MEETING OF THE PARLIAMENT

Wednesday 30 May 2001
(*Afternoon*)

Session 1

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

Time for Reflection

The Deputy Presiding Officer (Mr George Reid): To lead time for reflection today, I welcome Mr Alex Reid, the parliamentary officer of the Baha'i Council for Scotland.

Mr Alex Reid (Baha'i Council for Scotland): I would like to open with a prayer revealed by Baha'u'llah, the founder of the Baha'i Faith.

O Lord! Bestow thy gracious aid and confirmation upon this just government. This country lieth beneath the sheltering shadow of thy protection and this people is in thy service. O Lord, confer upon them thy bounty and render the outpourings of thy grace and favour copious and abundant. Suffer this esteemed nation to be held in honour and enable it to be admitted into thy kingdom. Thou art the powerful, the omnipotent, the merciful, and thou art the generous, the beneficent, the Lord of grace abounding.

I bring greetings from the Scottish Baha'i community. On its behalf, I wish to thank you for providing us this opportunity to address the Scottish Parliament and the Scottish people.

My thought for reflection this afternoon is about diversity and whether we can turn our diversity to our advantage. In the past, the diversity of our peoples and cultures has often led us into conflict and destructive wars. Even today, we are a diverse people with differing backgrounds and conflicting interests. The Baha'i writings ask that we view diversity in a new light. Abdul' Baha said,

"The diversity of the human family should be the cause of love and harmony, as it is in music where many different notes blend together in the making of a perfect chord".

Baha'i experience and practice is based on the concept of unity in diversity. Baha'is worldwide—and in Scotland—are drawn from diverse cultural and ethnic backgrounds. The teaching of our faith has helped us to experience diversity as a strength. All of us in Scotland daily press forward to build a new and, we hope, a better future for our country. It would be great if we could try to draw strength from our diversity. As Baha'u'llah says,

"Let each morn be better than its eve and each morrow richer than its yesterday. Man's merit lieth in service and virtue, and not in the pageantry of wealth and riches."

I am certain that we are united in wanting a better future for Scotland. Let us pray that each morrow will be richer than its yesterday.

Nearly 150 years ago, Baha'u'llah wrote to Queen Victoria. Included in his letter was a prayer that he had earmarked for use in democratic assemblies and Parliaments, such as this one. I will close with that brief prayer:

O my God! I ask thee by thy most glorious name, to aid me in that which will cause the affairs of thy servants to prosper and thy cities to flourish. Thou indeed hast power over all things.

Thank you.

Parliamentary Bureau Motions

14:35

The Deputy Presiding Officer (Mr George Reid): The next item of business is the consideration of Parliamentary Bureau motions.

I see that Euan Robson is not here. Let us wait 30 seconds, to see whether he arrives.

I am very sorry, but I think that we will have to suspend the meeting until we can find Mr Robson.

Dennis Canavan (Falkirk West): On a point of order, Presiding Officer. Could some other member of the Executive not move the motions?

The Deputy Presiding Officer: That is what I have been trying to determine for the past 30 seconds, Mr Canavan. I may have to suspend the meeting for two minutes. [*Interruption*.]

We now have someone who will move the motions: I ask Tricia Marwick to move motion S1M-1977, in the name of Mr Tom McCabe on behalf of the Parliamentary Bureau, on the timetabling of the stage 3 consideration of the Convention Rights (Compliance) (Scotland) Bill.

Motion moved,

That the Parliament agrees that the time for consideration of Stage 3 of the Convention Rights (Compliance) (Scotland) Bill be allocated as follows, so that debate on each part of the proceedings, if not previously brought to a conclusion, shall be brought to a conclusion on the expiry of the specified period (calculated from the time when Stage 3 begins)—

Group 1 to Group 3—no later than 50 minutes

Group 4 to Group 8—no later than 1 hour 20 minutes

Group 9 to Group 15—no later than 2 hours

Motion to pass the Bill—no later than 2 hours 30 minutes.—[*Tricia Marwick*.]

Motion agreed to.

The Deputy Presiding Officer: I now ask Tricia Marwick to move motion S1M-1973, in the name of Mr Tom McCabe on behalf of the Parliamentary Bureau, on the designation of a lead committee.

Motion moved,

That the Parliament agrees the following designation of Lead Committee—

the Justice 2 Committee to consider the Sex Offenders (Notification Requirements) (Prescribed Police Stations) (Scotland) (No 2) Regulations 2001 (SSI 2001/190).—[*Tricia Marwick*.]

The Deputy Presiding Officer: The question on that motion will be put at decision time.

Convention Rights (Compliance) (Scotland) Bill: Stage 3

14:37

The Deputy Presiding Officer (Mr George Reid): We now move to stage 3 proceedings for the Convention Rights (Compliance) (Scotland) Bill. I will make the usual announcements about the procedures to be followed. First we will deal with the amendments to the bill, then we will move on to a debate on the question that the bill be passed.

For the first part, members should have in front of them the bill as amended at stage 2—SP bill 25A; the marshalled list, which contains the amendments that have been selected for debate; and the list of groupings as agreed. Amendments will be debated in groups when appropriate. Each amendment is disposed of in turn. However, when we reach a series of Executive amendments that have already been debated and that are consecutive in the marshalled list, I shall invite the minister to move them en bloc, unless any member objects, and will put a single question on those amendments. The aim of that procedure is to save time, but I will employ it only if members agree; I am prepared to put questions on amendments individually when that is preferred.

An amendment that has been moved may be withdrawn with the agreement of members present, and it is possible for members not to move amendments should they so wish. The electronic voting system will be used for all divisions. I will allow an extended voting period of two minutes for the first division that occurs after each debate on a group of amendments.

Section 1—Release of life prisoners

The Deputy Presiding Officer: Amendment 1 stands in a group on its own.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): The purpose of amendment 1 is to preserve the effect of the decision in the case of O'Neill v Her Majesty's Advocate, which, for the cognoscenti and the interested, is reported in *The Scots Law Times* 1999, at page 958. It relates to the discretionary sentencing of life prisoners. Members will recall that, in bringing forward our proposals, it was our intention that they should not make any difference to sentencing. Rather, the release of prisoners is the key provision of this part of the bill. Amendment 1 was lodged to avoid any doubt that the decision in the O'Neill case will be maintained.

Since that case, when the court sets a

designated part of a discretionary life sentence, it has been required to approach that task in a particular way. The court must have regard to the determinate sentence that it would have given the same offender for the same crime if it had not decided to impose a life sentence. Such a determinate sentence might have been imposed both for the purposes of punishment and deterrence and for the protection of the public. The court is therefore required to disregard any part of that notional determinate sentence that it would have imposed for the protection of the public and to have regard specifically to that part of the notional determinate sentence that it would have imposed for the purposes of punishment and deterrence only.

Then the court is required to take into account the period that a prisoner sentenced to a determinate sentence of that duration would have served before becoming eligible for release under the early release provisions that are set out in subsections (1) to (3) of section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Under those provisions, a prisoner who is sentenced to fewer than four years is entitled to release when he has served half of his sentence. A prisoner sentenced to four years or more is eligible for release on parole when he has served one half of his sentence, and is entitled to release on licence when he has served two thirds of his sentence.

I understand that, during the debate, members may raise issues about the lack of effect that amendment 1 might have on mandatory life prisoners. I emphasise that amendment 1 applies only to discretionary life sentences. I will listen to the debate and respond to any such points. In the meantime, I indicate that the purpose of amendment 1 is to maintain the present position in respect of discretionary life prisoners as determined by the court in the case of O'Neill.

I move amendment 1.

Gordon Jackson (Glasgow Govan) (Lab): While amendment 1 appears to be absolutely fine, the minister is right to say that there is a slight worry about it.

Amendment 1 applies to discretionary life prisoners, but does not apply to mandatory life prisoners. The difficulty is that almost all life sentences are mandatory; discretionary life sentences are occasional. The fear is that, if amendment 1 is agreed to, judges will not apply the same test to mandatory life sentences. I am sure that many members will agree that that would be a great pity.

If judges do not conduct the same exercise on mandatory life prisoners, we are left to ask the question, "How will they set the punishment part in those cases?" The danger is that judges will simply say, "At the moment, the average time before someone is released from custody is 14 years, and we will make the punishment part that period."

The problem with that approach is that that 14-year period is not made up of the punishment part alone but includes a risk part. When members of the Justice 1 Committee asked Executive officials and witnesses from the Parole Board for Scotland to tell us the length of the punishment part of the present 14-year average sentences, they were quite unable to do so.

By a kind of perverse judicial logic, judges could also take the view that, because they are told to set sentences in that specific way for discretionary life prisoners, that means that they are not to set sentences for mandatory life prisoners in the same way. The danger is then that the judges will say, "What is the sentence that would have been passed? Let us say 15 years," and they will not discount those sentences in the way envisaged by section 1. We would then see sentences that are disproportionate in relation to the seriousness of the crime.

I am conscious that we might be dealing with a worry that is more imagined than real, but the danger is that, by not giving judges guidance for both mandatory and discretionary life sentences, we will never know how judges determine the punishment part for mandatory life sentences, which they set almost every day.

To be frank, had members noticed that danger in time, a number of us would have lodged an amendment in order to make the proposals in amendment 1 apply to all life prisoners. However, it might be helpful if the minister were to indicate the Executive's view, so that there would be at least some guidance, albeit not contained in amendment 1.

14:45

Phil Gallie (South of Scotland) (Con): We go along with the principles of punishment and deterrence that amendment 1 covers. The amendment is based on the repeal of subsections (4) to (7) of section 1 of the Prisoners and Criminal Proceedings (Scotland) Act 1993.

The minister referred to subsections (1) to (3) of section 1 of that act, which determine the meaning of sentences that are lesser sentences than discretionary life sentences. It is of regret to us that the minister did not also take the opportunity to repeal subsections (1) to (3) of section 1. That would have brought about a situation in which individuals who are being sentenced would know precisely how much time they would serve for punishment and deterrence. More important, the

victims would know how long those individuals would serve. More important still, when people hear of court sentences, the severity or lack of severity of the sentence imposed for individual crimes would register in people's minds.

Therefore, although we support the minister's amendment 1, we feel that he could have gone further. An opportunity has been lost here, because he has not gone for the repeal of subsections (1) to (3) of section 1 of the 1993 act.

Michael Matheson (Central Scotland) (SNP): I echo Gordon Jackson's comments. There is common purpose and concern on the issue, which we have discussed in some detail. My primary concern is the potential for divergence between the sentencing for the punishment part of discretionary life prisoners and that of mandatory life prisoners.

I note that, when Lord Ross gave evidence on behalf of the Parole Board to the Justice 1 Committee, he indicated that he expected that the courts would simply treat both in the same way. As Gordon Jackson highlighted, the concern is that there is always the potential for that strange judicial logic and for judges to go in the opposite direction. The question is whether we should put something in the bill to ensure that we do not have that divergence.

I therefore ask the minister to put on record clearly how the Executive believes that such sentencing should work. I also ask that, where possible, guidance be issued to judges to make it clear how they are expected to apply the proposed new paragraph.

Mr Wallace: I anticipated the concerns and issues that Mr Jackson and Mr Matheson have raised.

It has been mentioned in the course of the debate that evidence was given to the Justice 1 Committee by the right honourable Lord Ross, who has the advantage of being not only a current member of the Parole Board but a former Lord Justice Clerk. He indicated that he anticipated that the punishment part for murder would be around the 10-year mark. It is important to emphasise that, at the end of the day, the matter is for the courts.

