

# **MEETING OF THE PARLIAMENT**

Thursday 4 October 2001

Session 1

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# Scottish Parliament

*Thursday 4 October 2001*

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

## Protection from Abuse (Scotland) Bill: Stage 3

**The Deputy Presiding Officer (Mr George Reid):** The first item of business is stage 3 proceedings on the Protection from Abuse (Scotland) Bill. I will make the usual announcements about the procedures to be followed.

First, we will deal with the amendments to the bill; then, we will move on to the debate on the motion that the bill be passed. For the first part, members should have the bill—bill SP30A—as amended at stage 2, the marshalled list, which contains all the amendments that have been selected for debate, and the list of groupings. Amendments will be debated in groups where appropriate. An amendment that has been moved may be withdrawn with the agreement of the members present. It is possible for members not to move amendments, should they so wish.

The electronic voting system will be used for all divisions. I will allow an extended voting period of two minutes for the first division that occurs after each debate on a group of amendments.

### Section 1—Attachment of power of arrest to interdict

**The Deputy Presiding Officer:** We start with amendment 7, in the name of the member in charge of the bill, Christine Grahame. It is grouped with amendments 8 and 9.

**Christine Grahame (South of Scotland) (SNP):** You are quite correct to say, Presiding Officer, that I am the member in charge of the bill. However, as it is a committee bill, the amendments appearing in my name are in fact committee amendments.

Amendments 7, 8 and 9 intend to make it clear who is entitled to apply for a power of arrest and to make subsequent, related court applications under the bill. It might be helpful if I set out a little background, explaining how the relevant sections of the bill operate.

Under section 1(2), a court must attach a power of arrest to an interdict if it is satisfied that, among other things, the power of arrest is necessary to protect the applicant or any other person from a

risk of abuse. A similar provision is included under section 2(3) in relation to the granting of an extension of a power of arrest. Again, the court must grant an extension if it is satisfied that that is necessary to protect the applicant or any other person from a risk of abuse. Under section 2(7), a power of arrest must be recalled if the court is satisfied that it is no longer necessary to protect the applicant or any other person from a risk of abuse.

The reference in each of those provisions to “any other person” was inserted to follow the provision in the Matrimonial Homes (Family Protection) (Scotland) Act 1981 that gives a parent the right to obtain a matrimonial interdict on behalf of a child of the family, regardless of that child’s age. That provision applies even if the child has full capacity to act on its own behalf.

Capacity to act is a vital component in making an application to the courts. In general, all adults have capacity unless they suffer from a mental disorder, and in such cases the courts will appoint a person, often but not always a solicitor, to be named in their place on the court action. The fact that that person is acting in such a capacity would always be shown. Children, by which I mean persons under the age of 16 years, have legal capacity to instruct a solicitor in connection with a civil matter where they have a general understanding of what it means to do so. When they are aged over 12, the law presumes that a young person has a general understanding of what it means to instruct a lawyer in any civil proceedings, and that young people over that age have the same capacity as adults. They can, however, consent to an adult acting as their representative, and that would be shown on the court papers. If they do not have capacity, they are usually represented by their parent or parents as their legal representatives, and such a fact is also shown on the court papers.

Following further reflection, we do not consider it necessary to make express provision in the bill to try to cover the provision in the Matrimonial Homes (Family Protection) (Scotland) Act 1981 relating to a child of any age. In accordance with normal civil laws, it seems more appropriate that a child with capacity should either apply for a power of arrest themselves or consent to their parent acting on their behalf. If they do not have capacity, they may apply through a representative.

That brings me back to the amendments that seek to delete the words “or any other person”. We think that the policy that I have covered is already achieved without the need for those words. Removal of the words does not remove any protection that is currently provided by the bill. It will remain the position that a person can apply for a power of arrest to be attached to an interdict

if they consider that that is necessary to protect them from abuse. Either they will apply in person or their representative will apply on their behalf. In each case, “the applicant” and

“the person who obtained ... a power of arrest”

will be regarded for the purposes of the bill as the person whom the power of arrest is intended to protect.

