

# **MEETING OF THE PARLIAMENT**

Thursday 14 June 2001

Session 1

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## Scottish Parliament

*Thursday 14 June 2001*

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

### International Criminal Court (Scotland) Bill: Stage 1

**The Deputy Presiding Officer (Patricia Ferguson):** Our first item of business is a debate on motion S1M-1838, in the name of Mr Jim Wallace, on the general principles of the International Criminal Court (Scotland) Bill.

09:30

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** I thank the Justice 2 Committee for its careful consideration of the bill and for its report, which, I acknowledge, was produced to a tight timetable. The report provides a considered assessment of a complex subject and I welcome its broad agreement with the general principles of the bill. However, the committee identified some points on which I hope I can provide some reassurance.

The International Criminal Court (Scotland) Bill, along with the United Kingdom International Criminal Court Act 2001, which received royal assent on 11 May, will allow the UK to fulfil its obligations under the Rome Statute of the International Criminal Court and thus to ratify the statute.

The Rome statute, which was finalised on 17 July 1998 after three years of preparatory work, has been criticised by some for going too far into areas that are normally dealt with by national jurisdictions and by others for not going far enough in setting the jurisdiction of the new court. Nevertheless, the statute represents the current consensus of the international community and marks a significant new stage in the international response to war crimes, crimes against humanity and genocide. In that context, it is worth remembering that the first serious proposal for an international criminal court was made more than half a century ago, after the second world war. It is important that the international community grasps the opportunity to take this step forward in the new millennium.

It is interesting to note that, to date, 139 countries have signed the statute, including all the European Union countries, all the NATO countries except Turkey, two thirds of the Commonwealth and four of the five permanent members of the

United Nations Security Council. Of those 139 countries, 32 have ratified the statute, which means that we are now more than halfway to the 60 ratifications that are required to get the ICC up and running.

**Phil Gallie (South of Scotland) (Con):** Will the minister comment on why so few countries have ratified the statute, given the amount of support that has been signalled for it?

**Mr Wallace:** I am afraid that I cannot give the reasons why a range of countries have not yet ratified the statute. However, as Mr Gallie is aware, it often takes a considerable time for countries to ratify international treaties. Indeed, the UK has not ratified the statute, because we have not yet passed the bill. Other countries may also be progressing ratification procedures in their own way. The third anniversary of the treaty occurs next month—perhaps that will be an opportunity for other countries to announce their ratification of the treaty.

The bill contains 4 parts and has 6 schedules. Part 1 incorporates war crimes, crimes against humanity and genocide into domestic Scots law. Although that is not required under the terms of the statute, it is important that it is done so that the principle of complementarity can work fully. That principle means that ICC crimes should normally be investigated and prosecuted in the country in which they took place, or where there is a connection with a citizen of that country. Incorporating those crimes in exactly the same terms as in the Rome statute means that the UK will always be in a position to investigate and prosecute allegations made against UK nationals or residents.

Part 2 provides for assistance to be given by the Scottish justice system to the ICC. That is a requirement of the statute and includes a variety of measures, ranging from taking evidence to locating and freezing the proceeds of ICC crimes. Many of the practical details are described in schedules 4 to 6.

Part 3 provides for the enforcement of sentences and orders. The enforcement of orders for fines, forfeitures and reparations against those found guilty by the ICC is an obligation under the statute and the provisions in part 3 will allow us to meet that obligation. Although states that ratify the statute are under no obligation to accept ICC prisoners, it is important for the court to have a list of countries that are willing to accept those prisoners, given that it will not have its own prison. It is perfectly reasonable and appropriate for Scotland to help out in that regard. A request from the ICC to take a prisoner would come first to the UK Government. Thereafter, if it was thought that it was suitable for such a prisoner to serve his or her sentence in Scotland, the secretary of state

would consult the Scottish ministers, who would have the final say on whether the prisoner was to come here.

Part 4 deals with administrative matters. For example, it includes a provision to make commencement orders and defines the terms used in the rest of the bill.

I have mentioned some of the schedules. To complete the summary of the bill's provisions, I should also mention schedules 1 and 2, which reproduce the ICC crimes from the Rome statute, and schedule 3, which details the rights of the accused during an investigation.

I know that the matter of universal jurisdiction has been the source of considerable discussion within the committee and receives a deal of attention in the committee's report. It is undoubtedly a key issue and it certainly deserves the Parliament's attention in the debate.

Some have argued that we should take universal jurisdiction—that is, we should be willing to investigate and prosecute all ICC crimes, regardless of where they are committed or by whom they are committed. It is said that that would have the merit of dealing with a range of difficult situations in a relatively straightforward and simple way. However, in the view of ministers and in the context of the legislation, that is not the best way forward.

In evidence to the committee, we set out three key arguments, which are summarised in the committee's report. First, universal jurisdiction is not consistent with the traditions of Scots law, which is based on territorial principles. Secondly, we have taken universal jurisdiction in the past only where it was required by international treaty. Thirdly, we have no wish to take universal jurisdiction in this case, as we do not think it appropriate to assume the role of global prosecutor. I will take this opportunity to expand on those arguments a little further.

On the issue of the traditional approach taken in Scots law, it is instructive to note what the Justice 2 Committee report says, at paragraph 25, on the importance of maintaining

"internal consistency within domestic law, rather than trying to harmonise with the International Criminal Court in circumstances where that is not required".

We all agree that such an approach is highly commendable and I suggest that it should also extend to the issue of jurisdiction, where the fundamental point is that Scots law, unlike the law of a number of other jurisdictions, is based on the premise of territoriality, not universality.

**Christine Grahame (South of Scotland) (SNP):** What evidence did the Minister for Justice and his team take on universal jurisdiction prior to

presenting the bill?

**Mr Wallace:** I am not quite sure what Christine Grahame means by "evidence". The consideration that we gave to whether the notion of universal jurisdiction should be incorporated in the bill related to a number of points of principle. A key principle is that the application of universal jurisdiction is not the part of the tradition of Scots law—the tradition of Scots law is territoriality.

**Christine Grahame:** Perhaps I should clarify my point. Whose views did the minister seek in relation to universal jurisdiction and the Scottish legal system and practice before he made the decision not to incorporate it into the bill? In the evidence that the Justice 2 Committee took, only the ministerial team was opposed to universal jurisdiction—everyone else was fairly relaxed and some witnesses were quite positive about it.

**Mr Wallace:** I do not think that one needs to seek views on a matter that is a principle of Scots law, and this is about the principle of territoriality, on which Scots law has been based for generations. That principle is part of our law and we did not think that it required to be changed, particularly as there was no requirement under the treaty to have universal jurisdiction. I accept that the principle of universal jurisdiction—

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

**Mr Wallace:** I would like to develop my point—I will come back to Margo MacDonald.

**Ms MacDonald:** My question is on this point.

**Mr Wallace:** All right.

**Ms MacDonald:** We would like to think that that decision was taken for the reason outlined by the minister—that is, on the basis of the territorial principle in Scots law—rather than because universal jurisdiction was not included in the United Kingdom International Criminal Court Act 2001. I start from an even more fundamental principle than that contained in Scots law: doing the right thing.

**Mr Wallace:** The fact that we are legislating in this Parliament is indicative that we believe that the matter is properly for the Scottish Parliament. Given our distinctive legal system, it is right that we should legislate and that considerations should be based in Scots law.

As I indicated, the tradition of Scots law is territoriality. If, for example, a Scot is murdered on a tourist trip to a foreign country, traditionally we have not sought to extend jurisdiction in respect of that murder. The case has been left to the territorial jurisdiction of the country where the murder took place. There have been some exceptions in highly specific instances where

action has been required by treaty commitments that the UK has entered into.

The Rome statute represents a consensus in the international community. If the consensus was that countries should take universal jurisdiction, that would surely have been required by the statute. It is not required and we should take universal jurisdiction only where it is the clear will of the international community as expressed by international treaty. The Rome statute represents the clear will of the international community after many years of careful deliberation and discussion by experts in international law and it does not stipulate universal jurisdiction.

**Ms MacDonald:** Legal experts carried out much research into universal jurisdiction in compiling the Rome statute. The statute is in many respects a hybrid measure involving politics and law. Political considerations entered into the framing of the original Rome statute. The fact that the United States, for example, would never have accepted universal jurisdiction at that stage coloured the determination that eventually led to the statute as published. However, we can go back to first principles and say that it is much better to have universal jurisdiction if we wish to pursue international criminals in an equitable fashion.

**Mr Wallace:** The basis of the bill is the implementation of an international treaty. Inevitably, in any negotiation of an international treaty, there is give and take and detailed and complex negotiations. We are honouring not only the spirit, but the letter of the international treaty. In doing so, we are showing ourselves to be good members of the international community and we are going along with the consensus—the agreement that allowed the treaty to be signed and that will in the near future, I hope, allow it to be ratified by enough member states to be up and running.

If the international community thought that the best approach to deal with the crimes in question was for individual countries to take universal jurisdiction, there would be no need for the establishment of a permanent international criminal court, as states could prosecute the nationals of any country for offences committed anywhere. Universal jurisdiction and an international court are alternative approaches. The consensus was that issues are best dealt with on an international rather than on a unilateral basis.

There is a risk that widespread universal jurisdiction could undermine the ICC. That could happen if countries with universal jurisdiction decided, for example, that they were not content with the decision of the ICC prosecutor not to proceed in a particular case and took action themselves. It is not hard to see how just a few such actions could work to undermine—perhaps

unwittingly and without intent, but nevertheless in real terms—the position and legitimacy of the ICC as the court that deals with war crimes.

There is also an issue of resources and expertise. Whereas individual countries would face enormous practical difficulties in mounting an investigation and prosecution of a crime that was committed in a remote location with which they had no connection, the ICC, as a permanent organisation, will—perhaps unfortunately—quickly build up expertise in such potentially complex investigations and prosecutions. In such cases, there could be enormous difficulties for the Scottish criminal justice system, with its strict time limits on bringing proceedings. If we were to go down the route of universal jurisdiction in the context of ICC crimes, we could come under pressure to proceed against individuals with little or no connection with Scotland. Inevitably, collecting evidence in such circumstances would be complex and there would always be the danger that a case had to be abandoned if, for instance, the 110-day time limit could not be met.

**Phil Gallie:** The minister will be aware that there have recently been considerable pressures on the Crown Office and the prosecution service in getting cases in our own jurisdiction into the courts. What priority will be given to the ICC over and above our priorities in dealing with difficulties in this country?

**Mr Wallace:** As I indicated, that is one reason why—in terms of the volume of work that could be required—it is not appropriate to take universal jurisdiction. In the bill, there are some obligations on us to facilitate the work of the ICC. As good, upstanding members of the international community, we do not enter into such obligations lightly. We would make every endeavour to ensure that ICC requests that are facilitated and made legal by the provisions of the bill are met with timeously and with proper diligence.

**Phil Gallie:** I accept the minister's good intent, but he must recognise that we have problems in our own court and procurator service. I asked him what priority our cases would be given. Would he consider international obligations before domestic obligations?

**Mr Wallace:** I do not think that this is a question of either/or—it is a question of both/and. It is highly unlikely that any request will be such that the entire resources—the manpower and the womanpower—of the Crown Office will have to be given over to dealing with the case. If there is a request for particular information and procedures, that would not be just for the Crown Office. The police might also be involved. Such a request would be treated seriously and be given a good, fair wind, but it is not a question of setting everything else aside or putting a case to the

bottom of the pile. A lot of other work would have to be done, but the request would be dealt with properly, timeously and with the proper diligence that one would expect of a country that takes seriously the international obligations into which it enters.

It has been suggested by some that, if we do not have universal jurisdiction, Scotland could become a safe haven. That will not be the case. Where there is a connection with Scotland, through residence or nationality, alleged war criminals could be prosecuted for the crimes detailed in schedule 1 to the bill. On Mr Gallie's point, where a suspected fugitive is wanted by the ICC, he or she could be arrested and transferred to The Hague. There are arrangements for an expedited procedure leading to provisional arrest where the ICC believes that there are urgent grounds to act and that the person sought is either in the UK or simply on his way to the UK. In addition, measures have been strengthened to prevent such undesirable individuals from entering the country and enhanced extradition arrangements apply to those being sought for such crimes.

The Justice 2 Committee report makes a number of interesting observations of a more general nature. It comments on how the interface between our domestic law and that being established at the ICC will develop in practice and on whether there are implications for domestic proceedings in relation to the age of criminal responsibility, ICC case law and general ICC rules on procedure and evidence.

By and large, the ICC will operate according to the Rome statute and its own rules of procedure and evidence—which have been laid out in draft—while we will continue to investigate and prosecute those new offences in line with our own traditions where a case is brought before the Scottish courts. The statute does not provide for prosecution of those under 18, for instance, but we are clear that the age of criminal responsibility in Scottish courts will remain as it is for other domestic crimes. The introductory section of the Preparatory Commission for the International Criminal Court's draft rules of procedure and evidence helpfully states:

"The Rules of Procedure and Evidence of the International Criminal Court do not affect the procedural rules for any national court or legal system for the purpose of national proceedings."

The Law Society of Scotland has been active in scrutinising the detail of the bill. It made a number of helpful suggestions in its evidence and, as Iain Gray indicated in his 17 May written submission to the Justice 2 Committee, the Executive is actively considering a number of amendments in the light of the society's comments.

Points have been made about the timing of the

bill and the consultation process. Scotland was fully involved in the UK-wide consultation exercise that took place last year. That was the most appropriate way to proceed in this instance, given that many of the most important issues—such as arrest and surrender—have UK-wide implications and that the general principles behind both bills were identical. A total of 19 individuals and organisations in Scotland were invited to comment, including those in the academic community and interested non-governmental organisations.

It is regrettable that the timetable has ended up being so tight, but a number of factors outwith our control are at work. For instance, when the initial date of July 2002 was set for the first 60 countries to come on board, most commentators felt that that was an unrealistic target. However, the international community has warmed to the proposed ICC with welcome enthusiasm and, as I have said, we are already more than halfway to the target, with several more states on the verge of ratifying.

Moreover, the legislation proved to be very complex, involving a number of cross-border issues, both reserved and devolved, which were eventually the subject of the Sewel motion in the Parliament on 18 January. As it is essential that our bill and the UK act mesh together to give watertight provision across the UK, it was crucial that we took account of the arrangements in the UK bill—as it then was—and were in a position to take action in the light of significant amendments that were made to the UK bill during its passage through Westminster. It was thus inevitable and, indeed, desirable in the interests of producing robust legislation that our bill was introduced after the UK legislation and that our bill followed the UK legislation.

Time constraints notwithstanding, the Justice 2 Committee has produced a lucid and detailed report. It has managed to point up for the Parliament the key issues in this important bill and I pay tribute to the committee and the clerks for their work. I am glad that the committee approves the general principles of the International Criminal Court (Scotland) Bill and I note that it strongly believes that the establishment of an international criminal court will be of great benefit to Scotland and the international community. I am sure that all members would endorse such a statement. I commend the motion to the Parliament.

I move,

That the Parliament agrees to the general principles of the International Criminal Court (Scotland) Bill.

09:51

**Roseanna Cunningham (Perth) (SNP):** It is



worth reminding ourselves, at this early stage in the debate, of the overriding principle that has driven the whole idea of an international criminal court. Who better to quote than Kofi Annan, the UN Secretary General? He has stated:

"In the prospect of an international criminal court lies the promise of universal justice. That is the simple and soaring hope of this vision. We are close to its realisation. We will do our part to see it through till the end. We ask you ... to do yours in our struggle to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity."

Only then will the innocents of distant wars and conflicts know that they, too, may sleep under the cover of justice; that they, too, have rights, and that those who violate those rights will be punished."

It is worth emphasising the phrase that

"no ruler, no State, no junta and no army anywhere can abuse human rights with impunity."

That is, of course, a lofty ideal. Perhaps we will always fall short of reaching the ideal, but I hope that we agree that it is an ideal worth striving for. An international criminal court should be part of that process.

As an effective and responsible Opposition in this Parliament, we will debate the issues and scrutinise the proposals. However, we will not forget the higher purpose as laid out so clearly in that quotation from Kofi Annan. His statement can be taken as an exhortation to the legislatures of the world to finish the job that could be described as having been started in 1948 when the UN General Assembly, in the wake of the Nuremberg and Tokyo trials after the second world war, first recognised the need for such a court. The pity is, I suppose, that it has taken so long to reach the point that we have now reached.

A total of 139 countries have signed the Rome statute, which was adopted in 1998. The policy memorandum for the bill tells us that, as of 12 February 2001, 29 states had ratified—including South Africa, whose President Thabo Mbeki addressed this Parliament yesterday. I understand that, to date, some 33 of the 139 signatories have now ratified their original signature. The UN's website tells me that, as of 21 May, that number was up to 32. The 33<sup>rd</sup> country on the list will be Ireland, whose Taoiseach will address us next week. Members could be forgiven for missing the Irish agreement, which took place last week. All the publicity about the referendum focused on the Irish electorate's reaction to the Nice treaty. There was little or no media interest in the constitutional amendments that were agreed relating to the international criminal court.

Meanwhile, at the Westminster end of the legislation was one of those bills that were signed off in the rush to beat the election deadline. I hope that that does not reflect a view in the UK

Government that the bill was just something to be gotten over quickly. In this Parliament, we still have important issues to deal with and important questions to consider. One of those issues is the one that the minister dealt with at some length—universal jurisdiction.

I am concerned that the Justice 2 Committee felt constrained by the lack of time available for scrutiny of the bill. A whole section of its report is entitled "Time constraints and quality of scrutiny". Although I recollect from my time on the Justice and Home Affairs Committee that that was a perennial issue, it is nonetheless a matter of concern that the issue is raised time and again. I understand that the reason why things moved so quickly was to ensure that the UK was among the first 60 countries to ratify—it was seen as important to be at the heart of the process of establishing the court. However, I wonder whether that could not have been achieved a bit more efficiently and in a slightly better fashion that would have allowed fuller scrutiny of the bill. After all, we are introducing our bill considerably later than the one that has gone through Westminster. I wonder whether another few weeks would really have made an enormous difference.

The Justice 2 Committee's report specifically highlights the effect that the lack of time has had on consideration of the question of universal jurisdiction—a concept that is described in the report as the

"most complex, and most frequently raised, issue before the Committee".

Putting it as simply as I can, I would say that the bill provides for offences to be prosecuted in Scottish courts if they are committed in Scotland or outwith the United Kingdom by UK nationals or UK residents. Crimes committed outwith Scotland by a non-UK national or resident could not be tried in Scotland even if the accused was currently present in Scotland. That is my understanding.

The minister is correct: the Rome statute does not require states to adopt universal jurisdiction. However, it does not prohibit it. As the committee's report makes clear, the bill is consistent with the minimum standard required for compliance. We should be aiming for better than the minimum standard. If we can see an opportunity for improvement, we should take it and be one of those countries that is taking a lead in the development of international law.

It is telling that the only witness whom the committee heard from on the issue who opposed the adoption of universal jurisdiction was the minister. All the others who addressed the issue were of the view that universal jurisdiction should be adopted. The Medical Foundation for the Care of Victims of Torture, the Scottish Human Rights

Centre and, indeed, the Law Society of Scotland all identified loopholes that could be addressed by the introduction of universal jurisdiction. Dr Iain Scobbie of the University of Glasgow made it clear that universal jurisdiction was already an accepted principle in international law for torture, war crimes and crimes against humanity. In the written submission from the Scottish Human Rights Centre, Dr Scobbie concludes:

"In sum, international law appears to be developing in favour of the assertion of universal jurisdiction over international crimes committed during armed conflicts, whether these are international or non-international. The intention of the authors of the ICC Statute aims at the suppression of these crimes using prosecution at both the domestic and international levels. It would be in accordance with this if the Scottish Parliament were to assert universal jurisdiction over ICC crimes in the legislation it enacts."

We have to ask why Scotland should not follow the path that has been taken by the likes of Finland, New Zealand, Belgium, Spain and Sweden in opting for universal jurisdiction. Is the minister saying that those countries are wrong to do what they have done? Are we to pressure them into reversing the decisions that they have made in opting for universal jurisdiction? Surely, at this stage of the bill, the real issue is whether sufficient time has been made available to explore the issue in detail. This morning's debate suggests that that has not been the case. I suggest that that lack of scrutiny and detailed consideration is the real problem. The committee could have had a lot more time in order to go into the issue in the detail required.

Another issue on which all the organisations that gave evidence expressed concern was the absence of any mention of a UN trust fund for victims. Given the importance that this Parliament has attached in recent months to the rights of victims, it would be useful to have confirmation that the UN fund will indeed be created and that no separate legislation will be needed in Scotland.

When the Parliament approves the bill, as I am sure that it will, it will not be the First Minister's name that will go on the treaty. Although this Parliament is responsible for the administration of justice in Scotland, the UK speaks for us on the world stage. I urge the Minister for Justice to ensure that the distinctive nature of the Scottish legal system and the role of this Parliament are recognised by Westminster when the UK ratifies the treaty on the international criminal court. That should include giving Scottish judges due consideration in the nomination process for the court's judiciary.

With independence, Scots law would be individually recognised in the international criminal court's procedures. In the meantime, we can only hope that, when Westminster speaks on our behalf, Scots law is given equal weight with

English law in the UK's negotiations on procedure and the appointment of judges. I am pleased to note that the Justice 2 Committee report recognises the importance of that point and that, because of the difference between English and Scots law, the terms "UK courts" or "UK law" are meaningless concepts.

Many of the countries that have ratified the treaty have issued declarations in which they make clear the basis on which the international criminal court should dovetail with their own legal systems. Norway stated that its Ministry of Justice and the Police is the designated channel for the transmission of requests from the international criminal court. Spain declared

"that, without prejudice to the fields of competence of the Ministry of Foreign Affairs, the Ministry of Justice shall be the competent authority to transmit requests for cooperation made by the Court".

Finland declared

"that requests for cooperation shall be transmitted either through the diplomatic channel or directly to the Ministry of Justice, which is the authority competent to receive such requests."

I see no reason why the declaration from the UK Government should not make it clear that the Scottish Parliament or the Scottish Executive justice department is designated as the competent authority to deal with requests from the international criminal court in matters relating to Scotland. I hope that the minister will comment on that in his closing remarks.

In an earlier debate, I expressed concern about the extent to which we were allowing Westminster to legislate for us on this matter. Today, I have expressed my concern about the amount of time that is available for scrutiny of the bill. That concern is shared by the Justice 2 Committee. However, I understand and appreciate the desire to be one of the first 60 countries to ratify—a desire that does not appear to be shared by one of the countries that we all agree should be on board. Unfortunately, the USA—the country that wants to establish itself as the world's policeman—looks as though it will turn its back on the need for a world court, just as it seems to want to turn its back on so many of its previously agreed international commitments.

As Bush junior visits Europe, it is apparent that his language about the Kyoto treaty is softening. Perhaps that is just cosmetic; perhaps he does not realise that people in Europe are perfectly capable of reading and hearing the speeches that he makes to a domestic American audience. However, if the softer language is indicative of a shift in his outright opposition to Kyoto, I sincerely hope that he is facing pressure as strong—if less public—over his backtracking from the international criminal court.

The irony is that only through an international criminal court will there ever be a chance of bringing people such as Saddam Hussein and his deputy Tariq Aziz to justice for their actions during the Gulf war. Of course, bookshops are currently selling a powerful polemic against Henry Kissinger, which makes a case for his indictment as a war criminal because of decisions such as the bombing of Cambodia. Perhaps US nervousness about an international criminal court is based on the fear that the court could just as easily be used against former allies such as General Pinochet, never mind Henry Kissinger.

That belief—if I may refer to Phil Gallie's comments—might lie behind the reluctance to agree in practice something that countries have agreed in the past in principle. We know that agreeing with things in principle can be easy. Facing up to the reality of what that might mean in practice is when the chickens come home to roost. I suggest what lies behind America's reluctance is the fact that it would not necessarily be immune to interest from the international criminal court.

Nonetheless, it is undeniable that the international criminal court would be immeasurably strengthened by US ratification. I hope that the UK Government will keep up the diplomatic pressure to get the US on board. Either way, the truth is that the international criminal court will be a huge step forward in international justice.

Jose Ayala-Lasso, the former United Nations High Commissioner for Human Rights, said that

"a person stands a better chance of being tried and judged for killing one human being than for killing 100,000."

That has always been the case, but we should be doing all in our power to change that balance. The international criminal court will do that.

10:05

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** Not unexpectedly, after our marathon sitting yesterday, our numbers are somewhat depleted today. Perhaps the opportunity to debate the stage 1 report on the International Criminal Court (Scotland) Bill this early in the morning has failed to entice many colleagues beyond the Justice 2 Committee to join us. That is a pity, because we had a number of interesting evidence-taking sessions. One of the features of sitting on the former Justice and Home Affairs Committee, or the new Justice 1 Committee or Justice 2 Committee, is the frequency with which we see regular contributors to our evidence-taking sessions. We think of them fondly as our usual suspects, and we are genuinely grateful to them; however, for stage 1 of the International Criminal Court (Scotland) Bill, we were advised in our evidence sessions by people and sources who

were new to us.

As a side issue, it is about time that we were more aware of the financial burden that we place on charities when we ask them to give evidence to committees. We were pleased to welcome in person Dr Iain Scobbie, who did not have far to travel, but Mr Sherman Carroll of the Medical Foundation for the Care of Victims of Torture travelled some distance.

Members who have read our report will know that the Justice 2 Committee was concerned about the time scale of the bill, as Roseanna Cunningham said, particularly in the light of the date of introduction at the Westminster Parliament. We understand the eagerness to be among the first 60 states to ratify the treaty, but that is not an excuse to expect the committee to gallop through the bill.

While the International Criminal Court (Scotland) Bill is broadly similar to the UK legislation, it must be borne in mind that we are dealing with a distinctive legal system. Many of our inquiries prior to stage 1 centred on protecting the integrity of our current practice. We wanted to ensure that there was no seepage to the detriment of the Scottish legal system. For those who are not legally qualified, that was technically demanding. For my part, I am happy to admit that. I leave to others the opportunity to take members through the minute details of those aspects. I hope that there will be some takers.

Now to the main issues in the bill. The universal approval of the bill by those who gave evidence was welcome, and allowed us to go into greater detail in examining its finer points. Universal jurisdiction—this is the third time that it has been mentioned, and I am sure that it will be mentioned again—was a discussion point at every meeting, and for a good reason: it is not a requirement of the Rome statute, but neither does the Rome statute prohibit it. I suppose that sounds like wanting to have one's cake and eat it. We are presented with the opportunity for Scottish courts to prosecute offences such as genocide, crimes against humanity and war crimes if they are committed in Scotland, or beyond UK borders by UK nationals or residents. Here follows the technical part, which caused the committee much deliberation. I quote from the Justice 2 Committee's report:

"Crimes committed outwith Scotland, by a non-UK national or resident, could not be tried in Scotland even if the accused was currently present in Scotland."

Defining residence is no easy matter. I remember from my previous experience in the Inland Revenue that under tax legislation, 40 days is the critical figure—so critical that people would provide airline tickets showing dates of departure and return to justify why they should not be liable

for UK tax. However, the concept of residence is not a regular feature of criminal law here. The issue was eased somewhat on the basis of evidence from the Medical Foundation for the Care of Victims of Torture, which presented another option:

"Universal jurisdiction would allow the pursuit of any person suspected of an ICC crime, regardless of their connection with Scotland. There are two different forms: 'pure' universal jurisdiction where an arrest warrant could be issued regardless of whether the suspect was in Scotland and a more limited 'presence test' which requires the person (if not a UK national or if the crime was not committed in Scotland) to be present in Scotland before an arrest warrant could be issued".

We were urged several times to go the whole hog and opt for universal jurisdiction. The Law Society was especially encouraging with its advice that

"we should not be shy about embracing it if there is the political will."—[*Official Report, Justice 2 Committee*, 15 May 2001; c 187.]

Perhaps that is the acid test. The weight of opinion fell heavily in favour of universal jurisdiction to close potential loopholes, and it appears that the concept is readily accepted internationally, as several countries have plumped for it.

**The Deputy Minister for Justice (Iain Gray)** rose—

**Scott Barrie (Dunfermline West) (Lab)** rose—

**Mrs McIntosh:** I will take Scott Barrie's intervention first.

**Scott Barrie:** Sorry, minister.

Given what Lyndsay McIntosh has said and given that she has taken members through the evidence that the Justice 2 Committee took, am I right to think that she supports universal jurisdiction?

**Mrs McIntosh:** I am waiting to hear why we should not support the idea. I am waiting to be advised and informed. That is part of the process. We will hear about that at stage 2, but we have the opportunity to debate the issue today.

The deputy minister was next to intervene.

**Iain Gray:** My intervention follows on from Scott Barrie's. I want to ask Lyndsay McIntosh—

**Mrs McIntosh:** Have I clarified the matter? I said that the issue was part of the debate.

**Iain Gray:** Surely Lyndsay McIntosh has answered her own question in considering the evidence that was provided. Is there not a conflict between the desire to maintain the consistency and traditions of Scots law and the idea of moving towards universal jurisdiction, which is manifestly not part of those traditions or the principles behind them?

**The Deputy Presiding Officer:** I make it clear that members should not speak to one another across the chamber, except through interventions that a member has accepted.

**Mrs McIntosh:** I apologise, Presiding Officer.

It was a surprise that the Deputy Minister for Justice was not persuaded to accept the point of view that I described. The Medical Foundation for the Care of Victims of Torture foresaw cases that the international criminal court might be unable or unwilling to take up, and cited the example of an aid worker from Scotland who could be caught between two stools. Given all that the Justice 2 Committee heard in evidence, I hope that when the deputy minister sums up, he will take the opportunity to convince members beyond doubt that universal jurisdiction is not the best way forward.

Scottish Conservatives welcome any measure that will assist in bringing to book those who have committed crimes against humanity. The international criminal court will be permanent and will be situated in The Hague. It will be complementary to national judicial systems. The court will try individuals, not states. A prosecutor will be authorised to initiate proceedings on his own motion. The court will have jurisdiction over crimes that are committed in internal armed conflict and will give no immunity to heads of state or other Government officials.

Conservatives want to ensure that the international criminal court remains true to four principles. The permanent court should be a powerful deterrent. Its broad reach should end accusations of selective justice. The Justice 2 Committee considered that in great detail, because we had plenty of such examples to consider. We want to ensure that the court is based on global fundamental principles of justice and that it can respond quickly as a permanent institution.

On that basis, we offer the bill a fair wind and look forward to further examination—

**Mr Jim Wallace:** Will the member give way?

**Mrs McIntosh:** I am a few words from the end of my speech.

We look forward to further examination at stage 2. Before I finish, I say that I am terribly sorry, but I will not be present to hear Tavish Scott's speech. I do not mean that to be disrespectful.

