compatibility with some expedition and reasonable consultation, because that balance is difficult to strike. Two thirds of members in the chamber welcome the bill. It is a pity about the remaining small percentage who are not in favour.

I welcome the trend that is being followed by the Labour-Liberal coalition, in a number of areas, of developing legislation that advances citizens' rights. That is not about subservience to the UK or to Europe, but is part of a general trend that is supported with some enthusiasm by most in the chamber, except the Conservatives. There is now a clear dividing line between those of us who are enthusiastic about ensuring that the principles of the ECHR are fully incorporated in law and are part of citizens' rights, and those who are not.

The fundamental flaw in David McLetchie's argument is that it is built on the false premise that citizens did not have the right to take issues to the European Court of Human Rights in Strasbourg. The rights have always existed—all that we are doing is making them more accessible to Scottish citizens. Not only that, they will be dealt with in this culture, in Scots law, by Scottish judges. I fail to see why that is such a difficult issue for the Conservatives to accept. I would rather that judgments were made, at least initially, by our courts, than that they have to be taken to Strasbourg.

The approach of making our law compatible with the ECHR—combined with the proposed freedom of information bill and the changes that are taking place in medicine with regard to informed consent and organ retention—are part of general trends that will ensure that our citizens have rights that they understand, and are not subject to ministers making judgments that are often based on the pressure that they are under, for example from the tabloid press in relation to mandatory life prisoners. The trend of removing ministers from appointing temporary sheriffs, dismissing Parole Board for Scotland members, and deciding on mandatory sentences, is absolutely compatible with an increase in citizens' rights and is entirely appropriate. The independence of the Parole Board is to be welcomed.

I have some slight concerns about victims. I understand what will be done. Maureen Macmillan explained the position carefully. However, victims should have the opportunity to become proactive—it is sometimes difficult for them to know when they can do that—and, on the basis of informed consent, to opt out of the process. However, perhaps I have not understood that absolutely clearly.

On reading the Justice 1 Committee's report, I had some concerns about the remedial powers. However, the minister clarified several points today, which is to be welcomed. The minister said that the issue must be compelling and urgent. That is appropriate. He said that action would normally be taken through primary legislation. That too is appropriate. As I understand it, normally the court will trigger the issues. The minister also said—if I remember correctly—that the issue would normally be suitable for subordinate legislation, and I welcome that. On all those points, the minister has gone some way towards reassuring us that the remedial powers will not be abused.

As I understand it from the committee's report, the committee had a further concern. It was worried about when the decision to use the powers would be taken and whether the power would be used in a way that went beyond what was necessary to address the incompatibility. That issue has not yet been addressed. Perhaps when the Deputy Minister for Justice sums up he will tell us a little about that.

Phil Gallie: Does the member accept that, in part 1, the minister goes further than the ECHR demands?

Dr Simpson: It is important that we be ahead, not behind. In dealing with citizens' rights, that is appropriate and compatible with the general principle.

The Conservatives seem to have the misunderstanding that the ECHR contains a set of absolutes. It does not; it is a set of constructed rights with checks and balances.

The Deputy Presiding Officer: Please wind up.

Dr Simpson: For example, the Conservatives talked about drug courts. The situation already applies in Ireland. We will see whether the system stands the test of compatibility with the ECHR. It involves two issues—individual rights versus the general rights of the public interest. The courts should decide about that. I am happy for the Scots

courts to decide that. If someone wants to take the issue to Strasbourg afterwards, that is a matter for them.

In conclusion—

The Deputy Presiding Officer: Please be quick.

Dr Simpson: I welcome the bill. The compatibility of the forthcoming bill on mental health with the ECHR will be interesting, because it may remove people's rights to liberty. We will need to consider that closely. I support Margo MacDonald's comments. I find slopping out totally offensive. I worked in prisons for many years. That is the most offensive part of the degradation of prisoners, and anything that we can do to speed its removal should be done.

16:23

Mr Adam Ingram (South of Scotland) (SNP): I will focus on the legal aid issues that part 3 of the bill raises. In his summing-up, perhaps the deputy minister will address the points that I intend to make. However, I have some other comments to make first.

From the Justice 1 Committee's report and other evidence, it is glaringly obvious that there is a bit of a communication problem between the Scottish Legal Aid Board and the Scottish Executive. Perhaps the message for both ought to be that it is good to talk. I welcome Mr Wallace's assurances about that.

Article 14 of the European convention on human rights says:

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground",

including national origin. It is arguable that section 6(1) contravenes that right on that ground. As the signatory state, the United Kingdom could be in breach.

Section 6 deals with the extension of legal aid, but the Executive has so far been unable to say how many court, tribunal and statutory inquiries are likely to be affected. If the Scottish Executive intends that there should be a broad interpretation of section 6, it is conceivable that a Department of Social Security tribunal, for example, could merit advice by way of representation or civil legal aid. Because social security is a reserved matter, a discrepancy would be created within the UK, in that legal aid would be available in Scotland but not in England. That would result in unequal access to article 6 of the ECHR, which confers the right to a fair trial. Will the minister comment on whether the Executive has considered that cross-border issue and whether it sees the matter as problematic?

Section 7 relates to fixed legal aid payments. Legal aid used to be paid for on a time-and-line basis, but spiralling costs led to fixed payments. It has been argued that fixed payments do not necessarily ensure that the accused receives a fair trial and that they could therefore be challenged under article 6 of the ECHR. Proposed new subsection (3C) to section 33 of the Legal Aid (Scotland) Act 1986 would allow the Scottish ministers to define the criteria on which a case could be judged to have exceptional circumstances and would therefore allow legal aid to be paid for on a time-and-line basis.

Whether a case is judged to be exceptional is left entirely to the discretion of the Scottish ministers. Exceptional circumstances have not been defined in the bill. Perhaps the Executive could provide examples of circumstances in which a case would be defined as exceptional. It is a bit much to ask the Parliament to pass legislation in which the details and, therefore, the costs have yet to be decided.

Like my colleague Roseanna Cunningham, I appreciate that the regulations will be published at some point before stage 3 consideration of the bill, but—also like her—I do not agree that that leaves adequate time for proper consideration. I also wonder on what basis the Executive arrived at its estimate that 500 cases a year might be considered to have exceptional circumstances, if the criteria that determine that have yet to be decided.

My final point is on appeals. What would the appeals mechanisms be when an exceptional case application was denied? It appears that that is not addressed in the bill and I urge the Executive to get together with SLAB to work out the details and to include them in the bill.

Notwithstanding my questions, I welcome the general principles that lie behind the incorporation of the ECHR into Scots law.