There is an additional reason for making these amendments. At stage 2, the minister identified a possible difficulty in relation to what happens when the person in whose favour the application was made gains capacity. Arguably, there is then nobody who “obtained” the power of arrest and to whom section 2 of the bill can apply. The references to “any other person” could, in that connection, be misleading. They could be interpreted as trying to deal with children and adults who do not have the necessary capacity. They could lead to a construction of the phrases “the applicant” or “the person who obtained” the court order, which are used elsewhere in the bill, as references to the person who made the application, rather than to the person in whose favour the application and subsequent order were made. The proposed changes avoid that interpretation and the potential difficulty that the minister helpfully highlighted.

Under the bill, it remains the position that a person can apply for a power of arrest to be attached to an interdict, and the court will attach the power of arrest if it is satisfied that the power of arrest is necessary to protect the applicant. By removing the words “or any other person”, it will be clearer that the real applicant is the child or person with mental incapacity, despite the fact that, under the general law, the child or adult is being represented.

Similarly, where the bill confers power on the person who obtained the power of arrest and that power was obtained by the representative of a child or adult without capacity, it will be regarded as having been obtained by that child or adult. The child or adult will therefore be entitled to apply for an extension of a power of arrest if they subsequently have capacity.

I move amendment 7.

**Bill Aitken (Glasgow) (Con):** I can see the intention behind amendments 7, 8 and 9. Deletion of the words “or any other person” from section 1(2)(c) means that, before the court can attach a power of arrest, it must be satisfied that attaching that power is necessary to protect the applicant from the risk of abuse.

The bill as amended at stage 2 demonstrates that a power of arrest could be attached in circumstances in which a person other than the

applicant was at risk of abuse. I would question how an adult suffering from incapacity who was at risk would be able to be given protection under that measure, and I am not entirely convinced that the bill’s provisions offer a sufficient safeguard. As I understand the law as it stands, such an adult could not make an application under the 1981 act through lack of capacity, and the application would therefore be made by his or her guardian. However, because the guardian would not be at risk, it is difficult to ascertain the basis on which the power of arrest could be attached.

Christine Grahame has clarified the position to some extent, and I do not think that the amendments should cause us any great concern. There is, however, a little bit of dubiety about the relevant provisions, and I would be anxious for the minister to clarify that—I mean the member in charge; I keep forgetting that everything that we do here is new and unique. I am not quite convinced about the aspect of the guardian’s involvement that I described.

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** I am grateful to Christine Grahame for setting out the general purpose behind the bill and for explaining how we arrived at the first group of amendments. It is the Executive’s view that the additional words to which Christine Grahame has drawn our attention were not needed, and that the bill provides adequate cover without them. Iain Gray raised the issue at stage 2, and we are grateful to the Justice 1 Committee for taking it on board at this stage.

The purpose of the amendments is to remove unnecessary wording from the bill which had originally been inserted to allow a person to make an application for a power of arrest to be attached to an interdict for the purpose of protecting another person. On consideration, it was thought that that was unnecessary. The bill already enables any power of arrest to be applied for by that person, or by their parent, guardian or other legal representatives acting on their behalf if they do not have the necessary capacity. In other words, the provision already exists for a parent, for example, to make application to give protection. The wording that it is proposed should be deleted could therefore cause confusion. The Executive therefore supports Christine Grahame’s amendments 7, 8 and 9.

**Christine Grahame:** I will respond briefly to the point made by Bill Aitken. In the circumstances that he outlined, the applicant would be the person with incapacity. That would not be appropriate.

*Amendment 7 agreed to.*

## Section 2—Duration, extension and recall

*Amendments 8 and 9 moved—[Christine Grahame]—and agreed to.*

## Section 4—Powers and duties of police

**The Deputy Presiding Officer:** The next amendment for debate is amendment 10, in the name of Christine Grahame, which is grouped with amendments 11 and 13.

**Christine Grahame:** I can be brief in relation to these amendments. Section 4(4) of the bill sets out on the face of the bill the rights available to an arrested person. Those rights are specified in full and are essentially the same as the normal rights of a person arrested on a criminal matter.