10:14

**Pauline McNeill (Glasgow Kelvin) (Lab):** It is apt that we debate the principles of the international criminal court on the day after the momentous occasion of President Mbeki's

addressing the Parliament and reminding us of our international obligations. We should all be enthusiastic about such a historic proposal for legislation, because, as Jim Wallace said, it has taken efforts since 1948 to get this far.

We are attempting to ensure that no safe havens exist for international criminals who are guilty of crimes against humanity, genocide or war crimes. Although each country's legal system is respected, the meeting of those jurisdictions to form a permanent international criminal court is a major step forward in international co-operation. It is pleasing that Scotland is to be part of that process.

It must be noted that the UK Government has worked especially hard in pressing for advances in the definition of war crimes. The British delegation achieved much in the negotiation of the Rome statute. Crimes now include those that are committed during non-international conflict. The enlistment or conscription of children under 15 is made a war crime. Some sexual and gender-related offences, such as the use of mass rape as an instrument of ethnic cleansing, are criminalised. Crimes against humanity also now include torture, enforced disappearance and forced pregnancy.

The court will be complementary to national judicial systems and will be able to assume jurisdiction only after a national system has determined whether a prosecution should take place.

It is fair to say that the Justice 2 Committee felt that the bill raised several complex issues that, on the face of it, seemed quite straightforward. I must admit that when we heard evidence, it took a while for the penny to drop on several of those issues. I know that I was not alone in feeling that.

Like any other court, the international criminal court will require rules and procedures to be adopted. We did not go into much detail about that. We simply noted that we would need to keep our eye on that, because it has been said that in the development of international criminal court jurisprudence, the court will adopt the principles of the main legal systems of the countries that have ratified the Rome statute. Therefore, it is likely that the court will adopt some of the practices of those legal systems.

**Phil Gallie:** I thank the convener of the Justice 2 Committee for giving way. It seems that there was a feeling in the Justice 2 Committee that it lacked the time to pursue some of the important issues to which Pauline McNeill referred. Before stage 2 scrutiny of the bill by the committee could the committee take further evidence and probe the issues more to the bill's overall benefit?

**Pauline McNeill:** As we said in our stage 1 report, we felt that we were under a bit of pressure

to complete the report. However, we understood the reasons for the time scale. We want to be one of the first 60 countries to ratify the Rome statute.

It would not be possible to take more evidence that would help the committee on the point that I made about rules and procedures, because we would be trying to predict how the court would work. We simply say that we must monitor how the court develops its procedures. I will make the point later that we hope that some of the good legal practices in Scotland will be taken up through the adoption of some of the system's legal principles.

Eighteen judges with relevant qualifications will sit in the international criminal court full time and will be chosen by election. That means that a UK judge may not be a member of the court. However, as we might be one of the first 60 countries to ratify the statute, it is a distinct possibility that a UK judge will be a member. A Scottish judge may not be present, but it is important to note that the court's decisions will be those of the court and not those of the member states. Therefore, it is not absolutely necessary to have a UK or Scottish judge there. However, as witnesses told the committee, several eligible Scottish candidates exist, and the possibility remains that a UK judge could be Scottish. I look forward to seeing the outcome of that.

We urge Scottish ministers to make appropriate representations to UK ministers to reflect the fact that Scotland's system is regarded as one of the principal legal systems in the world. Roseanna Cunningham spoke about that.

Witnesses raised several technical points. I do not intend to cover them all. The Justice 2 Committee dealt with some of those issues in correspondence, because they concern a bit of tidying of the bill. The issues include points about the role of the Lord Advocate as opposed to the role of Scottish ministers, the inclusion of the Court of Session and the Court of Session's role as opposed to that of the criminal courts.

The Justice 2 Committee had some issues with the age of criminal responsibility. It took us some time to understand that domestic law on that matter would not be changed by adoption of the bill. Members will know that, under Scots law, the Lord Advocate can prosecute all those in Scotland above the age of eight. Those above the age of 16 can be prosecuted in the Scottish courts, unless they are the subject of a supervision order. However, it is important to note that Scots law will not change as a result of its adoption of international criminal court law. That fact took the committee about two meetings to note. We were concerned that there would not be seepage into Scotland from law that would be decided by the international criminal court.

That said, we took the view that, perhaps in 20 or 30 years' time, when the international criminal court is more established, there would be seepage into Scots law, as Scottish courts would be required to implement the decisions of the international criminal court. Those decisions will be influenced by other legal systems.

**Christine Grahame:** With respect, the Scottish courts are not required to follow the decisions of the international criminal court. The evidence that we heard was that that court would be persuasive.

**Pauline McNeill:** It would be fair to say that that was one of the points that was made. I wanted to make the point that, in years to come, there could be some seepage. That is not a bad thing, as we can always learn from other legal systems.

We have had a sizeable debate about the issue of universal jurisdiction because, as has been said by other speakers, we heard from a number of witnesses who took the view that it was important. Had we had more time to take evidence, we might have been able to take evidence from witnesses who would have given us another point of view. I am sorry that we were not able to do that. Speaking as an individual, I have not been convinced by the argument about universal jurisdiction. However, it has to be acknowledged that the witnesses that we heard from strongly urged the Executive to incorporate universal jurisdiction into the bill.

**Ms MacDonald:** I agree with Pauline McNeill, the convener of the Justice 2 Committee, that we were under pressure of time. However, although we heard evidence of excellent quality, does she agree that it would have been nice to have heard from someone from New Zealand or Canada or some of those other strange places that have adopted universal jurisdiction?

**Pauline McNeill:** I am not sure what the Parliamentary Bureau would think of the committee calling witnesses from New Zealand or Canada. On the other hand, if the member is suggesting that the committee could have gone to those countries, that might have found favour with the rest of the committee.

I simply want to make the point that, had we had more time, we might like to have heard from other witnesses. Several witnesses said—

**Mr Lloyd Quinan (West of Scotland) (SNP):** Will the member take an intervention?

**Pauline McNeill:** No, if the member does not mind I would like to get on with my speech.

Several witnesses said that there is always a danger that Scotland will become the safe haven in the world. I do not accept that argument. If only a minority of countries have signed up to universal jurisdiction, it must follow that any country that is

not signed up could also be a safe haven for international criminals. The Scottish Human Rights Centre and others have urged Scotland to take a lead. That is a perfectly acceptable request, as it is acceptable for us to go down that road, even although England and Wales have not adopted universal jurisdiction. Jim Wallace rightly said that one consideration for the committee is that it would be contrary to the principles of Scots law to adopt universal jurisdiction. That has to be a consideration, given that the committee said that it wants to protect the principles of Scots law.

One of the questions that gives rise to concern is the scenario that has been put to us many times: a Scottish national who has played a minor role in a war crime may be living in Scotland alongside someone who has had a more senior role in a war crime and who cannot be prosecuted by the Scottish courts. It is a nonsense to ignore the diplomatic issues that would arise if Scotland gave itself the powers to prosecute a person who is not a UK national. As France is not signed up to universal jurisdiction, if we were to prosecute a French national, there would be international problems with France as a result.

**Christine Grahame:** I am unclear as to whether Pauline McNeill is speaking as convener of the Justice 2 Committee. The last point that she made is not the view of the committee.

**Pauline McNeill:** When I began to speak about universal jurisdiction, I made clear that the views that I was about to express were my personal views. The committee report shows that the committee was undecided on that matter. We wish to press Scottish ministers today to give us some convincing arguments as to why Scotland should not adopt universal jurisdiction.

**Mr Jim Wallace:** Will Pauline McNeill also accept that the idea of the safe haven cannot apply if, under the UK act, a request is made by the international criminal court to execute a warrant for the arrest of a person who is to be prosecuted? Such a warrant can be effected in Scotland, as it can in any other part of the United Kingdom. One advantage of having an international criminal court is that there will be fewer safe havens, as the international criminal court will have its jurisdiction on a more universal basis.

**The Deputy Presiding Officer:** Before Pauline McNeill responds, I want to clarify that the debate is a Parliament and not a committee debate. Pauline McNeill is opening for the Labour party. I remind her that she is in her last minute.

**Pauline McNeill:** I said earlier that I do not accept that Scotland would be the only safe haven. However, there are a number of points on which ministers are to be pressed.

I return to Lyndsay McIntosh's point about residency. Given the problems of defining UK residency, if we are not to adopt universal jurisdiction we need to have guidance on how that will be adopted in practice. As yet, we have not had those answers.

The bill is important because taking part in the prosecution of international crimes is an important and progressive principle. A number of technical issues need to be addressed. We should continue to debate the issue of universal jurisdiction until we are satisfied that, if we adopt it, we will have done the right thing under Scots law, whether or not England and Wales have adopted that principle.

10:27

**Christine Grahame (South of Scotland) (SNP):** I, too, echo comments that have been made about the time constraints that led to difficulties for the Justice 2 Committee. I want to underline that committees cannot continue to be put into that situation. We had only two evidence-taking sessions, held on 9 and 15 May, on what is a complex matter, one that was made more complex because of the interaction with UK legislation.

In paragraph 9 of our report, we make a recommendation to the minister. We said:

"The Committee also recommends as best practice that, where there is parallel UK and Scottish legislation as in this case, both sets of legislation should be considered simultaneously. This would ensure compatibility between them and allow the highest level of scrutiny, to the benefit of both pieces of legislation."

I would like to hear whether the minister has considered that part of our report.

Much has been said on the subject of universal jurisdiction. At this stage in the debate, I pity the speakers who are coming behind me, as I do not know what will be left in the pickings. Dr Scobbie, reader in international law at the University of Glasgow, gave us interesting evidence on the subject of universal jurisdiction. He said:

"The trend is in favour of universal jurisdiction. The problems arise if we stay with the bill as drafted and go for a very vague notion of asserting jurisdiction on the basis of residence. What does residence mean? That is problematic. Residence means different things in different situations."

Dr Scobbie also highlighted the fact that a bill that covers universal jurisdiction is going through the Norwegian Parliament. He said:

"A coalition of non-governmental organisations put a strong argument to the Norwegian Parliament that Norway should adopt universal jurisdiction."—[*Official Report, Justice 2 Committee*, 9 May 2001; c 164.]

I say to Pauline McNeill that we could have made

a quick trip to Norway to take evidence. That would not have given us such a big bill as going to New Zealand.

**Michael Matheson (Central Scotland) (SNP):** A committee has used videoconferencing.

**Christine Grahame:** No. I do not want a videoconference. I want a trip. So far, as a member of the Justice 2 Committee, I have visited only prisons—in a professional capacity I hasten to add.

The problems of residence were put to us clearly in evidence. I quote from paragraph 17 of the report:

"The Law Society of Scotland noted that the difficulty with residence was that it was not a common concept in criminal law ... Residence is interpreted differently in different legislation ... for the purposes of taxation law."

I also refer to the quotation about universal jurisdiction that Lyndsay McIntosh included:

"we should not be shy about embracing it if there is the political will."—[*Official Report, Justice 2 Committee*, 15 May 2001; c 187.]

We are stuck at that point. The International Criminal Court Act 2001 has not dealt with universal jurisdiction. We are not being given an honest chance to explore or consider universal jurisdiction. That is my view.

The minister refers to paragraph 25 of the committee's report, which says:

"We consider it preferable that there is internal consistency within domestic law, rather than trying to harmonise with the International Criminal Court in circumstances where that is not required."

It is naughty of the minister to refer to that, because it is under the heading "Age of criminal responsibility". That was the area in which we were concerned about seepage. We were concerned about effecting such seepage, particularly in the current climate of opinion about the age of criminal responsibility. We were not referring to universal jurisdiction. We make the point clearly on universal jurisdiction that we did not have a proper opportunity to investigate it. I have no doubt that I and other SNP members will return to the matter at stage 2.

I have one final point, which is very important. It was made to us in passing. I do not know whether I can find it—I have so many bits of paper. I would like the minister to comment on the point because we did not follow it up. It is about extradition. Asked about extradition and extradition warrants, Dr Scobbie said:

"It depends on how a country's extradition system is set up. Currently, in the United Kingdom there is Executive discretion in deciding whether to extradite. I believe that the extradition law will be changed to remove that discretion."—[*Official Report, Justice 2 Committee*, 9 May 2001; c 165.]

We did not follow that up because of the constraints of time. The minister might like to comment on those remarks.

10:32

**Mrs Mary Mulligan (Linlithgow) (Lab):** As probably the newest member of the Justice 2 Committee, I found it interesting to be launched straight into the investigation into the International Criminal Court (Scotland) Bill. Listening to the speeches this morning, I note that we have all been quickly united by some concerns that have arisen. Members will forgive me if I repeat some of them. If we come at them from a slightly different angle, we may get to the bottom of some of the issues that remain.

The International Criminal Court Bill was introduced in Westminster on 14 December 2000. The International Criminal Court (Scotland) Bill was introduced to the Scottish Parliament on 4 April 2001. I listened to what the minister said in his opening comments about the timing of the two Parliaments' consideration of those bills. It might have been more satisfactory if the two Parliaments had been able to consider the bills at similar times. That would have affected two of the issues that have arisen in the debate. One is universal jurisdiction. As that was not included in the International Criminal Court Act 2001, it would be inconsistent for us to proceed with universal jurisdiction through our deliberations. I will return to universal jurisdiction.

The Scottish Parliament has prided itself on consultation on legislation. We hear that only two of the 45 submissions received on the International Criminal Court Act 2001 were from Scottish organisations: the Law Society of Scotland and the Faculty of Advocates. The Justice 2 Committee has been able to hear evidence from additional witnesses. It might have been more effective for our UK colleagues to have had that evidence before they dealt with the International Criminal Court Act 2001 under the Sewel motion that was moved in the Parliament on 18 January.

I stress that I do not want to take powers away from Westminster. I want the two Parliaments to be able to work together to create the most effective legislation.

I will raise the two issues with which we have had most difficulty. They have already been raised but are in need of further examination. The first is universal jurisdiction. The possibility of loopholes has been raised. For example, it has been suggested that if somebody comes to the UK but is not resident, the lack of universal jurisdiction would make the UK a safe haven. I agree with the minister's response to that. Because a claim of

residence would have to be interpreted in the courts, there are still discussions to be had on residence. That uncertainty may mean that the UK might not be seen as a safe haven.

Another possible loophole concerns two people who were involved in an offence, of whom one was resident and the other was not. They would have to be tried separately and might blame each other. That has happened in Scotland in recent years. We have not yet addressed that issue. Universal jurisdiction may address it.

Rosemarie McIlwhan from the Scottish Human Rights Centre said:

"The system would work if states tried only their nationals and residents".—[*Official Report, Justice 2 Committee*, 9 May 2001; c 155.]

However, she went on to say that universal jurisdiction would be of assistance. We still have some ground to cover on universal jurisdiction.

The other area in which we had difficulties was seepage. That came back to the age of criminal responsibility, as has just been mentioned. Dr Scobbie pointed out that

"all that means is that such people cannot be tried for crimes that are defined in the bill. People under 18 would still be liable for prosecution under common law."—[*Official Report, Justice 2 Committee*, 9 May 2001; c 161.]

There are still some issues about whether anything can be inferred on the age of criminal responsibility from the International Criminal Court (Scotland) Bill. The committee will need to discuss that further.

The establishment of the ICC is the right move. It can act as a deterrent or it can go to its full measures and try people. All the witnesses whom the Justice 2 Committee heard said that the establishment of the ICC was the right way to go. At stage 2, the committee will need to take further evidence and consider the issues that have been raised.

10:37

**Lord James Douglas-Hamilton (Lothians) (Con):** The Conservatives give a broad welcome to the international criminal court, which will bring justice to those who have committed crimes against humanity. We note that a court will be permanently situated in The Hague and that it will be in addition to and complement our own judicial system.

We understand that the international criminal court should be true to four principles. First, it should ensure that the work of the permanent court constitutes an effective deterrent to those who are minded to commit atrocities. Secondly, the court's jurisdiction should be sufficiently wide to end the charges of selective justice. Thirdly, the



court should be based on fundamental principles of justice that are accepted globally. Fourthly, the court must be able to respond quickly in its capacity as a permanent institution.

**Mr Quinan:** Will the member give way?

**Lord James Douglas-Hamilton:** I will give way briefly. I have a lot to say.

**Mr Quinan:** I simply want to add to the list of four basic principles. Does Lord James agree that completion of the abilities of the ICC would require the reconstitution of the war crimes unit of the police force?

**Lord James Douglas-Hamilton:** That is for the minister to answer. To the best of my knowledge, if a crime such as Lockerbie is committed in the Scottish jurisdiction, the police have the resources to follow it up effectively. Whether there should be any adjustment to police structure is definitely for the minister to answer in his closing speech.

In our cautious support of the principle of the ICC, we are supporting the development of the precedent that was laid down at the end of the second world war, when the international court at Nuremberg tried and sentenced the Nazi war criminals. I believe that we were right to do that. Indeed, if we had not taken that action there would have been attempts to settle old scores by those who had been subject to bondage, cruelty, persecution, genocide and abominable treatment of all kinds. It is right that the ICC should exist, so that victims of oppression, degradation and inhumanity should not feel compelled to take the law into their own hands. The existence of the ICC makes it much easier for scars to be healed over a prolonged period, because justice is done and seen to be done.

Nonetheless, the bill gives rise to a number of questions. I will ask some of them. Will victims be able to bring their plights to the ICC and will prosecutions be launched on their behalf if circumstances warrant that? Will there be a sifting process to ensure that when an alleged victim has committed a crime, that victim, or victims with a grudge, cannot raise cases? Examples of that might be armed robbery or when police officers who are being threatened defend themselves. Surely if members of the army or the police defend themselves when lack of action would have cost them their lives, they should not be arraigned before the international court. I would be grateful if the Deputy First Minister will confirm that atrocities and genuine crimes against humanity rather than frivolous cases, and crimes of the kind that occurred in the case of Lockerbie will brought before the court.

Will the Deputy First Minister address in particular the vexed question of where jurisdiction will begin and end? That must be spelled out

clearly, as there may be endless disputes if jurisdiction is in question. It appears that many countries will not recognise the court. Which countries will? Roseanna Cunningham said that one of the world's largest democracies, the United States of America, might not do so. The world's dictatorships, which do not have even extradition treaties with this country, are hardly likely to recognise the jurisdiction of the international court.

I would especially like to ask the Deputy First Minister how cases of conflict, where there is concurrent jurisdiction, would be resolved. In the case of Lockerbie, Scotland had jurisdiction. But America also had jurisdiction because the crime was committed on board an American airliner. The case was eventually tried in Holland. Many cases will involve reserved matters and international relations. The Lord Advocate was strongly opposed to a trial in Holland, but the influence of Robin Cook and the Foreign and Commonwealth Office played a key role in bringing the case to justice.

We would like to know how the costs and maintenance charges of the court will be paid for. Would we be expected to pay more than our fair share? How will the costs be allocated? We welcome in principle a measure that will be complementary to our national courts. In that welcome, we are supported by the law reform committee of the Law Society of Scotland, which says:

"the ICC will mark a move from a political to a judicial approach in the enforcement of international humanitarian law."

We support that and believe that the principle is good and worthy, even if there will inevitably be great difficulties with the practicalities, especially in relation to dictatorships.

The bill will provide reassurance and hope to vulnerable communities that are threatened with harassment, persecution and terror. At the end of the day, in the event of inhumanity rearing its ugly head, there is the hope that justice will be done.

10:43

**Scott Barrie (Dunfermline West) (Lab):** In her opening remarks, Roseanna Cunningham described the establishment of the international criminal court as a lofty ideal of which we might fall somewhat short. I echo her sentiment that the fact that we may fall short of that ideal should not stop us trying to achieve it.

I agree with Christine Grahame that those of us who are further down the pecking order in the debate may go over some of the same ground as those who have spoken before us. I do not want to take up time unnecessarily, but I have three points to raise. The first, which has not really been

touched on yet, is the deterrent effect of the establishment of the international criminal court. The way we proceed on the court—even though we are doing so about 50 years after we should have acted on the matter—is important.

The fact that we can have a system that may stop people committing the sort of atrocities that have been referred to is to be welcomed. That is why I was somewhat disappointed by Phil Gallie's intervention on the Minister for Justice: he seemed to say that there is a conflict between the resources that might be taken to implement prosecutions under the act, should it come into force, and what is going on in our domestic law and criminal procedures in Scotland. That was a bit of a red herring and it was unworthy of the debate—a debate that should perhaps be more concerned with the lofty ideals to which Roseanna Cunningham referred.

My second point is that one of the reasons people are talking so much about universal jurisdiction is that insufficient time was given to the Justice 2 Committee to tease out the pros and cons of the approach. Most of the evidence that was received was persuasive that universal jurisdiction would be a good thing. It should be acknowledged that four member states of the European Union have included it when they have ratified the international criminal court through their domestic law, but we have not fully heard the other side of the argument. Pauline McNeill touched on her reservations. For what it is worth, I am agnostic on the subject. We must return to the matter in greater detail at stage 2, as it is the issue that has given the committee the most difficulty in formulating its stage 1 report.

Finally, a small but important matter that exercised the committee at one point, although we later had it clarified, was the issue of private prosecution. The committee's attention was drawn to a difference between the UK act and the Scottish bill in that respect. Evidence received from Dr Scobbie of Glasgow University suggested that undertaking a private prosecution might be permissible under the bill. It would appear that there is a slight difference between the actions of the Attorney General in England and Wales and the Lord Advocate in Scotland. Although the wording in the two pieces of legislation is not entirely consistent, the effect may be the same.

Given the committee's lack of time and that the evidence, which suggested one thing, had to be clarified at a later stage, it is important that we return to the more substantive issues at stage 2.

10:47

**Mr Lloyd Quinan (West of Scotland) (SNP):** While welcoming the initiative represented by the international criminal court, we should recognise

the different nature of Scots law. It is essential for Scots law to be a party to any international treaty, in as much as Scots law informs any legal structures from a different perspective. It is a code very different from the Napoleonic code of France and the Roman code used in many other parts of Europe. Essentially, Scots law has influenced other legal codes over eight to nine centuries.

Our current legal system does not match the requirements of the circumstances we find ourselves in, specifically with regard to the use of extradition orders. Over my lifetime, without an international criminal court a number of cases in Scotland involving extradition and the committing of war crimes or crimes against humanity have failed to come to court and prosecution.

I am mindful of a case in 1975, for those who are old enough to remember it. A number of Scottish citizens were arrested and tried for war crimes in Angola in connection with the liberation war there. Others, who were not captured in Angola but came back to live in Scotland, effectively got off scot-free. If we had had the ICC then, we could have dealt with those individuals, who brought shame on this country. The fact that we had no treaty with the incoming Movimento Popular de Libertação de Angola Government meant that the men were never extradited. Some of the crimes that they committed during the civil war in Angola were as appalling as the crimes of the Nazi war criminals who are living in Scotland.

That obviously brings me to the failures of extradition. We have a requirement to pass this bill, but I suggest that we must also look again at universal jurisdiction. We currently have a situation in Scotland where, despite our separate legal code, our international treaty obligations are the treaty obligations of the United Kingdom. Extradition therefore has to be processed initially through the Home Office.

I have to bring up the specific case of Antanas Gecas, the Nazi war criminal and murderer of Jewish and Belarussian citizens who lives in Edinburgh. An extradition order was served on the United Kingdom Home Office on 29 March. It was passed within a few days to the Crown Office, which sought clarification of the treaty with the Lithuanian Government. The Lithuanian Government tells me that it has given the clarification that was sought, but Antanas Gecas—

**Phil Gallie:** Will Mr Quinan give way?

**Mr Quinan:** I shall give way on that point.

**The Deputy Presiding Officer:** I think that you should be a little careful when talking about this case, Mr Quinan.

**Phil Gallie:** That is the point that I wanted to make. Perhaps it would be in Lloyd Quinan's own

interests to rephrase what he is saying about Mr Gecas. My interpretation of what he said is that he is suggesting that Mr Gecas is guilty. I suggest that he is alleged to have committed those crimes. It might be better for Lloyd to rephrase his comments.

**The Deputy Presiding Officer:** I agree with that view. The word "alleged" would be helpful, Mr Quinan.

**Mr Quinan:** I fully appreciate what you and Phil Gallie are suggesting, Presiding Officer, but I refer you to Lord Milligan's 1992 defamation case judgment, when he made it very clear that he believes that Mr Gecas is guilty. If, on the basis that he is being defamed by me here in this chamber today, Mr Gecas wishes to take me to court, I will be more than happy to go to court and stand by exactly what I am saying at the moment, because Antanas Gecas is a Nazi war criminal who committed war crimes and crimes against humanity.

**The Deputy Presiding Officer:** I think that you should now move on, Mr Quinan.

**Mr Quinan:** That case makes it clear to us that extradition is not the best means by which to deal with cases of crimes against humanity or war crimes. At the institution of the bill, I urge the Executive to look again at the concept of universal jurisdiction. The introduction of the bill will take away some of the shame that is upon this country for our failure to recognise our international obligations and to hand over Nazi war criminals to the countries where they committed those crimes.

10:52

**Bill Aitken (Glasgow) (Con):** We start from the basic presumption that anything that will deter genocide and crimes against humanity is a good thing. We can all cheerfully and willingly sign up to that principle, but we must recognise that a number of issues have to be addressed.

I agree with Scott Barrie that the bill will be a deterrent, but to what extent I am a little uncertain. If we examine the lamentable catalogue of human crime over the past 60 or 70 years and those who have perpetrated it, we find not only that they were bad and evil people but that they were also, in many cases, mad and psychotic—from Hitler, Stalin, Mao, Pol Pot and Idi Amin to the warlords of Rwanda. The list is endless. I am not convinced that those people would have been deterred by the principles that we are debating today, but that does not mean that the principles are not correct.

The idea is that the court's principles will be based on a global principle of fundamental justice. Again, we can all quite cheerfully and willingly sign up to that, but I suggest that there is a degree of

selective justice, which is inevitable given the vast number of nations that have not, as yet, signed up to it.

I listened carefully to the words of Kofi Annan as enunciated by Roseanna Cunningham. They express lofty and worthwhile principles. I wonder how many members of the United Nations carry out those principles in their own jurisdictions. A considerable number do not. The legislation is to be applied even-handedly. Are we seriously suggesting that a warrant might be issued for the President of the People's Republic of China to be arraigned before the international court in The Hague? That simply would not happen, but it does not necessarily mean that we should not advance the bill further.

A great many technicalities will have to be addressed at stage 2. I listened with interest to the comments about the limited time available to the Justice 2 Committee to address the issues when the bill first came before it. I certainly hope that more thorough scrutiny will be undertaken at stage 2. I have no doubt that reassurances on that will be forthcoming. The difficulties are complex and must be reconciled. The issue of resources has been dealt with. I do not think that that is a matter that need concern us too deeply at this time. Nevertheless, we must recognise that there is a resource implication and that we may have to take corrective action.

What worries me more than anything else is just how effective the bill will be. Let us examine the situation that arose in Rwanda. Many of us will remember the stark horror of the newsreel film of that conflict. It is hard to understand that people can behave in such an inhuman manner. The causes of that conflict—like many others in the third world and nearer to home—were steeped in ethnic and tribal hatreds that have advanced over the centuries. There is always the possibility that attempts will be made to use international tribunals to settle old scores. There will be severe evidential difficulties to overcome. It is questionable whether they will ever be overcome. That must be taken into consideration.

The question of jurisdiction and extradition procedures has not been resolved. That, too, will have to be considered. We have to ask whether this is a principle that is worth pursuing. I think we take the view, almost unanimously, that it is worth pursuing—but we should not delude ourselves by thinking that there are not considerable difficulties and technicalities to overcome. We must recognise that the international criminal court may not be terribly effective in achieving what we are seeking to do.

10:57

**Ms Margo MacDonald (Lothians) (SNP):** I want to comment on what Bill Aitken said about the difficulties in the bill that remain to be ironed out. I am not referring only to universal jurisdiction, which has taken up most of this morning's debate: there are many more areas of detail that need to be considered at stage 2.

Several members have suggested that we are in a pickle tackling the huge concept behind this important piece of legislation. We are squeezed for time because we must march in step with the UK legislation. Well, why? Is it not more important to get it right than to get it at the right time? I know that there is a desire to be among the first 60 signatories to the statute, but we will probably manage that anyway without too much trouble. It is much more important that we get it right, rather than at the right time. We are altogether far too mindful of Robin Cook's late signing and decision to bring a bill into the Westminster system. We should determine our own timetable, which should be conditioned by doing things to the best possible standard in producing legislation, particularly legislation that will take part of Scotland into the international arena. We should not short-change ourselves or our legislation.

It is pretty obvious from what the minister said this morning that the absence of universal jurisdiction from the Scottish bill is entirely due to the fact that it is not in the UK legislation. We must ask why it is not in the UK legislation, because many of the countries whose legal systems and societies the UK has influenced have adopted that principle without any problem at all.

Many of our new partners in the European Union have adopted the principle of universal jurisdiction. Why have we not? Could that indicate a parallel with what Roseanna Cunningham suggested might underlie the United States' decision not to sign up—if we no longer have victor's justice, but have the concept of victim's justice in international law, a number of people could be called to account, such as Henry Kissinger for his policies in Cambodia?

We should not be too snuffy about this. People in the former Yugoslavia have been indicted under current international criminal law, but NATO has not. If the universal jurisdiction that we are asking for existed and there was equity in apportioning blame for acts that were outwith what we would consider the usual rules of warfare, NATO might well have been indicted for the type of bombing it undertook in Serbia.

The UK might have a vested interest in ensuring that there is not universal jurisdiction. Is that why the UK Government is fighting shy of it? Even if it is, we should not fight shy of it; that would be

wrong. We are trying to right the world's ills in this bill. We are trying to make justice equitable throughout the world, so our actions should be conditioned only by what would be the right thing to do. It is rather feeble for Jim Wallace—a man whom I admire in this field of activity—to say that universal jurisdiction would compromise the principles of Scots law. It would enhance the principles of Scottish justice. That is why we want to see it incorporated. I presume that that is why Alastair Duff from the Law Society of Scotland made it clear on page 76 of the Justice 2 Committee's report that lawyers such as him, who share with the Minister for Justice an appreciation of Scots law and a determination to protect it, believe that universal jurisdiction is “a matter of policy”, which is for politicians to decide.

**Pauline McNeill:** It is right that we spend time discussing universal jurisdiction. We all have our own reasons for wanting to examine it. The key reason is that the witnesses have asked us to consider that, when there is a non-UK national, we might not be able to prosecute. That is why I am interested in the issue of residence. Does the member agree that if we define properly what we mean by residency, it might be possible to achieve part of the objective because a non-UK national could be prosecuted if they remained in Scotland for a certain period of time? There has to come a point when a person who is living in Scotland—even if they are not a UK national—can be prosecuted because they are deemed to be resident. When they are deemed to be resident we are able to prosecute them. Does the member agree that there might be ways other than universal jurisdiction to deal with this point?