16:25

Des McNulty (Clydebank and Milngavie) (Lab): I listened to David McLetchie's speech. I wonder whether, from the Conservatives' point of view, there ever will be a right time to incorporate the ECHR into UK and Scottish law. It is, perhaps, their phobia about all things European that underlies the Conservatives' position. It seems to me that the mix-and-match approach that David McLetchie seemed to suggest—"Let's look at a wee bit here and a wee bit there and deal with problems as they arise"—runs completely against the underlying principles that are embedded in the ECHR. It also detracts fundamentally from the basis of the rights.

Phil Gallie concluded his speech by saying that

the Conservatives will neither support the bill nor reject it. It is remarkable that a party that in the past prided itself on its interest and focus on law and order issues cannot make its mind up on this set of issues. They really must make some kind of decision—it is not appropriate to fulminate, as Phil Gallie appeared to be doing, while sitting on the fence.

Phil Gallie: Will the member give way?

Des McNulty: Because I am speaking late in the debate, I am going to try to address only matters that have not already been raised. I will focus especially on areas in which I think it will be difficult to frame the proposed legislation as it moves to the next stage of consideration.

I have some sympathy with one or two things Phil Gallie said; in moving forward, we must get right the balance between the rights of prisoners and the responsibilities that lie on ministers, which they exercise on society's behalf.

It is true that, with the bill, we are moving to establish independent and impartial decision-making in relation to specific individuals in specific cases, but there has to be accountability in how the framework, policy or criteria against which decisions are made is set. There must be political input into that process. We will have to see how that input can be derived once the bill is enacted. Society expects Parliament and politicians to establish the terrain on which judgments are made, but the individual judgments should be made by those who are qualified to make them. We may have a role at the policy level to set clear criteria for holding accountable those who make the judgments.

The Parole Board for Scotland should be accountable for its decisions—that twist may need to be put into the process. I am not sure whether it is necessarily best constituted to make decisions. The proposal to allow people up to the age of 75 to sit on boards is understandable, given the kind of people we wanted to sit on them in the past, but I have particular concerns about that. There is no area of life—except that of judges—where people are allowed not to retire until they are 75. There is the example of the Supreme Court. The Parole Board makes important decisions about whether people are released or remain incarcerated. If we took those decisions seriously, we would put together a properly constituted body to take those decisions. It must be demonstrated why people are allowed to stay on boards until they are 75. I have some reservations about that.

I am concerned about the separation of the punishment element—which is the area that judges traditionally preside over—from the rehabilitation element in decision-making. There is a serious question about who should be making those decisions. It should be the kind of people who can make the best decisions about whether the people who are under consideration can be effectively and successfully rehabilitated into social life. I am not sure whether judges are well equipped to do that. In fact, even in the report I noticed an emphasis by Lord Ross on the need for training for judges and other legally qualified individuals. The Justice 1 Committee's report raises questions about the composition of the Parole Board for Scotland and the basis for the decisions it takes.

I favour the involvement of victims in the decision-making process, but we need to be careful that the process does not burden victims. There are two aspects to that. The first is that we need to ensure that victims have the chance to opt out of the process. Secondly, victims should not come under pressure to take a point of view that is different from the one they want to take, because of the interests of the person whose release is being considered.

16:34

Robert Brown (Glasgow) (LD): I first declare my connection with Ross Harper & Murphy and my membership of the Law Society of Scotland. In a slightly different context, I am convener of the cross-party group on human rights.

I welcome the bill and—to be obsequious—the way in which my party leader responded to the points made by the Justice 1 Committee. It was a model for the way in which the Executive ought to respond to committee points on such matters. Like Kate MacLean and others, I was appalled by the mishmash of unbalanced assertions that passed for Phil Gallie's view of constitutional law. I want to put into context how the bill stands.

The United Kingdom has been committed for many years to the principles enshrined in the European convention on human rights. The original convention was ratified in 1951—by the Labour Government, I think, although I may be wrong about that—with the support of all parties, in the aftermath of the horrors of the second world war. Originally, the convention was a treaty between states. Later, UK citizens were empowered to take cases directly to the European Court of Human Rights.

Thus far, there is agreement. All parties in the chamber are committed to the principles of the ECHR, or so they say, and to the availability of a direct remedy to aggrieved citizens for breach. Then there is divergence. Liberal Democrats, the Executive and the SNP say that a remedy for any breach of rights should be available to citizens in domestic courts, which is the most accessible, most convenient and cheapest way of dealing with

such matters. That allows the ECHR to be applied by judges who are familiar with the specific social norms and customs of our country and with the legal principles that apply in Scotland, rather than by judges who are perhaps less familiar with our way of doing things.

The Tories, on the other hand, say, "Yes, you've got a right and there should be a remedy, but we will make you wait five or six years to access that remedy and we will make it as expensive, inconvenient and difficult as possible." Furthermore, there is the paradox that Europhobes such as Phil Gallie prefer to have cases decided not by Scots courts but by those dreadful Europeans. Any view of Scotland's place in European jurisprudence is lamentably absent from the Conservative way of dealing with things. Where did Scots law come from? It came from Roman law and was taught to the institutional writers of Scots law at the great continental universities of Paris, Leiden and Utrecht.

It ought not to be necessary to say that, but there are compelling reasons to strive for ECHR compliance and to legislate in the bill on some areas of concern. The ECHR is a powerful legal tool. It is not the only one, but it is an important one, with which we can analyse our hallowed and not-so-hallowed legal procedures and practices to see whether they measure up to the highest standards. That was why temporary sheriffs and councillor JPs had to go. That is part of the driver for better rights for victims. That is why we are reforming mental health legislation.

We are doing those things, as Scott Barrie said, because it is right to do so, and not, as some would have it, to enable hordes of murderers, rapists and child abusers to be released on to the streets. Indeed, quite the opposite is true. We are doing it to ensure that the convictions of guilty people cannot be challenged because of the risk of contamination of the judiciary by the Executive, and to ensure that innocent people who are wrongly charged can vindicate their innocence. The Liberal Democrats strongly support the reforms relating to life sentences and to the constitution of the Parole Board. In that context, has Phil Gallie never heard of the concept of the separation of powers and the constitutional implications that go with that?

I did not altogether share the Justice 1 Committee's reservations about legal aid for tribunals, but the minister has dealt with that matter and has made promises about how he intends to proceed. I certainly agree that the draft regulations should be available to the committee and to the Parliament for examination as soon as possible.