At stage 2 I gave a commitment to consider further the rights conferred on an abuser when the police arrest them. As I indicated at stage 2, there was concern that the alleged abuser should be informed of the reason for their arrest at the time of arrest. These amendments follow on from that consideration.

Amendment 10 addresses the specific concern that I have mentioned and requires the police immediately to tell the person why they are being arrested.

Amendments 11 and 13 are consequential to amendment 10 and I propose to say no more about them.

I move amendment 10.

**Bill Aitken:** These amendments are infinitely reasonable. Amendment 10 seeks to ensure that the person who is arrested under the provisions of the bill is informed immediately of the reasons for their arrest. Natural justice demands that. The amendment is welcome and I am extremely pleased that the issue that it addresses is to be clarified. I need say no more on the matter. We will support amendment 10 and the consequential amendments 11 and 13.

**Mr Jim Wallace:** There is a blossoming of consensus. I am grateful to Christine Grahame and the Justice 1 Committee for agreeing to reconsider the rights that ought to be afforded to the alleged abuser under the terms of the bill. Amendments 10, 11 and 13 would make a proper adjustment to the bill; accordingly, the Executive is happy to support them.

**The Deputy Presiding Officer:** Does the member in charge wish to respond?

**Christine Grahame:** I have nothing to add.

*Amendment 10 agreed to.*

**The Deputy Presiding Officer:** Amendment 1, in the name of Bill Aitken, is grouped with

amendment 3.

**Bill Aitken:** This is the first in a series of amendments lodged in my name on behalf of the Conservative group. At the appropriate juncture, we will support the motion that the bill be passed, as we regard it as a worthwhile piece of legislation. The purpose of our amendments is to make this good piece of legislation better. They should be seen as a positive effort to improve a bill that will provide much-needed protection for many people in Scotland who over the years have found themselves the subject of abuse.

Amendment 1 seeks to clarify a situation that may not occur very frequently, but is likely to occur sometimes. If someone is arrested in a city, in a large town or even in a reasonably well-populated urban area, there is a high possibility that it will be possible to detain him or her in a police office. However, in rural or Highland communities the situation is somewhat different and incidents may occur many miles from the nearest police office. It may, therefore, be appropriate to allow the place of detention to be other than the police office.

I am reminded of the considerable impact made by Maureen Macmillan's speech when that matter was first debated in the Parliament, well over two years ago. On that occasion she spoke about incidents that had taken place in her neck of the woods, where it might not be easy to take someone to a police office after they had been arrested. Amendments 1 and 3 seek to address that issue.

I move amendment 1.

09:45

**Christine Grahame:** Amendments 1 and 3 seek to replicate in the bill a discretion that is given to the police under criminal law. The amendments would allow the police to take an arrested person to premises other than a police station. For a number of reasons, such discretion at the point of arrest is inappropriate.

At stage 2, there was much debate about importing criminal provisions into the bill. The Justice 1 Committee accepted that this bill, which is a civil measure, should stand alone, and expressed its approval for the fact that the bill is self-contained. The bill is not a criminal measure, and it is necessary to examine closely the purpose and effect of importing provisions that resemble criminal provisions into a bill where the purpose of detention is quite different from that of detention under the criminal law.

At section 4(2) the bill requires the arrested person to

"be taken to a police station as quickly as is reasonably practicable".

It does not require the person to be detained thereafter at the police station; it requires only that they be detained. That is in line with the equivalent provisions in the 1981 act.

Under the criminal law, an arrested person could be taken elsewhere for other purposes, such as attendance at an identity parade or the search of premises. Both those situations would be in connection with the on-going investigation of a crime. Neither can apply under the bill, as there is no further investigation to be undertaken. The arrested person may also need to be taken to another police area where the crime is being investigated. Again, that situation does not apply under the bill. The person requires to be brought before the sheriff for the district where they were arrested.

Although under the bill there are no release provisions by the police, we see no operational reason why an arrested person should not initially be taken to a police station, be advised there of their rights, have those rights recorded and have any requests acted on. Should the police for operational reasons wish to detain the arrested person elsewhere thereafter, the bill allows for that.