**Ms MacDonald:** With all due respect to the convener of the Justice 2 Committee, that would not clear up the anomalies that we have uncovered in the brief discussion this morning and that the committee began to find in its pre-legislative scrutiny.

After reading the evidence and listening to the witnesses, I think that the most effective way of introducing the concept of deterrence—presumably that is one of the reasons we want to introduce international criminal legislation—is to make the law as simple as we can so that it is understood throughout the world that no one who breaks it is safe anywhere. The notion of universal jurisdiction is simpler and easier to apply than residency tests and so forth.

I am asking, as I did at the start of my speech, for more time to consider the bill. Please do not be influenced too much by the UK Government's requirements. That is not a narrow nationalist point; it is an internationalist point. This is international legislation so we should be looking to the rest of the world, not only to London.

Some pertinent points have been made in the debate—especially by Bill Aitken—about the effectiveness of the apparatus that we seek to set up. He said that dictatorships might not co-operate with it. That is true. It is also true that the Government of Israel would not co-operate with it now. We do not consider it to be a dictatorship. However, a signal would be sent out that the perpetrators of the barbarities that are currently being carried out in some parts of the middle east would not be safe for all time. That is another reason for introducing the bill.

On resourcing, we should not think small. One of the gifts that we tell ourselves we give the world is our humanity as expressed through our legal system. We should not think small by being concerned about what the Procedures Committee, or whoever doles out the money, would say about our asking a visitor from New Zealand or Norway to tell us what their thinking is on the matter. This is not small legislation; please do not think small about introducing it.

11:06

**Tavish Scott (Shetland) (LD):** I congratulate the Justice 2 Committee, of which I admit to being a less than perfect member, on the work that it has done on the bill. Rather than sharing the concern that some colleagues have expressed about what has been contributed to the committee evidence and today's proceedings, I think that many members have shown a commendable grasp of an extremely complex and difficult matter.

In Margo MacDonald's words, we should not think small; we should think international. That was reflected in the honour that was bestowed on the Parliament yesterday by the President of South Africa, which Pauline McNeill mentioned. He challenged the Parliament to think international and to be international in its outlook. By enshrining the bill in Scots law, we take a step towards meeting that challenge.

Roseanna Cunningham began by quoting Kofi Annan. I want to reiterate the point that she made. He said that we should seek

"to ensure that no ruler, no State, no junta and no army anywhere can abuse human rights with impunity."

That assurance is at the heart of the measures that we seek to introduce through the bill. We should take an international approach—a joint approach. The Minister for Justice, when he introduced the bill this morning, listed those countries that have ratified the Rome statute. To answer Lord James Douglas-Hamilton's fair point about those that have not yet ratified, nations and countries that want to ratify must put as great a moral pressure as possible on those who have decided not to be part of the process.

The Deputy First Minister mentioned that four of the five permanent members of the United Nations Security Council have signed the treaty. The one that has not is the United States. Several members have mentioned the position that the US has taken on this matter. The US has not always been reluctant to get involved in establishing an international criminal jurisdiction to deal with crimes against humanity. The Americans persuaded Churchill and the British Government to bring top Nazis to justice, rather than lining them up against a wall and shooting them as a political act.

The US is keen to ensure that any steps that it takes do not result in a denial of due process to its own citizens. However, its current stance does little to protect American citizens. States that adhere to the Rome statute will be able to prosecute American citizens under their domestic arrangements, whether or not the United States decides to adhere to the system. It will be open to the international criminal court to prosecute American citizens who have committed international criminal offences. It is therefore hard to see the argument that lies behind the current American position. All of us who want to bring moral pressure to bear on states who have yet to take the step of ratification would want to make that point to the United States and the new American Administration.

There has been a detailed discussion this morning of universal jurisdiction. I will review a couple of the points that I think are important. Scott Barrie made the fair point that there will be an opportunity at stage 2 to properly scrutinise these matters, take more evidence and reflect on the fact that, in the pre-legislative scrutiny at stage 1, the Justice 2 Committee heard one side of the argument from several witnesses and the other from the ministerial team. However, as Iain Gray said in response to Phil Gallie, there appears to be a contradiction between upholding the traditions and principles of Scots law and moving considerably beyond that approach. Perhaps the committee should spend some time considering that during stage 2.

Pauline McNeill made an important point about safe havens, into which category the nations that have not chosen to ratify will logically fall.

Mary Mulligan highlighted the importance of UK legislatures dealing in parallel with the timing and scrutiny of the bill to ensure consistency. As Scott Barrie rightly pointed out, there will be an opportunity to develop those issues at stage 2, and I am sure that the committee will do so.

The committee has also highlighted time constraints and the pressure to produce reports in order to meet the ratification objectives. However, it is invariably the case that members on the

Opposition benches will criticise the timing of such matters. Furthermore, I imagine that many will wish to jump up and down and say that the Parliament and the Executive have not done what needs to be done to ratify the statute, especially since—as Roseanna Cunningham said—the Irish Prime Minister is visiting the Parliament next week and Ireland has already ratified the statute. Such an obvious example will be brought to everyone's attention, and it is important to bear in mind that there is a balance to these arguments.

As Margo MacDonald pointed out, Bill Aitken made an important point about the effectiveness of the ICC. It would be helpful if the committee could take evidence on that at stage 2 and I hope that such an opportunity presents itself.

It is a matter of regret that international law has been impotent in the face of the most monstrous crimes in history, committed in the previous century. Surely it is right to do more than simply denounce such offences. We must address our failure to bring to justice the Pol Pots, the Idi Amins, the Saddam Husseins and others whose names will reverberate throughout history for the atrocities they have perpetrated. The bill gives us the chance to take appropriate action, and I urge the chamber to endorse the stage 1 proceedings.

**The Deputy Presiding Officer (Mr George Reid):** Before I call Phil Gallie, I should tell any whips in the chamber that we are about half an hour ahead of ourselves and I therefore expect the debate on the Procedures Committee report to start at around 11:35.

11:13

**Phil Gallie (South of Scotland) (Con):** All members broadly support the bill, which is the correct approach. Lord James Douglas-Hamilton highlighted several key points about the ICC. First, it will be a permanent court that will provide an effective deterrent. At the same time, however, I wonder just how much of a deterrent it will be, given the number of countries that are not ratifying the treaty. The fact that those who are likely to commit the crimes and abuses that the bill addresses will try to find shelter in such countries is an issue that the international community will have to address in the longer term. I welcome the UK's commitment to ratify the treaty and commit to the ICC, because the fact that countries are signing up to the idea is perhaps a step along the road.

Although I acknowledge Margo MacDonald's position, Scotland is not ratifying the treaty itself. We are adding to a UK act and once we have done that the UK will take the matter forward.

**Ms MacDonald:** I could not disagree more with Phil Gallie. We are not adding to a UK act.

Scotland is contributing to an international cause. We are not tail-end Charlies. We are seeking to place our distinctive legal system on the world stage—where it should be—so that it can make a contribution.

**Phil Gallie:** I accept Margo MacDonald's point. There is no doubt that Scots law is distinct from the legal system in England and Wales. However, the UK Government will ratify the treaty and commit us to the ICC. Of course, Scotland will play its part and the Parliament will send a clear message today about Scotland's commitment to the principles of the bill and the ICC.

Roseanna Cunningham made a very good point about the number of countries that have agreed in principle to the ICC, but that have not yet ratified the treaty. We will wait with some interest to find out how many countries will commit in future.

Instead of repeating many of the arguments that have been made, I will make some points that the minister might address in his summing-up. First, Scotland has recently incorporated the European convention on human rights. Part 3 of the bill, however, mentions prisoners serving out ICC sentences in Scotland. Although I recognise that almost all European countries have signed up to the ECHR, other countries outside Europe might not have done so, which means that their systems of sentencing could well be different. How would that affect prisoners who are convicted under ICC sentencing policy and who return to Scotland, as far as our recently-adopted sentencing policies are concerned? I ask the minister to address that serious question.

Much concern has been expressed this morning about the important issue of universal jurisdiction and it is regrettable that the Justice 2 Committee did not have more time to investigate it any further. I return to comments made by Margo MacDonald and others about various individuals who could perhaps escape justice if we do not accept universal jurisdiction. However, I will mention a slightly controversial name. We have recently signed agreements that will lead to the creation of a council of the isles in the UK. What would happen if Martin McGuinness were to come to Scotland and be charged under the bill by a private witness?

**Mr Quinan:** Will the member give way?

**Phil Gallie:** I will give way to Lloyd Quinan in a moment. I ask that particular question to highlight one of the dangers of signing up to universal jurisdiction. I will mention one or two other reservations in a moment, but I will now give way to Lloyd.

**Mr Quinan indicated disagreement.**

**Phil Gallie:** Fair enough. I am sorry that I

allowed that point to run on so long after he wanted to intervene.

I believe that a number of other dangers might be built into the concept of universal jurisdiction. For a start, the bill's specific cost implications have not been identified. Although the minister accepts the bill as it currently stands, the cost of accepting universal jurisdiction might well be exorbitant. Perhaps that is one of the reasons why the ministers have hung back on that issue, and I ask Iain Gray to address that point in his summing-up.

Scott Barrie said that it was unfortunate that I had raised the issue of the Crown Office and Procurator Fiscal Service. It might be unfortunate, but I am trying to address the issues in a practical way. We cannot just bury our heads in the sand. The minister will mention additional costs in his summing-up. As he well knows, introducing such legislation will mean additional resource implications for the COPFS and the police. Will Angus MacKay address such costs in his motion on the bill's financial resolution? We must seriously address such points as we proceed with the matter.

I have some concerns about the points that Christine Grahame raised on the age of criminal responsibility. The minister is currently intent on protecting the Scottish position. I welcome that. On that basis, the minister will have our support.

There is another area about which I have some concerns. I recognise that I am over time, Presiding Officer, but you said that we were running early. I was taking advantage of that.

**The Deputy Presiding Officer:** We do not have an infinity of time, Mr Gallie.

**Phil Gallie:** That is unfortunate, because I have an infinity of notes. However, I respect what the Presiding Officer says.

I want to make a point about our armed services and the places where they serve. Currently, our armed services operate under the laws of the country in which they are serving. I believe that armed services personnel face up to their responsibilities and that the military accepts the jurisdiction of the areas in which it operates. However, I am concerned that, for example, Argentinians who have complaints against soldiers who served in the Falklands might take those up if a former soldier went on holiday to Spain, which has accepted universal jurisdiction. People with complaints might feel that, irrespective of the time that has passed, they could proceed with charges against soldiers who were involved in the Falklands escapade and against whom no charges had been brought under the jurisdiction of the land in which they were operating. That is a serious point that the minister may want to pick up in his closing remarks.

The Justice 2 Committee has a massive responsibility at stage 2. A range of issues will have to be debated in detail. Perhaps the convener will allow me to poke my nose in on occasion.

**The Deputy Presiding Officer:** I call Michael Matheson to wind up on behalf of the Scottish National Party.

11:22

**Michael Matheson (Central Scotland) (SNP):** I welcome the debate. Several members said that they were finding it difficult to make new points, given the speeches that had already been made. I hope, therefore, that members will have sympathy for those of us who have to close the debate.

I welcome the fact that we will be among the first 60 countries to ratify the treaty. The Westminster act was given royal assent at the beginning of May. I particularly welcome the fact that we are dealing today with a distinctive Scottish bill. That highlights the fact that Scots law has a long, proud tradition and that it is held in high regard internationally.

Margo MacDonald made an important point in response to a comment by Phil Gallie. She noted that Scotland has a distinctive contribution to make to an international criminal court. I am sure that all members welcome the fact that the bill will make genocide, war crimes and crimes against humanity offences under Scots law. We all recognise that there should be no hiding place anywhere for individuals who perpetrate such crimes.

A recurring issue in the debate, which also featured in the Justice 2 Committee's report, is that of time constraints. Several committee members highlighted that in their speeches. It is disappointing that we return to that problem time and again. We must ensure that our committees are given sufficient time at stage 1 to scrutinise legislation appropriately. If we do not provide them with the opportunity to do that, we undermine some of the founding principles on which the Parliament is based.

I do not believe that it is acceptable that we should be debating a distinctive Scottish bill, but having to content ourselves with the consultation exercise that was undertaken for the Westminster bill. We should have had proper consultation for the Scottish bill. The fact that only two Scottish organisations made submissions as part of the Westminster consultation process raises serious concerns.

Mary Mulligan claimed that a considerable amount of consultation took place for the UK bill. However, this chamber is concerned with the

Scottish legislation. It is incumbent on us to ensure that there is proper public consultation on the bill. Scotland has a distinctive legal system, and we have a responsibility to ensure that any legislation that will affect it is properly consulted on and scrutinised. The Justice 2 Committee has recognised that by suggesting how the problem could have been addressed. The two pieces of legislation should have been debated in parallel. While the International Criminal Court Act 2001 was going through Westminster, this bill could have been going through the Scottish Parliament. We could have considered the two bills in tandem. I would like to hear the minister's comments on that. We have a recurring problem of lack of time for some committees to consider legislation, but we never seem to come up with a solution to it.

Tavish Scott raised the issue of the consultation period and noted that Ireland has already ratified the treaty. He suggested that if we had not pushed ahead with the bill, the SNP would have complained that the Executive was taking too long to deal with it. No one would seriously suggest that two weeks for a committee to carry out stage 1 consideration of a bill is sufficient. We must ensure that the committees are protected and given time to carry out their role.

As several members have indicated, there is international experience of universal jurisdiction on which we could draw. New Zealand, some Scandinavian countries and Canada have all introduced universal jurisdiction. I would not advocate committees heading off to places such as New Zealand and Canada—

**Gordon Jackson (Glasgow Govan) (Lab):** Why not?

**Michael Matheson:** Mr Jackson may suggest that, but I am not inclined to do so in the chamber. One committee has already used the Parliament's videoconferencing facility. That gives committees an opportunity to find out from other countries what their experience has been. We should not shy away from that when we are considering legislation.

Concern has also been expressed about the procedures for the ICC and the fact that the delegation from the UK will be UK-led. There is a concern that Scotland's distinctive legal system could be forgotten. The Justice 2 Committee summed that up well when it stated:

“‘UK courts’ or ‘UK law’ is a meaningless concept.”

It is important that ministers ensure that the Scottish legal system is properly represented in any discussions that take place on establishing procedures for the ICC.

A number of members raised the issue of universal jurisdiction. There are concerns about

whether we should adopt that or whether we should follow the course proposed in the bill. I regard that question much as I regard the debate about whether we should establish a human rights commission. In this chamber I pointed out that the founding principles of any human rights commission would be the Paris principles. Those are the minimum standard that we should set ourselves. The same issue was highlighted in evidence that was given recently to the Justice 1 Committee. When considering the establishment of an international criminal court and the practice that we should adopt in Scotland, we should aspire not to a minimalist approach but to the highest possible standard.

It is incumbent on the Executive and those who oppose the introduction of universal jurisdiction to provide good reasons for their stance. The Executive has not yet done that. I cannot see any evidence in the report of the Justice 2 Committee that suggests that we should not introduce universal jurisdiction.

Like Phil Gallie, I believe that the Justice 2 Committee has a considerable amount of work to do at stage 2, giving the limited time that was available to it at stage 1. A number of issues will require detailed consideration. However, I wish the committee well in the course of its consideration. I am pleased to say that the SNP will support the general principles of the bill.

11:30

**The Deputy Minister for Justice (Iain Gray):** I repeat the Deputy First Minister's thanks to the Justice 2 Committee for its consideration of the bill and for the comments and conclusions that are contained in its report.

Much criticism has been voiced about the timetable and the time that the committee had available for its consideration of the bill. It has been claimed that the bill was rushed through unnecessarily. However, I remind members that Jim Wallace sympathised with that point in his opening speech. It is ironic that such criticism was heard today from Roseanna Cunningham, who, during last year's debate on the legislative programme, was somewhat disparaging of the priority that had been given to the bill. The International Criminal Court (Scotland) Bill is the first bill to be considered by the new Justice 2 Committee, which was set up to try to expedite business. It is therefore not true to say that no measures have been taken to address the problems of timing.

As many members have said, the bill is complex. It needed careful preparation and involves complicated cross-border provisions. Moreover, it followed the UK bill for good reasons.



The two bills together had to provide a watertight package throughout the UK and, in preparing the Scottish bill, we have been able to take account of relevant developments in the passage of the UK bill. I see nothing wrong in that, as this is legislation for the world—the world that we live in, not the one that Opposition members would like to see. I agree with Phil Gallie, if only because that gives me the chance to say how pleased I am to see him back here with us, where he belongs.

As I said, we have some sympathy with the point about the tight timetable. Nevertheless, as many members have indicated, that is at least partly a consequence of the requirement for the UK to be among the first 60 nations to ratify the treaty. The Executive's desire for us to be among those first 60 nations comes not simply from our wish to express political willingness or to secure good public relations in playing our part in ratifying the treaty; the first 60 nations will form the assembly of state parties that will have a key role in shaping the structures and procedures of the new court. It is therefore more than important that the UK is among the first 60 nations to ratify the treaty. Pressure has been created by the fact that many countries are ratifying the treaty more quickly than was first anticipated. That is a welcome development, but it means that we must ensure that our ratification happens as quickly as possible.

I am pleased to close this debate, as I spent many years, in my previous job, campaigning for the formation of a criminal court. In the course of that work, I saw the after-effects of war crimes and genocide—the continuing effects some 20 years after the crimes took place in Cambodia and the situation in Rwanda only a couple of months after a significant proportion of the population had been murdered and more had been displaced from the country. The poet Hugh MacDiarmid wrote of the tragedy of an unevolved people. Perhaps he had in mind something closer to home, but anyone who was in Kigali—a city emptied of its people—in late 1994 will recognise what he meant.

The truth is that tyrants stalked such countries for 50 years after the Nuremburg and Tokyo trials, secure in the knowledge that they would never be held to account. Happily, for some of them that assumption proved to be wrong. Even in Cambodia, where Pol Pot escaped trial, the likes of Khieu Samphan eventually did not. Nevertheless, the difficulty and delay in setting up the specific tribunals for Rwanda and the former Yugoslavia demonstrate powerfully the need for a standing court and properly codified procedures.

We do not believe that the ICC will be some sort of panacea, as some members have said. It will not immediately put an end to war crimes, genocide and crimes against humanity. However,

it should be remembered that the Yugoslav and Rwandan tribunals have led to a former Bosnian Serb president handing herself in and a former Rwandan prime minister pleading guilty to genocide. We can be too cynical about the impact that the ICC can have, and Pauline McNeill is right to say that the establishment of a permanent court after 50 years of gestation will be a significant step in the right direction.

**Ms MacDonald:** I appreciate the fact that the minister has tremendous experience in this field, which many of us do not have. Nevertheless, does he agree that there is still an element of victor's justice in tribunals such as those that were set up for the former Yugoslavian territories, in which the only people who were arraigned came from the losing side? Many people throughout the world argue that the actions that were undertaken by NATO should be subjected to the same sort of scrutiny.

**Iain Gray:** The key principle of any law is that it should apply equally to everyone. The infrastructures and codes of practice should be in place to ensure that anyone who is guilty of a war crime or genocide can be brought to justice. That is the purpose of our debate today.

The central issue in the debate has been universal jurisdiction. Jim Wallace and other members have put forward the Executive's arguments, but I shall summarise them. There are three reasons for opposing universal jurisdiction, which bear repetition, because Margo MacDonald, for one, seems not to have heard them. The first is that we should not accept universal jurisdiction unless it is clearly the will of the international community, as expressed in the treaty, that we do so. We have recognised that the clear will of the international community is not to incorporate universal jurisdiction in the ICC.

**Mr Quinan:** Both Mr Wallace and Iain Gray have referred to the general attitude of the international community. What test will they use to decide whether we should accept universal jurisdiction?

**Iain Gray:** The test of international consensus in this case has been the Rome statute. The treaty does not require universal jurisdiction, unlike previous treaties in which the position was different.

The second argument against universal jurisdiction is the principle of territoriality in Scots law. Many members have spoken of the importance of maintaining the fundamental principles of Scots law in the bill, and territoriality is a fundamental principle of our law. The third argument concerns the practical difficulties of raising a prosecution in a case in which there are only tentative links to Scotland, and doing so

within the strict time limits that are stipulated in Scots legal procedure.

**Christine Grahame:** Will the minister give a definition of residence, as no one has given us one? A key problem, which was raised by Dr Scobbie, is the fact that there is no definition of residence in criminal law. Will the minister give us such a definition now?

**Iain Gray:** Nonetheless, the concept of residence, as interpreted by the courts, exists in other legislation—for example, in the Sex Offenders Act 1997 and the War Crimes Act 1991. There is no reason why that concept cannot be included in the bill.

**Ms MacDonald:** Will the minister give way?

**Iain Gray:** Given the time constraints, I should move on.

Of the three arguments, the most important is that which concerns international consensus. We should act according to, and reflect, that consensus. Reference has been made to evidence that was given to the committee that appeared to suggest that many other countries were accepting universal jurisdiction, but the situation is less than clear. An example that has been cited repeatedly is that of Canada, whereas, in fact, Canada has opted not for full universal jurisdiction, but for jurisdiction over persons who are present in Canada. I agree that that is different from what we propose, but nonetheless it is not universal jurisdiction. We know that other countries, such as France, will not accept universal jurisdiction and we understand that Australia will adopt the same position.

Neither our legal traditions nor the obligations that are placed on us by our international agreements support the arguments for universal jurisdiction. It is wrong to say that the bill represents the minimum standard for compliance. The Rome statute does not require domestic legislation to take jurisdiction over war criminals and many countries will ratify the statute without passing substantive domestic legislation.

In response to James Douglas-Hamilton and Phil Gallie, I point out that the combination of our domestic law and the ratification of the statute gives the reassurance that was sought. Our bill and the UK act together mean that there is no possible scenario in which the ICC would have jurisdiction over a British national or serviceman while the British courts did not. If serious allegations were made against British servicemen, the UK authorities would examine them. There is nothing new in that situation.

I do not have time to deal with all the issues that were raised in today's debate. However, in the stage 2 debate in the committee, we will address

the concerns that have been expressed.

The key principle of the debate today is that the Scottish Executive is fully committed to playing its part in bringing the ICC into being. That is a noble purpose. We believe that the International Criminal Court (Scotland) Bill will allow us to fulfil that commitment and that, along with the International Criminal Court Act 2001, it will enable us to be among the first 60 countries to ratify the Rome statute and will bring nearer the day that the ICC is established.

I am pleased to note that, despite the concerns that have been raised today, the Justice 2 Committee's report recommends agreement with the general principles of the bill. I am happy to commend the bill to the Parliament this morning.

## International Criminal Court (Scotland) Bill: Financial Resolution

11:42

**The Presiding Officer (Sir David Steel):** The next item of business is consideration of motion S1M-1833, in the name of Angus MacKay, on the financial resolution in respect of the International Criminal Court (Scotland) Bill.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the International Criminal Court (Scotland) Bill, agrees to the expenditure payable out of the Scottish Consolidated Fund of the expenses of the Scottish Ministers in consequence of the Act.—[*Peter Peacock.*]

## Procedures Committee Reports

**The Presiding Officer (Sir David Steel):** We come now to the debate on motion S1M-2002, in the name of Murray Tosh, on the Procedures Committee's reports on written parliamentary questions and changes to standing orders.

11:43

**Mr Murray Tosh (South of Scotland) (Con):** I am delighted to introduce the Procedures Committee's second report on parliamentary questions. I presented our first report on the subject in November last year. The main purpose of that report was to recommend the establishment of an agreement between the Parliament and the Executive to monitor publicly the volume of parliamentary questions, of which there have been 15,801 to date, and the speed of the Executive's responses, of which there have been 15,426.

We proposed a series of seminars on the resources that are available to members in pursuing information. Two of those seminars have been held. We also proposed that members should have direct access to civil servants in appropriate circumstances through the provision by the Executive of its departmental directories. That system has been in place for a couple of months. We proposed to make transparent in the relevant parliamentary publications the gap between the holding and substantive answers to a written question and we have made a further recommendation on that matter in the report that we are debating today.

I can report that the parliamentary authorities and the Executive have established jointly a robust and quantifiable structure for monitoring the volume of written questions and the speed of the Executive's responses, which reflects what we sought earlier. The resulting figures are published regularly in *Written Answers*.

The run of figures covering the Executive's speed of response is contained in our report. In the period from 18 September 2000 to 30 March 2001, the Executive answered an average of 55 per cent of questions substantively to time. The committee believes that that figure must improve and, given the level of co-operation that the exercise has helped to engender, there is every reason to believe that that is possible. The committee will receive regular progress reports in that regard.

The second report on parliamentary questions goes beyond the recommendations in the first report and suggests that the date of holding answers should be given in *Written Answers* from

now on when the substantive answers are given. We hope that that will assist all members in keeping track of the periods of response to parliamentary questions.

The report covers a number of other important subjects, but I have time to mention only some of them. The committee was not persuaded to recommend any moratorium on questions during the parliamentary recess. The committee was sympathetic with the Executive's concern about keeping up the pace of responses in recesses, when its staff resources are depleted due to annual holidays, but thought that it benefited no one for backlogs to build up during the recess. The committee therefore recommended, as a modest relief for the Executive, extending by seven days the present deadline of 21 days for answering questions that are lodged in the major recesses and in the week prior to those recesses. A change to standing orders to accommodate that is set out in annexe F of the report.

The committee accepted that answers to inspired questions were a suitable means for the Executive to make policy announcements to the Parliament. Without the ability to use questions in that way, the Executive would find it difficult to timetable announcements in the Parliament. We considered, however, that in the interests of transparency the Executive should identify the questions that it intends to use in that way and allow members adequate time to anticipate the answers to such questions. No change to standing orders is required and the Executive has indicated to us that it will co-operate with those recommendations.

**Alex Neil (Central Scotland) (SNP):** I have a question about inspirational questions and the need for transparency. There was an inspired question during the crisis in the tourism industry. In such circumstances, it would help if the ministerial reply were made available to members in advance, just as a ministerial statement is made available to the Opposition spokespeople before the statement is made.

**Mr Tosh:** The committee prefers to think of the questions as inspired rather than inspirational.

The point that Mr Neil raises is valid. However, the current practice whereby the Executive provides advance copies of statements to Opposition spokesmen is a matter of inter-party courtesy, rather than of standing orders or parliamentary procedure. It would be appropriate for the committee to raise that issue with the Executive, but I would not want to anticipate the Executive's response. Ultimately, we have no jurisdiction in that area.

The committee is conscious that, during question time, fewer oral questions are being

reached than was hoped. That suggests that there might be a mismatch between the time that is allotted to questions and demand. The committee has considered that and, although it has made no recommendation on this occasion, it has given notice in the report that it will examine the question further later in the year.

The committee recognises the Executive's efforts, which were explained first in November 2000, to increase the resources that are available to speed the responses to parliamentary questions. Primarily, that increase has been in additional staff in the Executive secretariat and in an improved internal system to track the progress of answers to questions. The committee was told that the Executive was engaged in work on the costs of answering parliamentary questions. The committee has discussed that, but no conclusions have been reached. The committee has invited the Executive to discuss with it the conclusions of that work when they become available.

An issue arises from the fact that, when ministers refer members' questions to organisations such as non-departmental public bodies, many of the substantive replies from those organisations are not made available to members generally or to the public. The committee was concerned that, as a consequence, matters of genuine public interest may be escaping the communications net that links the Parliament, the Executive and the public. As a result, the committee has undertaken to examine further the current absence of any parliamentary mechanism whereby such information can be disseminated.

Like the previous report on parliamentary questions, the second report is an interim one and much work remains to be done. The committee is committed to promoting and maintaining a parliamentary question-and-answer system of the highest quality. We will not achieve that, or even make progress on it, unless we all continue to work as we have been doing—co-operatively. Our report is an attempt, both in its specific recommendations and in the methodology of the work that led up to it, to embody that principle of co-operation. I commend the committee's second report of 2001 to the Parliament.

Our third report of 2001 contains three proposed changes to standing orders. The first change will permit the withdrawal of amendments to motions, for which the current standing orders, surprisingly, do not provide. The committee agreed that that omission should be rectified and that the withdrawal of amendments should be treated in the same way as the withdrawal of motions. Amendments to motions that have been withdrawn should also fall automatically, and that should also apply to amendments to amendments.

The second recommended change to standing

orders is that those who deal with financial resolutions should reflect the principle that the Executive has the exclusive right to propose to the Parliament expenditure and charging commitments that have direct implications for the Scottish consolidated fund. The committee recommends, therefore, that amendments should not be able to be made to motions on financial resolutions. The resolutions can of course be negated, in that members may vote for and against them, but we recommend that they should not be subject to amendment.

The third recommendation concerns the Scottish commission for public audit. The appointment and removal procedures for that body are contained in a transitional order, but require to be set out in the Parliament's standing orders. Standing orders setting out the appointment and removal procedures are therefore included in our third report, as are the ways in which the commission will report to the Parliament.

I am grateful for the latitude that the Presiding Officer has given me to expand and explain—adequately, I hope—the main thrust of the report. I apologise to the school party that was in the public gallery and has now departed; its arrival into the chamber today, for this most arcane debate, was probably mistimed. However, the debate concerns matters that are important to the Parliament, because they reflect on the way in which we work and the way in which we unceasingly try to improve procedures in the general interests of everyone connected with the Parliament. I commend the Procedures Committee's third report of 2001.

I move,

That the Parliament accepts

(a) the terms of the 2nd Report, 2001 of the Procedures Committee, *Report into the Volume of Written Parliamentary Questions and the Scottish Executive's Speed of Response, and Related Matters* (SP Paper 346); agrees to amend the Standing Orders in terms of the amendment set out in Annexe F to the report, and agrees that this amendment should come into force on 15 June 2001; and

(b) the terms of the 3rd Report, 2001 of the Procedures Committee, *Changes to the Standing Orders of the Parliament* (SP Paper 347); agrees to amend the Standing Orders in terms of the amendments set out in Annexe A to the report, and agrees that these amendments should come into force on 15 June 2001.

11:52

**The Deputy Minister for Parliament (Euan Robson):** I am pleased to convey the Executive's support for the two Procedures Committee reports and for the recommendations and changes to standing orders contained therein.

I take the opportunity to acknowledge the work

of the Procedures Committee in producing the two reports and to thank the members of the committee and its convener, Murray Tosh, for the consensual approach that was adopted in taking this important work forward.