However, that does not suggest that murderers would serve a disproportionately long period before being reviewed for release. I ought also to remind the Parliament that any life prisoner who considered the length of his punishment part to be too long could seek leave to appeal. It would then be a matter for the appeal court to determine how that should be settled.

No amendment relates to this, but there are practical and philosophical difficulties in trying to put into statute the kind of consideration that Mr Jackson and Mr Matheson raised. The philosophical difficulty is that there is a material difference between a mandatory sentence for murder and a discretionary life sentence for—by definition—a very serious offence, but one that falls short of murder. Where there is a discretionary life sentence, no doubt one of the compelling reasons why the sentence has been longer than what would have been the determinate sentence is that the court has taken into account risk and the likelihood of the offence happening again. It is therefore important that the determinate period is indicated by the court in line with what was said in the O'Neill judgment.

Of course, the only sentence that is available to the court in a case of murder is life imprisonment. That is the mark which society attaches to the seriousness and gravity of the offence of murder. There is not—nor has there been—what might be described as a determinate period in cases of murder. It is very difficult, therefore, to require judges to consider what the determinate sentence would have been when there can be no determinate sentence in the case of murder.

There is a further point. As I indicated in my opening remarks, the bill relates to the way in which adult mandatory life prisoners are treated in terms of release. It was not the intention to use the bill fundamentally to change the nature of the mandatory life sentence. That would have required full and proper consultation. Obviously, that has not happened. It would therefore have been wrong to import proposals into the bill that could have led to such a change in the nature of a life sentence for murder. In many cases, there might have been a one-off incident. That in no way detracts from the gravity of the offence, but it might be that the court took the view that the risk of a repeat was very low. Nevertheless, a life sentence still has to be imposed.

Lord Ross anticipated that the punishment part for murder would be around 10 years. Parliament might be interested in the fact that research published in 1999 on life sentence prisoners showed that the average length of time served by mandatory life prisoners in 1996 was 13 years and two months. The average time served by discretionary life prisoners was 15 years and eight months, although in the latter case, the research was based on a very small sample. Perhaps because of questions of risk—which are for the Parole Board to consider—the sentences have on average been longer for discretionary life prisoners than for mandatory life prisoners.

I cannot accept Mr Gallie's invitation to repeal the subsections of the 1993 act to which he referred. I remind him that, as a loyal member of the Government at the time, he no doubt happily

voted for them. Perhaps he did not vote happily, but he certainly voted for them. The provisions help to achieve good order in prisons. If there was no possibility of any remission at all, I am not sure what would happen in prisons.

However, what I welcome in Mr Gallie's comments is the recognition that victims and, in the case of murder, victims' families should have a much clearer view of what the length of sentence will be. That is why we are asking the courts to set the punishment part in open court, so that families of victims know how long the punishment part will be. Currently, whenever the Parole Board recommends that a life prisoner be released on a particular date, the Lord Justice General is invited, in private, to indicate to me whether he thinks that the interests of justice have been served. It is far better that that should be above board and in the open.

Phil Gallie: To go back to the happy memories of having voted for those particular provisions, I remind the minister that, when the 1993 bill was in committee, two of us showed great resentment about that element. By 1997, Michael Forsyth had produced an act to redress the matter, although it was not implemented by the current Administration.

Mr Wallace: I notice that Mr Gallie has confessed his sins and then shown how he recanted.

In relation to adult mandatory life prisoners, the proposals in the bill will give a far greater indication to families of victims as to what the likely period of detention for the punishment part of the sentence will be. That is far better done in open court than behind closed doors as it is at present.

Amendment 1 agreed to.

The Deputy Presiding Officer: Amendment 14, in the name of Jim Wallace, is grouped with amendment 15.

The Deputy Minister for Justice (Iain Gray): Amendments 14 and 15 are required following amendments that were made at stage 2 to alter the Parole Board's system of review of life prisoners in the light of the judgment in Oldham v UK. The amendments bring into the new system existing life prisoners who have been released under the Prisons (Scotland) Act 1989 and recalled to prison. The 1989 act continues to apply to life prisoners who were sentenced before the Prisoners and Criminal Proceedings (Scotland) Act 1993 came into force on 1 October 1993.

Amendments 14 and 15 provide that a life prisoner released under the provisions of the 1989 act and subsequently recalled to prison will fall within the new provisions and, if not released by the Parole Board, will have the date of his next review set not later than two years from the previous review.

Amendment 15 also makes provision to remove the right of a life prisoner recalled to prison under section 28 of the Prisons (Scotland) Act 1989, or section 17 of the Prisoners and Criminal Proceedings (Scotland) Act 1993, to refer his case to the Parole Board once his case has been considered by the board. That brings the application of the new system to such life prisoners into line with its application to other life prisoners.

I move amendment 14.

Amendment 14 agreed to.

Amendment 15 moved—[Mr Jim Wallace]—and agreed to.

Section 2—Amendment of Criminal Procedure (Scotland) Act 1995

The Deputy Presiding Officer: Amendment 43 is grouped with amendments 28, 29, 37 and 38.

Phil Gallie: I will certainly move amendment 43 and I hope to push it to ministerial acceptance. Amendment 43 refers to the proposed new section that is entitled:

"Only one sentence of imprisonment for life to be imposed in any proceedings".

It seems that individuals who carry out especially vicious crimes—perhaps leading to the deaths of individuals or involving the horrendous crime of rape, about which we have heard so much in the chamber—on more than one occasion can expect to avoid the consequences of their actions when the matter is brought before the courts. One such deed alone brings about that sentence. Thereafter, if it is a discretionary life sentence, there will be no further penalty. What is to stop someone who has accepted that such a sentence offers no further risk if he goes before the courts carrying out a series of extremely serious criminal activities?

I move amendment 43.

Mr Wallace: Amendment 43 would have two consequences. It would leave judges with the power to make a minimum recommendation as to the time that an adult mandatory life prisoner should serve in prison before a review by the Parole Board. That may be an unintended consequence of Mr Gallie's amendment, because, with the punishment part being set, there would not really be a need for judges to retain a power to make minimum recommendations, given that the punishment part will already be set in statute.

The other consequence—which Mr Gallie rightly referred to—would be to remove a provision that was inserted at stage 2. Where a person is convicted of more than one crime for which the

punishment would be life on the same indictment, only one life sentence will be imposed and consequently only one punishment part will be set. That provision was added at stage 2 to ensure that when a person is convicted of more than one murder—or one murder and one other crime for which a life sentence would be imposed—one punishment part will not, in effect, be swallowed up by the other punishment part.

Mr Gallie raises a fair concern—that the viciousness or gravity of a particular crime may be overlooked because everything came together in one sentence. However, what is intended will address that concern. It is intended that the judge will look at all offences on the indictment and impose one punishment part that reflects the cumulative seriousness of them all. That should ensure that adequate punishment is given for all crimes. Because it is not possible to make the punishment parts consecutive, in setting the punishment part the judge will have regard to whether there was a rape or other factor that aggravated the murder. In that case, all factors ought to be taken into account by the judge when he sets the punishment part.

15:00

I hope that Mr Gallie is reassured that aspects of a particular charge that have been proven, on which the jury has returned a guilty verdict and which clearly are material to the case, will not be overlooked. I hope that, with those reassurances, Phil Gallie will withdraw amendment 43.

Amendments 28, 29, 37 and 38 are drafting amendments. The Criminal Procedure (Scotland) Act 1995 is defined in section 2(1) of the Convention Rights (Compliance) (Scotland) Bill as "the 1995 Act" and amendments 28, 29, 37 and 38 simply carry that through to other parts of the bill.

The Deputy Presiding Officer: Mr Gallie, are you reassured? Do you wish to press the amendment?

Phil Gallie: I wish to respond to the minister's comments. I accept his assurances. One of the purposes of lodging amendments is to get clarification and assurances. I would have liked such sentences to be consecutive. If that cannot be, I take on board the fact that the judge is expected to take into account the seriousness of all offences in setting the punishment and deterrent elements. That is now recorded in the *Official Report*. I am reassured that those who deal in the law must have regard to that point in future. I welcome the minister's words, and on that basis I seek to withdraw amendment 43.

Amendment 43, by agreement, withdrawn.

Section 3—Amendment of provisions relating to transferred life prisoners

The Deputy Presiding Officer: Amendment 2 is grouped with amendments 21, 41 and 3.

Iain Gray: Amendment 2 re-enacts the whole of section 10(1) of the Prisoners and Criminal Proceedings (Scotland) Act 1993 to make the provision easier to read. I fear that it does not make it easy to read, but it does make it easier.

The only further changes that amendment 2 makes to section 3 are the addition of subsections (1)(b) and (1)(c), which relate to transfers of life prisoners from the Isle of Man and Northern Ireland, and the insertion of section 3(1A), which provides a power for ministers by order to specify the relevant provisions in relation to Northern Ireland. I will take a moment to explain why the Executive has taken that approach.

At present, in Northern Ireland, the release of a life prisoner is a matter for the Secretary of State for Northern Ireland. There is no system of judicial tariffs in relation to discretionary lifers and under-18 murderers as there is in Scotland. However, the Secretary of State for Northern Ireland is in the process of changing the law in Northern Ireland to provide that, in future, discretionary lifers, under-18 murderers and adult mandatory life prisoners are given a judicial tariff that is fixed in open court. It is expected that the order making those changes—the draft Life Sentences (Northern Ireland) Order 2001—will be made soon.

The changes to the law in Northern Ireland mean that, in future, Scottish ministers will be in a position to accept restricted or unrestricted transfers from Northern Ireland on the following basis. Restricted transfer prisoners with a judicial tariff set in open court will remain subject to Northern Ireland law and will retain the judicial tariff that was set there. Unrestricted transfer prisoners with a judicial tariff set in open court in Northern Ireland will have that tariff treated as if it were a punishment part set by a Scottish court, unless it is a whole-life tariff. Amendment 2 deals in the same way with discretionary life detainees from the Isle of Man.

The new section 10A(3) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which is inserted by section 3(1A) currently applies only to prisoners who are released on compassionate grounds in England and Wales. The effect of that is that, on transfer to Scotland, the offender will have a punishment part set by the High Court if he is recalled to custody and the Parole Board does not order his immediate release.

Amendment 3 extends the provision to prisoners who are released on compassionate grounds in Northern Ireland. During stage 2, I advised the Justice 1 Committee that provision would be

required to bring such prisoners into the new system, but that it would be held back until stage 3, in the hope that the draft Life Sentences (Northern Ireland) Order 2001 would have been made. Unfortunately, that has not happened yet, so the exact provisions of the legislation, which the bill should specify, are not yet settled. Amendments 2 and 3 give the Scottish ministers a power to identify the relevant provisions of Northern Ireland legislation by subordinate legislation when that is possible.

Amendment 41 inserts the relevant Isle of Man and Northern Ireland provisions into section 10(5) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which provides that a transferred lifer who is serving two or more life sentences will not be released until he has served the punishment part of both sentences.

Amendment 21 is technical.

I move amendment 2.

Phil Gallie: I would like to query the Deputy Minister for Justice a little further. The group of amendments performs a major rewrite of section 3, which we discussed at stage 2. I note that the minister finds it necessary to mention England and Wales, the Isle of Man and Northern Ireland, of whose situation he gave a fairly lucid description. He needs to mention the Isle of Man in the bill, so why does not he have thoughts on the Channel Islands or other parts of the British Isles? Will he have to address that issue later? Are the systems in the Channel Islands and the Isle of Man different?