We also consider that it is desirable that a child be taken initially to a police station in order to ensure that the active step of intimation to the parent is properly carried out and supervised. We note the additional safeguards provided to children under section 43 of the Criminal Procedure (Scotland) Act 1995. That section requires the involvement of senior officers or the officer in charge of a police station when a child is not released immediately. It suggests that the provision in section 15(4) of the 1995 act refers only to a police station and that children under criminal law must be taken directly to a police station. We consider that the serious circumstances of the arrest of a child merit their being taken directly to a police station.

For the sake of completeness, I should point out that there is a problem with amendment 3. At present, the officer in charge of the police station must intimate the detention to the child's parents. The amendment would require the officer in charge of the other premises to intimate the detention to the child's parents. However, there may be no officer in charge of the other premises.

It remains our view that there are sound reasons for requiring the alleged abuser to be brought to a police station immediately after arrest and that the provisions of the bill should be consistent with the equivalent provisions of the Matrimonial Homes (Family Protection) (Scotland) Act 1981.

I invite Bill Aitken to withdraw amendment 1 and not to move amendment 3.

**Mr Jim Wallace:** Christine Grahame has given a number of reasons for resisting amendments 1 and 3. In particular, she indicated that they were inappropriate in two respects for dealing with young people under the age of 16. The bill also seeks to be consistent with the provisions of the parallel Matrimonial Homes (Family Protection) (Scotland) Act 1981. To import into the bill the additional words proposed by Bill Aitken would lead to significant divergence between those two pieces of legislation. For those reasons, I invite Bill Aitken to withdraw amendment 1 and not to move amendment 3.

**The Deputy Presiding Officer:** Would Christine Grahame like to add anything?

**Christine Grahame:** I have nothing to add.

**Bill Aitken:** I have heard what the member in charge and the minister have said, but I remain unconvinced by their arguments. I believe that amendments 1 and 3 are necessary to tidy up the anomalies to which I referred, as they recognise the practical difficulties that may apply in rural areas.

I accept that there is some inconsistency between what I propose and existing legislation. However, I suggest that existing legislation, rather than my amendments, is inept in this regard. I wish, therefore, to press my amendments.

**The Deputy Presiding Officer:** The question is, that amendment 1 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Aitken, Bill (Glasgow) (Con)  
Davidson, Mr David (North-East Scotland) (Con)  
Douglas-Hamilton, Lord James (Lothians) (Con)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Goldie, Miss Annabel (West of Scotland) (Con)  
Harding, Mr Keith (Mid Scotland and Fife) (Con)  
Johnstone, Alex (North-East Scotland) (Con)  
McGrigor, Mr Jamie (Highlands and Islands) (Con)  
McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
Mundell, David (South of Scotland) (Con)  
Scanlon, Mary (Highlands and Islands) (Con)  
Scott, John (Ayr) (Con)  
Tosh, Mr Murray (South of Scotland) (Con)

#### AGAINST

Adam, Brian (North-East Scotland) (SNP)  
Barrie, Scott (Dunfermline West) (Lab)  
Boyack, Sarah (Edinburgh Central) (Lab)  
Brankin, Rhona (Midlothian) (Lab)  
Brown, Robert (Glasgow) (LD)  
Campbell, Colin (West of Scotland) (SNP)  
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
Crawford, Bruce (Mid Scotland and Fife) (SNP)  
Cunningham, Roseanna (Perth) (SNP)  
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)

Eadie, Helen (Dunfermline East) (Lab)  
 Elder, Dorothy-Grace (Glasgow) (SNP)  
 Ewing, Dr Winnie (Highlands and Islands) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grahame, Christine (South of Scotland) (SNP)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Henry, Hugh (Paisley South) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Hyslop, Fiona (Lothians) (SNP)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Lochhead, Richard (North-East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacKay, Angus (Edinburgh South) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McGugan, Irene (North-East Scotland) (SNP)  
 McMahan, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Paterson, Mr Gil (Central Scotland) (SNP)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Quinan, Mr Lloyd (West of Scotland) (SNP)  
 Radcliffe, Nora (Gordon) (LD)  
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)  
 Russell, Michael (South of Scotland) (SNP)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Elaine (Coatbridge and Chryston) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 14, Against 69, Abstentions 0.