Finally, I raise the question of the Parliament's ability to examine legislation with ECHR compliance in mind. Roseanna Cunningham touched on the matter of a Scottish human rights commission, which is dear to my heart, but the Parliament should also look closely at its procedures. Many bills raise ECHR issues, some of them quite important, but the only formal consideration that we get is the bald and somewhat unconvincing narrative that a bill is ECHR compliant.

I believe that the Executive must find ways of laying out its more detailed view—what it considered, what it rejected and why—before it is decided that a bill is compliant. MSPs are not human rights experts, far less are they lawyers—well, some of us are, but others are not. There are time constraints on us. We need to raise ECHR considerations higher up the priorities of the Parliament.

I support the Convention Rights (Compliance) (Scotland) Bill and its passage at stage 1.

The Deputy Presiding Officer: I now call Lyndsay McIntosh to close for the Scottish Conservative party.

16:39

Mrs Lyndsay McIntosh (Central Scotland) (Con): Are we still sticking to the timetable?

The Deputy Presiding Officer: Yes please. You have five minutes.

Mrs McIntosh: In that case, I crave your indulgence if I gallop through my speech.

Wider consultation would have been welcome. I suspect that it is not only the Scottish Tories who agree on that; I suspect that members across the political divide will happily concur. Concerns about lack of consultation with SLAB sound a warning which I hope the Executive will heed in the future.

The minister said that orders passed under part 6 will be "an event", if I have noted his words correctly, rather than an escape route from scrutiny. We accept that.

Ms Cunningham highlighted the robustness of Scots law in the 21st century; there have been a mere 37 successful challenges under the ECHR.

On lay representation on parole boards and mindful of the jobs that my party whip and party leader formerly held, I am forced to agree that, like Roseanna Cunningham, I cannot understand the low esteem in which lawyers are held by the voting public.

Remedial orders bypass Parliament, which Ms Cunningham fears. I invite the minister, if an example of where such orders would be necessary has come to mind, to illustrate it in his summing-up.

Phil Gallie has signalled our discontent with the rush to incorporation. If I may address an error in Phil's comments, it was—according to my notes—Ms Cunningham who raised the issue of the criminal age of consent. We in the Conservative party would be concerned for the victims who have suffered at the hands of youngsters.

I am sure that Phil Gallie is mortified to have disappointed Mr Barrie, whose pre-prepared opening he thwarted. Victims and their families will welcome the punishment proportion of a sentence being heard in court. On the topic of homosexual practices, members may imagine who was the dissenter from the cosy consensus.

On Alasdair Morgan's comments, the type of crime should influence the length of sentence. It is encouraging that we can agree on that.

My gaffer, Mr McLetchie, highlighted previous compliance difficulties, such as JPs who are councillors, district courts and temporary judges, on which this Parliament has had to act to make remedy. He also highlighted the differences between Mr Straw and Mr Wallace. I am sure that Mr Gray will take the opportunity to make those differences clear.

Mr Rumbles: Although I intervened on David McLetchie, I am still not clear about the Conservative position. Do the Conservatives feel that when prisoners are put into prison they have no rights? Do they still have rights under the ECHR? Are they still entitled to a fair hearing?

Mrs McIntosh: If Mike Rumbles had waited, I would have come on to that in relation to slopping out. Will we go on to that now? [MEMBERS: "Yes."] Maureen Macmillan, Pauline McNeill and I went on a tour of Barlinnie prison. The situation is appalling. We had money that could have been used to tackle slopping out, but it has been taken from the budget and we have not done anything about that. I am sure that Margo MacDonald shares our concern. We should be ashamed of ourselves.

Mr Rumbles: Do prisoners have rights?

Mrs McIntosh: Of course they have rights. Prisoners certainly have the right to perform a natural bodily function such as that in privacy.

Mr Rumbles: Do they have rights?

The Deputy Presiding Officer: Order.

Kate MacLean: Will Mrs McIntosh give way?

Mrs McIntosh: I am waiting for instruction from the Presiding Officer.

The Deputy Presiding Officer: It is entirely up to you.

Mrs McIntosh: I thought that you were going to tell me that I am in my last minute.

The Deputy Presiding Officer: No.

Maureen Macmillan: Does Mrs McIntosh want to take an intervention?

Mrs McIntosh: From Kate MacLean? Yes.

Kate MacLean: Is Lyndsay McIntosh saying that the only right prisoners should have is the right to have a toilet rather than slop out, or is she saying that their rights should extend beyond that?

Mrs McIntosh: Naturally, their rights will extend beyond that. Slopping out is the most glaring example of the right of prisoners to privacy, which we could have and should have done something about.

I have lost my place. I was going to come on to Maureen Macmillan's comments; public safety is of paramount importance.

Margo MacDonald also made a point about slopping out. I agree that there is immense interest in the prevention of crime and whether detention in prison should have a deterrent effect. It is undoubted that if prisoners are detained in prison the public will be safer.

On John Home Robertson's speech, fundamental rights should be protected. I will hark back to something—

The Deputy Presiding Officer: Wind up, please.

Mrs McIntosh: When Churchill signed up to the ECHR way back in 1951, before I was born, it was seen as an evolving convention. In other words, what he signed up to is not what we might end up with, because of judicial decisions.

Although I am fearful of incurring your wrath, Presiding Officer, I must mention Des McNulty. In spite of what he suggested, the Conservatives are not in two minds and I warn him that he might have dampened a bright political career by agreeing with Phil Gallie at one stage.

16:45

Michael Matheson (Central Scotland) (SNP): The debate has illustrated two key issues about the bill. First, three quarters of the Scottish Parliament—not two thirds, as Richard Simpson said—favour the bill's general principles. Secondly, considerable benefit has been gained from incorporation of the European convention on human rights into the Scottish justice system—although it has not been without its problems, as the situation with temporary sheriffs demonstrated. That said, it has turned out that the solution to that problem has made the system even better.

Scott Barrie mentioned an audit. Members of the

Justice 1 Committee felt the need for a more detailed and public audit to ensure that we can find out exactly what is happening and where the areas of concern are. It is clear that a human rights commission has a role to play in that.

As ever, there are those who like to argue that the ECHR has been nothing but a complete and utter disaster. As ever, that argument has come from the usual suspects. The Conservatives demonstrated the usual xenophobia that we expect from them on anything to do with Europe. As Roseanna Cunningham pointed out, Winston Churchill ratified the ECHR back in 1951, and as John Home Robertson said, this is not a matter for the European Commission or the European Union; it is a matter for the Council of Europe. Britain was the first member state to ratify the ECHR.

Phil, you seem to object to the whole idea that we should have anything to do with the convention. If I recall rightly, you led us to believe that this is an issue where rules are made in Strasbourg which then come and affect the Scottish justice system, and you were surprised that the SNP would accept such a position. Do you not realise that the reason for incorporation is to ensure that judgments are made in Scotland so that people do not have to go to Strasbourg?