Iain Gray: We have attempted to cover all the jurisdictions for which different arrangements must be made. I hope that we have achieved that aim. Some aspects of the position in the Isle of Man and Northern Ireland have to be dealt with. We intend to cover all the jurisdictions in the UK so that we can make arrangements for transfer of prisoners.

I confess that I cannot answer Mr Gallie's question about the Channel Islands, but I am happy to look into that and provide reassurance.

Amendment 2 agreed to.

The Deputy Presiding Officer: Amendment 16 is grouped with amendments 17, 18 and 44.

Mr Wallace: When the bill was introduced, it allowed some categories of life prisoner to waive their right to a hearing to have the punishment part set. The categories that we had in mind were existing murderers who were under 18 and existing Scottish and transferred discretionary life prisoners who had designated parts set by way of a paper exercise.

At stage 2, amendments extended the entitlement to waive the right to a hearing to existing adult mandatory life prisoners dealt with under part 2 of the schedule—those with an agreed provisional release date or a recommended provisional release date from the Parole Board—and to transferred life prisoners in a similar position.

Amendment 16 extends the opportunity to waive the right to a hearing to any transferred life prisoner who has a tariff set under identified statutory provisions by the judiciary or by the secretary of state by way of a paper exercise. If such a prisoner waived his right to a hearing, his tariff set in the sending jurisdiction would be treated as if it were a punishment part set in Scotland.

Amendment 16 also provides an order-making power to allow the Scottish ministers to identify further types of tariff. Prisoners subject to such tariffs would be entitled to waive their right to a hearing on transfer to Scotland. That would allow for further provisions to be introduced in other parts of the United Kingdom on the setting of prisoners' tariffs that we do not consider to comply with the European convention on human rights, but which could comply in the future. In that way, the relevant prisoners would be entitled to waive their right to a hearing on transfer to Scotland.

Amendment 17 is consequential on amendment 16. It simply provides that a transferred life prisoner will have his case referred for a hearing to have a punishment part set unless he has waived that right or has served the tariff that was set in the sending jurisdiction.

Amendment 44, in the name of Phil Gallie, relates to the inter-jurisdiction transferral of prisoners. Mr Gallie tried a similar amendment at stage 2, but the answer is still the same. Inter-jurisdiction transfers of prisoners—that is the transfer of prisoners from outwith the United Kingdom—are governed by international conventions and bilateral repatriation agreements. The bill will not change those arrangements and there is therefore no reason why difficulties with the operation of existing arrangements should result from the proposals in the bill. I ask Mr Gallie to consider not pressing amendment 44 after he has had a chance to speak to that amendment.

I move amendment 16.

Phil Gallie: First, I will address my remarks to amendment 16. In taking evidence on the bill, the Justice 1 Committee had its attention drawn to the fact that a swings-and-roundabouts movement could occur for prisoners currently serving sentences who have not had punishment and deterrent elements set. When those prisoners are taken into court to have those elements set, some may be released a little earlier than they could

have expected and others may well have longer periods of detention prescribed for them.

My objection to amendment 16 is that it will give prisoners the impression that, by sitting back from their right to have a hearing, they can choose the roundabout rather than the swing. Rather than having everyone go through the system, amendment 16 will allow individuals to set the rules for themselves. If they thought that they would be more harshly dealt with at a hearing, of course they will waive their right to one. That is the wrong way to go about the setting of punishment parts. The approach should be all-embracing. I was assured by the swings-and-roundabouts approach that fairness would ultimately be achieved.

Gordon Jackson: How can Phil Gallie possibly apply the swings-and-roundabouts approach to the individual's case? It is to do with the justice for that individual. How can Phil Gallie possibly change the tariff of someone who has already been given one by the Home Secretary or an English court? That would be to play swings and roundabouts with someone else's case.

Phil Gallie: We are talking about the principles of the bill. We are talking about individuals who have a procedure to go through. Those individuals should not have the right to pick and choose for themselves. The system should be clear and identifiable. If individuals are supposed to have their sentences set as a punishment and deterrent, that principle should apply to everyone to whom the section applies.

On amendment 44, I still feel that there is an issue with the setting of the punishment part for transferred prisoners. The minister has suggested today that international law already allows agreements on the transfer of prisoners to be upheld. I cannot envisage that being written into the bill. For the very reasons that Gordon Jackson and the minister have identified, individuals should be entitled to have a full hearing once they come under our jurisdiction.

My request is simple. I refer to past cases in which members undoubtedly tried to help parents bring their children back to Scotland to serve a sentence. I think of one in particular: Sandra Gregory from Inverurie, who was sentenced in Bangkok. Many people of all parties worked to bring her back to the United Kingdom to serve her sentence. However, if the authorities in some jurisdictions believed that the sentence that they had passed on a prisoner would be reduced to a level that they did not recognise, that could lead to the blocking of the transfer of the individual to a prison nearer their home. We would do such people no service if that were the case. We should recognise and honour any agreements on the length of sentences that recognise the rights of other countries to impose the law as they feel is justified. That would be achieved by including any such agreements in the file of that individual. I will not step back from my amendment but ask the minister to accept it.

15:15

Mr Wallace: On Phil Gallie's initial points, which were picked up by Gordon Jackson, we are talking about people who have been given a paper-based tariff in other parts of the United Kingdom, by the Home Secretary or the English or Welsh courts. Gordon Jackson rightly pointed out that it is very unfair that the tariffs for those people should suddenly be upset.

It is an interesting jurisprudential point whether somehow or other a right can be forced on someone. The point being made here is that they have the right to waive a hearing to set a punishment part if a period has already been set. In fact, it could be very disruptive if people found, after entering a life sentence for which a tariff had been set and when a lot of the treatment had been geared to the date of possible release, everything got upset. That could be counter-productive. A right cannot be forced on someone; we are making provision for them to waive that right, if they wish to do so.

Phil Gallie: The minister must consider the other side of the argument. If the court in England or Wales has set a tariff, why should our jurisdictions set that tariff at a lower rate? That prisoner had his expectation and knew how long he would serve. When he comes into the Scottish system and the courts consider his case and downgrade the tariff, his expectations will change, albeit to a betterment of his situation.

Mr Wallace: There is no reason why courts should downgrade or upgrade the tariff. The point is that, if that is what the prisoner who has been transferred has, in many respects, reconciled himself to, we will not force the prisoner to exercise a right that he does not wish to exercise. That would be an odd concept. We therefore provide the opportunity for that right to be waived.

I ask the Parliament to resist amendment 44. As I indicated, the inter-jurisdiction transfer of prisoners is governed by international conventions and bilateral agreements. What Mr Gallie has said may have a bearing on whether a foreign jurisdiction would consider whether to repatriate a prisoner, but as there is nothing in the bill that in any way changes those international conventions and bilateral agreements, the issue is as pertinent today as it will be after the passage of the bill. We have entered into international agreements and the bill does not seek to change that; I therefore urge the Parliament to reject amendment 44.

The Deputy Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Mr Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Ms Margo (Lothians) (SNP)
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)
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)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
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, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Ben (North-East Scotland) (Con)
Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 65, Against 14, Abstentions 0.

Amendment 16 agreed to.

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

Amendment 44 moved—[Phil Gallie].

The Deputy Presiding Officer: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
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Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Ben (North-East Scotland) (Con)
Young, John (West of Scotland) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Mr Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Finnie, Ross (West of Scotland) (LD)
Gray, Iain (Edinburgh Pentlands) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)

Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (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)
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)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
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, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 14, Against 63, Abstentions 0.

Amendment 44 disagreed to.

The Deputy Presiding Officer: Amendment 19 is grouped with amendments 7, 8, 9, 11, 12 and 13.

Mr Wallace: Amendments 7, 8, 9, 11, 12 and 13 are technical amendments and are intended to clarify the application of paragraphs 15A and 46A of the schedule to the bill. Paragraphs 15A and 46A are transitional provisions, which provide that existing life prisoners and existing transferred life prisoners who have received more than one life sentence for crimes libelled on the same indictment—or which have been transferred from an equivalent document in the initial jurisdiction—will receive only one punishment part. Members will recall that we debated that principle just a few moments ago. The amendments are intended to ensure that an appropriate punishment part is imposed for all the crimes on an indictment in respect of which a life sentence is imposed, taking into account any other convictions that appear on the same indictment.

Amendments 7 and 11 will amend paragraphs 15A(b) and 46A(b) to make it clear that those transitional provisions apply to a person who is serving more than one life sentence, where two or more of those life sentences have been imposed for offences for which the offender was convicted on a single indictment. Amendments 8 and 12 will amend the relevant paragraphs and clarify that paragraphs 15A and 46A, as the case may be, apply to a person who continues to be detained in respect of more than one life sentence imposed on a single indictment or equivalent document, even if he is subject to another life sentence from which he has previously been released.

Amendments 36, 37, 80 and 102 at stage 2 provided that, where an existing life prisoner, an existing transferred life prisoner or a future life prisoner is convicted of more than one crime libelled on a single indictment, for which the court would be required to, or would have decided to, impose life sentences, the court shall—in the case of future life prisoners—impose only a single life sentence. Those amendments also provided that, in the case of existing life prisoners and existing transferred life prisoners, the court shall treat the offender as if he or she were subject only to a single life sentence.

Amendment 19 brings such life prisoners who are transferred to Scotland from other parts of the UK after the bill comes into force into line with existing transferred life prisoners and existing and future lifers who are convicted in Scotland. Where such a prisoner is convicted of two offences for which a life sentence would be imposed and which would have been libelled on the same indictment, and is then transferred to Scotland, he will be treated as if only one life sentence had been imposed and consequently only one punishment part will be set.

I reassure Mr Gallie and other members that the punishment part will reflect the seriousness of all crimes that are libelled on an indictment—or corresponding document—for which the life sentence was imposed, and of any other offences of which the offender was convicted on the same indictment.

I move amendment 19.

Phil Gallie: Having accepted the minister's earlier comments and assurances, it would be inappropriate for us to force a vote on amendment 19. We accepted it earlier and we accept it now.

Amendment 19 agreed to.

The Deputy Presiding Officer: Amendment 20 is grouped with amendments 24, 25, 27, 33 and 36.

Iain Gray: The amendments in the group all relate to an issue that Gordon Jackson raised at stage 2. He asked what provision there was for prisoners who required to have a punishment part set, but who are incapable of properly instructing a solicitor because of mental illness. We have considered carefully the point that Mr Jackson raised.

Amendments 20, 24, 25, 27, 33 and 36 will have the effect that when a life prisoner's case comes before the court for the setting of a punishment part, and the court is satisfied that the life prisoner—by reason of mental disorder or inability to communicate because of physical disability, which cannot be made good by human or mechanical aid—is unable to provide instructions to his solicitor, the court will not set a punishment part.

The prisoner will continue to be detained until such time as he becomes well enough to instruct a solicitor. Such prisoners are unlikely to be able to be returned to prison, but as soon as they are considered capable of instructing legal representation, their case will be referred back to the High Court for a punishment part to be set.

If such a life prisoner was never considered capable of instructing legal representation, and so could not have a punishment part set, but was deemed to be no longer detainable on mental health grounds, consideration could be given at that point to release on licence on compassionate grounds.

I hope that the amendments address the issue that Gordon Jackson raised.

I move amendment 20.