*Amendment 1 disagreed to.*

*Amendment 11 moved—[Christine Grahame]—and agreed to.*

**The Deputy Presiding Officer:** Amendment 12 is grouped with amendment 2.

**Christine Grahame:** At stage 2, Bill Aitken raised the question of detention under criminal proceedings following upon an arrest under the provisions of the bill. As I indicated then, that was helpful and the matter has been given careful consideration since that debate. I am grateful to Bill Aitken for pointing out that area and for allowing us time to look into the position.

The bill sets out the procedure that is to be followed on and after arrest when no criminal proceedings are to be taken in respect of the incident that gave rise to the arrest. That will be the normal position, as the purpose of the bill is to provide powers to the police to arrest and remove alleged abusers in situations in which the criminal law does not apply. When the conduct is sufficient to be a breach of the criminal law, it is to be expected that the arrest will be under criminal law provisions.

Having considered the position further, I accept that there is a need for an amendment to make it clear that the detention that the bill permits will cease at the point where criminal proceedings are initiated. In other words, when is the alleged abuser subject to the normal provisions of criminal law? Amendment 12 amends section 4(2) to make it clear that the detention under the power of arrest in the bill stops when the alleged abuser is accused of a criminal offence on petition or is charged on a summary complaint. From that time onwards, any detention of the person will be under the provisions of the criminal law and they will be in a similar position to other persons charged on complaint or accused on petition.

The position that I have described seems fair. It is fair to the alleged abuser, who will be returned to the criminal law sphere with the rights that apply to others who have been accused or charged. It is clear for the police, who will have a definite point in time when the civil warrant ceases to be applicable, and it is fair on the victim, who will have had the additional benefit conveyed by the power of arrest until the criminal law takes over.

In practice, in most cases the service of a petition or complaint will occur after the alleged abuser has been taken to court to await their appearance before the sheriff. Service will occur in the cells at court and the then accused will be required to appear before the criminal court later that day. We expect that, in most cases, detention will continue until their appearance in court, but that is a criminal law matter and not a matter for the bill.

Amendment 2 is in the name of Bill Aitken. The wording is the same as that of an amendment that he moved and subsequently withdrew at stage 2. As he indicated at stage 2, the amendment is directed at providing the police with the power to continue detention after an arrest under the bill but

in the circumstances in which the fiscal has initiated criminal proceedings. We do not consider that it is appropriate to put such a power in a civil law measure. Any detention prior to the alleged abuser's appearance before the criminal courts is a matter for the criminal law. The procedure in the bill is no longer relevant to such a situation.

We also consider that amendment 2 remains defective, as its reference to section 135(3) of the Criminal Procedure (Scotland) Act 1995 is incorrect. That section deals with taking an accused person to court on the first court day after arrest on a summary criminal charge. However, the accused will be appearing at court under section 144 of the 1995 act, following the service of the complaint by the fiscal. Furthermore, amendment 2 does not deal with appearance at court following the initiation of solemn proceedings.

I hope that Bill Aitken will not press amendment 2 and will feel able to support amendment 12.

I move amendment 12.

**Bill Aitken:** As Christine Grahame highlighted, history is attached to amendment 2. When the bill came before the Justice 2 Committee at stage 2, I lodged a similar amendment. We had considerable discussions on the matter at stage 2 and I reserved the right to pursue it further at stage 3, should it not be satisfactorily resolved.

Since then, Christine Grahame and I have exchanged correspondence on the subject. While there was some excitement yesterday afternoon, when it appeared to me that the wording of amendment 12 was not as clear as it might have been, I am satisfied that amendment 12 seeks to remedy a flaw in the bill as introduced.

In all the circumstances, and on the basis of the reassurances that Christine Grahame has given, I am prepared to accept amendment 12 and not to move amendment 2.

**Mr Jim Wallace:** Bill Aitken's concession is welcome. The Parliament is grateful to him for focusing on the situation of those who are originally detained under the bill's provisions but against whom criminal charges are subsequently made.