Phil Gallie: I presume that Michael Matheson's yous were addressed to me and not to you, Presiding Officer.

As far as I am concerned, the ECHR has been in place since 1951 and has been observed by all of us in this country. There was no need for its incorporation; up to now, we have been able to follow its principles without always having to follow it to the letter with the i's dotted and the t's crossed.

Michael Matheson: That is about as much as Mr Gallie said in his speech.

Alasdair Morgan: Would Michael Matheson care to reflect on the fact that the other thing that has changed since 1951 is that whereas at that time the Tories could command a majority of the popular vote in Scotland, they cannot now win one seat in a general election?

Michael Matheson: I entirely agree.

Scott Barrie made the good point that people are either for or against incorporation. It appears that the Conservatives are against it—even though a Conservative Government ratified the convention.

Robert Brown hit the nail on the head when he referred to the new procedure of setting a punishment part and a risk part in sentences. That will reduce the possibility of a challenge, which will provide important transparency, particularly for victims. We have all met people who have been left wondering how long offenders sentenced to life imprisonment will serve in prison. With the new procedures, it will be clear when the sentence is handed down that the offender will serve 13 years in prison before they can be considered for parole.

Euan Robson mentioned the difficulty the Justice 1 Committee identified with the notification of victims. After 13 years, some victims will have moved on and will not want to be involved in any review of the case. That needs further consideration. The committee agreed to write to some of the victims organisations to ask for their views on whether people who want to be informed should notify the court when the sentence is handed down or be automatically notified. I am of the opinion that they should indicate when the sentence is handed down whether they want to be involved in any parole process.

Mrs McIntosh: Does the member accept that, with the passage of time, people's views on that might change?

Michael Matheson: Of course. That is why the system should be flexible.

Phil Gallie suggested that Part 1 is not always necessary for us to be entirely compliant with the ECHR. The committee recognised that, but the proposals in the bill are even better and take us a step further. If they benefit the system, we should be willing to accept them. The ECHR should be only the baseline from which we work; we should always aspire to improve the system in any way possible. That is what the bill seeks to do.

Phil Gallie said that the minister is washing his hands of the parole issue and referred to the Parole Board for Scotland as a nameless organisation. As the Conservatives created more quangos than any other party in history, they should know about faceless organisations and faceless individuals. When Dr McManus and Lord Ross appeared before the Justice 1 Committee, they struck me as exceptionally sensible and expert people in their profession. They have a clear knowledge of their role. By removing the ministerial involvement in parole, we will get a decision that is made by people who know all the facts about the case and who have taken time to consider the matter—as opposed to a minister making a decision based on a political whim.

Yet again, Phil Gallie struck a chord with me on the power to make remedial orders. If there was any doubt about providing ministers with powers that they can misuse, he made a good case for never doing so. That may be going a bit far—Mr Gallie will never be in a position to use such powers—but he gave us a good example of why we should ensure that proper safeguards are in place.

I note what Jim Wallace said about ensuring that the safeguards are sufficient, but as Roseanna

Cunningham and several other members reminded us, we received the same assurances over Sewel motions yet we have been presented with more than 20 of them. The latest figures from the Scottish Parliament information centre indicate that the majority of them have been on justice matters. Introducing a 60-day period for laying an order would allow us to produce our own primary legislation to deal with the problem. David McLetchie made the best speech I have ever heard from a Conservative in support of an independent Scotland.

The SNP is supportive of the principles of the bill and will support the motion this afternoon.

16:53

The Deputy Minister for Justice (Iain Gray): I reiterate the Deputy First Minister's thanks to the Justice 1 Committee for its careful and constructive consideration of the bill. I am sure that the members of that committee will join me in thanking the various organisations that took time to give evidence and contribute in a valuable way. A number of points were made in that committee's report, and by members this afternoon. I shall mention a few of them, but I am afraid that I will not be able to mention them all.

Kate MacLean made a general point, which arose from the Equal Opportunities Committee's recommendation that we should insert an overarching equality statement in the bill. We are unsure where such a statement could be inserted, given that the bill's scope and long title have already been agreed with the Presiding Officer. Although we have no objection in principle to considering the idea, we simply do not know where we could insert such a statement.

The greatest discussion this afternoon has been generated by part 6, on the power to make remedial orders. Some members are concerned about the scope of the proposed powers, which they believe goes further than is necessary. However, as members heard today, the Executive has agreed to lodge an amendment at stage 2 to address those concerns. Ministers will have to have compelling reasons for using the remedial order route to remedy actual or perceived ECHR incompatibilities. They will not be able to use the remedial power to remedy an incompatibility when the reasons for taking that route are not compelling.

Some questions have been asked about how necessary it is for that power to be available. Roseanna Cunningham, for example, asked why it would not be possible to use emergency legislation to ensure compatibility and gave a couple of examples of where that route had previously been followed. Of course, the example of the Mental Health (Scotland) Act 1984 had nothing to do with the ECHR but, nonetheless, the act was remedied by emergency legislation.

I recall that some concern was expressed—not least by Roseanna Cunningham when she was the convener of the Justice and Home Affairs Committee—about the pressure that that route put on the institutions of the Parliament. There are other reasons why the power is important, of course. The current position is that, under the Human Rights Act 1998, UK ministers have greater powers than Scottish ministers to make amendments by subordinate legislation to remedy legislative provisions that are or that might be incompatible with the ECHR. The Scotland Act 1998 gives ministers the power to do so in relation to any legislation that is passed by the Scottish Parliament or by an act of a Scottish minister that is or might be compatible with the ECHR. The power is required in order to ensure that Scottish ministers have the same powers as UK ministers already have under the Scotland Act 1998 so that Scottish ministers are able to take urgent action when that is required. That will ensure that the scrutiny role in such a situation lies with the Scottish Parliament rather than with Westminster.

Phil Gallie spent some time complaining about the thinness of the bill and saying that it does not address enough of the issues that he believes it should. In support of his view, he listed a series of current ECHR challenges. The examples he used, however, such as the case of County Properties v the Scottish ministers, are mostly under appeal. In other words, the Scottish Executive disagrees with the finding of the court. That seems to be a typically perverse Tory argument. First, the Tories criticise the Executive for seeking to make our laws compatible with the ECHR, then they criticise us for not amending legislation that we think does not require to be amended because we believe that it is already compatible. First they ask us whether a law should be struck down on the "say-so of one judge"—David McLetchie used that phrase—then they criticise us for not caving in to such a judgment when we disagree with it, but instead appeal against it. The phrase "wanting it all ways" springs to mind.