Michael Matheson: I note from the minister's comments, and also from amendments 20 and 24, that there is a definition of what is meant by "incapable". Will the minister expand on the process that courts will use in deciding whether somebody is incapable? What assessment process or tests will apply? I understand that the courts currently use various systems. I would welcome clarification from the minister on the mechanism that will be used by the court to decide whether a person is incapable.

Iain Gray: The prisoner will be called to the High Court and it will be for the court to make the decision. It will use the same means, including background reports and psychiatric reports, as it would do if it were, for example, making a decision about whether someone was fit to plead: it would use the means that it wanted to use. The decision will be based on the wording in amendment 20, but it will be taken in the High Court.

Amendment 20 agreed to.

Amendments 21, 41 and 3 moved—[Mr Jim Wallace]—and agreed to.

Section 9—Employment of solicitors by Scottish Legal Aid Board: further provisions

15:30

The Deputy Presiding Officer: Amendment 4 is grouped with amendments 5 and 6.

Iain Gray: Amendments 4, 5 and 6 are essentially technical changes that will ensure that similar rules about client contributions apply where the Scottish Legal Aid Board employs solicitors to provide criminal legal assistance in individual cases, and where the plans of Scottish ministers and SLAB to pilot different delivery methods for legal services are being delivered.

Section 26(2) of the Legal Aid (Scotland) Act 1986 empowers SLAB to employ solicitors to assist local organisations in its functions of giving advice, promoting contacts with solicitors and giving oral advice to applicants. Scottish ministers will commence that section, along with sections 27 and 28 of the 1986 act, to allow the Scottish Legal Aid Board to run a series of pilot projects throughout Scotland. Indeed, the board has sought from outside bodies proposals for pilot schemes that will meet those aims. Although I have not yet seen any of the proposals, they are expected to be innovative schemes that are likely to come from both advice-giving organisations and partnerships that involve such organisations, as well as firms of solicitors and local authorities. The first pilots will commence as soon as the necessary arrangements can be made.

It is possible that SLAB solicitors who are involved in such pilots might be asked to give advice to a client on a particular problem. However, present drafting would allow clients' contributions to be collected only where advice was being provided in relation to criminal matters. That was not the intention and the amendments serve to ensure that appropriate contributions may be collected where advice and assistance on civil matters are given. There is no question of any client having to pay a larger contribution than would be the case where assistance was being provided by a private solicitor. The provision that will be made by way of section 9(2)(b) of the bill makes that clear.

Amendments 4, 5 and 6 will ensure that solicitors who are employed by SLAB under sections 26 to 28 of the Legal Aid (Scotland) Act 1986 can provide both criminal and civil advice and assistance, as necessary. We are keen that

the pilots do not meet any obstacles when they are trying out various options and we therefore commend the amendments to members.

I move amendment 4.

Amendment 4 agreed to.

Amendments 5 and 6 moved—[Iain Gray]—and agreed to.

Section 12—Remedial orders

The Deputy Presiding Officer: I call Michael Matheson to speak to and move amendment 46, which stands on its own.

Michael Matheson: Amendment 46 refers to section 12 of the bill and seeks to bring the bill into line with the Human Rights Act 1998. As it stands, the bill allows ministers to use remedial orders to rectify incompatibility with the European convention on human rights when it is considered "necessary or expedient" to do so.

First, I find it difficult to imagine a situation in which it would be expedient, but not necessary, to make a remedial order to address any ECHR incompatibility. At stage 2, the minister lodged an amendment that stated that the remedial orders will be used only when "there are compelling reasons". Surely any such compelling reasons would fall under the category of necessity. As a result, there is little justification for continuing to have the catch-all phrase "or expedient" included in section 12 of the bill.

Secondly, the bill's explanatory notes state that the proposed legislation mirrors the Human Rights Act 1998. However, I refer the minister to section 10(2) of that act, which states:

"If a Minister of the Crown considers that there are compelling reasons for proceeding under this section, he may … make such amendments to the legislation as he considers necessary to remove the incompatibility."

The Human Rights Act 1998 does not mention expediency. Given the concerns that have been highlighted about the use of remedial powers, I believe that the word "necessary" gives sufficient latitude for ministers to act where they have compelling reasons to address ECHR incompatibility. As a result, I do not believe that it is appropriate to invoke remedial orders purely on the basis of expediency.

I move amendment 46.

Mr Wallace: I thank Mr Matheson for giving us an opportunity to air the matter again. During the stage 2 debate, Iain Gray said that we would give the Parliament an indication of the thinking behind the provision in question. Mr Matheson is right to point out that section 12 is an important section of the bill. It gives Scottish ministers new powers to extend the range of circumstances under which they are able to make remedial orders to remedy actual or perceived incompatibilities with the European convention on human rights. As has been pointed out, the section is drafted to allow Scottish ministers to make a remedial order where they consider that to be "necessary or expedient".

Mr Matheson referred to the wording of section 10(2) of the Human Rights Act 1998. I refer him to section 107 of the Scotland Act 1998, which states:

"Subordinate legislation may make such provision as the person making the legislation considers necessary or expedient in consequence of—

(a) an Act of the Scottish Parliament or any provision of an Act of the Scottish Parliament which is not, or may not be, within the legislative competence of the Parliament, or

(b) any purported exercise by a member of the Scottish Executive of his functions which is not, or may not be, an exercise or a proper exercise of those functions."

The wording that appears in section 12 of the Convention Rights (Compliance) (Scotland) Bill is intended to reflect the provision in the Scotland Act 1998.

Because of concerns that were raised by the Justice 1 Committee at stage 1, an amendment to the bill was introduced at stage 2 that introduced additional wording to the bill, which stipulated that ministers must have

"compelling reasons for making a remedial order, as distinct from taking any other action."

It is important to emphasise that the "compelling reasons" test will apply in addition to the "necessary and expedient" test as set out in section 12(1) of the bill.

We must recognise the different way in which the European convention on human rights operates in Scotland relative to the functions of Scottish ministers, because the ECHR is incorporated into the Scotland Act 1998, our procedures and our fundamental constitutional framework. Scottish ministers are not in a position to act incompatibly with the ECHR, even if primary legislation appears to require or authorise them to do so. That is why we have sought the powers that are set out in section 12.

The word "expedient" is included to account for situations in which ministers are required to take action on an issue that is pending before the court and on which the Executive expects a declaration of incompatibility, or a similar finding. One might say that the word "necessity" covers situations in which the court has made its decision and we are up the creek without a paddle, to put it colloquially. By including the word "expedient" in the bill, we want to cover situations in which the court has not yet made a declaration of incompatibility, but is expected to do so, or situations in which ministers have been advised that there is a serious risk of

incompatibility, despite legislation not yet having been challenged in court.

Michael Matheson: Is the minister saying that the Executive would use the expediency test only if a court were about to rule that legislation was incompatible with the convention? Is he saying that it would not use the necessity test to address problems in advance of a ruling?

Mr Wallace: I am referring to situations in which there has not been a ruling, but in which the court is expected to issue a declaration of incompatibility. I also said—Mr Matheson might not have heard this, because he was trying to intervene—that there might be circumstances in which ministers are advised that there is a serious risk of incompatibility, although legislation has not yet been challenged in the courts. It might then be expedient to act, rather than to wait for a ruling that makes action a necessity. The provision seeks to ensure that we have the scope to cover situations in which a court ruling is expected, or in which we have been told that there is a serious risk of incompatibility, although a challenge has not yet emerged.

During the stage 2 debate, Gordon Jackson expressed the view that an expediency test was not the necessary result of introducing a compelling reasons test. This is getting very technical, but there is an important distinction to be made.

Gordon Jackson: I am still awake.

Mr Wallace: Yes, I know.

I have indicated the circumstances in which the expediency test would arise: it relates to the nature of the incompatibility. The compelling reasons test concerns the use of a remedial order rather than some other vehicle, such as primary legislation. The terms "necessary" and "expedient" relate to the actual incompatibility that is the matter of concern, whereas the compelling reasons test is whether we should address that incompatibility by way of a remedial order rather than through primary legislation. There is a clear distinction between the two, although I am conscious of the fact that it might not be obvious. If members read the *Official Report*, they will recognise the distinction.

Any action that ministers may propose to take under section 12—whether we consider that action necessary or expedient—cannot be taken until we have established that there is a compelling reason for proceeding with a remedial order rather than following other potential routes, most obviously the primary legislation route. That is why we find amendment 46 inappropriate, and I invite Mr Matheson to withdraw it.

Gordon Jackson: I am tempted to ask the minister to repeat all that.

Mr Wallace: I will.

Gordon Jackson: It was difficult to follow.

We discussed the matter in the committee, where we are frank about such things, and I have reservations about the first use of the word "expedient". I can see what Michael Matheson is getting at—I had not thought of it before—in relation to things that may happen in future, but I would have thought that that situation would be covered, by necessity, in the phrase "may be incompatible". I recognise expediency in relation to the incidental, consequential provisions further on in section 12, and I do not think that Michael Matheson is trying to take out the word "expedient" at that stage.

I took a position on the issue in the committee, and I accept the fact that the catch-all phrase "compelling reasons" probably means that there is not the danger that Michael Matheson is afraid of, so I am not prepared pointedly to disagree with the minister. Nevertheless, I have reservations about the use of the word "expedient" in that context. To the normal mind, "expedient" has a connotation that is quite different from necessity or compulsion—it just means something that suits. I would have preferred "expedient" not to have been used in the original section 12, but because of the "compelling reasons" catch-all, I am prepared to accept that it will not matter much and I am not pushed to remove the word. It is a difficult problem, and I will read what the minister said in the *Official Report*, as I suspect that I did not fully understand it the first time round.

Phil Gallie: I am delighted to be more enthusiastically behind the minister's comments. At long last, there is something good in the Scotland Act 1998 that I want to sign up to. The mention of expediency, to which the minister referred, reflects that perhaps our problem is that we incorporated the ECHR a bit prematurely in the Scotland Act 1998; many of our senior justice figures have said that in recent times, as did some of the judiciary well before the Scotland Act 1998 was passed.

Perhaps one of the greatest strengths of the bill is the fact that it will give the minister powers to deal with the unforeseen. We have been caught out on a number of occasions since the setting up of the Parliament, and we do not want the justice system to be put under a question mark. I believe firmly that the minister is right in taking the power. I am sure that he will use it extremely wisely. It is necessary.

15:45

Mr Wallace: I am grateful for Mr Gallie's support, which I am sure arises out of conviction rather than expediency.

I understand what Gordon Jackson is saying. The word "expedient" was picked up as a direct read-across from the Scotland Act 1998. I accept that, in some circumstances, it can sound as if it is a synonym for convenience, but—as I hope I made clear in my explanation—that is not the intent. Expediency falls short of an absolute necessity. If a provision were challenged in court on the ground that it was not absolutely necessary, we would be able to say that it had been done in anticipation of something that could become a necessity.

Michael Matheson: I confess that, after the minister's explanation, I was wavering about what to do with my amendment, but, having heard Phil Gallie's contribution, I have made up my mind.

Members have to reflect on the important role that is played by this part of the bill. It gives considerable powers to ministers to provide remedial orders to amend primary legislation, which the chamber and the parliamentary committees will be unable to amend. The Parliament will be able to pass comment on the legislation, but will have to either take it or leave it. Given the wide-ranging nature of the powers, it is important that there should be an element of necessity before legislation is changed by means of a remedial order; it is not enough to say simply that it would be expedient to do so.