The Minister for Parliament and I were grateful for the opportunity to meet the committee on 1 May to discuss a range of matters relating to parliamentary questions. We both found the exchanges most valuable. The Executive is happy to accept the committee's report on parliamentary questions and its recommendations, but in taking forward certain of them, there are some points of detail that we want to discuss further at official level. For example, while the Executive has no objections in principle to tagging questions, we wish to discuss further the development of a system, to assess how it would work in practice before we come to firm conclusions.

We welcome the proposed change to standing orders to extend the period for answering parliamentary questions during recess periods from 21 to 28 days and the proposal that the new arrangement will include the week before any recess of four days or more. As committee members know, the Executive had hoped that the committee would agree to a moratorium on lodging questions for three or perhaps four weeks during the summer recess. That arrangement would, we believe, have afforded greater benefit overall, not only for ministers and civil servants but for chamber office staff, at pressure points when resources are stretched. That would allow the Executive to concentrate on any backlog of questions and would put us on a firmer footing for dealing with the day-to-day flow of questions, which is what we thought all members would wish to see. We hope that the proposed arrangements will go some way to alleviating some of the pressures that are prevalent during holiday periods.

**Mr Tosh:** It might help if I said for the record that the committee considered those points. Our concern was that if we had such a moratorium, its principal impact would be to present the Scottish Executive executive secretariat with a huge backlog of questions lodged at the end of the summer recess. We were not convinced that such discontinuity in routine parliamentary work would benefit anyone. That remains an issue to be reconsidered in further discussions between the committee and the Executive.

**Euan Robson:** We need to agree to the changes that are to be implemented, to see how they work, and then revisit the issue if necessary. Building up a backlog at the end of the summer recess is a possibility and should not be discounted, but we would like to consider the matter further.

The Executive is happy for the joint monitoring of parliamentary questions to continue, with the Procedures Committee keeping the outcome of the exercise under regular review and reporting periodically to Parliament. The Executive will continue to produce its own quarterly audits of parliamentary question performance.

**Alex Neil:** This will, I hope, be a helpful intervention. Speaking as someone who makes modest use of the facility for asking questions, I think that there is no doubt at all that if the Executive were to give straighter answers to initial questions, a lot fewer supplementary questions—written questions and questions in the form of correspondence—would be generated. That would help also with regard to the time that it takes to get responses to correspondence to ministers, in particular to the Minister for Health and Community Care, who takes months to respond to the simplest of letters, which in turn generates more questions. It would help the Executive and the Parliament if ministers, when asked questions, gave straight answers. That might reduce the volume of written questions.

**Euan Robson:** There is perhaps a subtle difference between a straight answer and the answer that members want to receive.

**Michael Russell (South of Scotland) (SNP):** Either would do.

**Euan Robson:** I understand Alex Neil's point, and I believe that the Executive wishes all departments to raise their performance levels for answering questions. The issue of responding to correspondence is of considerable importance for the proper working of Parliament and the Executive is particularly aware of it.

I believe that there is now greater awareness of how the parliamentary question system can best be used and managed and of the various mechanisms that are open to members to access information. As the convener of the Procedures Committee mentioned, the Scottish Executive staff directory is now available on the Scottish Parliament intranet, so that MSPs and their staff—I emphasise "and their staff"—can, in cases of genuine and exceptional urgency, make direct contact with Executive officials for factual information that is not available in the public domain. We are monitoring how MSPs and their staff use that facility and we will report our findings to the Procedures Committee later this year.

Over the next few months, we will continue our study of the costs of answering questions. Once our findings have been analysed, we will be pleased to report back to the committee with any proposals for establishing a standing advisory cost limit.

All of us have a responsibility to ensure that the

parliamentary question mechanism works as efficiently and as effectively as possible.

**Michael Russell:** There will be some concern about what the minister has just said about a standing advisory cost limit. Parliamentary approval of that will have to be sought—I presume via the Procedures Committee—rather than the Executive making an ex cathedra decision that there is to be such a limit. I hope that the minister will take that on board when the matter is considered. An Executive decision could be used to restrict the answering of questions. I am sure that it would not be, given the Deputy Minister for Parliament's good offices, but parliamentary assent to the limit would perhaps avoid that possibility.

**Euan Robson:** I understand the member's point. I said that we would report back to the Procedures Committee with any proposals. What I mean by that is that there would be discussion with the committee about any proposals before they were implemented. We will take the committee's view into account, but first we need to complete the review and report to the committee.

**Michael Russell:** I ask the minister for a commitment that there will be parliamentary discussion of, and parliamentary authority for, the standing advisory cost limit. The Parliament should have that reassurance.

**Euan Robson:** I understand the point that the member makes. We would wish to seek the Procedures Committee's agreement.

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

**Euan Robson:** I would rather continue, as I am running short of time.

**Ms MacDonald:** I have a question.

**The Presiding Officer:** The minister is not giving way.

**Euan Robson:** As I said, all of us have a responsibility to ensure that the parliamentary question mechanism works as efficiently and as effectively as possible. I believe that the Executive made significant progress in its consideration, in conjunction with the Procedures Committee, of how best to manage the process. A great deal has been achieved and the Executive is committed to improving its performance further. We look forward to assisting the committee further in its continuing work.

I will address briefly the changes to standing orders, which relate to the withdrawal of amendments to motions, amendments to motions for financial resolutions and appointments to the Scottish commission for public audit. While those changes are relatively minor, they are

nevertheless important and the Executive is happy to endorse them. The changes will add clarity to parliamentary rules and procedures and should assist in the more efficient and effective discharge of parliamentary business.

The Executive commends the work carried out by the Procedures Committee and is happy to endorse both the reports that are before the chamber. We are particularly pleased with the co-operation that exists between the committee and the Executive. As ever, we are ready to assist the committee further with its continuing work.

12:01

**Mr Gil Paterson (Central Scotland) (SNP):** I pay tribute to Murray Tosh and the way in which he handled the committee's business. I also pay tribute to John Patterson and his team. The work of the Procedures Committee may be dry, but it is an easy committee to work with. I will probably be removed from the committee now that I have said that.

Murray Tosh's speech covered most of the major points. I have no desire to go over them all, but I would like to endorse what he said and speak to a couple of the points.

The ability to ask questions throughout the parliamentary year is vital to MSPs' work in holding the Executive to account. A moratorium would put that work back by light years. We should guard that privilege—it is more of a duty—with everything that we have.

There are lessons to be learned. We must recognise that the last thing that a person running a business would do is burden himself with a lot of work during a holiday period. There is a responsibility on members to take it easy when it comes to recesses, as they should be aware that that is when officials go on holiday. Day-to-day research work should be held back during the recess and only vital questions lodged.

Let me give an illustration of how the system could work. I lodged 27 questions on my work on men's violence against women and children; the questions were all published in one issue of the business bulletin. I asked them after I had contacted the police, health trusts, outside agencies and the voluntary sector—we even elicited information from abroad. In due course, the 27 answers arrived. We have all had experience of asking questions that receive poor-quality answers. Alex Neil suggested that the fact that answers are sometimes of such poor quality generates more questions. However, the answers to the 27 questions that I lodged were high quality. I would like to think that those questions—and the answers—had a bearing on the Executive's views and on the direction in which it headed.

Apart from getting the hard political facts, there is an add-on benefit in asking questions; they give us an opportunity to get help from the Executive on finding answers.

In the committee, I raised the fact that only English may be used for parliamentary questions. Standing orders seem to suggest that every word must be English. In other words, if a member were to use Scots, some form of translation would need to be given. However, most of us—including the Presiding Officer—have used Scottish words. Perhaps we are all bilingual and use a mixture of words. It would be ridiculous to permit only English words. I gave examples of Scots words, such as dreich, drookit, oxter and—since I come from the west of Scotland—vindaloo. We use many other words in our everyday language.

One area of conflict between Murray Tosh and me arose when he said that he would be embarrassed if Australians were to look up the Parliament's website and find Scottish words and not know what they meant.

**Mr Tosh:** Mr Paterson is working hard at creating a difference of opinion where no difference exists. At the committee, I made it clear that I consider oxter, dreich, drookit and vindaloo to be within the English language. Like any other language, English absorbs vocabulary from all round the world. Words that are in everyday use—including different pronunciations of standard words—are clearly English.

The committee and the Scottish Parliamentary Corporate Body have made it clear that we have no difficulty with the introduction of the old Scots leid or tongue, which is an attempt to bring in a different language, but if parliamentarians wish to speak in the old Scots tongue, a translation will be required, not least because most members do not speak Scots. I do not think that anyone in the official report is particularly geared to understand it either. It would be unfortunate if our publications—electronic and paper—did not contain an English-language version of a language of which relatively few people in Scotland now have a command.

**Mr Paterson:** Dinna fash yersel, man.

**Mr Tosh:** That is English.

**Mr Paterson:** One of the difficulties is who would decide what is a Scottish word and what is not. We should be able to use everyday words. To say that we are embarrassed sets back what we are trying to do. We should not make people embarrassed about the way they speak.

I looked up Australian *Hansard* on the web and I found that, lo and behold, every day of the week, aboriginal and Australian words are used in the Australian Parliament. The Australians do not have any problem with that; they are not

embarrassed and we should not be either.

I respect Murray Tosh an awful lot. I certainly would not describe him as a galah or a dag; I would call him a fair dinkum person. I hope that he will join me and many others in Scotland on this matter. We will have a great corroborree in our own Scottish tongue.

12:09

**Donald Gorrie (Central Scotland) (LD):** I do not know whether I can join in this stushie, but I would like to commend Murray Tosh. He tries hard to keep a fair balance between allowing us, whenever possible, to rough up ministers—people such as me feel that that is our task—and giving a fair do to the ministers and the civil servants who are being roughed up and who deserve reasonable protection.

I appeal to members—especially those who are not here but are listening at their desks, with half an ear to the television—to fill in the questionnaire that the committee produced to seek members' views on a number of options for improving the way that we conduct our affairs.

I would like to discuss one or two points from the report. One concerns the best use of oral questions. It would be helpful to compare the way that we operate with the way that Westminster operates. I suspect that Westminster ministers have to reply to a greater volume of questions than ministers here do, but it would be useful to find out. Our collective job is to hold ministers to account. It may be the case—and I believe that it is—that we do not lodge enough questions to hold them to account fully.

The second point relates to questioning quangos. That is a big issue that we have not really resolved. Ministers manage to wash their hands of quangos by saying, "It wasnae me." Quangos run a huge proportion of our activities. They really must be held accountable. We must pursue how we can ask questions of them.

One of the many things that I do not understand is the rule that civil servants are not allowed to speak to members of Parliament. A civil servant may receive a question from a member and not really understand what the member is getting at. In any civilised society, he or she would pick up the phone and say, "Look, you have asked a question about X—what on earth are you on about? What do you want to find out?" That would clarify the question and the answer would then be relevant to what the member was looking for. I was approached at a recent social event by a civil servant who was in exactly that position. We had quite a useful conversation, wondering why it could not be normal practice to clarify questions. The thing may be quite clear in the questioner's

mind, but it may not be clear in the civil servant's mind, with the result that a huge amount of time is spent scratching heads and wondering what on earth this idiot Gorrie is on about. We must break the Westminster tradition that civil servants are not allowed to speak to members.

We have to consider the overall use of our time. Yesterday's discussion of the Housing (Scotland) Bill showed yet again that we do not allow enough time for stage 3 of major bills. The timetable was far too tight. It is not acceptable that members who lodge worthwhile amendments do not get the chance to speak to them. They probably know that they will lose the vote, but they deserve to put their case. We are doing ourselves no favours at all by rushing things through in just the way that we deplore when it happens at Westminster.

This debate and the previous one illustrate the fact that virtually all debates are conducted by the members on the relevant committees, who merely rehearse what has been discussed in committee. Gil Paterson flogs his Scottish horse. It is a good horse, and I am all for flogging it, but others should be involved. I am guilty, as are others—sometimes I do not attend debates on subjects that are covered by other committees. There is a risk of us all becoming too specialised in our own committees and developing tunnel vision. I have no suggestions on that, but we must work out a broader way of running the Parliament so that more members take part and take an interest in the activities of other committees.

There are many issues to consider with regard to improving the way that we go about things. In this Parliament, unlike Westminster, there is a possibility of improvement. I live in the hope that, one day, Murray Tosh will lead us to the promised land.

12:14

**Ms Margo MacDonald (Lothians) (SNP):** Can we afford to send anybody to the promised land? During the previous debate, we had questions on whether we could afford to live up to our own ideals.

I support what Donald Gorrie says about the structuring of debates. Yesterday's stage 3 debate was a very good example of the problem. People outside the Parliament can easily understand the issue that was being discussed, which was not esoteric but was about housing costs, conditions and provision. There were amendments that were undebated, so arguments went unrehearsed and information did not go out to the people who pay our wages. We fell down on the job yesterday. I do not want that to happen with other legislation that comes before the chamber.

I agree with the point that Donald Gorrie made—

we did not collude and there was no inspirational questioning—about quangos and non-departmental public bodies not being as accountable as they should be, given the influence, power and finance that they have. That is an excellent point. Our procedures are a bit old-fashioned and are not up to date with the way in which public duties and policies are discharged. If the convener of the Procedures Committee does not mind, I would like the committee to address that point.

Finally, I will raise the point that I meant to raise in the first place. I had a question for the minister, and if he had just answered me I would not have had to take up time by making this speech. Can we find out which questions are forbidden? I asked a perfectly reasonable political question, as I am supposed to do of an opposing politician, but I was forbidden from lodging it by the clerks, because it was not about something covered by the Scotland Act 1998. The question I asked was: will the Executive instigate an investigation into full fiscal autonomy for the Parliament? I have no doubt that the Executive would not be too keen to do that, but I would like to hear why it would not be keen to do it. As I had heard ministers discuss the concept, I thought that it would be reasonable to have a further explanation in the Parliament, but I was not allowed to lodge the question. I ask the minister to tell us in his summing-up which questions are forbidden.

12:17

**Alex Neil (Central Scotland) (SNP):** I have a couple of points that I hope the Procedures Committee will examine, one of which is about question time. The current situation is that we question the Executive in its entirety, never knowing which minister or junior minister will answer, so we do not have the opportunity to grill the ministers from a particular department as is done at Westminster.

Just because something happens at Westminster does not mean that it is automatically a bad idea. That may be news coming from an SNP member, but there are some things at Westminster that are better than here. The Procedures Committee should examine the possibility of grilling the ministers from a department, for example the health department, the education department or the enterprise and lifelong learning department, for 20 or 30 minutes on Wednesday every week. In that way we could get to the basis of departmental policy.

**Mr Tosh:** We discussed that proposal and are willing to examine it again. I must point out that in the context of meetings of the Parliament on a day and a half a week, if we seek to increase question time substantially, it will impact on other aspects of



the Parliament, not least the ability of back-bench MSPs to make speeches on matters of contemporary importance. To a degree, the feeling in the Parliament has been that committee meetings provide the opportunity for sustained questioning of ministers. I put those points to Mr Neil for his consideration, as we examine this issue in the round.

**Alex Neil:** I am sure that another 20 minutes on Wednesday afternoon would not destroy the structure of debates or the ability of back-bench members to speak. One of the problems that we have in the Parliament is that we have not got the system of debates right. As we heard from Donald Gorrie and Margo MacDonald, not enough time was allocated to stage 3 of the Housing (Scotland) Bill, and perhaps too much time is allocated to debates that are time fillers, as we have seen in recent weeks in the run-up to another event.

**Ms MacDonald:** Repeats and replays.

**Alex Neil:** It is bad enough being heckled by other parties without being heckled by my own party.

I have put my suggestion on the table. Perhaps the Procedures Committee can revisit the proposal.

My second point is about the time that is allocated for First Minister's question time. I feel that 20 minutes is too short and perhaps we need about 30 minutes. For example, it is rare that members are able to ask supplementaries to the leader of the SNP's questions. Limited supplementaries are made to the questions from the leader of the Conservative party, and since January, despite the excellent way in which the Presiding Officer handles matters—

**The Presiding Officer:** Flattery will get you everywhere.

**Alex Neil:** We have sometimes not reached question 4, seldom reached question 5 and even more rarely reached question 6. We need to revisit First Minister's questions. To be honest, part of the reason for the problem is that the First Minister is rather lengthy in some of his replies. Twenty minutes is fairly short. At Westminster, the Prime Minister is grilled for 30 minutes during question time. Frankly, that system seems better.

I suggest that we revisit whether we can slot in the grilling of departmental ministers individually rather than as part of the wider corporate Executive. We should also reconsider First Minister's questions to decide whether that can be improved and made more effective.

12:21

**Mr Kenneth Macintosh (Eastwood) (Lab):** I thank the members who have spoken during the

debate. There has been more interest than I had expected, but I find it difficult to imagine that a debate initiated by the Procedures Committee would need the extra sandwiches and refreshments that were laid on for last night's marathon session.

I thank my colleagues on the Procedures Committee. We worked well together to achieve agreement with one another and with the Executive on how our Parliament should work. On the more controversial subject of parliamentary questions, neither the committee nor the Executive was happy with the volume or speed of responses, but the committee recognised the efforts that the Executive has made to improve performance and the modest success that it has achieved.

As a result of its work, the Procedures Committee appreciates better the difficulties in achieving progress. We do not underestimate the difficulties, but expect that progress will be made. That will require combined effort. Committee members urge other members to recognise their responsibility for and role in improving that vital parliamentary procedure.

I will respond to a couple of points that were raised during the debate. In an intervention, Alex Neil talked about ministers' slow responses to letters. Mr Adam has raised that issue with the committee, although we are not considering it at present. It is interesting to note that the Executive has established a group, headed by a civil service department, to consider that matter. The people who deal with parliamentary questions also deal with parliamentary letters.

Mr Russell sought reassurance from the Executive on the proposals that will be made about an advisory cost limit on parliamentary questions. I may not be able to offer the reassurance that he seeks, but I draw his attention to paragraph 80 on page 16 of the committee's report, which says:

"The Committee considered that it was of paramount importance that any cost limit on parliamentary questions was fully justified. The flow of information from the Executive to Members and on to the wider community was a fundamental principle of parliamentary democracy."

We invited the Executive to discuss the conclusions of its study with us.

**Euan Robson:** I thank the member for explaining that issue in detail from the Procedures Committee's point of view. I made it clear that the Executive will discuss that point in detail with the committee, before any action is taken. I hope that that is of some reassurance.

**Mr Macintosh:** I thank Mr Robson for his comments. I wish that Mr Russell were present to hear that reassurance, but I am sure that it will be passed on.

The Minister for Parliament also restated the Executive's request for a moratorium on asking parliamentary questions during the summer recess. Gil Paterson strongly objected to that request. The committee considered the matter at length. The convener has already said that we wish to avoid the build-up of a backlog of questions. In keeping with the Parliament's family-friendly policy, we wished to respect the importance of the recess to the Executive and civil servants and to allow them to take their holidays too. However, we were unanimous in our belief that a ban on parliamentary questions would be inappropriate.

**Brian Adam (North-East Scotland) (SNP):** Earlier in the debate, the convener gave an indication of the Procedures Committee's view on inspired questions. Can Mr McIntosh confirm whether, in addition to agreeing that inspired questions should be tagged, the Executive will introduce a delay between the publication of the question and the provision of the answer? I believe that that change is to be made to current practice.

**Mr Macintosh:** I can confirm that that is the case. That is not a recommendation of our reports, but the Executive has agreed to do that. No change to standing orders is required.

Mr Gorrie raised a number of points that require our attention. Alex Neil echoed some of them, in particular Donald Gorrie's point about the time that is available for debates. The debate is not the final word on the subject. I will have many opportunities to address Mr Gorrie's concerns.

Margo MacDonald asked about forbidden questions. I am not sure that I can answer her question entirely. I offer her the guidance that questions that come within the responsibility of the Scottish Executive are acceptable.

**Euan Robson:** In accordance with standing orders, it is the chamber desk that decides on which questions are admissible. The Executive has no role in that decision. It becomes involved only when the question is lodged. The member might like to take up her concerns with the chamber desk.

**Ms MacDonald:** On a point of order, Presiding Officer. Now that I have aired the matter of forbidden questions in the chamber, I ask you for guidance as to whether I take up the matter with the chamber desk or with you. Is it not the Presiding Officer who rules on whether a question is in order?

**The Presiding Officer:** Margo MacDonald is technically correct. The chamber desk, in common with all the Parliament's clerks, is overseen by the Presiding Officers. The answer to her question is straightforward: questions outside the scope of the

Scotland Act 1998 are simply not admissible in the Scottish Parliament.

**Ms MacDonald:** On another point or order—

**The Presiding Officer:** Let not us get into a debate.

**Ms MacDonald:** It is not a debate. I do not want to debate the subject with you. However, I would like to talk to you about it.

**The Presiding Officer:** I was about to invite Margo MacDonald to come and talk to me about the matter.

**Ms MacDonald:** If the subject matter has been discussed in the chamber and ministers have introduced it, is not it permissible for me to ask a question on it?

**The Presiding Officer:** No. I take Margo MacDonald's question seriously. At any time, the Parliament can debate or make reference to matters that are outside the Scotland Act 1998. What members cannot do is ask ministers questions on subjects that are outside the Scotland Act 1998. There is a difference between debates and questions. That difference is enshrined in the standing orders.

Believe it or not, Mr Macintosh, you had the floor.

**Mr Macintosh:** I was trying to say that ministers can answer only for their own responsibilities.

I end by thanking the committee clerks for their work: John Patterson, Mark MacPherson, Katherine Wright and Eileen Martin. I also want to thank others who helped to develop the proposals that we have debated today, including Anne Peat, Alison Coull and Andrew Mylne.

The changes that are proposed to standing orders are relatively minor but, as I said in response to Mr Gorrie, they are not the last word on the subject. As the Procedures Committee convener mentioned in his opening remarks, the system of parliamentary questions will be kept under review.

In reply to a query that was made by Alex Neil, I confirm that the committee will examine in greater detail the length of the weekly question time, the volume of questions that are raised during the recess and the transparency of Executive answers.

I commend the two reports to the Parliament.

## Business Motion

12:29

**The Presiding Officer (Sir David Steel):** The next item of business is consideration of the business motion S1M-2004, in the name of Tom McCabe.

*Motion moved,*

That the Parliament agrees the following programme of business—

Wednesday 20 June 2001

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Stage 3 Debate on the Mortgage Rights (Scotland) Bill

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business - debate on the subject of S1M-1976 Karen Whitefield: National Carers' Week: 11-17 June 2001

Thursday 21 June 2001

9.30 am Scottish National Party Business

*followed by* Ministerial Statement

*followed by* Business Motion

2.30 pm Question Time

3.10 pm First Minister's Question Time

3.30 pm Debate on Holyrood Project

*followed by* Motion on Members' Allowances

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business - debate on the subject of S1M-1959 Donald Gorrie: Young Carers

Wednesday 27 June 2001

2.30 pm Time for Reflection

*followed by* Ministerial Statement

*followed by* Executive Business

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business - debate on the subject of S1M-1740 Michael Matheson: Lung Disease in Scotland

Thursday 28 June 2001

9.30 am Committee Business

*followed by* Ministerial Statement

*followed by* Business Motion

2.30 pm Question Time

3.10 pm

First Minister's Question Time

3.30 pm

Executive Business

*followed by*

Parliamentary Bureau Motions

5.00 pm

Decision Time

*followed by*

Members' Business - debate on the subject of S1M-1970 Miss Annabel Goldie: Endometriosis—[*Euan Robson.*]

*Motion agreed to.*

**Brian Adam (North-East Scotland) (SNP):** On a point of order, Presiding Officer. In today's business bulletin, the oral questions for 21 June have been published. I note that Mr John Farquhar Munro has question 1 and question 7. Is that a mistake? Is it a typo? If Mr Munro lodged two questions and had two questions drawn, will one of those be withdrawn and another chosen?

**The Presiding Officer:** What a pleasure it is to have a genuine point of order. You are quite right. The questions are chosen by computer. I do not know how two questions from one member managed to appear on the list. Mr Munro will be asked to withdraw one of them and the list will be modified. By the time we come to question time next week, Mr Munro, like everybody else, will have only one question.

12:30

*Meeting suspended until 14:30.*

14:30

*On resuming—*

**The Presiding Officer (Sir David Steel):** Before we begin proceedings this afternoon, I am sure that members will join me in welcoming to the VIP gallery colleagues from the Hong Kong Legislative Council, headed by its former speaker, Mr Andrew Wong. *[Applause.]*

## Question Time

### SCOTTISH EXECUTIVE

#### Robert Burns World Federation

**1. David Mundell (South of Scotland) (Con):** To ask the Scottish Executive what support it provides to the Robert Burns World Federation. (S10-3562)

**The Deputy Minister for Sport, the Arts and Culture (Allan Wilson):** I am pleased to announce that the Scottish Executive will support specific projects through its relevant agencies.

**David Mundell:** The minister will be aware that the First Minister quoted Burns yesterday, when President Mbeki was with us. Is he aware that the Robert Burns World Federation receives no funding from organisations such as the Scottish Arts Council and various literary funds? Will he use his considerable influence with the luvvie glitterati to ensure that the Robert Burns World Federation receives the support that it undoubtedly deserves?

**Allan Wilson:** As members will know, the literati hang on my every word. The First Minister's reference to Burns at yesterday's historic event demonstrates the international importance and significance of Burns's work to Scotland. Alasdair Morrison and I met today and we are considering how we can best get the relevant agencies to work with private organisations such as the Robert Burns World Federation to maximise the potential that Burns's fame affords to Scotland across the world.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** I hope that the minister, with his "honest, sonsie face", will recognise the importance of the Robert Burns World Federation and Robert Burns himself to the cultural tourism industry. The potential for expansion in that area is huge and we should not miss the opportunity to support it when we can.

**Allan Wilson:** I am not going to exchange Burns quotations with Ian Jenkins. However, it is my intention to take up an invitation to attend the Robert Burns World Federation congress in

Atlanta in July. I am determined that we will exploit fully Burns's international appeal on that occasion.

**Dennis Canavan (Falkirk West):** Will the Executive ask the Robert Burns World Federation whether the First Minister and the Secretary of State for Scotland could adopt a slightly amended version of Burns's words as their motto—"O wad some Pow'r the giftie gie us, To hear oursels as others hear us"?

**Allan Wilson:** I am quite sure that there will be much more to be said on that subject in later questions. That will be good advice to all concerned.

#### Schools (Examinations)

**2. Bristow Muldoon (Livingston) (Lab):** To ask the Scottish Executive what progress is being made in ensuring that all scripts for this year's school examinations will be timeously marked. (S10-3573)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** As I announced on 1 June 2001, the Scottish Qualifications Authority has now identified sufficient markers with the appropriate qualifications and experience to ensure that all scripts will be timeously marked.

**Bristow Muldoon:** I thank the minister for his encouraging response. Can he expand on how progress towards marking this year's examinations compares with the progress that was made towards marking last year's examination diet?

**Mr McConnell:** It is no secret that markers were still being identified at the end of June and the beginning of July last year. Largely wrongly, there have been question marks ever since over the qualifications of some of those markers. This year, it is important that the arrangements for marking are made on time, as is happening. It is also important to ensure that, across the board, the SQA has required the relevant standards of those who have applied to mark. My understanding is that that has happened in all cases.

**Ms Margo MacDonald (Lothians) (SNP):** The minister will know that, informally, I have raised the question of the qualifications of the examiners. What reassurance can he give Scottish teachers that the entire complement of people who will be marking this year will meet the criteria that he has set out—and with which we all agree—on the standard of competency and experience required?

**Mr McConnell:** In the past week, concerns have been raised with me by Ms MacDonald and others about that matter, both privately and publicly. This week, I have checked with the SQA, which assures me that everyone who has been accepted as a marker has signed the appropriate

documentation to guarantee that they have the relevant experience. That is the basis on which they have been selected. I hope that anyone who has any suggestion to the contrary will alert either the SQA or my department. Any such suggestions would be examined, but I am told that they would be without foundation.

### Strategic Planning

#### 3. Rhoda Grant (Highlands and Islands)

**(Lab):** To ask the Scottish Executive what progress is being made with its review of strategic planning. (S10-3576)

**The Deputy Minister for Transport and Planning (Lewis Macdonald):** We have made excellent progress and I am pleased to announce that, tomorrow, I will publish a consultation paper outlining proposals for the revised arrangements for strategic planning.

**Rhoda Grant:** The minister may be aware of the concerns that have been expressed by communities about their role in strategic planning. For example, constituents in Laid in Sutherland have concerns about a proposed superquarry in their area, but feel that their concerns are being ignored. Can the minister offer them any reassurance about their input into the decision-making process?

**Lewis Macdonald:** I hope so. One of the purposes of the review is to increase communities' sense of ownership of the strategic planning process. The consultation that will begin tomorrow will run until the end of October and will give community groups a chance to make an input.

On the Laid question, the member will be aware that there are currently no proposals on the table for a superquarry development in the Highlands. The Highland structure plan confirms that Highland Council will continue to identify possible sites for a superquarry. That plan was modified by the Executive to reflect some of the concerns that have been expressed and to make it clear that the status of the situation is investigatory. If the council presents a proposal, there is no assumption that development will go ahead.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Will the minister include in that consultation the role of the trunk roads authority? Does he accept that, in the north of Scotland, the only place for any development is often land off a trunk road? Does he agree that the trunk roads authority needs to act with far greater flexibility and sensitivity to local needs, especially in the north of Scotland?

**Lewis Macdonald:** I do not think that the role of the trunk roads authority is specifically a matter for the strategic planning review. We are familiar with the issue that the member raises. We believe that

the trunk roads authority receives adequate information and will conduct visits where that is appropriate and necessary.

#### Mr John Home Robertson (East Lothian)

**(Lab):** The minister will be aware of serious concerns in communities and local authorities in the Lothian area about a proposal by the Scottish Executive to extend the area of search for opencast coal sites far beyond what was proposed in the agreed local structure plan. Will he accept that environmental, social and economic priorities must take precedence over the lobbying influence of opencast mining companies? Will he agree that the areas of search ought to be restricted to the limited and appropriate areas?

**Lewis Macdonald:** I am aware of the widespread interest in this issue. It is worth reminding members that, in 1999, new and tougher planning controls on opencast mining were introduced. Those controls made it clear that any opencast mining proposals had to satisfy environmental and social criteria.

### Indigenous Music

#### 4. Mr Lloyd Quinan (West of Scotland) (SNP):

To ask the Scottish Executive what plans it has to market Scotland's indigenous music abroad. (S10-3571)

#### The Deputy Minister for Sport, the Arts and Culture (Allan Wilson):

The Scottish Arts Council has been allocated an extra £300,000 this year to support the promotion of all of Scotland's culture abroad. It is currently developing a strategy for international working to include the showcasing of Scottish arts abroad.

**Mr Quinan:** I thank the minister for that reply, although I had thought that my question would be dealt with by one of the ministers with responsibility for enterprise, as it deals with enterprise rather than arts matters.