Phil Gallie: Can I assume that, if the minister loses an appeal, he will bring forward an order to rectify the situation?

The Presiding Officer (Sir David Steel): Before the minister responds, I ask for quiet in the chamber. This is becoming known as the graveyard slot, when a minister has to fight to be heard above the babble of those who have not been present during the debate. That is most unfair.

Iain Gray: I assumed that the babbling was because of the excitement that surrounds the

Convention Rights (Compliance) (Scotland) Bill.

We will respond to the outcome of the appeal when we hear what it is. However, we believe that our position is correct.

I am generally pleased with the response to part 1 of the bill, which deals with changes in arrangements regarding the release of adult mandatory lifers. A lot of support for part 1 was expressed throughout the chamber. Even Phil Gallie admitted that allowing the judge to include a part of the sentence that takes account of the need to punish the criminal amounts, basically, to his mantra of having sentences that mean what they say. If a punishment part is included in the sentence, that time must be served. Given Mr Gallie's expression of agreement with our intention—I see that he is nodding his head—I hope that his comments outside the chamber will not paint lurid pictures of murderers being released early. I think he knows that such pictures would not represent the truth of the situation because, as Margo MacDonald said, the bill is intended to ensure consistent and clear sentencing, not softer sentencing.

Judges will be able to set a punishment part of a sentence that will continue beyond a prisoner's natural life if they believe that that is the correct punishment. Indeed, the current position is that, when a life sentence is handed down, the convicted prisoner can appeal on the ground that the sentence is too long but, because its period is indeterminate, the Scottish Executive cannot appeal on the ground that it is too lenient. Under the legislation, we might be able to appeal against a punishment part of a sentence if we believe that it is not as lengthy as the crime warrants. In fairness, that is an advance that helps to balance the two sides of that equation. Life will mean life—exactly as it does now—in the sense that a prisoner, even if released, remains on licence for the rest of his or her life, and is liable to be recalled to custody for a breach of licence conditions.

Related concerns were raised. Roseanna Cunningham asked about the pressure on the courts in dealing with existing convicted prisoners. There are a couple of points to make in relation to that matter. First, we have more judges than we have had in history. Secondly, the return of the judges that were involved in the Lockerbie trial will help with the work load. We believe that we can deal with existing prisoners in the court system.

A question was asked about whether legal aid would be available for existing life prisoners who require hearings to have the punishment parts of their sentences set. There is no specific provision for that in the bill, but it is clearly stated in the financial memorandum that assistance by way of representation will be available for existing life prisoners. That is something of which the Scottish Legal Aid Board is aware.

Margo MacDonald raised a question about the upper age limit for members of the Parole Board for Scotland, which is 75. That limit was set to allow retired members of the judiciary to serve on the board for a period, but that was not a matter that the Justice 1 Committee considered commenting on in its report.

It is only fair to mark one important point that was mentioned by Phil Gallie on transferred prisoners. Euan Robson called that point interesting. It is, indeed, an interesting and complex issue, which we are still considering. We will have to consider whether to lodge amendments on it at stage 2.

Comments have been made on the question to which tribunals legal aid will be made available. In his opening speech, Jim Wallace undertook that the list of those tribunals would be made available by stage 3—the point was made that it should be available by stage 2. I point out that to produce that list by stage 2 would not allow us to consult the bodies that might be affected by it. In any case, the list will not be definitive. Other tribunals or bodies will emerge at a later stage, and we will not draw a line under the matter—it is an initial exercise.

In that regard, there have been a number of references to the criticism that was voiced in the committee's report that the Scottish Legal Aid Board was not fully consulted. SLAB officials were consulted extensively, although we acknowledge the point that has been made about its members.

The interesting thing about the debate is the way in which the Tories' Europhobia has, ironically, ended up highlighting—Richard Simpson was the last member to point this out—the legislative importance of the incorporation of the ECHR into our law. It is to ensure that Scottish people have their human rights judged in Scottish courts by Scottish judges that the bill should be passed. To be frank, that seems to me to be a good day's work for a Scottish Parliament. The Tories have also inadvertently highlighted the historical role of the ECHR as part of the framework of guarantees against fascism and war in western Europe.

Last week, there was some talk of strange alliances in the chamber which, I think, upset certain colleagues. I would be happy to accept Winston Churchill into today's coalition. It seems unfortunate that the Tory members of the Parliament say that they will not follow his support of human rights.

The bill is another mark of the Executive's commitment—and that of three quarters of the Parliament—to the protection of the human rights of every Scottish citizen. The Justice 1

Committee's report recommends agreement to the bill. I am happy to commend the bill to the Parliament.

Convention Rights (Compliance) (Scotland) Bill: Financial Resolution

The Presiding Officer (Sir David Steel): The next item of business is consideration of motion S1M-1536, in the name of Angus MacKay, on the financial resolution in respect of the Convention Rights (Compliance) (Scotland) Bill.

Motion moved,

That the Parliament for the purposes of any Act of the Scottish Parliament resulting from the Convention Rights (Compliance) (Scotland) Bill, agrees to any increase attributable to that Act in expenditure payable out of the Scottish Consolidated Fund by or under any other Act.—[*Angus MacKay*.]

Decision Time

17:04

The Presiding Officer (Sir David Steel): As there are no Parliamentary Bureau motions today, we come now to decision time. There are two questions to be put as a result of today's business. Before I put those questions, members should check again that the lights in front of their cards are out—which means that members are registered as present—and be ready to check the voting lights.

The first question is, that motion S1M-1526, in the name of Jim Wallace, on the general principles of the Convention Rights (Compliance) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)

Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Salmond, Mr Alex (Banff and Buchan) (SNP)
Scott, Tavish (Shetland) (LD)
Sheridan, Tommy (Glasgow) (SSP)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinney, Mr John (North Tayside) (SNP)
Thomson, Elaine (Aberdeen North) (Lab)
Ullrich, Kay (West of Scotland) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

ABSTENTIONS

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

The Presiding Officer: The result of the division is: For 94, Against 0, Abstentions 13.

Motion agreed to.

That the Parliament agrees to the general principles of the Convention Rights (Compliance) (Scotland) Bill.

The Presiding Officer: The second question is, that motion S1M-1536, in the name of Angus MacKay, on the financial resolution in respect of the Convention Rights (Compliance) (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament for the purposes of any Act of the Scottish Parliament resulting from the Convention Rights (Compliance) (Scotland) Bill, agrees to any increase attributable to that Act in expenditure payable out of the Scottish Consolidated Fund by or under any other Act.