I take on board the distinction that the minister is trying to make, but I find it difficult to understand why his aim could not be achieved with wording that mentions only the idea of necessity. There is nothing in the bill that would prevent that. In defence of the inclusion of the word "expedient", the minister talked about a situation in relation to which his officials had advised him that there would be a clear incompatibility that, if it were not acted on, could leave the legislation open to challenge. However, that would be a compelling reason and would make the passing of a provision necessary. Similarly, if a case were being challenged in the courts and it looked as though there would be a ruling that there was an incompatibility, there would be a compelling reason and a necessity to act in the interest of Scottish ministers.

Taken together, the factors of compelling reason and necessity give ministers sufficient ground and latitude to make provisions.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): Further to what Mr Matheson has just said, it is true to say that, in the case that Mr Wallace outlined, there would not be the same urgency, because the legislation that would have to be amended by order would not, at that point, have been found to be incompatible by any court. That would allow the minister time to amend the offending legislation by means such as emergency legislation in this chamber, rather than by making an order.

Michael Matheson: That is correct, and the situation that Mr Morgan talks about happened with the Mental Health (Public Safety and Appeals) (Scotland) Bill because of a challenge against the Mental Health (Scotland) Act 1984.

I take on board what the minister said about the Scotland Act 1998, but the policy memorandum for the Convention Rights (Compliance) (Scotland) Bill says that the remedial powers section mirrors the provisions that are contained in the Human Rights Act 1998. In the section of that act that deals with remedial powers, there is no mention of expediency.

Gordon Jackson: Having heard the minister's explanation, which I had not heard before and which is undoubtedly interesting—[*Laughter.*] I did not mean that pejoratively.

Having heard the minister's explanation, I ask Mr Matheson what harm inclusion of the word "expediency" would do. I do not like the word, but I cannot see what damage it would do, given the explanation that we have heard.

Michael Matheson: It is a catch-all word that people who draft bills like to include just in case a situation arises that they have not considered. However, the ministers have been unable to come up with a situation in which the factors of compelling reason and necessity would not give them the power to act. The question is, if there is no need for the word to be in the bill, why include it? It has been included because it is a catch-all word.

I will press my amendment.

The Deputy Presiding Officer: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Canavan, Dennis (Falkirk West)
Ewing, Mrs Margaret (Moray) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)

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White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
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Butler, Mr Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Fergusson, Alex (South of Scotland) (Con)
Finnie, Ross (West of Scotland) (LD)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
MacLean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 19, Against 62, Abstentions 0.

Amendment 46 disagreed to.

The Deputy Presiding Officer: Amendment 22 is grouped with amendment 23.

Michael Matheson: Amendment 22 is, essentially, a paving amendment to amendment 23.

Amendment 23 reflects some of the concerns that exist around the provisions under section 12, which deals with remedial orders. As was mentioned in the debate on amendment 46, ministers will have wide-ranging powers, as the bill stands, to modify by way of a remedial order any sort of instrument or document, although it may not be directly related to the functions of the ministers.

At stage 2, the Deputy Minister for Justice said, of instruments or documents that would not relate to ministerial functions:

"I admit that we have no particular documents or instruments in mind".—[*Official Report*, *Justice 1 Committee*, 25 April 2001; c 2370.]

He was unable to give us an example in which such powers would be required.

It is only right for the Parliament to be a little suspicious of giving ministers powers to change things of which they are unable to give specific examples. Ministers should be able to use the powers under remedial orders only in connection with functions of the Scottish Executive. On that basis, and given that the minister was unable to give us clear examples at stage 2 of the type of documents and instruments that ministers may have to change and for which they do not have direct responsibility, I do not believe that it is appropriate that we continue to have such provision in the bill.

I move amendment 22.

Iain Gray: As Mr Matheson has explained, his amendments 22 and 23 would amend section 12(2)(d), so that modification in a remedial order of any instrument or document that was not an enactment or prerogative instrument could be carried out only if it was an

"instrument or document relating to the exercise or purported exercise of functions by the Scottish Ministers".

Mr Matheson lodged a similar amendment at stage 2, and he is quite right to say that, at that time, he asked me for an example of particular instruments or documents that we had in mind that would fit in the category of being neither enactments nor prerogative instruments, but which would be likely to need amendment by way of the remedial order power.

I fear that Mr Matheson is, again, correct to say that I could not provide an example. My position was that we needed to be flexible, because we were unsure what the future could bring. It is difficult to predict exactly what amendments may need to be made to our law in future as ECHR case law develops before the domestic courts. I confess, further, that I find myself still unable to give an example. In recognition of the points that have been raised by Mr Matheson, in all humility and to show our disinterest in catch-all phrases, I am happy to accept amendments 22 and 23.

Michael Matheson: This is a result—I have not written a speech for such an occasion.

I thank the minister for exhibiting such humility before so many of his fellow members. I have no difficulty with the use of remedial powers in relation to issues for which the Scottish ministers have direct responsibility. However, given that the minister has failed on at least four occasions to give an example, it is only right that the Executive should accept that there is no need for such a power.

Amendment 22 agreed to.

Amendment 23 moved—[Michael Matheson]—and agreed to.

Schedule

TRANSITIONAL PROVISIONS

Amendments 24 and 25 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Presiding Officer: Amendment 26 is grouped with amendment 35.

Mr Wallace: Existing life prisoners who were given designated parts in Scotland during the transitional arrangements in 1993 and 1997 were given those parts as a result of a paper-based exercise. Amendment 26 would allow the judge who is setting the punishment part to have regard to the designated part that was given as a result of that paper-based exercise.

Life prisoners who transfer from other parts of the United Kingdom, particularly from England and Wales, may have received a recommendation from the trial judge as to the minimum period that they should serve in prison, or the Lord Chief Justice may have recommended a non-statutory tariff for them. Alternatively, they may have a tariff set under statute by the secretary of state or by the judiciary.

It is considered that it would be appropriate to allow the High Court, when setting the punishment part, to have regard to such recommendations and tariffs. Amendment 35 would allow the High Court to have regard to those recommendations and tariffs when setting the punishment part in respect of prisoners who have transferred from other parts of the United Kingdom.

I move amendment 26.

Amendment 26 agreed to.

Amendments 27, 28, 7, 8, 29 and 9 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Presiding Officer: Amendment 30 is grouped with amendment 39.

Iain Gray: Amendments 30 and 39 propose transitional provisions to be made in consequence of amendments that were agreed to during stage 2 to alter the Parole Board's system of review of life prisoners in the light of the judgment in Oldham v UK.

Amendment 30 provides that existing life prisoners who have been released before the bill comes into force and subsequently recalled, or who have been recalled and reviewed, but whom the Parole Board has declined to release, will have a date set for the next hearing by the Parole Board

"as soon as reasonably practicable".

That date will be no more than two years from the Parole Board's previous consideration of the case, or two years from the date of recall, whichever is the later.

Amendment 39 has the same effect for existing transferred life prisoners.

I move amendment 30.

Amendment 30 agreed to.

The Deputy Presiding Officer: Amendment 31 stands in a group on its own.

16:00

Iain Gray: Part 1 of the schedule to the bill makes provision for existing life prisoners. Amendment 31 proposes the insertion into that part of the schedule of a new part 1A, which will make transitional provision for existing life prisoners with a designated part that is fixed under section 2(2) of the Prisoners and Criminal Proceedings (Scotland) Act 1993, before part 1 of the bill is brought into force.

Amendment 31 provides that a designated part that is set in respect of an existing life prisoner before part 1 of the bill comes into force shall be treated as if it were a punishment part after part 1 comes into force.

I move amendment 31.

Amendment 31 agreed to.

The Deputy Presiding Officer: Amendment 32 is grouped with amendment 34.

Iain Gray: Amendment 32 extends the provision

of part 3 of the schedule to transferred under-18 lifers who have been given a certified part by the Home Secretary under section 28(4) of the Crime (Sentences) Act 1997. The effect of the amendment is to require such prisoners to be given a hearing to have a punishment part set.

Amendment 34 provides for a copy of any certificate that has been issued under section 28(4) of the Crime (Sentences) Act 1997 to be produced to the court when the part is being set. Amendment 34 is consequential on amendment 32.

I move amendment 32.

Amendment 32 agreed to.

Amendments 33 to 37, 11, 12, 38, 13 and 39 moved—[Mr Jim Wallace]—and agreed to.

Long Title

The Deputy Presiding Officer: Amendment 40 stands in a group of its own.

Iain Gray: Mercifully, amendment 40 is a purely technical amendment to the long title of the bill. It reflects an amendment at stage 2, which introduced the power to make it an offence under the rules that ministers provide for the Parole Board for Scotland for a person to fail to attend or to produce documents for a board hearing, if cited to do so.

I move amendment 40.

Phil Gallie: We feel that the Parole Board has sufficient recognition of its powers. We do not want to see the provisions of amendment 40 built in.

If any criticism can be made of the bill, it is that ministers are passing off to the Parole Board responsibility for the final say on the decision to release what are often dangerous individuals back into the community. That seems to me to be stepping back from ministerial responsibility.

This morning in the Justice 1 Committee, the minister said that he would retain his veto over what could be passed out under the freedom of information bill.

Alasdair Morgan *rose—*

Phil Gallie: The minister said that he would ensure that he had the final say on what information could be passed out.

Alasdair Morgan: Will the member give way?

Phil Gallie: Yes.

Alasdair Morgan I wanted Phil Gallie to give way before he was ruled out of order. Phil Gallie has said nothing about the powers of the Parole Board. He has talked only about the powers of ministers, which is not what amendment 40 is about.

Phil Gallie: Perhaps Alasdair Morgan's greying hair indicates that he, too, has a hearing problem. We are talking about the Parole Board's taking on responsibility for the final release of individuals who have often committed the most heinous crimes. That will take responsibility away from the minister. Such decisions should remain ministerial decisions; the minister should have the veto in such circumstances. I oppose the minister's giving away such powers to the Parole Board.

The Deputy Presiding Officer: You are on the margin, Mr Gallie.

Phil Gallie: I am not on the margin about the Conservative party's determination to vote against amendment 40.

Iain Gray: Mr Gallie is rather on the margins because he refers to one of the principles—perhaps more than one of the principles—that underlie the bill. He refers to the key principle that we ensure that our jurisdiction is compliant with the ECHR. Mr Gallie has lost the debate on a number of occasions, most notably at stage 1 when the bill's principles were debated. Amendment 40 will ensure that we can take forward the stage 2 amendments to ensure that the function of the Parole Board is ECHR-compliant and that the board does the proper job of assessing the risk to the public. That is the role that we have given the Parole Board through the changes that we have considered.

Phil Gallie: I thank the minister for giving way.

The Deputy Presiding Officer: I am not sure that the minister gave way, but Mr Gallie may have one final cut.

Phil Gallie: Does the minister accept that there is no need for him to give away to the Parole Board his powers on the release of prisoners? Does he accept that, south of the border, Mr Straw—who must also now comply with the ECHR—is not giving away those powers? Mr Straw has not done so, has no intention of doing so and has stated that there is no need to do so under the ECHR.

Iain Gray: We have debated that point on a number of occasions. There were debates at stages 1 and 2 and Mr Gallie lost the argument. He is about to lose the argument at stage 3. Mr Gallie must accept that.

The Deputy Presiding Officer: The question is, that amendment 40 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Mr Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Ms Margo (Lothians) (SNP)
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)
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)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
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, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Ben (North-East Scotland) (Con)
Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 67, Against 14, Abstentions 0.

Amendment 40 agreed to.