Does the minister agree that, in our live and recorded music industry, we have a great opportunity to boost tourism, given the number of concerts that are to be held in historic places in this country over the coming months? Will he support the projection of that across the world? Most important, will he support the idea of using new technology to create a virtual trade fair on the web, allowing Scottish music labels access to a world market, from which they are currently excluded?

**Allan Wilson:** I will be pleased to consider that proposal. We know that the imaging of Scotland abroad should be more diverse, so that the traditional whisky-and-castle images are complemented with a reflection of a more dynamic and contemporary Scotland. I want that to be part of a major events strategy, which we are

developing and about which we will make an announcement later in the year.

### **Schools (Buildings)**

**5. Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** To ask the Scottish Executive what progress is being made in improving the fabric and condition of school buildings. (S1O-3584)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** Local authorities are making significant progress in improving school buildings, thanks to our recognition of the need for funding to reverse the results of the neglect of school buildings, which was the legacy of the years before 1997. We are in continuing dialogue with local authority representatives to clarify the level of need for further improvement, to establish strategic priorities for the future and to make best use of the financial support that is available.

**Cathie Craigie:** Does the minister agree that the quality and condition of school buildings has an effect on the discipline, performance and attainment of young people? Can he assure Parliament that he will pursue that issue with all those involved—including local authorities—in order to ensure that conditions are greatly improved?

**Mr McConnell:** Yes. I have been concerned to learn that, in developments of school buildings, facilities to help with behaviour problems have not always been provided. I want to ensure that any school building strategy that we put together reflects what Cathie Craigie says. The discipline task group has been considering the matter. As it is reporting before the end of June, it would be presumptuous of me to mention today what it is planning to recommend. In any event, it will be addressing the issue in its report.

**Andrew Wilson (Central Scotland) (SNP):** In the interests of accountability and transparency, will the minister publish the detail of the cost of borrowing associated with private finance initiative deals to enhance school buildings across Scotland?

**Mr McConnell:** As the member is aware, when I was Minister for Finance, we changed the rules to ensure that such details were published. The most important thing about that is that the schemes can be justified in respect of the public purse. Andrew Wilson should occasionally recognise the amount that is being invested through public-private partnerships across Scotland. The new schools that I have visited in recent weeks, and those that I will no doubt visit later this year, in Glasgow and elsewhere, are a testimony to the good use to which the money is being put. That contrasts sharply with the impact of the absence of the

£500,000 investment under Andrew Wilson's plans for a trust for public investment, which would never work in practice.

**Dr Elaine Murray (Dumfries) (Lab):** The minister is well aware of the problems with school buildings in my constituency—and while I am on that topic, I briefly digress to welcome a party of pupils from St Andrew's Primary School in Dumfries, who are in the public gallery. [Applause.] When does the minister hope to give further consideration to the possible PPP bids from areas such as Dumfries and Galloway for large-scale school building and repair programmes?

**Mr McConnell:** As the member will be aware, Dumfries and Galloway Council received, I think, £466,000 from the Executive earlier this year in order to pursue plans for its public-private partnership. It is vital that, when working on that, the council brings forward proposals at an early stage. I hope, as part of our overall strategy, to deliver quick conclusions on any proposals to allow building to take place, not just in Dumfries and Galloway but in other parts of Scotland.

### **North Lanarkshire Council (Meetings)**

**6. Mr Gil Paterson (Central Scotland) (SNP):** To ask the Scottish Executive when it last met representatives of North Lanarkshire Council. (S1O-3570)

**The Deputy Minister for Finance and Local Government (Peter Peacock):** Scottish Executive officials last met officials of North Lanarkshire Council on 30 May 2001.

**Mr Paterson:** Can the minister update the Parliament on the progress that is being made in providing funds for North Lanarkshire Council for the total refurbishment or replacement of Airdrie Academy?

**Peter Peacock:** The question of Airdrie Academy has been raised with me frequently by Karen Whitefield, who is the MSP for that area. It is a matter for the council, but the Scottish Office gave £450,000 of additional funding in December 1998 and the Scottish Executive, in its normal spirit of generosity, gave £500,000 on top of that in October 2000. At present, the council has a large sum of money at its disposal to prepare a public-private partnership scheme. It is clear that such support would come only from this Executive—no doubt that is why the voters supported us last week, while the SNP vote collapsed.

### **Cancer Plan**

**7. Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** To ask the Scottish Executive whether its forthcoming cancer plan will include ways to raise awareness amongst health

professionals and the general public of oral cancer and the importance of its early diagnosis. (S1O-3560)

**The Deputy Minister for Health and Community Care (Malcolm Chisholm):** Oral cancer, including awareness raising among the public and health care professionals, is included in the Scottish Executive's forthcoming cancer strategy, which we expect to publish within the next few weeks.

**Ian Jenkins:** Does the minister recognise that, because some cancers do not have a high profile, there is a danger that they will not be given the attention that they deserve? Is he aware of the work of the Ben Walton Trust, which was named for a young man who died young as a result of oral cancer? Is he also aware of the work of the Scottish oral cancer action group, which intends to raise awareness of oral cancer? Is he further aware of the forecast that early diagnosis could reduce the mortality rate of oral cancer—which causes 260 deaths a year in Scotland—from 90 per cent to 50 per cent? It is important that the Executive's cancer plan should take cognisance of oral cancer. Would the minister be willing to meet the Scottish oral cancer action group in the near future?

**Malcolm Chisholm:** I am aware of both the groups that Ian Jenkins mentions. I pay tribute to their work and I am certainly prepared to meet them. Oral cancer will be comprehensively covered in the cancer strategy, but action has already been taken on the prevention work that he refers to. A comprehensive training and information pack was widely distributed last year to dental and general practitioners. Screening by dental practitioners in the course of their normal work is being developed, in line with the action plan for dental services.

**Elaine Smith (Coatbridge and Chryston) (Lab):** Sadly, I have had personal experience of oral cancer in my family recently. A surgeon at Monklands hospital told me that the incidence of oral cancer is increasing, particularly among young men. Has funding been earmarked for research into the causes of that increase?

**Malcolm Chisholm:** Bids for research are taken by the chief scientist's office and I will write to Elaine Smith to advise whether any such projects are being funded. There are clear risk factors for oral cancer, but those factors do not explain everyone's cancer. As with many cancers, the picture is complicated.

**Dorothy-Grace Elder (Glasgow) (SNP):** I take it that the minister agrees that dentists are in the front line in detecting oral cancer in its earliest stages. Therefore, will he investigate the plight of Glasgow dental hospital, where dentists are

grossly over-strained by the huge volume of patients and where waiting lists are far too long? Will he assure me that he will pay particular attention to Glasgow dental hospital?

**Malcolm Chisholm:** As I indicated in my answer to Ian Jenkins, the work of dentists is crucial in detecting oral cancer. I was pleased that Paul Martin recently brought a number of dental practitioners from Glasgow to meet me at the Scottish Executive. The dental hospital was one of the issues that we discussed on that occasion.

### Medical Secretaries

**8. Richard Lochhead (North-East Scotland) (SNP):** To ask the Scottish Executive what steps are being taken to improve the pay and conditions of medical secretaries. (S1O-3581)

**The Minister for Health and Community Care (Susan Deacon):** The pay and conditions of NHS administrative and clerical staff are negotiated on a UK basis by the Whitley Council. The Scottish Executive health department has facilitated discussions between NHS trusts and trade unions to consider the grading of medical secretaries in Scotland and I understand that those talks are continuing.

**Richard Lochhead:** A couple of days ago, I spoke to a medical secretary who, after 22½ years of service in the NHS, is paid £12,500 a year. This week, the Prime Minister, Tony Blair, gave himself a 41 per cent pay increase, taking his wage to £163,000. He has made himself the highest-paid Prime Minister in Europe. Will the minister say on the record today that a salary of £12,500 a year for a medical secretary is unacceptable?

**Susan Deacon:** Once again, SNP members are demonstrating that they are more interested in headlines than in health workers. I am interested in ensuring that all staff groups in the NHS get a fair deal. That is why the Scottish Executive is facilitating discussions on medical secretaries grading issues and taking forward work on low pay. I am pleased that we will be able to continue to work with the new Labour Government on modernising the NHS pay and conditions system throughout the UK to help all staff groups in the health service—[*Interruption.*]

**The Presiding Officer:** Order.

**Pauline McNeill (Glasgow Kelvin) (Lab):** Does the minister agree that the question is not strictly about pay and conditions, but about grading definitions? Does she agree that medical secretaries—as part of the administrative and clerical group in the NHS—have historically been low paid? They are not the only group in the NHS that suffers from low pay. Other non-pay review body staff—porters, domestics and catering staff, for example—are the lowest paid in the public

sector. I ask the Scottish Executive to address low pay in the NHS as a whole and not just that of one group.

**Susan Deacon:** I am glad that Pauline McNeill has reminded us of the range of people who make a contribution to the NHS. All too often, we simply talk about nurses and doctors. Nurses and doctors are crucial in the health service, but they are not the only staff groups and not the only staff groups that make a difference. It is precisely because of our recognition of the needs of those other groups that we have given a crystal-clear commitment in our Scottish health plan to take action on low pay and to ensure that wider conditions in the working environment for all those staff groups are improved. We will continue to work with the trade unions to make such improvements.

**Tommy Sheridan (Glasgow) (SSP):** Pauline McNeill was absolutely right to raise the plight of NHS domestic staff, porters and caterers, who are woefully paid. However, the medical secretaries have recently lobbied Parliament and several hundred demonstrated in Glasgow yesterday. Does the minister accept that they are too low paid and that they deserve an increased grading?

**Susan Deacon:** I do not think that politicians do workers any favours by distorting facts. Those of us who have been active in the trade union movement over the years respect the proper process that resolves such considerations. The issue is about grading and it has different local dimensions. That is why the action that the Scottish Executive has taken to facilitate discussions between the employers and the unions is right and is in the best interests of that staff group.

#### **Schools (Anti-bullying Strategies)**

**9. Karen Whitefield (Airdrie and Shotts) (Lab):** To ask the Scottish Executive what further action it is taking on schools anti-bullying strategies. (S10-3578)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** Over the years, a range of guidance has been issued to schools and authorities. Recently, the Executive has set up the national anti-bullying network and it funds that network.

Much good work is being done on bullying in schools and good practice was shared and celebrated at the recent young voices conference in Glasgow. Every school must be safe, but more needs to be done. Earlier this year, I set up and chaired the discipline task group to address discipline issues in schools. The group's report will be published before the end of term.

**Karen Whitefield:** I thank the minister for his response. Will the group give consideration to a

suggestion that was made to me by one of my constituents whose son has been the victim of bullying? My constituent suggested that there is a need for an open and transparent complaints procedure in schools so that children who have been victims of bullying can see that bullying will not be tolerated and that their complaints will be treated seriously.

**Mr McConnell:** In some ways, the answer is similar to the answer I gave about school infrastructure. The issue has been discussed by the task group. The communication between schools and parents in particular can be central to resolving many behavioural difficulties in schools.

We need to have open and transparent complaints procedures so that the parent and the school can be satisfied that complaints are properly looked into and properly resolved. Those who are not satisfied with the end result will then at least feel that they have been heard. We will address that matter in our final report and will return to it after the summer.

#### **National Theatre (Financial Support)**

**10. Michael Russell (South of Scotland) (SNP):** To ask the Scottish Executive when it will announce what financial support will be made available to the Scottish national theatre plan as outlined in the report of the independent working group, submitted to it last month. (S10-3556)

**The Deputy Minister for Sport, the Arts and Culture (Allan Wilson):** The report of the independent working group on a Scottish national theatre was submitted to the Scottish Arts Council last month. The Executive looks forward to the Scottish Arts Council's considerations once the council has had time to reflect on the report.

**Michael Russell:** Let me remind the minister that the plan for a Scottish national theatre has been around for many years. It was endorsed by the Education, Culture and Sport Committee in its report on the national arts companies, which was published on 2 February 2000. Many people hoped for some movement from the Executive to support and encourage the national theatre with a detailed plan, rather than simply saying, yet again, that it is somebody else's decision.

**Allan Wilson:** The overall support for the Scottish Arts Council will increase by £15.2 million over the next three years. That is not an inconsiderable sum. It will obviously be for the Scottish Arts Council, in the first instance, to decide how it allocates those resources. I am grateful for the work that the independent working group has done on the national theatre. I met the group last week. We will study its report with great care, and we will consider the views of the Scottish Arts Council when they come.



## Children's Health

**11. Michael Matheson (Central Scotland) (SNP):** To ask the Scottish Executive what progress is being made in developing joint working between the health and education sectors to improve children's health in schools. (S1O-3585)

**The Minister for Health and Community Care (Susan Deacon):** Health boards and local authorities are working together to develop health-promoting schools. The Scottish Executive, in consultation with the Health Education Board for Scotland, the Convention of Scottish Local Authorities and Learning and Teaching Scotland, is now taking forward the development of a health-promoting schools unit for Scotland.

**Michael Matheson:** The minister will be aware of the genuine concerns of parents about a number of health boards and education departments that are considering making the morning-after pill available via school nurses. Does the minister condone such a policy? If so, what guidance will the Executive issue on such a policy direction? If she is against such a policy, what action will she take to ensure that it does not happen?

**Susan Deacon:** As the member indicates, this is a sensitive issue. I can assure the member and I can assure parents that it is subject to carefully constructed guidance and procedures, both for education authorities and for health boards. I am not aware of this being a practical issue or something that is happening on the ground at present.

**Scott Barrie (Dunfermline West) (Lab):** Will the minister assure me that when health and education authorities work together, they pay particular attention to child mental health? That area has been greatly overlooked in the past, yet all the research shows that it is an increasing concern for many young people.

**Susan Deacon:** The whole thrust of Government policy is, rightly, to consider children and their families in the round. Our policy interventions do just that.

Scott Barrie is right to raise the issue of mental health. It is wrong to think of youngsters' health as being simply a physical condition. I am pleased that important joint initiatives—such as new community schools that bring together not only health professionals but a range of other professionals—are making a difference in that area. Only last week, I was pleased to launch the next round of work in that area at Castlebrae Community School in my constituency, when I saw at first hand what is being achieved. I can assure Scott Barrie that ministers will continue to work together to make a difference in that area.

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I welcome what the minister has just said, but may I turn to the issue of school nurses? Wick High School in my constituency has around 900 pupils. Many years ago it had a school nurse, but now it does not. Although first aid can be taken care of, if a pupil is taken ill, it takes up not only the time of teachers but of the rector and the rector's staff, who have to summon the parents to come and collect the child. Without necessarily calling for extra resources, I feel that an opportunity exists for joined-up government between the minister's department and Jack McConnell's department in re-establishing what was an excellent service.

**Susan Deacon:** I reiterate that we are working hard to ensure that health and education interventions work together effectively. Jack McConnell and I met only recently to discuss precisely how we could enhance our efforts in that direction.

Jamie Stone will be pleased to know that in the review of public health nursing that was published only a couple of months ago, one of the main areas identified for attention and additional investment was the school nursing service. That is in recognition of the fact that nurses play a key role that has become undervalued over the years. We have not realised their full potential. I am delighted that we are now working with nurses to make progress on that and on investment in that area.

**Phil Gallie (South of Scotland) (Con):** What benefits to children's health does the minister envisage emanating from the materials to be used by teachers in the five-to-14 sex education programme?

**Susan Deacon:** May I, on behalf of all colleagues, take this opportunity to welcome Phil Gallie back to this chamber.—[*Applause.*]

**Phil Gallie:** I have never been away.

**Susan Deacon:** We will thole Phil for the next couple of years. That is a small price to pay for seeing his and many other Tory heads roll in last week's election.

On the serious point that he raised, my colleague Jack McConnell has been involved in that matter, and has commented on it in considerable detail in this chamber. We have worked closely with parents, teaching professionals and other professional groups to ensure that effective guidelines are in place.

## Foot-and-mouth Disease (Compensation)

**12. Christine Grahame (South of Scotland) (SNP):** To ask the Scottish Executive what forms of compensation for losses arising as a

consequence of the foot-and-mouth disease outbreak will be made available to businesses in the Scottish Borders. (S1O-3564)

**The Minister for Enterprise and Lifelong Learning (Ms Wendy Alexander):** Farmers who have suffered the loss of livestock as a result of the foot-and-mouth outbreak have received cash compensation. Businesses across all sectors, including agriculture, in the Scottish Borders have access to advice and support from the small business gateway in the Borders.

The First Minister and ministerial colleagues met representatives from the Borders on 29 May to discuss the impact of foot-and-mouth disease in the Borders, and what measures might be required to assist recovery. That was followed by a meeting between local agencies and Executive officials on 8 June to take forward the details of the plan. Consideration of recovery measures will be on-going in the context of national recovery strategies.

**Christine Grahame:** May I give the minister an example? McNab's, a saddlers with premises in Kelso and Selkirk, has produced figures showing a loss of £45,000 in turnover to the end of May, with projected turnover for the year halved from £250,000 to £125,000, which already has caused cuts in the work force. Will Mr McNab and others like him be entitled to direct compensation?

**Ms Alexander:** As I said, there is on-going dialogue. The First Minister met representatives of the Borders two weeks ago, officials met last week, and the ministerial committee that my colleague Ross Finnie chairs will meet again this week. It is precisely those issues to which Christine Grahame referred that are under consideration in the context of a long-term recovery plan.

#### National Health Service

**13. Mr John McAllion (Dundee East) (Lab):** To ask the Scottish Executive what assessment it has made of any impact on the health service of the World Trade Organisation's proposals for a general agreement on trade in services. (S1O-3572)

**The Deputy Minister for Health and Community Care (Malcolm Chisholm):** The regulation of international trade is a reserved matter. However, the Executive continues to be in regular contact with the Department of Trade and Industry on trade issues, including WTO matters, and how those may impact on our responsibilities. Neither the UK Government nor the Executive expects any changes that would have an impact on how public services such as health are run, as a result of the negotiations relating to the general agreement on trade in services.

**Mr McAllion:** In the light of that reply, will the minister take the opportunity if not to condemn, at least to distance himself and the Executive from the comments of the European Union trade commissioner Pascal Lamy, who commented that health and education were ripe for liberalisation in the wake of the proposed treaty? Will the minister take the opportunity to assure not just doctors and nurses, but hospital porters, cleaners, laundry workers, secretaries and all other public sector workers in the health service that they too will be protected from corporate takeover of their jobs?

**Malcolm Chisholm:** I note John McAllion's comment and the reference to the European commissioner, but neither the WTO secretariat nor any Government that I know of takes that view of the general agreement on trade in services. Public services, such as health and education, are excluded from GATS. Indeed, any service that is supplied in the exercise of government authority is excluded.

**Alex Neil (Central Scotland) (SNP):** Given John McAllion's comments on the initiatives from the EU on this matter, will the minister raise the issue at the next meeting of EU health ministers? Will he be attending that meeting of health ministers, or will Susan Deacon be attending?

**Malcolm Chisholm:** Alex Neil will be pleased to know that Susan Deacon attended such a meeting last week. In line with my answer, I am not aware that this is an issue that requires to be raised, but if the particular individual who made the remark is there, it can be taken up with him. However, the position is absolutely clear. As I indicated, the WTO secretariat and every Government that I know of takes the same view of GATS.

#### Litter (Penalties)

**14. Miss Annabel Goldie (West of Scotland) (Con):** To ask the Scottish Executive how many local authorities currently operate systems involving fixed penalties for people dropping litter. (S1O-3555)

**The Deputy Minister for Environment and Rural Development (Rhona Brankin):** Under the Environmental Protection Act 1990, all local authorities are empowered to deal with litter offenders by giving the offender a notice allowing him to pay a fixed penalty as an alternative to prosecution. However, the Executive does not hold information on the number of authorities that exercise that power.

**Miss Goldie:** I thank the minister for her reply, which may explain much. The Scottish Executive overlooks much, but not even it can be blind to the unlicensed public tip that many of the streets and open spaces in the villages and towns of Scotland constitute. Is it reasonable to expect the people of

Scotland to continue to paddle through abandoned food containers, half-eaten dinners and other miscellaneous debris? Is that the best advertisement for Scotland that we can offer potential visitors? If not, what will the minister do about it?

**Rhona Brankin:** I will return to the response that I gave to another member's question. I assume that all political parties have taken down all their posters after the general election, but I understand if members of some political parties are somewhat demoralised and do not feel up to the job.

The Scottish Executive takes seriously the problem of litter. That is why we sponsor the Keep Scotland Beautiful group to the tune of £234,000 a year, to help to raise public awareness about the problem of litter. Guidance is given to local authorities in the form of a code of practice on litter. We want to keep Scotland beautiful. We are aware of the issue and will continue to put money into dealing with it.

### Ayr Hospital

**15. John Scott (Ayr) (Con):** To ask the Scottish Executive on how many occasions over the last 12 months Ayr hospital has been unable to accept GP-referred admissions. (S1O-3561)

**The Minister for Health and Community Care (Susan Deacon):** That is essentially an operational matter for Ayrshire and Arran Health Board and its NHS trusts. However, I am aware that local circumstances have led to particular pressures in that area.

**John Scott:** The minister accepts that problems exist at Ayr hospital. My information is that in the past six weeks, Ayr hospital has been unable to take GP referrals on 11 occasions. Given that the hospital is under great pressure, what will the local trust do to cope with the expected increased demand for bed space as winter approaches?

**Susan Deacon:** I will visit the Ayrshire and Arran Health Board area next week and will take the opportunity to speak to local NHS leaders and GPs, to discuss the issue further. I am pleased that the sizeable programme of investment and modernisation that the Scottish Executive has developed should make it that bit easier for local NHS bodies to resolve such local problems.

**The Presiding Officer:** Question 16 has been withdrawn.

### Economic Growth

**17. Mr Kenneth Gibson (Glasgow) (SNP):** To ask the Scottish Executive when it estimates that Scotland's rate of economic growth will reach that of the Republic of Ireland. (S1O-3568)

**The Minister for Enterprise and Lifelong Learning (Ms Wendy Alexander):** The Executive does not prepare forecasts for economic growth for Scotland, but it is committed to enhancing Scotland's prosperity. I discussed Ireland's recent successes, its future plans and opportunities for co-operation between Scotland and Ireland just last week when I met Mary Harney, the Irish Minister for Enterprise, Trade and Employment, in Dublin.

**Mr Gibson:** Is the minister aware that the Irish economy grew by 11 per cent last year—10 times Scotland's economic growth rate? Does she realise that the standard of living in oil-poor Ireland is 25 per cent higher than that in the UK, never mind that in oil-rich Scotland? Will she accept that independence is the key to Ireland's prosperity and also the key to Scotland's prosperity? Only with independence—nothing less—will Scotland realise its true economic potential.

**Ms Alexander:** When I was in Ireland, the Irish drew it to my attention that their independence came in 1923. A period of substantial economic underperformance followed. The amazing turnaround that the Irish have managed is rooted in the correct policy instruments. I discussed the correct policy instruments with the Irish, and I must tell SNP members that no one suggested that taxing those who succeed—a policy that the SNP proposed just a week ago for the general election—was how to encourage economic growth.

Mary Harney commented favourably on the fact that Scotland was enjoying its best employment rate for 40 years and its lowest unemployment rate for 25 years. In the most recent quarter, Scotland's growth rate had accelerated to a higher rate than that of the UK. Sadly, the Irish rate is heading in the opposite direction.

## First Minister's Question Time

### SCOTTISH EXECUTIVE

#### Secretary of State for Scotland (Meetings)

**1. Mr John Swinney (North Tayside) (SNP):** To ask the First Minister when he last met the Secretary of State for Scotland and what issues were discussed. (S1F-1136)

Before the First Minister answers, I remind him that there are children in the gallery and that his microphone is switched on.

**The First Minister (Henry McLeish):** I ask Sir David to confirm that my microphone is working.

**The Presiding Officer (Sir David Steel):** I confirm that the First Minister's microphone is switched on.

**The First Minister:** I am mightily relieved to hear that.

I am somewhat surprised at the question. After last Friday, I thought that everyone in Scotland knew what I had discussed with the Secretary of State for Scotland. However, in answer to the question, I met the Secretary of State for Scotland last Friday.

**Mr Swinney:** I remind the First Minister of his new year message, issued to the readers of the *Sunday Post*, no less. In it he said that the hallmark of his leadership would be to say what he meant and to mean what he said.

Is that an explanation as to why, last Friday, the First Minister was caught knifing his Labour colleagues?

**The First Minister:** Mr Swinney had a few days to think about that question and I would have thought that we might have got a better one than that. However, why be disappointed? Consistency is a virtue, as far as the SNP is concerned.

When I addressed the readers of the *Sunday Post*, that illustrious organ of the press, I was talking about what divides Labour and the SNP in last week's election result.

When we speak about the Scottish people, we will be justified in what we do and we will be praised for what we deliver on every policy front. We saw the result of the election last week. It must be the first time in recorded history that the nationalists went into an election saying that it was going to be a two-horse race and ended up third.

**Mr Swinney:** I am sorry to have to tell the First Minister and his hapless Liberal Democrat colleagues that the SNP was second in the Scottish Parliament election.

The First Minister said that a lot divides us, but let me try to unite us. Last year, the First Minister and I won a parliamentary award for building consensus in the Scottish Parliament. Let me try to build another note of consensus today. Does the First Minister agree—he said it last Friday—that Brian Wilson is indeed a liability?

**The First Minister:** I think that that was an attempt to be patronising. I can live with the ebb and flow of political fortune. Politics is a tough business, but we knew that when we got into it. Members are shouting, "yes" and "no".

If we are talking about hapless people, I will tell members where the hapless people are—they are sitting on the SNP side of the chamber. Let us record the fact that the SNP share of the vote was the worst election result in many years: indeed it was the worst since 1987. The SNP will go down in history as the party that let the Conservatives back into Scotland. In 1974, the SNP sent a football team to Westminster. In 2001, the SNP can barely muster a five-a-side team.

**Mr Swinney:** We all know why the First Minister is irritated. He spent the election talking up the Tories and being Hague's big helper in Scotland and now he has also produced one of his many thousands of gaffes—it is death by a thousand gaffes. We know now that Brian Wilson is a liability and that John Reid is a patronising one of those words that begins with B and ends with D. [MEMBERS: "Bald."] The First Minister tries to tell us that partnership runs through the Labour manifesto like lettering through a stick of rock. It is not a stick of rock it is a baseball bat. It is not partnership, it is open warfare. [Interruption.]

**The Presiding Officer:** Order.

**The First Minister:** I will let the laughter subside before I re-enter. To describe that contribution as pathetic would be an abuse of the English language.

Let us end on a serious point. The Scottish National Party does not want to hear it. Let me remind the SNP that the most important event of last week did not happen on Friday morning; it happened on Thursday. That was when the Scottish people started to see through a party that is in no-man's-land. The SNP will not actually support independence—although the issues that were raised in the leadership bid were reminiscent of where the party has been—but neither will it support the chamber by saying that devolution is the way forward. We will take no lectures from a failed SNP and look forward with considerable relish to 2003.

#### Cabinet (Meetings)

**David McLetchie (Lothians) (Con):** I am glad to see that there is such delight among Labour

members for the follicularly challenged. This is one bald Conservative leader who intends to succeed.

**The Presiding Officer:** Can we get on to the question?

**2. David McLetchie:** To ask the First Minister when the Scottish Executive's Cabinet will next meet and what issues will be discussed. (S1F-1137)

**The First Minister (Henry McLeish):** The Cabinet will next meet on 19 June, when it will discuss issues of importance to the people of our country.

**David McLetchie:** I hope that, when the Cabinet meets, it will give some early attention to the financial problems that affect our nursing and residential homes as a result of the inadequate level of payments that councils are making for the care of the elderly. The First Minister will be aware that it was reported this morning that nursing homes in Aberdeen will refuse to take any more local authority placements because they simply cannot afford to provide the care that is needed for the sum that is being paid to them.

Will the First Minister tell us what steps the Scottish Executive is taking to resolve that serious problem?

**The First Minister:** I welcome the question because David McLetchie is right to identify a serious issue that affects every part of Scotland.

Our ministers are working hard to ensure that we facilitate discussions between the Convention of Scottish Local Authorities, other local authorities and the nursing home owners. A meeting was held on 11 June. There is to be a further meeting in early July at which the rate of payment in particular can be addressed. I remain hopeful that we can ensure that we have no further difficulties. That is especially important as we are dealing with the older section of the community, which involves sensitive issues, and families who worry greatly about their older people.

I reassure David McLetchie that progress is being made. I urge all those involved to reach a speedy conclusion in the interests of the long-term care of elderly people.

**David McLetchie:** Is the First Minister aware that there is considerable disparity between the cost of maintaining a resident in a local-authority-run residential home and the amount that local authorities pay to the independent sector, whether private or voluntary, for such provision? Is he also aware that many home owners feel that the system is biased against them and that there needs to be a much more level financial playing field than exists at present? Does the First Minister accept that, unless we sort that bias out, more homes will close and more patients—more elderly

people—will languish in hospital beds? That is not in their interests and not in the interests of the national health service.

**The First Minister:** I am pleased to acknowledge the difficulties that David McLetchie outlined. The issue is not new. It has been simmering for a considerable time. However, we now want to give a short-term benefit to the nursing homes, but that will not be the medium to long-term solution. It is in the interests of the nursing home owners to make sure that we have a permanent solution for the older people who are involved.

I point out that there are discrepancies—the Tories would call them differences—in Scotland between one area and another. Of course, there are differences between what local authorities pay for their residential homes and those in the private sector. However—forgive me for taking a minute on the matter; David McLetchie has raised important points—the Parliament and the Executive are committed to a new deal for older people in Scotland.

We will move to free personal care soon, but we do not want to address one part of what we are doing and ignore another. We want to have a cohesive policy that looks generously at care for our older people and ensures that we do everything possible to tackle the immediate issue. I hope that the matter will be resolved in early July.

**Dr Richard Simpson (Ochil) (Lab):** Will the First Minister join me—and urge the whole chamber to join me—in asking the Grampian nursing home owners to call off their action, in view of the fact that the people who are suffering as a result of it are old people? The Government now understands the problem and is acting on the matter. The action should be called off today.

**The First Minister:** I will respond by going slightly further than I did at the Association of Directors of Social Work conference last Friday. I understand the frustration with the nursing home owners and the frustration in social work. I understand organisations, such as Age Concern, which represent those who are frustrated.

I endorse Richard Simpson's point by appealing to the home owners. I have given a commitment today in the hope that the matter will be resolved. Malcolm Chisholm and Susan Deacon are working hard to ensure we facilitate discussions. On that basis, with a bit of trust, and in the interests of longer-term care for older people, I say to the nursing home owners, "Please stop any further action. Stick with us round the table. Let us see what happens in early July. That would be not only in the interests of the Parliament and the Executive, but—more important—in the interests of the people of Scotland."