Mr John Home Robertson (East Lothian) (Lab): On a point of order, Presiding Officer. You will recall from another Parliament, in which we both served, that the Speaker has always deprecated people who shout no and then do not vote in the division. What is the point in Phil Gallie shouting no and calling for a division and then abstaining?

The Presiding Officer: That is not a point of order; it is a point of delicacy. Phil Gallie was quite entitled to do what he did. It is in order to call a division.

Phil Gallie (South of Scotland) (Con): Further to that point of order, Presiding Officer. Although I accept that Mr Home Robertson was totally out of order in making that point of order, does the Presiding Officer agree that the rules for the Scottish Parliament are different from those for Westminster and that all members should appreciate that?

The Presiding Officer: That is an interesting point. It is certainly the case that a member cannot record an abstention unless they first call no when the question is put.

Scottish Berry Project

The Presiding Officer (Sir David Steel): We move to members' business, which is a debate on motion S1M-1420, in the name of Irene McGugan, on the Scottish berry project. It will help if members who want to take part in the debate indicate that now.

Motion debated,

That the Parliament notes that the rate of coronary heart disease in Scotland is now the highest in western Europe, that Scotland has a long-established soft fruit industry that is suffering economic distress, that advances in medicine have conclusively demonstrated a link between increased consumption of fruit and vegetables and a reduction in risk from coronary heart disease, but that Scottish consumption falls far below even the World Health Organisation recommended minimum of 400g per day; further notes that a holistic approach to these factors which crosses traditional government departmental structures has enabled Finland in the last 25 years to reduce its rate of coronary heart disease by 50% and that a plan for such a cross-sectoral approach has been put forward as a "Berry Scotland Project", and recommends that the Scottish Executive takes forwards a cross-sectoral project that reflects the aims of the original "Berry Scotland Project" in order to raise consumption of soft fruit, especially the home produced product, which the Finnish experience has demonstrated could significantly benefit both the rural economy and public health.

17:08

Irene McGugan (North-East Scotland) (SNP): The background to the motion is very simple: Scotland is a most unhealthy nation and every week a new report highlights that. In particular, the rate of coronary heart disease is about the highest in western Europe. In large part, that is because of our unhealthy eating habits. Advances in medicine have conclusively demonstrated a link between increased consumption of fruit and vegetables and a reduction in coronary heart disease, yet Scottish consumption falls well below the World Health Organisation minimum of 400g a day, despite good campaigns by the Health Education Board for Scotland and others. [*Interruption.*]

The Deputy Presiding Officer (Patricia Ferguson): Ms McGugan, I will halt you for a moment. I ask members who are leaving the chamber to do so quickly and quietly.

Irene McGugan: While we grow and harvest in Scotland some of the highest quality fruit and vegetables, we seem to have been incapable of linking two things—bad health and good produce—and taking positive action.

In particular, we have a world-class soft fruit industry. Our raspberries are internationally renowned, yet that sector, like so much agriculture these days, is collapsing. I have lived all my life in Angus, where I spent every school summer holiday picking berries, so I cannot fail to notice the steady erosion in the production of soft fruit, in particular of rasps, production of which declined from 14,400 tonnes in 1984 to 4,500 tonnes in 1999. There are farmers, producers and growers who are at crisis point and who are trying to decide whether to press on in the face of cheap imports and lack of markets.

I would like the minister to consider an initiative to preserve our soft fruit industry and increase the consumption of berries within the wider aim of promoting the message that all fruit and vegetables are good for one's health. The example that is often quoted in support of such a project relates to North Karelia in the province of Eastern Finland. The Finns started a programme in 1972, at a time when they topped the league for chronic heart disease. The programme that they developed moved people away from a diet that was rich in fat—particularly from dairy products—and on to a regime of berries, fruits and vegetables. Their Government supported that programme, because it recognised not only that it was a good thing to do everything possible to improve the health of the nation, but that a lot of changes must take place at the same time for those changes to be effective.

It is not possible for one organisation, agency or even a Government department to achieve or oversee everything. A Scottish initiative will require an inter-sectoral and truly cross-cutting approach if it is to be even remotely successful. Such an approach has enabled Finland to reduce its rate of coronary heart disease by 50 per cent in the past 25 years. That fact speaks for itself.

Dr Winnie Ewing (Highlands and Islands) (SNP): I have met Finnish consultants, who seem to place great emphasis not only on the general benefits of what Irene McGugan describes, with which they would agree, but on the consumption of raspberries in particular.

Irene McGugan: Dr Ewing is absolutely right—I will say a bit more about raspberries later.

About three years ago, a group from Tayside visited Finland to see at first hand how the Finns had advanced their project. Enthused by their findings, that coalition of health and agricultural experts put together a project that it has not yet been able to develop.

Health professionals, nutritionists, soft fruit growers, marketing bodies and the whole Finnish nation cannot all be wrong. A five-year pilot project that would cost a few hundred thousand pounds is surely worth trying; that is what I would like the Executive to support.

Scottish raspberry growers have invested heavily in machine harvesters. For the most part,

those harvesters produce raspberry pulp, which is highly nutritious but relatively cheap at only £900 a tonne. That pulp is ideally suited to mass catering outlets such as schools and canteens, and the fact that such outlets have lots of consumers would facilitate the measurement of the benefits. Those mass outlets will also best reach the low-income populations that are most at risk from diseases that are related to poor diet. There are few manufactured products on the market that utilise the potential of Scottish soft fruit, but everybody must get the message from the Executive that soft fruit is beneficial and that they should be making more use of it.

I am aware that the Executive is funding research at the Rowett Research Institute in Aberdeen into flavanoids in raspberries and other fruits. However, it is irrelevant whether berries provide specific benefits over and above other types of fruit and vegetables. Berries could spearhead a popular campaign covering all fruit and vegetables, just as in the Finnish project. I am concentrating on berries because we have—or had—a major soft fruit industry in Scotland and the Finnish experience suggests that the health benefits of berries are easier to promote.

We should be greatly encouraged by the publication by the Joseph Rowntree Foundation and the Scottish Council Foundation called "Healthy food policy: on Scotland's menu?", which notes that

"Scotland is world-renowned for some of the food it produces. But it is more successful in serving the export market than improving the Scottish diet. Scotland is one of the leading areas in Europe for soft fruit and vegetable growing, with Tayside traditionally a major producer of raspberries."

If there are members present who have never experienced a Tayside raspberry, I can reveal that I have some here. [*Laughter.*] They were picked last summer and frozen, but they are still delicious. They are of the Glen Ample variety—a newish variety that was bred at the Scottish Crop Research Institute outside Dundee—and were grown at Hillend of Burnside, which is outside Forfar. In a way, they are a tribute to a young grower, Ian Watson, who was tragically killed in an accident with a raspberry harvesting machine last summer.