Convention Rights (Compliance) (Scotland) Bill

The Deputy Presiding Officer (Mr George Reid): We are now 20 minutes ahead of schedule. The next item of business is a debate on motion S1M-1941, in the name of Mr Jim Wallace, which seeks the Parliament's agreement that the Convention Rights (Compliance) (Scotland) Bill be passed.

16:09

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I thank members of the Parliament, particularly the members of the Justice 1 Committee, for the work that they have done on the Convention Rights (Compliance) (Scotland) Bill. I also thank all those who contributed to the work of the Justice 1 Committee with oral and written evidence.

The Executive has demonstrated its willingness to work with the Parliament to produce legislation that achieves its objectives and that is workable in practice. I appreciate the points that members have made during the debate and we have been happy to accept amendments that have resulted in improvements to the bill. Although I rejected one of Mr Matheson's amendments on remedial powers, it is absolutely appropriate that Opposition parties challenge the Executive—with amendments and provisions such as that one—to make it give its arguments as to why it seeks the powers that it seeks.

I would like to thank the officials in the justice department for their considerable help with the bill. We have seen in this afternoon's proceedings that these matters are not always straightforward and easy to deal with. The nature and complexity of the amendments are indicative of how much attention to detail is given by officials. I also thank the Deputy Minister for Justice, Iain Gray, for the work that he has done, not least at stage 2. As proper reward, he was allowed to make a concession to the Opposition—the only one that we made this afternoon.

I consider this to be an important bill. It gives us another opportunity to confirm our commitment to the European convention on human rights. It recognises the need to introduce amendments to our laws when we consider that we are at risk of challenge. By passing the bill, the Scottish Parliament will recognise the important place that the protection of human rights does, and should, take in Scotland.

The bill contains proposals on adult mandatory life prisoners, the appointment and removal of Parole Board members, legal aid, homosexual offences and the Lyon Court. It also introduces a new general remedial power.

The bill will bring the release arrangements for adult mandatory life prisoners into line with the arrangements that are in place for other life prisoners in Scotland—specifically, for under-18 murderers and for discretionary life prisoners. Those arrangements came into place, I think, in 1995 legislation. At the time, Mr Gallie was only too willing to support them. We believe that the proposals will satisfy the ECHR. I cannot accept the accusation that the release of dangerous individuals is imminent as a result. The important point is that life sentence prisoners will serve a period that satisfies punishment and deterrence. That period will be set by the judiciary in open court. That ought to give greater certainty not only to the prisoner, but to the families of the victims of crime.

The assessment of risk will be determined by an independent and impartial body with expertise in the area. I believe that it is wrong for ministers to take decisions about the length of time to be served by life sentence prisoners. Those decisions are properly taken by the judiciary and the assessment of risk will properly be made by an independent and impartial body. The result will be a more logical and transparent system. As I indicated, ministers have already been removed from having a role in relation to the release of under-18 murderers and discretionary life prisoners. The bill will ensure that adult mandatory life prisoners have their release determined in the same way.

In relation to the Parole Board, I undertook to provide draft appointment and removal regulations prior to stage 3. Those regulations were made available last week. The removal procedures follow closely the contents of the regulations that we introduced on part-time sheriffs. It is our intention to consult fully on the regulations before they are laid formally before the Parliament. I would certainly welcome comments from members.

On the extension of legal assistance, I undertook to provide the Justice 1 Committee with details by stage 3 of the bodies for whose proceedings we propose to make legal assistance available. Six bodies were consulted—the Office of Social Security and Child Support Commissioners, the Pensions Ombudsman, the Occupational Pensions Regulatory Authority, the VAT and Duties Tribunal, the unified appeal tribunals and the Special Commissioners of Income Tax. In addition, we consulted the Council on Tribunals, the Federation of Small Businesses, the Scottish Legal Aid Board and the Law Society of Scotland.

To avoid the risk of breaching article 6.1 of the ECHR, we consider that legal assistance should be made available where a court, tribunal or other body determines civil rights and obligations and certain clearly defined circumstances apply. I wrote to the convener of the Justice 1 Committee, Alasdair Morgan, last week to confirm that it is my intention to extend legal assistance in respect of two bodies—the Office of Social Security and Child Support Commissioners and the VAT and Duties Tribunal. I am still considering the position of the unified appeal tribunals and the Special Commissioners of Income Tax, as I have not yet received sufficient information from those bodies to enable me to reach a decision.

It is important to stress that no definitive position has been reached. I expect this to be an on-going process as ECHR jurisprudence develops. There may be other bodies in relation to which legal assistance should be made available. Some other bodies have been suggested in the consultation responses I have received and my officials will follow those up. I am happy to outline the reasons for the decisions if members would find that helpful.

There has been some debate this afternoon on the general remedial power, which I welcome, as it is an important issue. I need say little more than to confirm that the Executive considers that the power is essential, because our courts can immediately strike down Scottish legislation or functions of Scottish ministers that they find to be incompatible with the ECHR. We need a swift remedy. I emphasise also that there is no intention that the power should be a replacement for primary legislation and for full scrutiny by the Parliament. The amendment that was introduced at stage 2 in response to concerns expressed by members of the Justice 1 Committee, to ensure that there are compelling reasons for using the remedial order route, underlines that.

Part 4 of the bill deals with homosexual offences. It is important to bear it in mind that the changes that have been introduced were made as a direct result of a case in the European Court of Human Rights, which found that the equivalent English law—to which the Scottish law is identical—was incompatible with the ECHR on the ground that it breached article 8 on the right to respect for private life. Therefore, we have introduced a measure to bring Scots law into line with the ECHR.

Part 5 of the bill remedies an irregular arrangement in a 19th century statute that meant that the Lord Lyon appointed the procurator fiscal to his own court. The bill provides that the fiscal to the Lyon Court will in future be appointed by Scottish ministers as an independent third party. We were happy to accept a recommendation in the Justice 1 Committee's stage 1 report that the fiscal should be legally qualified and effect was given to that at stage 2.

In conclusion, the bill before Parliament contains proposals that are necessary in terms of the European convention on human rights, but there are other benefits. It is right to remove ministers from decisions about the release of adult mandatory life prisoners. The public will continue to be protected, but the process will be clearer and more logical. The inclusion in regulations of appointment and removal procedures for members of the Parole Board for Scotland will ensure that the system is fair and transparent. Our legal aid proposals will make justice more accessible when important decisions are being taken about child support, social security and taxation.

I want to see a system of justice in Scotland that is fair, open and transparent. The proposals in the bill accord with those principles and will help to further them. I commend the bill to Parliament.

I move,

That the Parliament agrees that the Convention Rights (Compliance) (Scotland) Bill be passed.

16:18

Michael Matheson (Central Scotland) (SNP): I begin by thanking the clerks to the Justice 1 Committee, who were of great assistance in lodging amendments at stages 2 and 3. I also wish to put on record my thanks to those who came before the Justice 1 Committee and took time to give us evidence, both orally and in writing.

As was outlined in the stage 1 debate, the Scottish National Party welcomes the general provisions of the Convention Rights (Compliance) (Scotland) Bill. Although the argument that the bill has been forced upon the Scottish legal system will not end as a result of the bill being passed, a considerable number of its provisions will enhance and improve the Scottish legal system. If it had not been for our incorporation of the European convention on human rights, we may not have had a debate about improving our criminal justice system in the way that the bill will improve it.

Congratulations should be given to those who decided, back in the 1950s, to sign up the UK to the ECHR. We should congratulate in particular the Conservative members of Parliament who supported the convention at that time and realised the benefits that it would have. I am sure that Conservative members of the Scottish Parliament will want to continue that tradition by supporting human rights in Scotland.

It would be naive of any member to think that the bill will draw a line under some of the conflicts that occur in our justice system or in legislation that

does not comply with the ECHR. Two options are available. We can stick our head in the sand and ignore the issues or we can be more proactive and take up the challenge that the ECHR sets us to improve our system. The bill will do the latter.

I hope that the bill will be something of a watershed. Legislation that has dealt with ECHR-related matters, such as the Noel Ruddle mental health issue and the issues addressed in the Bail, Judicial Appointments etc (Scotland) Act 2000, has all been a result of potential conflicts and challenges. At least the Convention Rights (Compliance) (Scotland) Bill is more proactive and will make changes before problems occur. On that basis, it is to be welcomed.

A human rights commission is needed. It would augment the work that has been done with the bill.

I will conclude on a personal note. As the Minister for Justice said, the bill when passed will amend the Lyon King of Arms Act 1867 to transfer the power to appoint a procurator fiscal to the Court of the Lord Lyon to the safe hands of ministers of the Scottish Executive. I am sure that Scotland will be able to rest easy now.

The ECHR has an important role to play in Scotland and is important to the people of Scotland. The bill will enhance and improve the Scottish legal system. On that basis, the SNP will support the motion to pass the bill.

16:22

Phil Gallie (South of Scotland) (Con): I speak with mixed feelings. Michael Matheson commented on Conservatives signing up to the European convention on human rights. We signed up to the principles and pursued them throughout the years, but we never felt the need to incorporate the convention into the law of our land. Therein lies the difference between other parties and us; it suggests that we were not in favour of incorporation. I repeat that our opposition was supported by several senior figures in the judicial system. [MEMBERS: "Name one."] Lord McCluskey. However, the bill is here and we have debated it.

The bill goes further than is necessary to comply with the ECHR. I make no apology for referring again to part 1. South of the border, Mr Straw has made it clear that ministerial responsibility will be retained for the release of those who are considered to be dangerous and violent criminals. He will have the final say. I return to the point that the minister made to the Justice 1 Committee this morning when he suggested that he wants to retain a veto over freedom of information. The minister should also have retained his veto over the freedom of extremely dangerous people in some circumstances. I am disappointed that the minister has pursued part 1.

The Conservatives support other elements of the bill. We go along with the idea that the Parole Board should be better constituted. That is an improvement. Michael Matheson suggested that he is glad that the bill has forced us into a debate, to improve Scottish law. I honestly believe that we could have designed a similar bill without the pressure of compliance. If the Executive had the will, we could have a debate at any time to address some of the serious justice and home affairs issues that face Scotland.

The bill contains provisions on legal aid. I regret the fact that part 4 must be enacted, but it is necessary to comply with the ECHR.

Michael Matheson made his joke about the Court of the Lord Lyon, to which the minister referred. The Court of the Lord Lyon has had two or three mentions during the passage the bill. Although it was necessary to include provisions for the court, that part of the bill does not register with people in Scotland.

Part 6 is the key element of the bill. We do not know what is round the corner and part 6 gives ministers powers to address any unforeseen ECHR problems. I am sure that, as a representative of the Executive, the minister will execute those powers soundly, just as any future Conservative minister would if they were to find themselves in such a position.

I thank the Deputy Presiding Officer for allowing us to debate the bill so freely. I also want to associate myself with the thanks that Michael Matheson expressed to the various people who helped the Justice 1 Committee. We will make our own judgment on the bill.

16:26

Gordon Jackson (Glasgow Govan) (Lab): I rise to speak only briefly to give my total support for what we are doing, as most of what I want to say has been said by other members.

I do not understand Phil Gallie's point when he said that the Tory party never found the need to incorporate the ECHR, as the idea of becoming ECHR-compliant is a good thing. It is a sad thing that the Tories did not find the need to incorporate it, as the need was there for 18 years. We have come along and we have said that to incorporate the convention is the right thing to do.