### Public Protection

**3. Maureen Macmillan (Highlands and Islands) (Lab):** To ask the First Minister what plans the Scottish Executive has to give greater protection to the public from people who have committed serious violent and sexual crimes. (S1F-1150)

**The First Minister (Henry McLeish):** There have been two major developments this week.

On 11 June, we published our proposals for the sentencing, management and treatment of serious violent and sexual offenders. We intend to legislate on the proposals as soon as possible. On 12 June, the expert panel on sex offending, chaired by the Honourable Lady Cosgrove, published its report, "Reducing the Risk: Improving the response to sex offending". The report will go out for public consultation, which will inform decisions on implementing the recommendations of the report.

**Maureen Macmillan:** I thank the First Minister for his reply. I welcome the announcement earlier this week of the lifelong restriction orders. I realise that they will be used only in exceptional cases, but their existence will reassure us that the protection of the most vulnerable in society, especially children, is paramount.

I ask the First Minister for reassurance that, if orders such as those are put in place, they will not be a substitute for the excellent treatment programmes for sex offenders, such as the ones in Inverness prison and other Scottish prisons. Will the First Minister consider how rehabilitation work could continue for the duration of those lifelong orders?

**The First Minister:** I give Maureen Macmillan complete reassurance on every point that she has raised. She has identified one of the key developments from the studies that we have been doing, which ensures that we have the possibility of lifelong restriction orders. That is not to punish individuals unnecessarily but to make absolutely sure that people who are a threat to public safety and the community are incarcerated in that way.

A key part of our penal system will be rehabilitation. We must always work on the premise, whether the problem is mental illness or other difficulties, that people will have a chance to go back into the community. That will always be at the forefront of our minds. At the end of the day, people in Scotland can be reassured that we are also taking action on those mentally ill offenders who might be a constant threat to the public. We do not want their activities to be reproduced in the future as they have been in the past.

**Alasdair Morgan (Galloway and Upper Nithsdale) (SNP):** In view of the recent

conviction—for the murder of an elderly man in Kirkcudbright—of a young person recently released from the Crichton royal hospital in Dumfries, will the First Minister undertake to review the arrangements for the aftercare of such patients, to give some assurance of the security of constituents throughout the country?

**The First Minister:** I am happy to take Alasdair Morgan's point, to respond to him specifically on that case and to draw out some of the wider implications.

The lifelong restriction order will be part of a thorough process in which criteria will be used to try to ensure that rights are protected. However, in cases where there is a possibility of further action, as we have heard described today, we can try to nullify that or remove it by ensuring that those restrictions are applied. I am very happy to look into the specifics of the case, and I will widen it out and give the member a full response.

### Central Heating Initiative

**4. Mr Kenneth Gibson (Glasgow) (SNP):** To ask the First Minister what progress has been made to date regarding the Scottish Executive's central heating initiative. (S1F-1151)

**The First Minister (Henry McLeish):** We are making excellent progress. Local authorities are already installing central heating under the programme, allocations will shortly be made to housing associations, and the recommendations of the central heating working group are being implemented in the scheme for elderly people in the private sector. We will meet our programme for government commitment that every council and housing association tenant and every elderly person has central heating by April 2006, and we are already examining how the programme can be extended.

**Mr Gibson:** I am somewhat perplexed by the First Minister's answer. Is he aware that 15 local authorities have said that not a single pensioner in their area will qualify for that initiative, because of restrictive eligibility criteria? Does he agree with Highland Council that the initiative is a "cruel deception"? Does he accept the view of Age Concern Scotland that

"there is clearly something wrong with the Scottish Executive Scheme when only one in 60 pensioners qualify"—

8,000, rather than the 100,000 promised? Does the £350 million promised for the initiative actually exist, and what will he do to save Scotland's poorest pensioners from shivering through yet another Scottish winter?

**The First Minister:** We have clearly committed ourselves to ensuring that every elderly person

and everyone who rents from a local authority or housing association will have central heating by April 2006. One would expect any member of any party to say that that is pioneering work in the long-term interests of people who will benefit in Scotland. It is the essential forms of central heating that we must put first into the homes of those who have maximum priority, but we will, of course, consider proposals to extend the scheme thereafter.

I do not want to put a discordant note into a discussion on such a serious subject, but members must not continue to distort and talk down imaginative schemes that are in the long-term interest of the people of Scotland. We are in touch with the people of Scotland, but the SNP merely seeks cheap political headlines at their expense.

### Ministerial Responsibilities

**5. Dennis Canavan (Falkirk West):** To ask the First Minister what plans he has for changes in ministerial responsibilities. (S1F-1140)

**The First Minister (Henry McLeish):** Allocation of ministerial responsibilities is entirely a matter for me.

**Dennis Canavan:** Will the First Minister tell us exactly what the Minister for Finance and Local Government's new responsibilities for central services are and whether there is any truth in reports that he is also to be given responsibility for European and external affairs?

**The First Minister:** On the latter point, there are no plans to change that portfolio. We are talking about members, rightly, reading our national newspapers. That is important in a democracy. It is also right that my Cabinet and junior ministers are delivering for Scotland on the widest range of radical policies that this country has seen in the post-war period. That is the true test of what we are delivering for Scotland. I therefore take Dennis Canavan's question about how I allocate ministerial responsibilities with a minor pinch of salt. It is vital that we continue the programme that we have embarked upon. That is why every minister in the Cabinet and all the junior ministers are working hard to ensure that.

**Ms Margo MacDonald (Lothians) (SNP):** Will the First Minister give us an undertaking that he will appoint a minister for tourism? If not, why not?

**The First Minister:** When I was Minister for Enterprise and Lifelong Learning, that comment was often made. The answer to Ms MacDonald's question is no. As she knows, I hate saying no to her.

**Ms MacDonald:** I know. I know.

**The First Minister:** Before this answer gets very much more complicated, I would like to add that we have two ministers who deal with tourism and a whole Cabinet that takes the matter very seriously indeed. We are ensuring that, after the foot-and-mouth outbreak and a whole series of other problems, we win through for that important industry.

### Primary Health Care

**6. Janis Hughes (Glasgow Rutherglen) (Lab):** To ask the First Minister what progress the Scottish Executive is making towards achieving its objectives for primary health care. (S1F-1149)

**The First Minister (Henry McLeish):** We are making considerable progress in the development of primary care through initiatives such as the recently announced extra expenditure of £18.5 million on personal medical services and the development of NHS24.

We have also decided to invest a substantial part of the additional resources that we received as budget consequential on primary care. The money will be spent to improve access to services, to manage chronic conditions more proactively at home and to redress inequalities in health.

By resourcing primary care to do more, we will free up time in hospitals. The details will be given when formal decisions on the budget consequential are announced in due course.

**Janis Hughes:** I thank the First Minister for that answer. I am delighted to hear that the important primary care sector will benefit from this large investment. However, while I welcome the ambitious plan to provide patients with access to an appropriate member of the primary care team within 48 hours, could the First Minister outline what practical measures the Scottish Executive will put in place to ensure that that time scale can be met?

**The First Minister:** I take Janis Hughes's point. We are not going to commit ourselves to ambitious programmes without putting in place delivery mechanisms and processes to ensure that they are achieved. In the circumstances, I will take the question, which the Minister for Health and Community Care has been listening to, and give Janis Hughes a full response on the details behind the question that she posed.

**Lord James Douglas-Hamilton (Lothians) (Con):** Is the First Minister aware that those with profound sleep problems are having their treatment withdrawn? Would he investigate the matter urgently, because the patients concerned very much need the treatment that is currently being given?

**The First Minister:** I am being prompted and tempted from every quarter to refer to a member in the chamber, but of course I will not do that. I believe that he fell asleep, but I do not want to go into that in too much detail.

I know that most constituency MSPs, including me, have received requests about the subject. The health department is considering the issue. Although it may look like a superficial issue, it badly affects a number of people. The work that is being done should be applauded and, again, I will get some details on the matter to Lord James Douglas-Hamilton.

**Alex Neil (Central Scotland) (SNP):** The First Minister will have seen that a policy reversal was announced down south yesterday, to abandon waiting list targets as a key indicator of success in the health service. Having failed to achieve the targets in Scotland, will the First Minister give us an assurance that he will not abandon waiting list targets?

**The First Minister:** I will make two points in response to Alex Neil's question. First, I think that the Parliament agrees that waiting times are more important than waiting lists. Secondly, we committed ourselves to achieving the waiting list targets by April 2002. We will continue to press on that, to ensure that we deliver.

## Common Fisheries Policy

**The Presiding Officer (Sir David Steel):** The next item of business is the European Committee debate on motion S1M-2006, in the name of Hugh Henry, on reform of the common fisheries policy.

15:33

**Hugh Henry (Paisley South) (Lab):** I start by paying tribute to Stephen Imrie and his clerking team, who supported the committee and have once again done a first-class job in producing this report.

I also thank my colleagues on the European Committee for the constructive way in which they approached this important subject. I am pleased to inform members that our report was agreed without division. Given that the subject is contentious and that it was discussed at a fairly lively time in the Parliament, I think the report shows how effective committees can be at working to achieve consensus. We have produced what I consider to be a balanced and fair report. I am also pleased that our colleagues on the Rural Development Committee have had time to assess our findings and have also endorsed them.

I thank all the witnesses who came to give evidence to the committee or provided a written submission. We received more evidence on this subject than we received in any of our other inquiries over the past two years. Much of it was very detailed and all of it was passionate. I make special mention of John Goodlad's thoughtful and analytical presentation on behalf of the Shetland fishermen. John has now resigned as their chief executive to concentrate on his salmon fishing business. I wish him well.

Such passion highlights the importance of the industry to the Scottish economy, and to local communities in particular, and fishing's resonance across Scotland. Like shipbuilding and coal mining in previous times, the fishing industry has played an important part in developing Scotland's character.

I will pull out one set of statistics from the report. Whereas for the UK the fishing industry represents only 0.2 per cent of gross domestic product, the figure for Scotland is 3 per cent and for the wider Highlands and Islands region it is 6 per cent. Indeed, in some localities employment in the industry can be as high as 33 per cent of the economically active population. Although the industry as a whole might not be large in UK terms, it is as much of a lifeline for many communities across Scotland as coal mining used to be.



On 20 March, the European Commission published a green paper on the reform of the common fisheries policy. It has long been apparent to many that the CFP in its current form is failing on two main fronts: it fails to preserve fish stocks and it fails to safeguard the livelihoods of people involved in the fishing industry.

The committee heard a number of calls for the outright abolition of the CFP or, failing that, for the UK to cede from its requirements. I can report that all committee members rejected that view, which is legally difficult, politically impossible and has no logic when we consider the fact that fish do not respect artificial boundaries or lines in the sea. We simply must co-operate in the management of stocks. The argument for unilateral withdrawal is—if members will forgive the pun—a red herring.

The committee felt that the CFP should be reformed. The driver for that view is that we wholeheartedly believe that, in its current format, it fails to deliver in protecting stocks and in safeguarding a viable fishing industry. As Cathy Jamieson said during the debate in the Rural Development Committee—and as we say in our report—now is not the time for blame. I simply note that political will in the Council of Ministers is going to be vital.

If my colleagues permit me, I will quote a former Conservative minister, John Gummer, who was more famous for hamburgers than for fish. At a recent conference, he said:

"If you are a fisheries minister you sit around the table arguing about fishermen—not about fish. You're there to represent your fishermen. You're there to ensure that if there are ten fish you get your share and if possible a bit more. The arguments aren't about conservation, unless of course you are arguing about another country."

Such an approach is simply not sustainable.

Although this is not the time to question whether the industry itself has contributed to the problems that face the fishing sector, I note that at least some of the senior representatives of fishing bodies are putting up their hands and saying mea culpa. There is a recognition in some quarters that a more responsible approach is required. Although I welcome that, we now need to move on.

**Mrs Margaret Ewing (Moray) (SNP):** Will the member pay tribute to the fact that, in the Scottish fishing fleet, many people who have been directly involved have been in the van of measures to protect the fishing stocks of Scotland and the North sea as a whole? That should be put on record.

**Hugh Henry:** Although I acknowledge the member's comments, I should point out that people in the industry have also indicated that the industry itself must take some—not sole—responsibility for what has happened.

The committee felt strongly that it is critical to take a long, hard look at reforming the CFP, even if that means taking uncomfortable decisions. The EC's green paper provides the obvious backdrop to the options for reforming the industry. Although that has been broadly welcomed by many in Scotland, the issue that faces us is what exactly will be agreed by ministers over the next year. For that reason, we wanted to consider as a committee and as a Parliament the general principles that must underpin any reform.

The overriding principle is that a regime must be created that protects stocks and creates a viable industry. Within that, fishing representatives must have their say. There is no point in excluding the industry from decisions about its members' livelihoods if we want it to buy into those decisions. Fishing representatives must be more than simply consulted; they must help to take the decisions in certain areas, such as the management of stocks. That must not be limited to emergencies, as the Commission suggests; it must take place over the longer term.

I would like to draw on my upbringing and background and paraphrase a well-known advert about buying pets that appears at Christmas time: fish is not only for Friday, but for all the year round. We must manage stocks better. For that reason, the committee endorsed unanimously proposals for more localised zonal management, with fishermen, scientists and key organisations taking decisions together. Legal advice on this matter is clear: provided we remain within the framework of the powers the Council has, certain responsibilities can be devolved and delegated to newly established and inclusive management committees. Our committee does not underestimate the political obstacles to putting that framework in place, but we agree wholeheartedly that it is the future for the industry. Perhaps such a regime needs further analysis; it may need to be phased in, but it must happen.

With a new regime of the type I have outlined comes responsibility. It is clear to everyone that there are too many fishermen chasing not enough fish. That cannot go on. As Commissioner Fischler announced on Tuesday, a 40 to 50 per cent reduction in fishing activity may be required. The committee did not comment on those figures, but we noted that some long-term equitable decommissioning and restructuring of the fleet is absolutely necessary.

**Tavish Scott (Shetland) (LD):** As Mr Henry noted, on Tuesday Franz Fischler said that there might need to be 40 to 50 per cent cuts in the fishing of certain stocks, including hake. Does he accept that in fisheries management we do not need commissioners making grand statements without the logical extension of what they are

saying being worked through in detail—in fishing regulations that affect all parts of the European Union, particularly Scottish waters? That does not help.

**Hugh Henry:** I agree, but Commissioner Fischler has drawn attention to a problem that needs to be addressed. That should happen in the way Tavish Scott suggests.

I know that decommissioning and restructuring will cause problems in certain areas. That is why the European Committee called for immediate action from the Executive and for the creation of a task force now—not later—to help communities diversify. We also noted that some areas may be hit harder than others. That may mean that a differentiated approach is needed that takes into account local circumstances. Any decommissioning moneys must be spread wider than to just the boat or licence holder. We want ordinary fishermen and their families to share in any support that is given to the industry.

We also want a level playing field to be created for our fishermen. We heard anecdotal evidence that they are treated more harshly than others. We are not able to prove that one way or the other, so we argue for a more open and transparent system of recording enforcement and infraction, to highlight to all whether Scottish fishermen are treated unfavourably. We are very strong on the fact that, even if matters could be better co-ordinated, enforcement should remain a competence of the member states.

Finally, we made a number of recommendations on quota setting, licences, access rights, the protection of inshore fishing and such basic matters as the continuation of historic fishing rights.

I conclude by noting that nearly 10 years ago the fishing industry in the grand banks of Newfoundland collapsed. Something similar is close to happening in the North sea and other areas where Scottish boats fish. More than five years ago a House of Lords report stated:

"In their heart of hearts scientists, fishermen, managers and politicians must all know that action must be taken now to prevent a repeat of the Grand Banks fiasco nearer to home. The question is, will they take it?"

I urge the Scottish Executive to take heed of our findings. I welcome the positive and constructive feedback that we have received prior to today. I hope that in her discussions at the fisheries council the minister will succeed in having some of our recommendations accepted. I know that the Executive will work hard to achieve the best deal possible.

I do not underestimate the difficulties in this process, but it is now time for all to demonstrate that there is a will to ensure that the Scottish

fishing industry and Scottish fishing communities have a future.

I move,

That the Parliament notes the 3rd Report, 2001 of the European Committee, *Reforming the Common Fisheries Policy: A Blueprint for Negotiations* (SP Paper 330) and commends the Report's recommendations to the Scottish Executive.

15:45

**Richard Lochhead (North-East Scotland) (SNP):** I congratulate the committee on its excellent, first-class report. I hope that the Scottish Government recognises the role that the committees are playing in the Parliament by taking on board many of the recommendations that I am about to discuss.

The SNP believes that this year and next year present a long-overdue opportunity radically to overhaul the common fisheries policy and to renew and embed the provisions that are crucial for the protection of fish stocks. The coming years will be a make-or-break time for many of Scotland's fishermen and processors, and the success of the Parliament in influencing the CFP will determine which road the industry will take. Thankfully, the report that we are debating points the way.

This cross-party report and the green paper from the European Commission highlight the fact that, for the first time in the past 20 years, the fishermen, the politicians and even the European bureaucrats are all singing from a similar—if not the same—hymn sheet. We all agree that, over the past 20 years, the CFP has largely failed Scotland, which is the home of Europe's richest fisheries. To many fishermen, the CFP is simply a crazy fisheries policy. Change is inevitable, as EU enlargement calls for a radical re-think of the way we operate European fisheries policy. We cannot have landlocked states or new EU entrants dictating to Scottish fishermen what they can catch off their own shores.

**Tavish Scott:** Does Richard Lochhead accept the fact that the former eastern European countries that are entering the EU have no historic rights and simply will not have access to North sea fisheries or other areas?

**Richard Lochhead:** I could not agree more with Tavish Scott. I shall touch on the subject of protecting our historic fishing rights.

The continuous expansion of the EU makes a centralised, inflexible fisheries policy unworkable. It is not only about EU enlargement, however; the fact is that we cannot continue with a policy that forces fishermen to throw two thirds of their catch overboard. Only one in three fish that is caught at sea ends up on the table. We cannot continue with

a policy that allows industrial fishing to proceed unabated and destroy juvenile fish stocks and the livelihoods of our people. Nor can we continue with a policy in which the rules are applied forcefully in some countries but not in others, thereby creating an unlevel playing field.

Fisheries-related employment in Scotland has declined and fish stocks are at dangerously low levels. Fishing ports such as Lossiemouth, Pittenweem, Whitehills and many others around Scotland's east and west coasts and in the islands are shadows of their former selves. The key—as is highlighted in the report—is to protect Scotland's historic fishing rights in our own waters. Many people agree that the common management of fish stocks is sensible, but we must guarantee that Scotland will get its fair share.

That is why it is essential that, in the CFP review—as the committee highlighted—we retain relative stability as a founding principle of the CFP. That must be cast in stone. The Hague preference must be retained. The six and 12-mile limits, which help us to protect our inshore sector, must also be retained as a founding principle. The existing restrictions on access to the North sea must be retained—we cannot allow the North sea to become a free-for-all—and we must retain the Shetland box. We do not want more derogations: as long as we have the CFP, we should have a lifetime guarantee that those principles will be at the policy's heart.

The SNP is at one with the committee on those points, and we join the committee in demanding that the EU remove any ambiguity or question marks over the principles that are in the green paper before it reaches its conclusions. Also, the introduction of individual transferable quotas must not be allowed. Unfortunately, the report highlights that spectre as well. If ITQs were introduced, they would allow relative stability to be undermined by the back door.

The only way in which the common fisheries policy can move forward in the 21<sup>st</sup> century is through the introduction of subsidiarity and the establishment of meaningful zonal management committees. Fishermen should be at the heart of the policy-making and decision-making process, along with the scientists, fisheries managers and environmentalists. Conservation has to be the No 1 priority for the CFP.

Total allowable catches are a useful tool in maintaining relative stability but they are not effective in protecting stocks as they control only the amount of fish landed rather than the stocks. We have to get away from the annual TAC bunfight, which is why we welcome, as does the committee, the promotion of multi-annual, multi-species TACs that are far more suited to Scotland's mixed fisheries and help us move away

from constant crisis management.

We have to put more emphasis on technical measures at sea, as well as on the amount of fish landed. Like the committee, the SNP wants seasonal closures, no-take zones and real-time closures higher up Europe's agenda. We have to cut fishing effort as well as capacity. If the Government cannot see beyond decommissioning over the next few years, we will have no fleet left in 10, 15 or 20 years' time and all our processors, which employ tens of thousands of people, will close—as is highlighted by the report, 40,000 jobs are at stake. That is why tie-up schemes are essential.

If the minister paints herself into a corner every time there is a closure in Scotland's mixed fishery, the boats will either go bankrupt or they will divert their attention to other areas of the sea, thereby increasing pressure on them. It may be cheaper in the short term to decommission boats, but in the long term it is the most expensive policy possible, as it will result in the disappearance of the industry.

Ministers have to acknowledge the social role of fisheries in Scotland. Conservation measures such as tie-up schemes are an investment in rural and remote communities. This country invests £500 million a year in our farming communities because they supply food to the country and offer employment in areas in which there is no alternative. We have to adopt a similar approach to fisheries-dependent communities in Scotland.

The report concludes by calling on the minister to show political will. The SNP echoes that call. The minister has to lead from the front. Scotland is a fisheries-dependent nation and the Scottish Parliament is the custodian of Europe's richest fishing grounds. The minister has to lead for the UK in the CFP negotiations. We have 70 per cent of the UK's landings. Fishing is 15 times more important to Scotland than it is to the UK, as is highlighted by the report.

If the Scottish Government fails to rise to the challenge, there will be the gravest imaginable consequences for the economic situation of our fishing communities and this Administration will be forever associated with the demise of one of Scotland's most traditional industries.

On behalf of the SNP, I commend this report to the Parliament.

15:52

**Mr Jamie McGrigor (Highlands and Islands)**  
(Con): I congratulate the European Committee on producing the report.

The issue is simple: fewer fish mean fewer jobs. One job at sea creates five jobs on land. The

recently announced further cuts to our long-suffering fishing industry will seriously jeopardise the future of that industry and of the people who depend on the income generated from fishing.

Will the Executive follow the stated will of the Parliament, and the advice of Franz Fischler, to draw down the money that is available for a limited tie-up scheme or will it ignore the most obvious way of conserving fish stocks and retaining a sustainable Scottish fishing industry?

*The Press and Journal* today highlights Franz Fischler's warning that fishermen face a great deal more pain before North sea cod stocks begin to recover. Apparently, more measures to cut fishing effort are vital, but EU funds would be available to help fishermen weather the storm. Franz Fischler stated:

"EU funds to cushion negative effects are available under the Financial Instrument for Fisheries Guidance. It is therefore up to individual member states to review their priorities in the light of the cod and hake recovery plans".

Further cuts will have huge implications for Scotland. Scotland's fishing industry employs 7,000 people and up to 40,000 people are employed in the wider industry. In Shetland, in 1998, the total turnover of the fisheries industry accounted for one third of the Shetland economy. The fisheries industry employs 20 per cent of Shetland's work force and can employ as much as 31 per cent of the active local population in Banff and Buchan. Its value to Scotland must not be underestimated.

The fishermen of the Western Isles rely so heavily on shellfish that there must be a case for local management not only of the six and 12-mile limits but further out as well, to ensure consistency of conservation policy.

Now that Belgium, with its numerous regional Parliaments, has taken over the EU presidency and its regional ministers will be able to lead European meetings and debates on fisheries, perhaps we might see the Scottish Deputy Minister for Environment and Rural Development leading on fisheries matters in Europe—rather than relying on Elliot Morley to do it for her. That is what happened during the Conservative Administration and it is a measure of true and honest devolution. Scotland should lead the way on fishing in Europe.

The Scottish fishing industry has suffered enormously over the past few years. In line with what successive politicians have required them to do, they have dutifully trimmed their catches, lowered their incomes and even stayed at home in attempts to allow fish stocks to replenish.

The threat of the possible introduction of individual transferable quotas is another problem because 20 per cent of our quota is already in

foreign hands and ITQs would undoubtedly lead to a further substantial loss of British quota. They would destroy relative stability. They have been tried in Iceland, to the detriment of Icelandic fishermen.

It is little wonder that fewer young men want to go into an industry whose future looks so bleak and so uncertain. That is why it is so important that the woefully inadequate CFP is reformed coherently and comprehensively to provide a sustainable future for Scottish fishing. Continuing to implement short-term measures that achieve little if anything is completely unacceptable. We need long-term policy that will balance the competing interests of conservation and commercialism. We need our coastal limits, we need zonal management and we need retention of the Hague preference.

The European Committee's report is absolutely right to call the present system "untenable". The CFP cannot be defended. If a lunatic had been asked to design an EU-wide fisheries policy, they would have come up with the CFP. In terms of employment and environment, it is the Titanic of all EU initiatives. I think that we can all agree on that point. The EU can hardly advise the rest of the world on fish conservation unless it puts its own house in order first.

The report recommends a complete overhaul of the current CFP. That is absolutely right. Radical reform is the only way forward, but will the Scottish Executive do anything about the report? Will it listen to Franz Fischler's comments and draw down money for a compensated tie-up scheme, or will it continue to wave two fish fingers at this Parliament and the Scottish fishing industry? Instead, why does it not wave two fish fingers at industrial fishing, which is taking 700,000 tonnes of fish biomass a year? That really would help conservation.

While panic measures have undoubtedly been necessary in the past, there is absolutely no reason for fisheries managers, whether at a national or at a community level, not to arrange for the investment of funds in technical conservation measures trials to establish their level of performance. Fishermen require to be closely involved in such trials, not only in the obvious sense of carrying them out, but in monitoring and evaluating them. I ask the Executive to arrange such trials.

In the end, technical measures can go only so far. Curtailment of effort in biologically correct TACs is likely to be the only sensible way of achieving proper stock conservation. The only definable answer to the problem is restriction in effort. Fisheries managers are usually unwilling to examine a reasonable scheme because while the cost of technical conservation measures require to

be met by the industry, it is the duty of Government to fund effort control measures.

Scotland's fishing industry is vital to the social and economic fabric of our rural communities, so relative stability is more important to us than to anyone else. We did not join the CFP to see our fishing industry decimated and our fishermen impoverished, but that is exactly what has happened. That has to change. We need to endorse the policy set out in the committee's report and we need the Scottish Executive to support that policy.

I have talked to many fishermen. I find that there is still great optimism and a belief that this bad cycle will end and good times will return. It is therefore all the more necessary that we show loyalty to the fishing industry by safeguarding fish quotas for the Scottish fishermen of the future so that they can sustain their families in our coastal areas.

15:59

**Tavish Scott (Shetland) (LD):** I associate myself with Hugh Henry's remarks, in what I thought was an important piece of analysis. I also associate myself with what Richard Lochhead said about the European Committee's report overall. It is an important and a good report, and it does the committee structure of the Parliament proud to have delivered such a serious analysis of a complex area that has many complex issues of fishing and fishing politics around it. The report is a good, solid piece of work.

Last night, the Norway-European Union talks in Oslo collapsed. Josie Simpson, who is the chairman of the Shetland Fishermen's Association telephoned my office last night—in despair, more than anything else. He demonstrated that despair in a clip of an interview with him that I heard on the radio this morning. Those talks are important for the future of fisheries management in the North sea, but they have gone nowhere. I understand that the Scottish Executive environment and rural affairs department officials share Josie Simpson's frustration. If the EU officials who are negotiating at those talks are not up to the task, it is incumbent on the member states to replace them with people who are.

I want to pick up on a remark that was made by Hugh Henry—he was right to make it—when he asked what was wrong with the CFP. To my mind, it is clear what is wrong with the CFP, when people such as Josie Simpson, who is respected not only in Shetland but throughout Scotland and Europe, sit outside the room, with Mike Park and others, rather than sitting in the room to help with the negotiations and to bring to bear practical experience in the discussions.

**Richard Lochhead:** As the member is aware, difficult negotiations will continue over the next few months to draw up the cod recovery plans. Does the member think that we should set up the zonal management committees early—that is, in the next few months—rather than wait for the five-year recovery plans to be put in place first?

**Tavish Scott:** That proposal has some superficial attractions, but we must still go through the process, in which fishermen must be involved. As Richard Lochhead said, fishermen must be in the room to change policy. My concern about his proposal is that it would not change anything until such time as the zonal management processes have been followed through in relation to CFP policy after 2002.

I start, as does the CFP green paper, from the premise that the CFP has failed. There are few people who would dispute the failure of the CFP to create a sustainable fishing industry and sustainable fishing stocks. In many ways, the policy has been an unmitigated disaster. For example, unmarketable fish have been dumped, over-quota fish have been landed and there is the annual December fisheries council—mentioned by Richard Lochhead—which must be the worst way imaginable of negotiating the future of our fishing industry.

How can the situation be improved? The committee report makes compelling arguments in response to that question. Those arguments were further enunciated in Shetland at the Shetland oceans alliance conference—known as the SHOAL conference—at Scalloway less than a month ago. I was pleased that the Deputy Minister for Rural Development was able to attend that conference and to contribute to its proceedings, as did a number of other members present in the chamber. Christophe Nordmann, who is the head of the fisheries unit within the fisheries directorate-general, also addressed the conference. To my mind, he made one of his most important comments when he stressed the need for vulnerable peripheral fishing communities to benefit most from a reformed CFP. That must be a driving principle behind the Scottish Executive's approach.

I agree with many of the points that were made by Hugh Henry and other members about the principle of relative stability and the Hague preference, and I would like to pick up on two points in particular. First, I see no reason why the six-mile and 12-mile limits should not be encapsulated as permanent features of the CFP. Surely it would be a logical development of the principle of subsidiarity that the 12-mile limit should be enshrined as the management tool for white fish stocks within that area, as they should be managed locally by local management

organisations. I hope that that proposal will be taken up.

Secondly, I support members' comments about the Shetland box. I also support the comments that the minister made in Scalloway three weeks ago, when she said that the Executive was considering research in that area and that it might expand the Shetland box if there was a scientific case for doing so. I hope that she will comment further on those points in her speech later in the debate.

The committee made a specific point, which I support, about adequate and transparent enforcement of regulations. I endorse the approach that was proposed by the committee. It is important that the same regime for fish landings at ports should apply throughout Scotland, particularly to the pelagic sector.

I want to highlight briefly the case of my constituent, Jimmy Sinclair, who is being prosecuted over an alleged incident to do with square-mesh panels. My principal concern about Mr Sinclair's case is that the department received copious information that indicated that the regulations on square-mesh panels have a disproportionate effect on low-powered inshore seiners, such as his boat. It is important that, when we consider making regulations, we ensure that they recognise different forms of fishing activity. Blanket regulations do not suit the fishing sector and, in particular, small boats. I hope that the way in which regulations are introduced will be considered in that light.