"Healthy food policy" goes on to state:

"Scotland could design a National Berry Strategy to raise home-based consumption of raspberries … Such an approach requires a model of governance that is holistic enough to understand the longer-term vision and offer practical support for a strategy which would, by definition, fail to fit within the traditional departmental structures … The missing ingredient has been sufficient political commitment to act."

I would like the minister to give a commitment to take forward an inter-sectoral project that reflects the aim of the original berry project. Such a project would raise consumption of soft fruit, especially the home-produced variety, which the Finnish experience has demonstrated can be of significant benefit to the rural economy and the health of our people.

The Deputy Presiding Officer: Having previously been in receipt of a cake from Dorothy-Grace Elder at another members' business debate, I am very glad that this evening I am not being singled out for blandishments from the SNP.

17:16

Mary Scanlon (Highlands and Islands) (Con): I am delighted to speak in this debate about berries. Although members' business is normally consensual, I have to put on record that I am very sad to see the benches so empty. [MEMBERS: "Labour benches."] Yes, it is the Labour benches that are empty. Given the enormous benefits to the health of Scotland and to our rural economy, it is a poor show indeed to have them empty.

I had to fight with Alex Johnstone for my place in this debate. As members can see, I won. Like Irene McGugan, I was brought up in Angus. As a child growing up near Montrose, our summer holidays were all spent at the berries: first the strawberries and then the raspberries at Charleton. Little did I think, on becoming an MSP, that I would still be talking about them.

The health benefits of eating berries are well documented in the North Karelia project in Finland. The evidence from that project has been brought before the Health and Community Care Committee on many occasions, as the committee seeks to address Scotland's serious public health record. As Irene McGugan said, coronary heart disease in Finland has been reduced by 50 per cent. As coronary heart disease is one of Scotland's top three clinical priorities, we undoubtedly have an enormous amount to learn from Finland.

In what is a most difficult time for farmers, surely we can have joined-up government to help the nation's health and the nation's farmers. With that in mind, I submitted a written question that asked for an increase in financial incentives to farmers to invest in the production and marketing of Scottish berries.

I see that there is a berry on its way to me just now. I do not mean Brian Adam—he is the one who is bringing them.

The answer stated that there were no plans to increase the funding for marketing, but that there was some hope regarding production. It stated that Scottish Soft Fruit Growers Ltd's application for recognition as a producer organisation should

lead to a European Union grant of 50 per cent. I hope that the minister will update us on that application and outline and confirm the aid package. If the application has made progress, that will indeed be excellent news in these troubled times.

I am being upstaged by a man with a plate of berries.

Diversification to soft fruit, alongside a strong marketing campaign, would go some way to addressing the rural crisis, especially as Scotland's tonnage has dropped from 18,000 in the 1970s to around 4,000 now. In other words, we are producing around a quarter of the output that we produced in the 1970s. The first year of the Scottish berry project asks for only £150,000. That is a minimal figure compared to the problems that we have in health and the potential benefits to the rural economy. It is also a minimal figure in the overall Scottish budget.

As Irene McGugan said, the WHO has recommended 400g of berries per day. We also have a crucial need for positive marketing. I would like to make a suggestion. The recent Health Education Board for Scotland advertisement for smoking cessation, which has become a hit record, reminded me, when I was researching for this speech, of Billy Connolly's song about his wellies. I am pleased to say that I will not attempt to sing it. [MEMBERS: "Aw."] I suggest to the Parliament that Mr Connolly, better dressed than he was last Saturday, could perhaps relate his song to berries.

If it wisnae for the berries, where would we be?
We'd be in the hospital or infirmary.
Nae mair heart attacks or even surgery
If we only keep eating the berries.
Berries they are wonderful, berries they are grand,
They are the magic cure to the health of Scotland.
Now we know we have the chance to gain the health we cherish,
If only we keep eating the berries.

I hope that I have done my bit to raise awareness of the berry project.

17:20

Mr John Swinney (North Tayside) (SNP): I begin by placing on record my thanks—and those of a number of my constituents—to Irene McGugan for her tenacity in securing this debate. The issues that she has spoken about raise an important point—the need for a cross-cutting approach to certain policy issues in government. I will say more about that later.

For two reasons, I want to speak from a constituency perspective. First, the project was drawn to my attention some time ago by Dr Hector MacLean, a constituent of mine in the Kirriemuir area. I have to put on parliamentary record that he has demonstrated enormous commitment to ensure that the project has survived long enough to reach this debate today. The amount of work that he has put into ensuring that there is awareness of the project, support for it, and an understanding of its cross-cutting nature—the project comes under the remits of the rural development and the health departments—is worthy of enormous praise in our Parliament tonight.

The second reason for my constituency interest is that I have the privilege of probably being the MSP who represents the largest portion of the berry-producing areas of Scotland, in the counties of Perthshire and Angus. Just to demonstrate my credentials as a fit young party leader and constituency MSP—and this is designed to put all members to shame—when I am out cycling around east Perthshire in the morning before I come down to Edinburgh, it is my privilege to cycle past vast areas that still, despite all that has been said about declining output from the soft fruit sector, produce a fine crop of berries for the marketplace in Scotland and further afield.

In addition to Dr MacLean, a number of other people, such as Dundee general practitioner Dr James Dunbar, have demonstrated the great health benefits of this project. The opportunities that the project raises for people in my constituency who are still involved in the agricultural and soft fruit sectors are enormous. I hope that the minister will give us some welcome news on where the project is going and on the Government's reaction to it.

The industry is still substantial in my constituency. In terms of manpower, it is much diminished from previous days, but the investment in mechanisation, in plant and in machinery has been formidable and has contributed enormously to the wider agricultural economy. Anyone raising agricultural issues at this time is obviously aware of the strains that the agricultural community is under, but when opportunities arise for positive and imaginative initiatives that will assist the agricultural sector in a proactive way, it is essential that we seize them. Irene McGugan's debate provides us with an opportunity today.

I do not want to be critical of the Government—although the minister is familiar with my being critical of this Government—but I do not think that it has truly grasped the interconnection between the rural and agricultural aspects of this project and the health aspects. There is a danger of such projects falling between the two stools of those respective departments. I say this in an effort to be helpful and to try to encourage the Government to consider the point. I do not want to be impertinent, but I hope that the large number of civil servants who are in the chamber tonight is an indication

that both the health department and the rural affairs department are represented. I hope that that will ensure an integrated approach.