However, we should not think that we are simply doing something because it has been forced upon us. Michael Matheson talked about the bill being "forced upon the Scottish legal system". I do not like that approach, as I have always said that what we do in this sort of bill is not something that is a bad thing that we are being forced to do. The provisions are in themselves good things and

some of them hardly got a mention during today's stage 3 debate—for example, what we are doing with the constitution of the Parole Board for Scotland and how people are removed from the board. That is good legislation. Another example is bringing flexibility into payment for solicitors. That is also good legislation.

I disagree very strongly with Phil Gallie over what he said about part 1 of the bill, which covers how we deal with life prisoners. It is absolutely right in principle that the politicians, God bless them, should be taken totally out of the process. Phil Gallie says that Jack Straw will not take the politicians out of the process. I say to him that Jack Straw is wrong on that. On matters that relate to the bill, his writ does not run in this chamber. That is devolution working, and that is how devolution ought to be. I do not apologise for saying that. Politicians under political and media influence have kept people in jail when a proper judicial decision would have been that their time was served and they should be released. That is a disgrace. I say to Phil Gallie that we are moving forward in a proper manner in that respect.

Phil Gallie: I accept Mr Jackson's opinion on the matter, but does he not agree with me that what we are debating is really the European convention compliance bill? Does he also agree that Jack Straw stepping back demonstrates the point that that issue does not need to be covered by the Convention Rights (Compliance) (Scotland) Bill? If it is the will of the Scottish Parliament, I accept that that is a fair way to take the matter forward.

Gordon Jackson: I do not accept that. No doubt Jack Straw gets his advice from his officials. Time will tell whether that advice is right or wrong. We are taking politicians out of the process to comply with the ECHR, but I say again that we are doing it because it is the right thing to do. We do not believe that politicians should any longer be a part of the process of sentencing. I am totally in disagreement with Phil Gallie on that issue.

The great thing about the bill is that it shows that the committee system is working. The Justice 1 Committee has had a lot of discussions and debates. They have been extremely constructive. Even Phil Gallie will at times admit that we have had extremely constructive debates and that we have made real changes to the bill through the committee system. What we did in terms of compelling reasons for remedial powers was an important change to the bill. It showed the willingness of the Executive to take on board informed, sensible discussion and change the bill. We started with a good bill. We have ended with a better bill. If people in another place do not want to follow that example, that is a matter for them, but we are not apologising. I commend the legislation to the chamber.

16:30

The Deputy Minister for Justice (Iain Gray): I take the opportunity to thank the members of the Justice 1 Committee and the Parliament for their careful consideration of the Convention Rights (Compliance) (Scotland) Bill. I agree with Gordon Jackson—what we have in front of us is a solid, workable piece of legislation that will continue to ensure that Scotland is a place in which human rights are respected and protected.

We have debated the roles of Winston Churchill, through signing the United Kingdom up to the ECHR, and Westminster, through the Scotland Act 1998, which incorporates human rights into our legal system. That is the important thing, I say to Mr Gallie. It allows the principles that were signed up to in the 1950s to be exercised in Scottish courts and the Scottish legal system. It has not always been the most exciting legislating that we have done, but it is important. It is time to stake the Parliament's place in the history of human rights in Scotland. I commend the bill to the chamber.

Motion without Notice

16:31

The Deputy Minister for Parliament (Euan Robson): I ask the chamber's permission to move a motion without notice.

The Deputy Presiding Officer (Mr George Reid): We have bowled along at good speed this afternoon and have 28 minutes in hand. I am minded to accept the motion to bring forward decision time. Is that acceptable to the chamber?

Members *indicated agreement*.

Euan Robson: I first apologise to the chamber for not being here earlier this afternoon to move the Parliamentary Bureau motions. Unfortunately, I was distracted by confirmation of a further case of foot-and-mouth disease in my constituency.

I move,

That the Parliament agrees under Rule 11.2.4 of the Standing Orders that Decision Time on Wednesday 30 May 2001 shall begin at 4.33 pm.

Motion agreed to.

The Deputy Presiding Officer: I note in passing the point of order raised by Mr Canavan at the start of proceedings. Under standing order 8.11.2, the right to move a business motion is reserved to members of the Parliamentary Bureau. That is why we took a bit of time.

Decision Time

16:33

The Deputy Presiding Officer (Mr George Reid): There are two questions to be put as a result of today's business. The first question is, that motion S1M-1973, in the name of Tom McCabe, on designation of lead committees, be agreed to.

Motion agreed to.

That the Parliament agrees the following designation of Lead Committee—

the Justice 2 Committee to consider the Sex Offenders (Notification Requirements) (Prescribed Police Stations) (Scotland) (No 2) Regulations 2001 (SSI 2001/190).

The Deputy Presiding Officer: The second question is, that motion S1M-1941, in the name of Jim Wallace, which seeks agreement that the Convention Rights (Compliance) (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: I hear a no from Mr Gallie. There will be a division.

FOR

Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Mr Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Home Robertson, Mr John (East Lothian) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
MacDonald, Ms Margo (Lothians) (SNP)
MacKay, Angus (Edinburgh South) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Muldoon, Bristow (Livingston) (Lab)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
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, Andrew (Central Scotland) (SNP)

AGAINST

Macmillan, Maureen (Highlands and Islands) (Lab)

ABSTENTIONS

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North-East Scotland) (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)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Wallace, Ben (North-East Scotland) (Con)
Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 59, Against 1, Abstentions 12.

Motion agreed to.

That the Parliament agrees that the Convention Rights (Compliance) (Scotland) Bill be passed.

Chester Street Insurance Holdings Ltd

The Deputy Presiding Officer (Mr George Reid): We now come to members' business, which is on motion S1M-1927, in the name of Des McNulty, on Chester Street Insurance Holdings Ltd.

Ms Margo MacDonald (Lothians) (SNP): On a point of order, Presiding Officer. Is it in order for a members' business motion to be contentious, controversial, argumentative and misleading? The motion in the name of Des McNulty, on Chester Street Insurance Holdings Ltd, gives the impression that the only people who are concerned with and who own the asbestos campaign are Gordon Brown, Helen Liddell and Tony Worthington.

The Deputy Presiding Officer: The motion is obviously in order, as it has been selected by Sir David Steel and the full Parliamentary Bureau. You have had the chance to make your points and your views are noted.

Alex Neil (Central Scotland) (SNP): On a point of order, Presiding Officer. The motion refers to the "Clydebank MP". There is no such thing at the moment as a Clydebank MP. This is an election advert for the Labour party, not a members' business motion.

The Deputy Presiding Officer: My understanding is that the motion was lodged before the general election was called and was in order at that point.

Motion debated,

That the Parliament welcomes the successful outcome of the campaign at Westminster led by Clydebank MP Tony Worthington on behalf of asbestos disease sufferers affected by the collapse of Chester Street Insurance Holdings Ltd; congratulates Chancellor Gordon Brown and Scottish Secretary Helen Liddell on their role in hammering out a deal between Her Majesty's Treasury and the insurance companies to ensure that compensation is paid; notes that asbestos-related disease has led to more than 1,800 deaths in Scotland since 1997, and believes that the Scottish Executive can assist in preventing further distress to sufferers and their families by doing everything within its power to ensure that legal actions relating to compensation claims are not subject to delays in the Scottish courts.

16:37

Des McNulty (Clydebank and Milngavie) (Lab): I notice that the two members who raised points of order are so concerned about the people affected by asbestos that they have not remained in the chamber, which is perhaps salient.

I do not want to make party political points; this is an issue of justice. A grave injustice was done to some of the most vulnerable people in our society—people suffering from the dreadful effects of asbestos. Those people, many of them from my constituency and from other constituencies in the west of Scotland, worked for many years where asbestos was present. Those people were wounded, deliberately perhaps, by employers who knew that asbestos was a dangerous substance and that the people working in shipyards and other areas where asbestos was present were likely to have their health impaired by their proximity to the substance.

The owners of the shipyards passed their responsibility to an insurance company called Iron Trades Holding Ltd. In the fullness of time, the responsibility passed to an organisation called Chester Street Insurance Holdings Ltd, which deliberately sought, in one of the most cynical manoeuvres imaginable, to parcel itself up in such a way that its liability for sufferers of asbestos-related disease was transferred out. The insurance companies could therefore make money in other areas and the amount of money available to compensate those suffering from asbestos-related disease was minimised. The effect was that only 5 per cent of compensation claims would have been met. That was a grave injustice, which has now, thankfully, been put right.

I do not make any apology for praising all the MPs at Westminster who were involved in the campaign for justice for sufferers of asbestos-related disease—I include Tony Worthington, Margaret Ewing and members from all parties. However, the people who were most involved in the campaign were the sufferers of asbestos-related disease. Those people represent an example of dignity under pressure and in the face of a grave injustice. They fought and argued their case and the injustice was overcome. We should be pleased about that. It is a positive step and should be recognised.

I did not lodge the motion simply to mark the fact that an injustice was sorted out. I also wanted to highlight the fact that there is more to do. This Parliament can do more. People who are diagnosed as suffering from asbestos-related disease, and their families, deserve all the support that we can provide. The disease is terrible. When one speaks to people who have it, or to members of their family, one discovers that it is a disgusting way to die. It is also, for those people who have a milder form of it, a disgusting way to live.

The people who have come to the Parliament today are a microcosm of the people in Scotland who have been affected by the disease. Their rights should be at the forefront of our minds. We should consider carefully the morality of the way in which they are treated.

I want Parliament to consider the health care

services and counselling support that are available for people who suffer from asbestos-related disease. We should ask health boards and local authorities to do all that they can to ensure that people who are affected by the disease, and their families, are properly supported by specialists who have the necessary expertise and can give expert advice.

The greatest concern is that it takes so long for people to get compensation through the Scottish courts. In many debates in the chamber, I hear people talking about what a marvellous system of justice we have in Scotland. As far as sufferers of asbestos-related disease are concerned, Scottish justice is not delivering. There are delays of two or three years from the point at which people raise asbestos cases in courts to a decision being made. That is unacceptable. We must find ways of circumscribing that process so that people can get the compensation to which they are entitled.

Someone who is diagnosed with mesothelioma can be dead within a year or even months. People who are suffering from that disease should get their compensation quickly after diagnosis, so that they and their families get the best available comfort.

People with chronic asbestos-related disease also deserve compensation quickly. We cannot continue with the current situation, in which 500 cases are going through the judicial process. Each case is subject to blanket denials by the companies that are defending the cases. Those companies deny that there was a John Brown's shipyard and then they deny that the person worked for it. They deny that asbestos was used and deny that the people involved were exposed to asbestos. Those denials are a strategic device to slow down the process of dealing with the cases.

That is unacceptable; it is a blot on the landscape of Scottish justice. There must be fast-track justice. We are not asking insurance companies to pay up when they are not supposed to, but they should not use procedures and mechanisms to impose unreasonable delays, especially when the people who bear the brunt of the delay are some of the most vulnerable in our society. It is the Parliament's responsibility to tackle the issue to ensure that people get justice and that our system of justice is not a barrier to people getting what they deserve.

There is a lot of support in Parliament for finding a way forward on the issue, for tackling it and for matching—perhaps even going beyond—what Westminster did in relation to Chester Street Insurance Holdings Ltd, so that our Scottish victims of asbestos get the justice that they deserve.

16:44

Mrs Margaret Ewing (Moray) (SNP): I congratulate Des McNulty on securing this debate. As he knows, the issue is not new to me; it was drawn to my attention when I was the member of Parliament for the old East Dunbartonshire seat. I remember asking questions and speaking in debates in the House of Commons on the matter. I constantly received invitations from the asbestos producers to visit their plants so that they could reassure me that there was no problem. I am glad to say that they never convinced me.