I will finish with two technical points. To some extent, the first was picked up the other day in the helpful briefing that officials gave to members of the Rural Development Committee. The technical conservation proposals must accept that there is a huge difference between an inshore low-powered seiner and a twin-rig trawler. I do not apologise for repeating that, because it is important for the overall approach that the commission takes.

Secondly, on effort limitation, recovery plans and closed areas—whatever description is used—I want to consider what Franz Fischler has said. On 27 May, he picked up the allegation that the European Commission had completely ignored the points about displacement of effort and the effect that that would have. He said that vessel lay-ups were the only way to avoid other stocks being hit by the displacement of effort. Policy must change to take account of that fact. Tie-ups must be in that package of measures. Otherwise—particularly given the current talk of individual transferable quotas—I will be concerned that the fishing industry will wither on a free-market vine, having been surrounded by red tape that is created in Brussels. I passionately wish to avoid that.

16:06

**Irene Oldfather (Cunninghame South) (Lab):**

When the European Committee first embarked on its inquiry, some members who were not from traditional fishing communities—I include myself in that category—felt that we would be on a bit of a learning curve. We spent many useful hours taking evidence and listening to what the fishermen had to say—listening is the key word. I am pleased that the report has been welcomed by the fishing organisations and the wider community, who have, generally, been receptive to it.

It is important to put on the record that the purpose of the report was not simply to gather information—although that was important—but to influence the European debate on the common fisheries policy and to ensure that, in the weeks and months to come, Scotland's voice is heard.

Today, the Parliament is once again demonstrating its worth in a practical way by giving a fair airing to the European Committee's report. From an early stage, all committee members were agreed on the need for reform. The status quo is simply not an option. Tavish Scott outlined eloquently many of the problems with the current policy.

The committee embarked on its inquiry before the green paper was produced, so it was welcome to note that the Commission had undertaken what fishing organisations have referred to as a candid analysis. The green paper was helpful to the committee's deliberations, because it coincided with some of our early thoughts on such things as the inadequate stakeholder involvement and the ineffective control and enforcement measures.

From the mountain of evidence that we took, it is clear that many in the industry are also prepared to be candid. There is a clear commitment to finding a route whereby conservation and fishing can go hand in hand. On all sides, there was recognition that progress can be made only by working together and that there must be a fishing heritage for our children and our children's children. That honest approach led me to believe that zonal management committees, which give power to those who are best placed to understand the issues, are the best way forward.

The enforcement regime must be part and parcel of any progress. One of the key difficulties that has dogged the common fisheries policy—it was recognised by almost everyone who gave evidence to the committee—is the need to ensure transparency and a level playing field. The committee felt strongly that annual, verifiable statistics should be provided by the European Commission. Central monitoring should be complemented by the role of zonal management committees in the member states in inspection

and in compliance with the regulations. Resources will need to be allocated for that. Further discussions may need to take place at European level on how all those things will be funded. It is important—we considered this when taking evidence—that the industry should not have to bear the brunt of financing the inspection regime.

I am running out of time, but it would be remiss of me not to thank the European Committee clerks, who undertook the formal drafting of the report in partnership with the committee. They did that work without the assistance of an adviser, on what is, for many of us, a very complex area. I also thank colleagues on the committee. In the main, discussions were conducted in a good-humoured way. I commend the committee's report to the Parliament and I trust that the minister will ensure that it makes a significant contribution to the debate that will take place in Europe in the weeks to come.

**The Deputy Presiding Officer (Mr George Reid):** I call Stewart Stevenson.—[*Applause.*]

16:11

**Stewart Stevenson (Banff and Buchan) (SNP):** Presiding Officer, and my new colleagues in all parties, thank you very much for the warmth of your welcome. It is much appreciated. I am sure that Brian Fitzpatrick will feel exactly the same. It has been a particular pleasure to see a number of familiar faces round the chamber. I thank, especially, Richard Lochhead for paving the way for me by bringing my home village of Whitehills into his opening remarks.

Let me turn to fishing and the common fisheries policy. I pay tribute to my predecessor, Alex Salmond, whose success in raising fishing to the top of two Parliaments' agendas for the first time in a generation is something of which we should take note. One of the key achievements of the Scottish Parliament has been to provide a platform for precisely such important Scottish issues, which have previously been neglected by Westminster. It is my job to ensure that the fishing industry, in all its diversity, feels as well supported by me as it was by Alex Salmond.

I see another parliamentarian's work today in the European Committee's report. It was some time ago that Allan Macartney, the much-missed member of the European Parliament, proposed locality management of our natural fishing stock. There could be no finer tribute to him than the adoption of zonal management as a key part of the reform of the common fisheries policy. He would have been very proud of this Parliament's support in the committee's report.

What does the fishing industry think of the report? The Scottish Pelagic Fishermen's

Association told me yesterday that there is wide agreement in the industry that the common fisheries policy has fallen well short of its objectives in many areas. Looking forward to zonal management, the association said that bringing fishermen to the table, along with fisheries managers and scientists, should result in better-informed, realistic and pragmatic management measures. I say to Tavish Scott that that will allow Mike Park to sit at the top table. I did not hear Tavish Scott say that Scotland's minister with responsibility for fisheries should sit at the top table in Europe, representing Britain, but I look forward to hearing him say that in future.

I am happy to agree with Jamie McGrigor, who spoke yesterday of the need for more local control. We have advocated that for many years. The Scottish Fishermen's Federation's focus is on the need to maintain relative stability; it believes that that should be embedded in European law. Roddy McColl of the Fishermen's Association Ltd—and, of course, the ever-combative Tom Hay—gave evidence to the European Committee. Roddy McColl said:

"It is extremely difficult to get"

everyone

"to agree and to speak with one voice ... There are tensions that should be buried for the common good."—[*Official Report, European Committee, 30 January 2001; c 946.*]

I have every reason to believe that the European Committee's report presents the best opportunity for many years to bring the fishing industry together to be of one mind.

I note that the Deputy Minister for Environment and Rural Development is looking rather lonely—I hope that she is not isolated in the debate. I make a plea to her and to the Executive that, in responding to consultations on the £27 million that is being made available, they give due regard to the need to have a strong fleet available to catch the class of haddocks that are currently swimming in the sea and that we should be catching in 2003. Taking too many boats out of the industry now will benefit only other countries' fishing industries. We have to ensure that we do not fish out the young haddock before then. Against that background, I ask that the door be left open to compensated tie-ups. Keep listening to the fishermen.

To end on a sombre note, we forget sometimes that fishing is not just another industry. It is a way of life and a staple for many communities, and it is a cruel mistress for many of those who put to sea. Today's news that the wreck of the Peterhead-based Trident has been found after 27 years is a poignant reminder of the price that can be paid. All in the industry should be assured that I and my SNP colleagues will fight just as hard as Alex

Salmond has always done to represent the fishermen's interests.

16:16

**Alex Johnstone (North-East Scotland) (Con):**

May I be the first to congratulate Stewart Stevenson on his maiden speech in Parliament. While we are on the subject of congratulations, I thank the European Committee for producing its report. An examination of the issues leading up to the renegotiation of the CFP was one of the Rural Affairs Committee's identified priorities at the outset. Unfortunately, as a result of pressure of work, we did not arrive at a point when we could begin that process, so we were delighted when the European Committee took up the issue at an opportune moment and proceeded to produce its report.

The report is significant, not only because it mirrors the views that were expressed by the Rural Development Committee—we have discussed the report and backed it 100 per cent—but because it was prepared while John Home Robertson, the former fisheries minister, was on the committee. His contribution was important and his experience was of great benefit. Most significant, however, is the title of the report—"Reforming the Common Fisheries Policy: a Blueprint for negotiations"—because it is a blueprint for negotiations. We have all heard that the common fisheries policy has damaged the fishing industry, and that damage shows most clearly in Scotland, because—as we have heard—Scotland's fishing industry is significant in our most peripheral areas. It has long been the will of every political group in this Parliament to reform the common fisheries policy.

It is increasingly the case that we also support the need to devolve the management of our fisheries stocks to the lowest possible level, so that ultimately we gain proper local control. As is clear from the report, we have gathered round the view that the correct level for that management is one that includes all the countries that have an interest in a given fishery. That is why the principle of zonal management has become established and embedded in the report, as the declared will and desire of everyone in this Parliament. We need the Executive to take up that view and go forward with it. I have no doubt that the minister agrees broadly with the principles of the report, but I urge her to take on board its details and to express that view in international negotiations.

That brings me to the most important and significant point, which has been repeated several times during the debate—the fishing industry is far more important to Scotland than it is to the rest of the United Kingdom, or to virtually any other country in Europe. It is therefore essential that

Scotland's ministers are in a position to represent Scotland's interests. For that reason, I urge the Deputy Minister for Environment and Rural Development to take every possible opportunity to ensure that, when negotiations take place, she and her colleague the Minister for Environment and Rural Development are at the forefront. Only then will Scotland's interests be represented above all else.

It is my pleasure to commend the European Committee's report to Parliament. When we come to a unanimous conclusion at the end of today's debate, I hope that what is set out in the report's pages is the true future for the Scottish fishing industry, so that we can go forward hand in hand, Parliament and Executive, to begin to impose Scotland's will and Scotland's needs on the common fisheries policy.

16:20

**Elaine Thomson (Aberdeen North) (Lab):**

I welcome the opportunity to participate in this important debate. I congratulate Stewart Stevenson on his first speech in the Parliament. I am not a member of the European Committee. Like others, I congratulate it on delivering a well-considered and thoughtful report on reform of the CFP. I am sure that the minister will welcome the report and that it will achieve its objective by being an effective base for further discussions in the EU.

I think that we all agree that the fishing industry is undergoing one of the most difficult periods in its history, particularly the white fish sector. The next three years will without doubt be extremely hard for fishermen, fish processors and others who provide support services to the fishing industry.

It is vital that the CFP is reformed in a way that offers the industry a good future throughout Europe and, of course, in Scotland. The North sea was, and could be again, one of the world's richest fishing grounds. Overfishing and the failures of the present CFP have resulted in the figures for about 40 of the 80 commercially exploitable species being below safe biological limits. I understand that only about three in 10 cod manage to reach their fourth birthday. Some 60 per cent of their biomass is fished out every year.

I was pleased that the report focused on recognising the importance, in reforming the CFP, of rebuilding healthy and sustainable fish stocks. The coming together of fishermen, scientists, environmental groups and the Government on the issue—particularly fishermen's recognition that they must protect and sustain fish stocks—can only be welcomed. As Hugh Henry said, no one wants a repeat of the Canadian catastrophe. Canadians lost their cod and, after nine and a half years, no signs of recovery have appeared.



As members have said, the European Commission's green paper on the CFP contains many radical proposals that concentrate on zonal management, fish conservation and management and better compliance and enforcement. On policing, it has been said that many Scottish fishermen feel that they are picked on, but that judgment depends on whom they are compared with. Others would say that policing is much stricter in Norway than it is in the EU.

The CFP raises the question of restructuring the fishing industry. I am pleased that many of the ideas in the CFP green paper have been widely supported by organisations such as the Scottish Fishermen's Federation and by many in the fish processing sector.

Richard Lochhead talked about tie-up costs. In written evidence to the European Committee, the Commission's director general of fisheries gave the cost of tie-up schemes and said:

"The cost of compensating for one year all of the vessels concerned to fish 50% of their normal time at sea would be twice the cost of permanently decommissioning 50% of the vessels."

In the longer term, the investment that was made earlier this year will be considerably better than tie-ups.

**Richard Lochhead:** The member mentions the cost of tie-up schemes. The SNP accepts that decommissioning is an unfortunate necessity, but we make the point that if the Executive continues to decommission the fleet, the long-term cost will be the loss of the fishing industry—catching and processing. Surely economic criteria should not be the only criteria.

**Elaine Thomson:** If the reform of the CFP is to be effective, it must rebuild fish stocks so that decommissioning of the fleet is not required to continue for ever. We want to return to having healthy fish stocks that will sustain an economically viable fishing industry, without the requirement for decommissioning. In the short term, there is no question but that we must decommission.

It is important that the fishing industry is engaged and involved. Many members referred to that. One result of that is the report that was published recently by the fish processors working group. That is an example of the industry working successfully with Government and the enterprise agencies.

**The Deputy Presiding Officer (Patricia Ferguson):** I ask Elaine Thomson to come to an end.

**Elaine Thomson:** The fish processors working group report produced a raft of recommendations that were accepted by the minister. I hope that

those recommendations will allow the fish processors to restructure and so survive the current difficulties in the fishing industry, which is so important to Aberdeen.

The report is effective and I wish it well.

**The Deputy Presiding Officer:** I call Nora Radcliffe and ask her please to keep her comments to under four minutes.

16:25

**Nora Radcliffe (Gordon) (LD):** I will do my best.

I commend the report for the coherent way in which it presents the background, the evidence that was taken by the committee and our deliberations. I add my congratulations to the clerking team, who worked hard, long and to good effect to pull the report together and to frame our recommendations.

The EU green paper is refreshingly honest about the shortcomings of the CFP. It is generally accepted that the common fisheries policy has been, in many ways, a disaster. It needs, and is about to get, a radical overhaul. However, we should not disregard the fact that things would have been immeasurably worse without it and that some of the failings of the original CFP are rooted in the way that it has been operated by member states. That they did not always make full use of the flexibility and opportunities that the CFP offered is now water under the bridge, but useful lessons could be learned from having a good look at the current rules to see where opportunities were missed.

There is a horrible saying, that bad laws are made to be broken. That is untenable: bad laws should be changed or, better still, not made in the first place. The current CFP has fallen foul of the bad-laws-are-made-to-be-broken attitude. The new CFP must be acceptable and enforceable. In the last resort, policing can be done only by consent.

We must get the new CFP right. It is important that we pay attention to how we monitor it and how, once it is agreed and in place, we police it effectively. We need an EU-wide agreement on the management of fisheries. It is essential that that fulfils the twin requirements of maintaining fish stocks at sustainable levels and protecting fishing communities.

If we look at fishing from the top down, we see that it equals 0.2 per cent of UK gross domestic product. However, if we move the perspective and look from the bottom up, we see that fishing can account for 100 per cent of gross local product in some coastal communities. That is one reason why it is essential to get the new CFP right. We have seen elsewhere that a fishery can be

depleted beyond the point of recovery and can collapse completely. It is unthinkable, but only too possible, that that should happen in the fisheries on which our communities depend. That is the other reason why we must get the new CFP right.

It is up to us to work with the other member states to devise a better policy that is informed by what we have learned from experience. The green paper recognises that we need to involve fishermen fully in developing policy for their industry. It is fair to say that, in the past, the fishing industry has been inclined to pooh-poo what the scientists have tried to tell them. The industry is now coming round to accepting that the scientists were perhaps not too far adrift. Scientists must also recognise and respect the fishermen's knowledge and experience. Equally, we politicians and our officials must be prepared to listen to and respect such sources of expertise and good advice.

Whatever the shape of the new CFP, it will work only if all the parties that contribute to it feel that their contribution has been properly valued and taken into account in the final outcome and that the final outcome has been arrived at fairly and is workable. Those are easy sentiments to articulate, but achieving them requires a long process that will involve a lot of hard work and hard talking.

Our ministers and officers must apply themselves now to making contacts in all the other member states that have fishing interests to make the case for and argue the merits of what we want in the new CFP. The committee's report offers, as the title says, "a Blueprint for negotiations". It is not an end point, but—I believe and hope—a well-informed, well-founded and robust starting point. To borrow a phrase from "Masterchef", "Let's get talking."

**The Deputy Presiding Officer:** We now move to the winding-up speeches. I apologise to the three members whom I have not been able to call.

16:30

**George Lyon (Argyll and Bute) (LD):** I start by endorsing the sentiments expressed by most members in congratulating Hugh Henry and the European Committee on an excellent report. I read it for the first time yesterday. It lays out in logical sequence the problems that the industry faces.

The most important quotation that we heard from Hugh Henry was from page 38 of the report. It is from a House of Lords report and relates to evidence that my friends in the Clyde Fishermen's Association gave. It reads:

"In their heart of hearts ... fishermen, managers and politicians must all know that action must be taken now to prevent a repeat of the Grand Banks fiasco nearer to home. The question is, will they take it?"

That is a sign that the industry recognises how severe the problem is. The Canadian Grand Banks fishing grounds were closed in 1992. A recent television programme showed that there was still no obvious sign of cod returning there. That shows us how high the stakes are.

Jamie McGrigor complained in his speech about 20 per cent of the quota being owned by other countries. He should remember that his party was in power when that measure was introduced. If he really believed that it was a serious problem, why did not he do something about it? Too often, he complains in the chamber without remembering that his Government was responsible.

**Mr McGrigor:** I take on board what George Lyon says, but too often he goes on about 18 years of Tory misrule. He has sat there for four years and done absolutely nothing.

**Members:** Four years?

**George Lyon:** Jamie McGrigor may have been here for four years, but I have been here for only two. He has obviously lost track of time in some hostelry somewhere.

I will move on from the four years of Jamie McGrigor's rule in the Parliament. My colleague Tavish Scott made an important point. He stated—I think he quoted a European official who was at a conference in Shetland—that the vulnerable peripheral communities should benefit from the reform of the CFP. We must keep that to the forefront of our minds in renegotiating the CFP.

Another important point, which also comes through in the common agricultural policy, is the need for adequate and transparent enforcement regimes—there must be a level playing field for the enforcement of European regimes in different countries. Too often there are complaints that there is over-regulation and over-enforcement in the UK compared with the situation in other countries.

Irene Oldfather said that Scotland's voice must be heard and that there is a need for reform. The most important issue she raised was the need to involve the stakeholders. In that context, it is clear that zonal management—a policy that the Liberal Democrats have pursued for many years at Westminster—is the only way to make progress. Unless we empower the fishermen and give them responsibility—

**Mr Lloyd Quinan (West of Scotland) (SNP):** Will the member give way?

**George Lyon:** I was nearing the end of my speech, but I will give way briefly.

**Mr Quinan:** Will Mr Lyon outline for us the structure of the Liberal Democrat concept of zonal management?

**George Lyon:** The point that I am making on zonal management is the important principle of empowering fishermen to take control of and responsibility for their own destiny. That is fundamentally important if we are to tackle some of the conservation issues and rebalance the catching fleet and the amount of fish in the sea.

I congratulate Stewart Stevenson on his maiden speech—it must have been quite a challenge on his first day; Mr Salmond is a hard act to follow. Stewart Stevenson made the easy political point about bringing other countries into the EU and about how widening access would suddenly swamp Scottish fishing grounds. However, he overlooked a fundamental point: unless a country has a quota and a historical track record, it cannot fish in European waters. That is important. People try to make a political point without realising that it is utter rubbish.

Hugh Henry and his committee should be congratulated on the report, which lays out a clear position for the Scottish Government when negotiations begin on reform of the common fisheries policy. I hope that the minister will heed this excellent document in formulating the Scottish Government's position, before it goes into negotiations.

**The Deputy Presiding Officer:** I call Ben Wallace to close for the Conservative party.

**Mrs Margaret Ewing:** He's awake!

16:35

**Ben Wallace (North-East Scotland) (Con):** Aye. In the Conservative party we have to sleep with one eye open and with our backs against the wall so that we can watch for the impending knives.

I begin by expressing my appreciation to Stephen Imrie and David Simpson, the clerks to the European Committee and to Christine Boch, from the legal office, who have worked extremely hard to produce a first-class report, at the same time as dealing with a heavy work load in other subjects. I also place on record my thanks to the European Commission and its office in Edinburgh for the assistance provided throughout the inquiry, which went a considerable way to ensuring that we reached good conclusions.

During the weeks that we spent investigating the proposals for the future of the CFP, it became increasingly clear to us—and to me, and I am no expert on fishing—that the current system is untenable. The EU's green paper admits that the CFP

"has not delivered sustainable exploitation of fisheries resources."

That is a major regret, as the British taxpayer is

contributing €1.1 billion annually towards the present policy. If the existence of such an untenable regime is not motivation enough for the member states seriously to reform how Europe deals with its fishing stocks, I do not know what is.

I am pleased to say that, throughout our deliberations, we reached a consensus on the recommendations. In general, we recognised—as my party does—that reform is necessary and that the previous policy left fishermen and communities feeling isolated from policy and decisions. We unanimously support the concept of zonal management committees. We believe that only when those who use and protect fishing grounds are empowered to manage them will the right balance between conservation and industry be struck.

Understandably, as George Lyon said, enforcement regimes have weakened the element of trust among fishing nations. I was especially pleased when some members of the committee had a chance to cross-examine the chairman of the Galician Parliament's fishing committee and ask him whether his region would be prepared for an element of cross-enforcement among member states or regions. It was refreshing that he had no problem with that. I hope that our reforms would go some way to managing that, so that we rebuild the element of trust that clearly does not exist among many member states.

The further issue of the protection of coastline and fishing limits was discussed in some depth. Although the Conservatives would have been keen to push the six and 12-mile limits out to 12 and 24 miles, we were acutely aware that what must be achievable is the maintenance of the status quo. Concerns remain following the green paper. The Commission's proposals are not clear enough about ruling out the possibility of individual transferable quotas, which pose the threat of removing the link between communities, fishing grounds and boats. As has happened in Iceland—and as my colleague Jamie McGrigor showed all too well—the ITQs can lead to the concentration of fishing rights in the hands of the very few. I urge the minister to make clear her position on ITQs and the line that she will take in Brussels.

The committee report raises the subject of technical measures. Scotland can be proud of the measures that it has taken until now, but it is of some concern that other member states and the green paper still seem to pay only lip service to them. I urge the minister and the Executive to ensure that the EU makes certain that in future the measures are introduced by all member states—I hope at the same time—throughout the fishing grounds.

As for the long term, we saw yesterday another example of the pressure that is being put on our

fishing stocks. We need to clarify that the Commission's response to the reports of Franz Fischler was that those were not extra cuts in quota; they were, in effect, a reinstatement. Everyone on the committee felt that the way in which discussions on the total allowable catches are held is untenable. The annual December regime must be changed.

I urge the Executive to re-examine tie-ups if further pressures on our stock come about. Spain and Belgium still pursue tie-ups optimistically and I believe that they have a role to play. The report is clear and comes with all-party backing. I am pleased that, as a bonus, nearly all those in the industry back it, too.

I congratulate Stewart Stevenson on his maiden speech. I am informed that it would be wrong and bad form to make comment on it, but I should perhaps remind him that maiden speeches are supposed not to be contentious.

If George Lyon's past precludes him from contributing to the future, the Liberal party must still be back in 1919 or in the 1970s. One cannot prevent parties from trying to contribute to the future, and I shall certainly not stop purely because of Mr Lyon.

Enlargement raises an issue. If ITQs are introduced, they could well be traded by the new member states and the larger fleets. We must consider that possibility.

The report is excellent. I hope that the Executive takes it forward and fights for Scotland's fish, Scotland's fishermen and Scotland's communities, to ensure that the CFP has a future and that we can all help to sustain our fishing industry.

16:41

**Colin Campbell (West of Scotland) (SNP):** I have to tell Ben Wallace that I did not find anything remotely contentious in Stewart Stevenson's speech.

**Ben Wallace** rose—

**Colin Campbell:** I would like to crack on. Ben Wallace's speech overran by a minute and a half.

The real strength of the Scottish Parliament lies in its willingness to consult, listen, filter, absorb and then arrive at well-informed conclusions that reflect what it has heard. The committee report does just that.

Almost all the organisations that we heard from were unanimous in the view that the CFP, as it is currently constituted, does not work. There was near-total agreement on the need to retain and improve it. There was a recognition that fishing moves from one white-knuckle crisis to another

with the annual fixing of TACs and that stocks were perilously low. All the organisations recognised the need to reform the system and reform some old habits.

The major part of the CFP's problem is that it has been seen as a remote imposition by scientists and politicians, who have been perceived as having no knowledge of, or interest in, fishing. It has led to the alienation of the fishing industry from the European Commission, the European Union, the UK Government and now, in part, the Scottish Executive. The annual pattern of fixing quotas in the small hours of the morning, when people's resistance is low, is no way to run the industry. A multi-annual approach is to be recommended. I suppose that that answers Tavish Scott's question and his point about Franz Fischler's sudden announcement this week.

The fishing industry now recognises that its view that there was a bottomless bank of fish resources has often been over-optimistic. I sense that not only is there more tolerance of each other between conservation experts and the fishing industry than there once was, but they are working together to the same ends—to have fishable stocks and to avoid the awesome warning of the Grand Banks fiasco of 1992. The bottom line is that there are currently too few fish to meet the catch capabilities of all who want to fish.

I will focus on zonal management committees. The Commission's green paper suggests

"participation in the pre-decision phase of CFP policy-making"

and

"establishing a network of regional advisory committees",

as well as providing advice for the Commission to consider. That seems to be underambitious and to represent a reluctance to cede power.

Zonal management without power, however limited, will atrophy, be seen to be meaningless, and continue the resentment towards the Commission that already exists in fishing communities. Zonal management committees must have as much power devolved to them as is legally possible and must include every legitimate interest. Zonal management committees with real power will make subsidiarity a reality. We must recognise that that may mean a variety of differing solutions in different parts of the EU, but it will give back some measure of ownership and control of fishing to the people who are most dependent on it. It is crucial that the UK fisheries minister be persuaded of that and do everything that can be done to attain maximum powers for ZMCs. When the debate is over, I hope he will transmit that message—and the contents of the report—as strongly as possible to the UK.

As Richard Lochhead said, it is even more crucial that the Scottish Parliament's fisheries representative heads up delegations to Europe, on the basis of the greater importance of fisheries to Scotland than to the UK. I am sure that Rhona Brankin might enjoy that personally, although politically she may be a little restricted. I seek assurances from the minister in summing up that she concurs with that and will call Elliot Morley this weekend, in time for next week's European fisheries council.

16:45

**The Deputy Minister for Environment and Rural Development (Rhona Brankin):** I start by welcoming the new member for Banff and Buchan to the Parliament. I look forward to many opportunities for discourse with him in debates about the fishing industry.

The European Committee's inquiry into reforming the common fisheries policy had one stated objective:

"to provide the Scottish Executive with a clear and unequivocal statement of what we regard as the optimal outcome of the negotiations with counterparts in the UK and in the EU."

I believe that the committee has achieved that objective. I thank Hugh Henry and the rest of the committee for producing a thorough and thought-provoking report.

Today's debate highlights the importance that is placed on the CFP in Scotland and further afield and the importance that is placed on Scotland's role in the review process. I have listened with interest to the points that have been raised. The view that the Parliament expresses today will assist our preparation for the fisheries council on Monday, when the Commission's green paper will be debated.

No one could dispute that, after 20 years, the CFP is confronted with major challenges and is in profound need of reform. We are all agreed on that, but I welcome the European Committee's view that the CFP needs to be reformed, not scrapped. I agree with the committee's analysis that the CFP has failed to meet all its objectives, but I emphasise—as I have done before—that the Executive is firmly committed to the continuation of the CFP beyond 2002. Although the CFP needs reform, we need a common fisheries policy.

I make no secret of the fact that we view the Commission's green paper as helpful. It has picked up many issues that are priorities for Scotland and the UK, such as the need for a more regional approach and for greater involvement of stakeholders. I will deal with that in more detail later in my speech.

The green paper reflects the hard work that we have done in putting the Scottish view forward, but much more work remains to be done. The poor state of many stocks also highlights the need to plan strategically for a long-term future for the fishing industry. As I have said throughout recent months, we must secure a better balance between fishing capacity and fish stocks. Unfortunately, not all member states share that view. We must work hard to ensure that that objective is agreed.

**Robin Harper (Lothians) (Green):** Does the minister agree that the remarks of Franz Fischler have underlined the fact that everything we have discussed this afternoon—I agree with much of what has been said—will be totally meaningless without a reduction in the total size and fishing capacity of the European fleet and a parallel reduction in the size of the Scottish fleet?

**Rhona Brankin:** I agree that we need a reduction in capacity. That is important and why the Scottish Executive has produced a plan for decommissioning. As has been said already—we must keep saying it—too many boats are chasing too few fish.

On the points that have been raised by various members, including Richard Lochhead, Jamie McGrigor and Tavish Scott, we have had much debate about tie-ups in recent months and we have made our views clear. Tie-ups are one means of contributing towards reductions in fishing activity or mortality.

**Stewart Stevenson:** Will Rhona Brankin give way?

**Rhona Brankin:** No thanks. I will finish this point, but I will give way to Stewart Stevenson later.

It is important—[*Interruption.*] It would be good if Richard Lochhead listened to this, because I am responding to one of the points that he made. Tie-ups fail to address the underlying structural problem of too much capacity. Franz Fischler is focused on that. We will fail to build a sustainable Scottish fleet if we disregard that problem. Tie-ups fail to address the underlying problem; that is why we are committed to taking out a proportion of the Scottish fleet.

Members will recall that when Steffen Smidt spoke to the European Committee earlier this year he said, in effect, that permanent capacity reductions were a more cost-effective approach to tackling excess fishing activity. I remain to be persuaded that the use of tie-ups is a more appropriate approach to tackling the sustainability issues that face the Scottish industry.

**Stewart Stevenson:** I am simply responding to the minister's invitation to participate fully in debate, for which I thank her. Will she make it

clear whether she is now permanently closing off the idea of tie-offs? If so, she will have united the fishing industry—which I welcome—just as she worked so hard in recent months to divide it.

**Rhona Brankin:** Well, goodness me; that is not a great surprise. Following hard on the heels of Mr Salmond, the SNP member for Banff and Buchan fails to recognise that the Scottish Executive has made the biggest ever single investment in the Scottish fishing industry in history. He is just like his colleagues. His first ever intervention in the Scottish Parliament is overwhelmingly negative. I tell him that unless we address the problem of excess capacity, the Scottish fishing industry will have no future. I would very much welcome Mr Stevenson's support for the biggest ever single investment in the Scottish fishing industry, but I fear that we will not be receiving that endorsement—what a surprise.

**Richard Lochhead:** Will the minister give way?

**Rhona Brankin:** Richard Lochhead must let me carry on. I have rather a lot to say, and I will be covering some of the points that he has already made in his speech. I am sure that he will welcome that.

**Richard Lochhead:** Will the minister give way?

**The Deputy Presiding Officer:** The minister is not taking an intervention.

**Rhona Brankin:** We have heard the old chestnut: should not the Scottish minister lead UK delegations at EU meetings? How often do we have to go over this ground? We are part of a team in Europe. Whoever leads does so on the basis of agreed lines to take. If the particular topic for discussion refers to Scotland, of course I lead as part of the UK delegation and will continue to do so. In fact, we are very lucky. All of us—except the SNP—support the fact that we have the full weight of the UK's 10 votes behind us. That is how we ensure that Scottish priorities are properly represented in all EU discussions. I will continue to play my full part.