My final point is a positive one about what the Government has done. A meeting has now been arranged between the berry project and Government departments to discuss how the project can move forward. The meeting arose thanks to a great deal of co-operation from Mr Finnie's office and dialogue in response to constituency correspondence from Irene McGugan and me. I hope that that is an indication that the Government has something positive to say about the future development of the project, which brings with it enormous economic opportunities and opportunities to tackle the miserable health record. That record concerns us all and we all want to find solutions to the difficulties.

The Deputy Presiding Officer: I see that Brian Adam is now handing out raspberries to the civil servants. Before his enthusiasm leads him to the public gallery, I indicate that neither the clerk, Mr Thomson, nor I was being rude when we refused the raspberries we were offered. We were merely trying to lead by example. The standing orders are very clear on the matter of food in the chamber.

17:25

Mr Jamie McGrigor (Highlands and Islands) (Con): It is very nice to be given a raspberry by SNP members rather than have them blow a raspberry, which is what they quite often do when I stand up to speak.

I want to make a short, impromptu contribution to the debate, which is especially important to the inhabitants of the Blairgowrie area, which I know well.

Recently, I have been taking evidence on behalf of the Equal Opportunities Committee on the sites occupied by gypsies and travellers. I have spoken to many gypsies and travellers, many of whom have referred to the work that they used to do, berry picking—it is work that they wish they still did. Berry picking was incredibly important to them, and they were equally important to the berry farmers. Although mechanisation has taken over to some extent, one hopes that an increase in the number of berry fields might once again bring back the important link between the berry farmers and the gypsies and travellers, which profited both parties for so long.

I very much liked Mary Scanlon's artistic contribution. There are many songs and legends about the berry pickers and when the work was done, then there were the parties. Not only would an increase in berry production help the Scottish agricultural community and the health of our nation, it would re-establish an important and rich part of our Scottish cultural heritage.

17:27

The Deputy Minister for Health and Community Care (Malcolm Chisholm): I congratulate Irene McGugan on securing this debate and pay tribute to her tenacity in pursuing the matter over several months.

I realise that Irene McGugan's previous inquiries about the berry Scotland project have been dealt with by Ross Finnie. I venture to suggest that, contrary to what John Swinney said, the involvement of Ross Finnie and health ministers is a reflection of our determination that the project should be a cross-cutting matter.

I want to talk later about coronary heart disease, diet and the soft fruit industry in general, but it is appropriate right at the start to address the berry project.

We have taken a sympathetic view of the underlying aims of the berry Scotland project. That is why we have encouraged the group to prepare proposals for a pilot project in Tayside. It is perfectly reasonable and normal to run a pilot operation before deciding whether to invest a substantial sum from the public purse. After all, that is precisely what they did in Finland. The oft-cited North Karelia project, which of course involved a lot more than promoting berries, was a pilot project. I remind members that Susan Deacon visited Karelia and assures me that she enjoyed eating berries for breakfast during her visit.

It is not unreasonable to seek a pilot project in Scotland, to establish what is appropriate and what works for our particular needs and circumstances. That is why I am pleased that the Scottish berry group has now submitted proposals for a pilot project. We hope that when we meet the group we will be able to work further on the proposals to develop a project that has a real chance of charting a path for achieving the twin aims of improving the health of the nation and increasing consumption of Scottish berries and berry products.

As Irene McGugan and other members reminded us, coronary heart disease is one of Scotland's major killer diseases. Half a million Scots suffer from it and there were 13,337 deaths from it in 1999. Moreover, our coronary heart disease death rate is 15 per cent higher than the United Kingdom average. In view of that, we are pursuing a host of initiatives with regard to prevention, diagnosis and treatment, which we will bring together in a national plan for coronary heart disease. A key element is the £6 million demonstration project that the Scottish Executive is funding in Paisley, which is based on the same

principles as Finland's North Karelia project. Professor Vairtainen from the North Karelia project is an active adviser.

I have spoken for four minutes, which is hard to believe. I will have to miss out part of what I wanted to say.

We have to remember that diet is only part of a comprehensive strategy. I enjoyed Mary Scanlon's adaptation of Billy Connolly's song, but we all know that we have to take action on a range of fronts, including smoking, exercise and poverty. However, diet is crucial, and the Scottish diet action plan aims to focus the efforts of all key interests, so that the interrelated objective to improve the diet of all individuals can be properly met. The implementation of the plan's recommendations will be further supported through the appointment soon of the national diet action co-ordinator. The work of the Scottish community diet project, which has lots of local health projects, is also crucial to this issue.

Increasing fruit and vegetable consumption, including the consumption of berries, is one of the most important aspects of improving diet. Indeed, the Health Education Board for Scotland has been promoting the message of five portions of fruit and vegetables a day for a considerable time. Moreover, the health improvement fund, which will involve £100 million over the coming four years, has the consumption of fruit and vegetables as one of its key priorities. More than half the money will be channelled through health boards, and we have advised that they should give priority to improving the diet of children through support for the provision of fruit for infants in pre-school settings, and fruit/salad bars and breakfast clubs in school settings.

I have only one minute left, and because I ate some raspberries I am sure that the Presiding Officer will not let me have any extra time, so I will end by saying a few words about the soft fruit industry. We are well aware of the problems that are besetting the industry, in spite of the unprecedented investment of European and UK funding of about £8 million over the past eight years. The relevant EU programme is now at an end, but Mary Scanlon referred to other European initiatives, and they are being pursued.

We are working with Scottish Soft Fruit Growers Ltd in its application for recognition as a producer organisation under the EU fruit and vegetable regime. We will also assist it in preparing an operational programme under the scheme, so that it continues to benefit from European funding. Also, we recently commissioned management consultants to report on the future of raspberry breeding in Scotland. The rural affairs department has issued a consultation paper on the findings of the consultants' report, and is currently analysing responses.

Mr Swinney: I have one brief point. The minister mentioned Scottish Soft Fruit Growers Ltd and the berry Scotland project. Is he aware, as is suggested by my recent correspondence, that the members of SSFG are working closely in support of the berry Scotland project, and that common representation is being made to ministers on behalf of the project, which represents a consensus view in the berry industry?

Malcolm Chisholm: I am impressed by the wide range of people who are involved, including health interests. It is a striking feature of the initiative.

The rural affairs department is funding strategic research and development on pests and diseases that affect raspberry crops, because we know that those have been a problem for the industry in recent times.

The Scottish Executive already is helping, but clearly, we want to work on the Scottish berry project proposals. I look forward to the meeting that will take place soon, and I hope that following it, there will be progress on this worthwhile initiative.

Meeting closed at 17:34.

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