I was delighted to be in the House of Commons on 6 March when Tony Worthington spoke effectively in a debate on this subject. As we know from subsequent reports, there has been progress since that debate. The Treasury's announcement on 10 May is welcome, as it ensures that the victims who were affected before 1972 will be paid 90 per cent of the awards that would have been made had compensation been settled before Chester Street Insurance Holdings Ltd became insolvent in January. Although that is welcome news, the remaining 10 per cent of the compensation is not yet forthcoming, which is an injustice to the victims and their families.

I am sure that the minister is aware that the relevant pension regulations, national insurance issues, the Insurance Companies Act 1982 and the Policy Holders Protection Act 1975 are complex, reserved matters, but this Parliament can raise its voice in Scotland to ensure that the people are listening and that our views are relayed to the appropriate authorities. However, the Parliament can do more than just raise its voice; it can do a great deal to help asbestosis sufferers and their families.

Those of us who had the opportunity—and the privilege—to meet the Clydebank asbestos action group heard many tales of the need to alter the Scottish legal system, for which this Parliament is responsible. We want to deal efficiently and effectively with the cases that are brought before our courts. Suggested proposals will speed up the process of dealing with compensation, which is needed early to assure the victim's quality of life and to make him or her secure in the knowledge that their families will receive money after they have gone.

I understand that the Justice 2 Committee has considered a carefully worded petition that was referred to it and that it has asked for comments from the Lord President of the Court of Session and the Scottish Law Commission. I hope that the responses to the committee will be sent speedily and show a positive attitude. At the moment, widows can wait for up to four years for compensation. The written system, the stated cases, the denials and the other processes are

expensive not only for the victims and their families, but for the Scottish court system. Altering the system in a way that gives people justice could also result in some savings.

One of the widows at today's meeting raised my next point, which concerns the way in which victims' medical reports are used. We recognise that such records must be released to the defence agents, but that involves costs. The widow said that she had spent approximately £700 on the medical reports alone. Such a ludicrous system could surely be simplified.

We must consider this issue in the context of health. We could do much to improve the facilities for counselling families and to enhance the provision of doctors and nurses who are qualified to deal with these cases.

16:49

Lord James Douglas-Hamilton (Lothians) (Con): Mr Des McNulty's motion is timely and welcome. Some years ago, I supported Brian Wilson's bill in the House of Commons on a comparable subject. At the time, I announced a past interest as an underwriter at Lloyd's of London, because the company had been involved in claims concerning asbestos-contaminated sites in America. I should repeat that that interest is in the far and distant past.

Mr McNulty has raised an important issue of principle. When victims of asbestosis face considerable uncertainty after an insurance company goes into provisional liquidation and cannot meet their compensation claims, it is right that the Government should become involved. Mr McNulty is absolutely right to highlight that. It is extremely important that these matters should be settled expeditiously. Many victims fear that lengthy delays in their cases will deny them justice. As Mr McNulty indicated, claimants in Scotland have died before mesothelioma cases have been brought to settlement. That is grossly unjust. Urgent action must be a top priority.

One of the problems with this subject is that thousands of people may be affected but may not have launched civil actions because they do not realise that they have an asbestos-related disease. That is because the symptoms can take a long time to manifest themselves.

I hope that this afternoon the minister will repeat the reassurance that compensation will be paid within a reasonable time scale, given the suffering sustained by victims of asbestos-related diseases, and that every effort will be made to assist the constituents concerned. We greatly look forward to the minister's reply.

16:51

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I thank my colleague and friend Des McNulty for giving us the opportunity to have this debate.

When we recently debated compensation for mesothelioma victims, we could not have expected that the situation would get worse. However, in life when one door closes, another one slams in your face. The provisional liquidation of Chester Street Insurance Holdings was a door slamming in the face of asbestos victims.

As usual, asbestos campaigners rose to the challenge. MPs and MSPs were contacted, the *Daily Record* got behind the campaign and we had a successful rally in Clydebank. The fact that the campaign has resulted in this evening's debate gives us some satisfaction.

However, in a sense we have come full circle. We are back where we were when we debated the issue previously. Victims must still prove their cases, with all the difficulties that that involves. We have heard some of those difficulties described today. The Parliament and the Executive have the job of influencing the justice system. We must work to remove the obstacles that cause delays, and we must make it easier for cases to be heard by juries, rather than by judges. The justice system needs to give consideration to terminally ill victims and it could, if it wished, review the powers of the courts to allow interim payments pending final resolution of cases.

The debate also gives us an opportunity to pay tribute to the men and women who have campaigned on the issue in the past and to those who continue to do so. This is not the first debate on asbestos-related illnesses to take place in the Parliament. The campaign for a worldwide ban on asbestos products, justice for the victims, and medical research and specialist care for victims and their families will ensure that it is not the last. We wish the campaign well.

16:54

Bristow Muldoon (Livingston) (Lab): I welcome the fact that the debate is taking place today and I congratulate Des McNulty on raising the issue, in which he has a strong constituency interest. I also congratulate the campaign that is led by Clydeside Action on Asbestos on achieving an outcome for asbestos disease sufferers following the collapse of Chester Street Insurance Holdings. I welcome the UK Government's prompt response to what happened. The campaigners to whom we spoke today acknowledged and welcomed that.

Both the Scottish Trades Union Congress and the Scottish trades councils have made asbestos-

related diseases one of the key campaigning issues that are associated with the international workers memorial events that were held this year. Many of the other issues that have been raised by members form part of their broader campaign.

Many of the issues that we are debating are reserved to Westminster, so I would like to concentrate on the problems that we have the power to address. I hope that the minister will respond to the points that I make.

Members have talked about the delays in the justice system, and many sufferers of asbestos-related diseases die before they receive any form of compensation. That is an issue that we must resolve, so that the sufferers of those fatal diseases are able to achieve a better quality of life and to know that their families will be financially secure when they die.

I urge the minister to give the commitment that there will be a fundamental review of the way in which asbestos-related diseases—indeed, all industrial diseases—are dealt with by the judicial system. When that system results in the delays that we have heard about, that is a denial of justice. The Parliament has it in its power to resolve that, and I hope that we can start to make progress on that today.

16:56

The Deputy Minister for Justice (Iain Gray): I am pleased to be able to speak in the debate. I am sorry that I could not be here in November when Duncan McNeil's motion on compensation for asbestos disease sufferers was debated.

I have constituents who are suffering from asbestos-related diseases, and my sympathy goes out to all those who suffer and to their families, as well as to those who have lost people close to them through asbestos-related diseases. It is impossible to know what to say to people who are in such a position; one can only give as much help and support as possible to the campaign that they are running.

I am happy to agree with Des McNulty, that all those who were involved in securing the arrangement that is now in place—following the insolvency of Chester Street Insurance Holdings—are to be congratulated on their work. However, as Duncan McNeil said, that returns us to the latter part of the motion, which concerns the assistance that the Executive can give to prevent legal actions from being subject to delays in the courts. We must approach that issue in a way that does not interfere with the management of court business. We must leave to the courts the responsibility for deciding on the order of business and the application of procedure. Nonetheless, when we can take action we will do so. It cannot be denied that there is scope for such cases reaching conclusions more quickly, which would be commensurate with the interests of justice.

Many of the cases that we are discussing are not easy to resolve when they reach court. We must accept—as Des McNulty does—that employers have a right to defend against claims for compensation. The medical issues can also be complicated, and there is often more than one employer involved. Moreover, some claims relate to employment of 50 or more years ago and it is difficult to establish who was doing what for which employer at that time. Both sides must cope with those complexities, but it cannot be denied that the time that is taken to deal with such matters adds to the distress of sufferers.

Nonetheless, the interests of sufferers and of employers alike require all reasonable steps to be taken to make the facts as clear as possible for the court. That should not, however, be taken as an excuse for prevarication; nor should it be used as an attempt to cause deliberate delay, such as would cause sufferers to give up on their claims. It would be even worse if the delay were to extend beyond the tragic death of some of the sufferers.

The use of blanket denials by employers has been criticised as a cause of delay. It was criticised most recently in a petition from Frank Maguire, who is a solicitor advocate, and Harry McCluskey, of Clydeside Action on Asbestos, which was submitted to the Public Petitions Committee. That petition is—as Mrs Ewing said—being considered by the Justice 2 Committee. Lord Coulsfield's proposals for the reform of procedure in reparation actions, which I shall mention again in a moment, would result in less reliance on the written case and would put more emphasis on the disclosure of material issues such as medical reports and the value of the claim. In either event, in the case of a blanket denial, employers would leave themselves open to an application for a summary decree on the ground that a defence to the action has not been disclosed. I encourage pursuers to make best use of that remedy.

I would also like appropriate use to be made by pursuers of interim and provisional awards of damages so that, at the very least, suitable arrangements for the care of sufferers can be made pending the determination of cases by the courts.

Although the management of claims by courts is, as I said, a matter for the courts, there is no reason why those cases cannot be dealt with reasonably expeditiously. Indeed, the issue of how to process reparation cases has already been the subject of thorough consideration under the direction of Lord Coulsfield. Lord Coulsfield's proposals, which are at present under

consideration by the Court of Session's rules council, involve the courts taking a more active part in ensuring that time limits for case preparation are adhered to. The proposals also include a proposal to set dates for hearing cases much earlier in the proceedings than is done at the moment. The proposals also call for fuller disclosure of the position of defenders or employers, particularly with regard to the value that they would place on a claim, assuming that liability to pay compensation was not an issue. The point of that is to encourage parties to settle earlier, because over 90 per cent of cases ultimately settle without evidence being heard. The Executive has previously stated its support for the comprehensive package of procedural reform that is proposed by Lord Coulsfield and I do so again today.

One of Lord Coulsfield's other recommendations is that pursuers' offers should be reintroduced. A pursuer's offer is an offer to settle a case for a specified sum which, if it is not accepted by the defender, could have significant consequences for the amount of legal expenses that are awarded against the defender if the court subsequently awards the pursuer the sum that was offered, or a higher sum. Those offers provide an important inducement to employers to settle claims and that recommendation also has our support. However, primary legislation is required to extend the rule-making powers of the Court of Session to enable the necessary procedure rules to be put in place. We will consider how that might best be achieved.

The rules and administrative practices of the Court of Session, where most of the cases are heard, allow 13 weeks for the parties to state their case in written pleadings, and then 19 weeks to prepare for a proof or jury trial. As members will know, that 19-week period is a target that is agreed between the Lord President and ministers. Accordingly, the court should be ready to hear those cases after about 32 weeks, which I consider to be sufficient time for even the most complex issues to be properly addressed.

That said, I am aware that most cases take longer than 32 weeks—often considerably longer—to reach a conclusion. That is usually because the court has been persuaded on the application of one of the parties that it is in the interests of justice to allow more time for case preparation. The reasons for that can be many, but the court must be alive to the need to weed out applications that are simply delaying tactics.

In response to earlier representations that were made in previous debates—which have been referred to this evening—I say that the Executive is exploring with the Lord President what further action might be taken to expedite the cases, consistent with the recommendations of Lord Coulsfield's report. That is further demonstration of our determination to act where we can.

I ask Parliament to note the support that the Executive is already providing to improve arrangements for the management of claims by the court, while respecting the independence of our judiciary and the reliance that we place on it to uphold the interests of justice. We will continue in those efforts because there is no doubt that asbestos disease sufferers deserve justice.

Meeting closed at 17:04.

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