Richard Lochhead also suggested that zonal management committees should be set up now. At the moment, we have what could be described as zonal management in the form of our cod recovery policy. There are now regionally based decision-making bodies that are composed of fishermen, scientists, member states, officials and the EC. We can learn from the development of the cod recovery plan, which has been a positive experience in the way in which it has involved the industry. We are very much committed to such involvement.

**Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP):** Will the member give way?

**Rhona Brankin:** I will continue, if I may.

I should now mention the cod recovery plan talks. Tavish Scott said that they have collapsed. In fact, they have not collapsed; they have adjourned and will reconvene next week. Tavish—and every other member—understands the complex and difficult nature of those discussions.

**Tavish Scott:** Will the minister give way?

**Rhona Brankin:** Let me assure Tavish—

**Members:** Give way.

**The Deputy Presiding Officer:** Order.

**Rhona Brankin:** Let me assure Tavish that the industry is involved in the sessions and is constantly updated by officials on any progress.

**Tavish Scott:** Will the minister give way?

**Rhona Brankin:** I will continue, if I may.

Elaine Thomson's comments were well made. It is not surprising that Richard Lochhead asked her to disregard the issue of value for money, as she compared value for money between tie-ups and decommissioning. When Steffen Smidt gave evidence, he made it absolutely clear that tie-ups offer poor value for money. On that point, I agree with Elaine Thomson. Furthermore, Mr Lochhead also refuses to understand that one of the main objectives of decommissioning is to return the fleet to viability, and I very much welcome Elaine Thomson's acknowledgement of that.

I will now turn to Ben Wallace's speech. It was nice to hear that he had managed to stay awake for the debate—I promise that I will not mention that again. I have made my position on ITQs clear.

**Ben Wallace:** If the minister keeps on talking, I will soon be asleep again.

**Rhona Brankin:** I have made my position on ITQs clear—did Mr Wallace hear that? I will continue to advocate relative stability and the Hague preferences; I do not support ITQs as an alternative to relative stability.

The committee offers support on a number of key issues, such as the retention of the six and 12-mile access restrictions, the Shetland box and the Hague preferences. I welcome that support.

We must also deal with the important question of governance. The Commission recognises the need for greater stakeholder involvement and less centralised management. There has been considerable support for that approach this afternoon, which will allow the CFP to be more responsive to local needs and to react more quickly and appropriately to stock crises.

The committee underlines the need for a decentralised approach based on some form of

zonal or regional management committees. I support that. I am particularly keen to continue involving the fishing industry, along with scientists, managers and other relevant experts, in formulating fisheries policy.

**Fergus Ewing:** Will the minister give way?

**Rhona Brankin:** No.

Fishermen have a special understanding of their fisheries. The information that they provide may not always have been regarded as entirely reliable, but times and circumstances are changing.

**Mrs Margaret Ewing:** Will the minister give way?

**Rhona Brankin:** I must move on—I still have a lot to get through.

During my seven months as Scottish fisheries minister, I have experienced first hand negotiations where industry representatives were at the table. Their knowledge and experience greatly enhanced the process. The majority of fishermen are genuinely concerned about conservation and securing a sustainable future. I would like to take advantage of sound advice from those responsible fishermen.

The committee called for the setting up of zonal management committees and for those committees to have designated decision-making powers after an appropriate transition period. I do not have an argument with that as an ideal.

**Mrs Ewing:** Will the minister give way?

**The Deputy Presiding Officer:** The minister is winding up.

**Rhona Brankin:** However, to develop a regional element to the CFP, we must bring other member states along with us. Some view proposals for any form of regional bodies—advisory or otherwise—with deep suspicion. They see them as the first steps towards national control. We must proceed with caution and pragmatism.

We need to have more openness and involvement of the stakeholders. It is crucial that fishermen and other stakeholders are at the table, actively formulating ideas and developing policy.

I know that there is great interest in the progress of decommissioning and the detail of how the Scottish scheme will operate. A great deal of preparatory work has been done. There have been initial consultations with industry and a range of issues has been considered—for example, issues relating to scheme eligibility and targeting of decommissioning funding. The dialogue continues with the industry and the other fisheries departments in the UK to ensure complementarity of approach with the English and Northern Irish

schemes. We want to ensure that the Scottish scheme is effective and achieves best value for money.

Before the Parliament rises for the summer, we intend to introduce legislation. That will ensure that the legal framework is in place to allow work on implementation to continue over the summer months. Parliament will, of course, have an opportunity to debate that legislation, which will be subject to affirmative resolution.

**Mr McGrigor rose—**

**The Deputy Presiding Officer:** The minister is about to close.

**Rhona Brankin:** The committee recommended the setting up of a task force

“to develop alternative industries and training opportunities for any communities to be affected”

by decommissioning. Members will recall that in December I committed myself to

“an initiative to examine the Scottish fishing industry as a whole ... aimed at refocusing the industry and identifying the scope for restructuring that key industry.”—[*Official Report*, 20 December 2000; Vol 9, c 1153.]

Thus the Scottish fishing industry project was born. The project's objectives are to refocus the industry and to identify the scope for restructuring, in order to promote a competitive and sustainable fishing industry in Scotland.

The key Scottish and UK objectives for the common fisheries policy review are well represented both in the European Committee's report and in the green paper. However, there is no denying that further work must be done. I welcome the Parliament's input in helping to develop the UK position on the common fisheries policy review.

**Richard Lochhead:** On a point of order, Presiding Officer. The minister refused to give way during much of the latter part of her speech. You then intervened and said that she did not have to give way because she was in the last minute of her speech. However, that was four minutes ago.

**The Deputy Presiding Officer:** That is not a point of order. It is up to the speaker to decide whether they want to take interventions. The minister took interventions in the first part of her speech, but not towards the end. That is her decision.

17:00

**Mr John Home Robertson (East Lothian) (Lab):** I offer my thanks to colleagues on the committee and to the committee's staff for their hard work on the report. I also thank colleagues from all parties for their constructive contributions to this important debate. In particular, I

congratulate Stewart Stevenson on his maiden speech. His measured and reasonable speech was in stark contrast to what we have come to expect from the representative of Banff and Buchan. I am sure that he will be an effective advocate for fishing interests in his constituency. Many of us have always suspected that Alex Salmond is really a Brit at heart and he has now returned to the imperial Parliament.

Mr Stevenson and other members sought to reopen the rather old debate about tie-up schemes and decommissioning. I draw his attention and that of other members to the evidence that the committee took during its inquiry, which could not have been more conclusive. The evidence that we took from the director general of fisheries in the European Commission, Steffen Smidt, made it quite clear that a subsidised tie-up scheme could not be a sensible substitute for an effective and fair decommissioning programme.

It is abundantly clear that the fishing industry must change to take account of the need to sustain fish stocks. It is incumbent on the Parliament and the Scottish Executive to take the lead in considering that process of change in the context of the Commission's green paper on the future of the CFP, and I hope that the committee's report is a constructive contribution to that process. The committee strongly endorses the overwhelming case for the fundamental principle of relative stability, for the entrenchment of the six and 12-mile limits and the Hague preferences—that is our Hague, not the Tories' Hague, who is now gone—and for the retention of the Shetland box. We pay tribute to the industry and the Scottish Executive for taking the lead on the square-mesh panel technical conservation initiative. The use of more selective fishing gear is obviously an important way in which to reduce discards of immature fish. The committee also makes important points about the Scottish Executive's contribution towards enforcement.

However, the most important part of the report is its clear endorsement of the case for zonal management in the common fisheries policy. The report recommends that strategic decision-making powers should remain with the Council of Ministers, but that responsibility should be devolved to the nations that fish in zones such as the North sea and to inclusive management teams with strong input from stakeholders such as fishing interests and environmental bodies.

**Mrs Margaret Ewing:** Will the member give way?

**Mr Home Robertson:** I am sorry, but I am already over time.

The Scottish Executive is taking the lead in negotiating the case for zonal management.

Those negotiations will be difficult. I know from personal experience just how grim European fisheries council sessions can be. However, following the debate, Rhona Brankin will be able to go to Whitehall and onwards to Brussels with the unanimous support of the Parliament and the committee and the overwhelming support of fishing communities all round the coast of Scotland. We wish her well and we hope that she is successful.



## Parliamentary Bureau Motion

17:03

**The Presiding Officer (Sir David Steel):** I call Euan Robson to move motion S1M-2005, on the approval of statutory instruments.

*Motion moved,*

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (Scotland) Order 2001 (SSI 2001/195) be approved.—[*Euan Robson.*]

## Decision Time

17:04

**The Presiding Officer (Sir David Steel):** There are five questions to put as a result of today's business.

The first question is, that motion S1M-1838, in the name of Mr Jim Wallace, on the general principles of the International Criminal Court (Scotland) Bill, be agreed to.

*Motion agreed to.*

That the Parliament agrees to the general principles of the International Criminal Court (Scotland) Bill.

**The Presiding Officer:** The second question is, that motion S1M-1833, in the name of Angus MacKay, on the financial resolution in respect of the International Criminal Court (Scotland) Bill, be agreed to.

*Motion agreed to.*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the International Criminal Court (Scotland) Bill, agrees to the expenditure payable out of the Scottish Consolidated Fund of the expenses of the Scottish Ministers in consequence of the Act.

**The Presiding Officer:** The third question is, that motion S1M-2002, in the name of Mr Murray Tosh, on behalf of the Procedures Committee, on its reports that we debated this morning, be agreed to.

*Motion agreed to.*

That the Parliament accepts

(a) the terms of the 2nd Report, 2001 of the Procedures Committee, *Report into the Volume of Written Parliamentary Questions and the Scottish Executive's Speed of Response, and Related Matters* (SP Paper 346); agrees to amend the Standing Orders in terms of the amendment set out in Annexe F to the report, and agrees that this amendment should come into force on 15 June 2001; and

(b) the terms of the 3rd Report, 2001 of the Procedures Committee, *Changes to the Standing Orders of the Parliament* (SP Paper 347); agrees to amend the Standing Orders in terms of the amendments set out in Annexe A to the report, and agrees that these amendments should come into force on 15 June 2001.

**The Presiding Officer:** The fourth question is, that motion S1M-2006, in the name of Hugh Henry, on behalf of the European Committee, on its report on reform of the common fisheries policy, be agreed to.

*Motion agreed to.*

That the Parliament notes the 3rd Report, 2001 of the European Committee, *Reforming the Common Fisheries Policy: A Blueprint for Negotiations* (SP Paper 330) and commends the Report's recommendations to the Scottish Executive.

**The Presiding Officer:** The fifth question is, that motion S1M-2005, in the name of Mr Tom McCabe, on behalf of the Parliamentary Bureau, on the approval of statutory instruments, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Paralytic Shellfish Poisoning) (Orkney) (Scotland) Order 2001 (SSI 2001/195) be approved.

## Adult Learners Week

**The Presiding Officer (Sir David Steel):** The final item of business is a members' business debate on motion S1M-1937, in the name of Cathy Jamieson, on adult learners week.

*Motion debated,*

That the Parliament recognises Adult Learners' Week between 12 and 18 May 2001; supports the goal of making lifelong learning a central theme of working life; commends the work done by the trade union movement in promoting learning and training opportunities in the workplace, and asks the Scottish Executive to continue with its work in creating a culture of lifelong learning among the people of Scotland.

17:06

**Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** I am delighted to have the opportunity to speak in this debate and to commend everyone who has been involved with adult learners week over the past years and ensured that people who have taken up the opportunity of education in adulthood get the recognition that they deserve.

It is very much the policy of the Labour party that lifelong learning should be viewed as a continuous development of skills and knowledge to enhance the quality of life that can be achieved through the integration of learning into life and work. The benefits of lifelong learning include economic prosperity, social inclusion, increased citizenship activity and cultural development. Those benefits are important both to the individual and to Scottish society. It is important that a learning culture becomes integrated into work and into life generally and that our society values that kind of personal achievement.

The trade union movement deserves recognition for the opportunity that it has given to people who would otherwise not have been able to take up training or education. The trade union movement has filled that gap for many years. Historically, the unions provided scholarships and finance to assist members with training to attend college and university. A number of the trade unions with which I have been in contact still work on that basis. Trade unions are moving towards new ways of providing education, such as the way in which the Educational Institute of Scotland and the University of Paisley are working together to promote the e-learners for teachers project as part of teachers' professional development. The Transport and General Workers Union, to which I belong, has long made a major contribution to the provision of education as part of its core activities.

It is probably fairly well recognised that many of the areas in which the trade unions have given

opportunities for education have been related to the workplace and to the skills that trade union representatives would want to have. Those areas include negotiation, communication and presentational skills, equal opportunities awareness, health and safety, pensions and benefits, training and employment law, and information technology.

It is interesting to note that many trade unions, such as the Transport and General Workers Union, have also moved towards improving the personal development of those who receive training. Many Transport and General Workers Union courses are delivered by trained and accredited tutors drawn from the active membership. Many of those people also become involved in the delivery of training programmes organised by community campaigning and charitable organisations. It is important to note that the reputation that has been gained by the unions as providers of quality training in industrial relations has led many employers to support the organisation of union-led training in the workplace and in a wider context, in terms of developing partnerships between employers and employees.

**Margaret Jamieson (Kilmarnock and Loudoun) (Lab):** On the partnership between employers and trade unions, I am sure that Cathy Jamieson agrees that the return-to-learn experience of the health service workers in Ayrshire and Arran, together with that of the trade union Unison, has developed significantly; it has now been taken on board by the Scottish Executive health department as the way forward for all employers. I am sure that she also recognises the improvement in career progression of health service workers who have now moved on into the professions.

**Cathy Jamieson:** I certainly recognise that the initiative to which Margaret Jamieson refers has had many benefits. I know people who have benefited from it and I am glad that it will be used as a model for developing things elsewhere. In addition to what is being done by Unison, the Transport and General Workers Union and other trade unions, a number of initiatives and projects are being assisted by the Scottish union learning fund, which is backed by the Scottish Executive.

A particularly interesting initiative involves the training of shop stewards in a number of local authority areas—including the cities of Glasgow, Edinburgh, Dundee and Aberdeen—in the role of union learning reps, as they are called. They are involved in carrying out training needs analysis within the workplace. That process has encouraged many workers and their families to consider coming into part-time and further education. Previously, many of those people, particularly those on low income, had faced

barriers to entering further education. The work of the workplace learning reps has been useful and has identified, for example, people's lack of confidence in their abilities or a fear of failure, which they associate with their previous experiences in education.

Other barriers include poor access to information about the opportunities that are available and perhaps pressures of domestic situations, which may involve caring roles. Disabled access may be unavailable; there could be problems of poor transport; and people may face language or cultural barriers. Especially significant—I hope that the minister will be able to comment on this—is the need to improve basic literacy and numeracy skills. Many people fear coming back into education because they are afraid of revealing a lack of such skills to their new employers or colleagues.

The training of those learning representatives by the unions is proving to be an invaluable social inclusion measure. The initiative identifies the steps that must be taken and the problems that must be addressed if the lifelong learning agenda and action on improving the skills base are to be successful. It is clear from such projects that many people are more willing to inform and work with members of their trade union, as a trusted and respected organisation, in order to overcome their difficulties than they perhaps would be through other agencies about which they do not have information or of which they are not fully aware.

The growing success of the Scottish union learning fund initiatives and the enthusiasm of the trade unions for the promotion of lifelong learning are encouraging. More employers are now coming forward to work with the trade unions in education. For example, the bus company FirstGroup recently agreed to use the Transport and General Workers Union education system to train learning reps in each of its depots in Scotland; it also agreed to make finance available to support the take-up of college courses by up to 1,000 T & G Scotland members working for First Glasgow. That is a welcome example of how the private sector is beginning to co-operate.

Having identified the need to improve the core literacy and numeracy skills of workers, the Transport and General Workers Union is now considering the possibility of training its own tutors in the delivery of basic skills teaching. That move would be of great benefit to the attempts by the Government and others to tackle that issue.

One of the difficulties in the past has been that training, particularly in small organisations, has sometimes been viewed as something that is done only in crises. There have been concerns that some work forces and organisations consider training opportunities only when there are

redundancies or a requirement to shift people's skills within the labour force. In considering the way forward, we must recognise what was clearly identified in the Scottish Executive's framework for economic development: that there is, or rather has been, an under-provision and under-demand for training. We must move forward on that and ensure that all firms have the opportunity to provide training for their work forces. I particularly wish assistance to be given to small and medium-sized enterprises.

The old saying, "If you think training is expensive, try ignorance," holds good today. We have an opportunity to create a highly skilled, highly motivated and committed work force and to give people the opportunity for personal development, which is equally valid in the debate about people in Scotland having a good quality of life. I welcome the Executive's initiatives, but it is clear that much remains to be done. I look forward to the minister's response.

17:15

**Christine Grahame (South of Scotland) (SNP):** I congratulate Cathy Jamieson on securing this debate on her motion. I lodged a similar motion, although my motion was not for debate. My motion was prompted by attending the adult learners dinner and awards ceremony, at which the minister presented the awards. The diversity of the groups and individuals who won awards or who had been nominated for awards was an eye-opener. All had overcome enormous personal difficulties—physical, economic and so on—to make progress.

Let me give members who were not there an idea about the ceremony. One of the award winners was a deaf and hard-of-hearing adult education group. I started off drinking with people in that group—that is not relevant to the debate. They are a jolly bunch, who did not tell me that they had been nominated. They participated in a learning programme about deaf literacy practices and now offer support and help to other deaf people. Their long-term aim is to campaign for equal rights for deaf people.

A different example is that of a chap called Mark Fleming, to whom horrendous things had happened. He had been homeless and had had multiple health problems. He managed to get settled in a community care centre and then got on a computing course. From that, he moved on to develop editing skills in the production of videos and hopes to start a higher national certificate course. I do not suppose that any member has had to overcome anything like the difficulties that that young man had to overcome in order to make progress. I may have found school and university hard, but I faced none of those difficulties.

The third example is that of a group of Asian women who used their sewing skills to sew a banner. That banner became a bond, so to speak, which enabled them to express themselves when they educated people about the difficulties that they faced. That work built up their self-esteem and, as a by-product, members of the group have taken more independent actions, such as standing for election to a community committee, searching out information about education and job opportunities and improving their English. Building self-confidence and self-esteem is a large part of participating in the adult learner system.

That ceremony led me to a meeting of ALFIE—the adult learners forum in Edinburgh. I was interested to learn that that forum has produced a bill of rights, which is called work in progress. However, while the document is a bit raw, it has an interesting aim. It states:

"Authentic democracy is only made possible when citizens are engaged in a permanent search for knowledge about themselves and their society.

This search for knowledge should be lifelong, lifewide and accessible to all, regardless of means or disposition. Essential for realising this commitment is the availability of a wide variety of adult education opportunities."

The document goes on to list the articles of the bill of rights. I will list some of them in order to demonstrate that there are handicaps in the way of people who face the difficulties that I outlined. When I questioned members of ALFIE, they were clear that they wanted to be

"involved in the formation of adult education policy at local, national and international levels."

They wanted to be participants—they did not want to have adult education policy handed down to them. They knew what their problems were and believed that they should have an input into the system. Article 9 of the bill of rights says that they want

"to be taught by qualified and competent tutors who have appropriate subject related knowledge as well as knowledge and understanding of adult learning needs".

They told me that they often felt that they were being patronised or taught by people who did not know how to teach adults with the sort of difficulties that I mentioned.

Article 10 speaks about

"support for study at all levels, e.g. books, IT, tutorials and local study support centres to encourage all types of learning, including distance learning."

Another handicap that forum members faced was that of travel to places of learning. Some of them lived in rural areas—one was from a constituency in the Borders. Forum members also required

"structures of social support, e.g. dependant care, childcare"—

the forum involved single parents and all kinds of people who could not educate themselves and move forward because of practical difficulties—

“travel costs and other financial assistance”.

This is a learning process for me. I was very impressed by the people at ALFIE, and I ask the minister to give their bill of rights serious consideration when it is complete and is no longer work in progress.

17:20

**Miss Annabel Goldie (West of Scotland) (Con):** I also thank Cathy Jamieson for securing the debate and I welcome the opportunity to contribute to it.

I want to make it clear to Cathy that I do not disagree with her, although I will perhaps identify slight distinctions of emphasis. As a Conservative, I entirely endorse Cathy's reference to the trade union movement. There is no doubt that the movement has played a significant role in the promotion of adult learning.

However, it is also important to remember—and, to be fair, Cathy referred to this and commended everyone—that adult learners week is a collaborative initiative between education providers, training providers, broadcasters and industry. It is important that partnership elements are remembered. Collective contribution enriches the outcome for all those who participate.

I would welcome the minister's comments on one or two matters. If the trade union movement is involved, that is great. Its involvement gives people who are seeking adult learning a vehicle—or a pair of legs—to seek it. However, many people are boxed into environments or circumstances in which there are real impediments to and difficulties in accessing adult learning. I understand that adult learners week was co-ordinated by Community Learning Scotland to develop increased participation in education and training, particularly for those who do not have easy access because of class, gender, age, race, language, culture, learning difficulty, disability barriers or insufficient financial resources. It might be instructive for Parliament and helpful to the relevant committees to ascertain from Community Learning Scotland how it got on with adult learners week. Would it be able to give us a report on participation? Were areas identified where access was not utilised fully? Were there reasons for that? Does Community Learning Scotland have a positive report on the response to the week?

Cathy Jamieson mentioned the possible impediments that might deter people from participating. People might be embarrassed or nervous about their basic literacy or numeracy, or

feel that they do not want to make fools of themselves by even saying that they might be interested in a subject. That is of critical importance. I suspect that Community Learning Scotland could comment on that and give us some guidance.

In conclusion, I endorse the motion. Some very useful lessons are to be learned from the week. If the minister could procure further information from Community Learning Scotland, we would all be enriched.

17:23

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** I, too, congratulate Cathy Jamieson and endorse her remarks about the co-operative movement and the trade unions.

The Liberal Democrats are committed to the principle of lifelong learning, which is increasingly recognised and an expanding area. I think Cathy Jamieson mentioned that all teachers will be involved in adult learning in a big way as a result of the McCrone settlement. The quality of that learning will determine the quality of the future of Scottish education.

We also welcome Executive initiatives such as the individual learning accounts, which have the virtue of being flexible, available and affordable. Individual learning accounts are a model of the kind of thing that we want to do more of to improve accessibility. The Executive has also produced a good deal for mature students and disabled people who enter university.

Lifelong learning is of economic importance. In our debates about the Borders economy, we have recognised the need for upskilling. The textiles industry is reshaping itself. That means that those who remain in the industry need more training to develop their skills and those who have been made redundant must depend on support that allows them to develop new skills that will allow them to find a different place in the work force. In unhappy circumstances, we have seen good examples of that recently. Individuals have had to leave particular firms, but they have trained as drivers of heavy goods vehicles or developed information technology skills in the hope of getting jobs in the wider area or even in their own towns.

I would like to make a plea that I have made before. It seems to me that funding for the Borders College does not recognise the problems that are inherent in having a small population. It is difficult for the college to increase the number of students. When people come to the college, they can be supported, but the college needs core funding so that it can offer upskilling courses to smaller numbers than might be involved in a city.

At a dinner during a visit to Stornoway with the Education, Culture and Sport Committee, I sat beside a lady who runs a voluntary organisation in Uist that is involved in adult learning. She told me that the organisation had helped 72 people into work in a fairly short time—in circumstances where that is not easy.

In a particular week in February, I was contemplating the outbreak of foot-and-mouth disease, the damage that had been done to the Borders by storms and the Yorkshire train crash in which a chap went off the road and down on to a railway line. I got a feeling that people were not in charge of their own destiny. Things that people could not control were coming out of the blue. In that week, I was asked to present prizes at a ceremony for adult learners. At that presentation, I realised that there are people who can take control of their destiny and who can help themselves if they are given the opportunity.

I met a man called Roy Middleton, who had been made redundant from the textile industry. He took a course in floristry and now has a business in Selkirk that he tells me is doing well. I would like to give a particular mention to an organisation called LEAD—Linking Education and Disability. I met Fiona Hewitt, a lady who became blind quite suddenly and now has a guide dog. She took a course in computing and now works as a secretary.

Alison Gair had had a head pointer for 27 years, since she was small. Alison was really disabled—she had a head pointer and she was in a wheelchair. She took a course with the help of Leonard Cheshire and she gained a lot of self-respect. Her sponsor says that she can now wear her hair naturally without a head pointer. She wants to improve her chances of getting a boyfriend. She wanted to get a job as a secretary, to feel useful and to enter the adult world more fully. She now has a part-time job as a secretary. She wants to gain a qualification to improve herself, her writing skills and her self-confidence. She wants to publish her writing—poetry and short stories. She wants to access the internet so that she can benefit from an online tutor, keep in touch and make new friends. Transforming people's lives in that way and increasing their self-esteem is what adult learning is all about.

In the Borders, we have had a pilot for better government for older people. People even older than I am have started Open University courses, transformed their lives and given themselves a genuine interest. All such things contribute not only to the individuals but to their communities. We hope to help people to help themselves. By helping themselves, they can help others.

On Friday, when I was down at a Sue Ryder home, I met a bloke called Dave. I cannot

remember whether he had been in an accident, but he had been damaged and was in difficulty. He was in a wheelchair. Dave learned computing and is now teaching somebody else. He is a volunteer for LEAD and helps it to help other people. Their learning makes their world a better place, which in turn improves the world for us all. We should not just have an adult learning week; we should have an adult learning year.

17:30

**The Deputy Minister for Enterprise and Lifelong Learning and Gaelic (Mr Alasdair Morrison):** I am happy to respond to this debate, which was initiated by my colleague Cathy Jamieson. I will respond in reverse order, first to Ian Jenkins. He made a point about the on-going work in my constituency. I am well aware of the excellent work that is being done not only in Uist, but in Barra, Lewis and Harris. He cited exactly the type of people who we all want to be assisted and helped to enable themselves to overcome incredible challenges and barriers. Access to adult learning allows them to do that.

In response to Annabel Ewing's points, I am more than happy—I beg your pardon, I meant Annabel Goldie. Presiding Officer, I do not know how I can begin an apology that will suffice.

**Miss Goldie:** He had better make it good, Presiding Officer.

**The Deputy Presiding Officer:** Carry on, Mr Morrison.

**Mr Morrison:** I have no idea how to begin an appropriate apology. In response to Annabel Goldie's points, I am happy to discuss with my officials her request for more information and I will ensure that she is given full details of what has been happening with Community Learning Scotland and any relevant information. I am delighted, because it was refreshing to hear Annabel Goldie so resoundingly endorse the trade union movement.

I have tried to recall when, in the past two years, I have ever had occasion to agree with anything Christine Grahame has said in this chamber, never mind outwith it, but I fully endorse everything she said. She is absolutely right about the type of person we both had the pleasure of being in the company of one month ago at the 10<sup>th</sup> anniversary awards ceremony. They are incredible people. They are of extraordinary calibre, have exhibited extraordinary determination and have overcome incredible barriers. It was refreshing to meet them in the same week as I had the misfortune to glimpse the British Academy of Film and Television Arts awards, which—if I may put it bluntly—was vomitogenic compared with the pleasure of being present that evening.

We must remember that we have an adult learner in the chamber this evening. Brian Fitzpatrick is just about to finish his education, because he will have completed two full days in the Scottish Parliament. We wish him well. I am sure that he will ably represent the people of Strathkelvin and Bearsden.

Christine Grahame mentioned the awards ceremony. Like everyone, I was greatly impressed and delighted by the range of learning that was undertaken by entrants to the competition—university degrees, counselling, languages, even film-making. I welcome the opportunity that Cathy Jamieson has given us to debate this important issue.

We fully support the goal of making lifelong learning a central theme of working life. We have established learndirect Scotland to promote lifelong learning and provide a one-stop shop for adults who want to learn. Already, 104 centres have received learndirect Scotland branding which, I am delighted to report, includes two in my constituency—one in Castelbay in Barra, the other on Benbecula. In addition, we have introduced individual learning accounts to help people invest in their own learning with financial support from the Executive. We set a target of 100,000 accounts to be opened by 2002, but that target was met last week, which shows how quickly people have shown an interest in receiving £150 to fund learning. Already, 32,000 people have begun courses.

Then there is our massive increase in support for further education, which means an increase over the life of this Parliament from £289 million to £436 million by 2004—a 50 per cent increase. Our colleges are now providing learning opportunities to many more people, who have been denied them in the past. We have set the further education sector the challenging target of attracting an extra 40,000 student places over three years, with particular emphasis on people from a background of low income or disability. I am delighted that the sector is well on the way to achieving that target.

Adult literacy and numeracy problems, which were raised by Annabel Goldie—I am getting it right—and Cathy Jamieson, are serious. Far too many people have problems with literacy and numeracy, and many are struggling to hold down jobs. We have announced £22.5 million to be spent over three years to tackle the big problem of adult literacy and we hope to announce more details on that soon.

Cathy Jamieson was right to highlight the central role of the trade unions in lifelong learning. Their support is crucial to creating a culture of lifelong learning in the workplace. The unions have a responsibility to encourage their members to

embark on learning programmes, particularly in the workplace. Trade unions have shown considerable commitment to driving forward learning in the workplace, as with Unison's return to learn programme, for example. Our Scottish union learning fund—funded to the tune of £1.6 million over four years—will undoubtedly help the unions to do more.

The Scottish Trades Union Congress has received financial support from the enterprise network to help build up the trade unions' capacity to promote learning. It has received more than £100,000 to support its bargaining for skills initiative and £180,000 for the establishment of its lifelong learning unit. My colleague Wendy Alexander has further shown her commitment to working with the unions by chairing the trade union working party on lifelong learning. When she cannot attend that party's meeting, I am deputed to attend.

The motion asks the Executive

"to continue with its work in creating a culture of lifelong learning among the people of Scotland."

We have made a good start in developing such a culture, in which there are more learners such as the lady who won the John Smith award for lifelong learning at the awards ceremony that has been mentioned—after returning to learning after an incredible gap of 70 years. That is a remarkable achievement and she is a remarkable lady.

We are creating a culture in which adults, perhaps prompted by an advertisement on TV or on the side of a bus, call learndirect Scotland, as more than 126,000 Scots have. We are developing a culture in which people are willing to commit £25 of their own money to save £150 on their learning costs with an individual learning account, as more than 32,000 Scots have. A culture is being created in which Transport and General Workers Union members who work in some of Scotland's largest councils can speak to their workplace learning representative and access the support of one of the lay tutors who are funded by the Scottish union learning fund.

However, we are not complacent. We know that there is much more to do, but we believe that by working with all our partners, including the trade unions, we will embed the culture of lifelong learning in the hearts and minds of the people of Scotland.

*Meeting closed at 17:37.*





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