It is important that there should be clarification for the police on the interaction between the bill's provisions and the criminal law. Amendment 12 achieves that aim, as it clarifies the position for the police and provides an important measure of protection for the accused person.

In the circumstances, the Executive will support amendment 12.

*Amendment 12 agreed to.*

*Amendment 2 not moved.*

*Amendment 13 moved—[Christine Grahame]—and agreed to.*

*Amendment 3 moved—[Bill Aitken].*

**The Deputy Presiding Officer:** The question is, that amendment 3 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Aitken, Bill (Glasgow) (Con)  
Davidson, Mr David (North-East Scotland) (Con)  
Douglas-Hamilton, Lord James (Lothians) (Con)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
Goldie, Miss Annabel (West of Scotland) (Con)  
Harding, Mr Keith (Mid Scotland and Fife) (Con)  
Johnstone, Alex (North-East Scotland) (Con)  
McGrigor, Mr Jamie (Highlands and Islands) (Con)  
McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
Mundell, David (South of Scotland) (Con)  
Scanlon, Mary (Highlands and Islands) (Con)  
Scott, John (Ayr) (Con)  
Tosh, Mr Murray (South of Scotland) (Con)

#### AGAINST

Adam, Brian (North-East Scotland) (SNP)  
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Boyack, Sarah (Edinburgh Central) (Lab)  
Brankin, Rhona (Midlothian) (Lab)  
Brown, Robert (Glasgow) (LD)  
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Crawford, Bruce (Mid Scotland and Fife) (SNP)  
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Gibson, Mr Kenneth (Glasgow) (SNP)  
Gillon, Karen (Clydesdale) (Lab)  
Godman, Trish (West Renfrewshire) (Lab)  
Gorrie, Donald (Central Scotland) (LD)  
Grahame, Christine (South of Scotland) (SNP)  
Grant, Rhoda (Highlands and Islands) (Lab)  
Henry, Hugh (Paisley South) (Lab)  
Hughes, Janis (Glasgow Rutherglen) (Lab)  
Hyslop, Fiona (Lothians) (SNP)  
Jackson, Dr Sylvia (Stirling) (Lab)  
Jackson, Gordon (Glasgow Govan) (Lab)  
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)  
Kerr, Mr Andy (East Kilbride) (Lab)  
Lamont, Johann (Glasgow Pollok) (Lab)  
Livingstone, Marilyn (Kirkcaldy) (Lab)  
Lochhead, Richard (North-East Scotland) (SNP)  
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Macdonald, Lewis (Aberdeen Central) (Lab)  
Macintosh, Mr Kenneth (Eastwood) (Lab)  
MacKay, Angus (Edinburgh South) (Lab)  
MacLean, Kate (Dundee West) (Lab)  
Macmillan, Maureen (Highlands and Islands) (Lab)  
Martin, Paul (Glasgow Springburn) (Lab)  
Marwick, Tricia (Mid Scotland and Fife) (SNP)

Matheson, Michael (Central Scotland) (SNP)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)  
 McGugan, Irene (North-East Scotland) (SNP)  
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 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
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 Paterson, Mr Gil (Central Scotland) (SNP)  
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 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 14, Against 70, Abstentions 0.

*Amendment 3 disagreed to.*

10:00

**The Deputy Presiding Officer:** Amendment 4 is in a group on its own.

**Bill Aitken:** To some extent, I will argue for amendment 4 from a converse position to my arguments of a few moments ago. We are dealing with practicalities once again. The effect of the amendment would be to place a positive onus on the police to take active steps to contact the parent or guardian of a child held in custody. The police would need to intimate that the child had been arrested and where he or she was being held.

The purpose of the amendment is to ensure that, in all cases where a child has been arrested under section 4(1), the officer in charge of the police station will contact the person with parental responsibility for that child. That is essential. As the bill stands, the duty to intimate applies only in circumstances where it is "practicable" to do so. That does not offer sufficient protection for children who could be held in custody under the bill.

The term "practicable" is open to many varying interpretations. Although there should be no difficulty in the vast majority of cases and I fully accept the premise that hard cases do not make

good law, we must have the safeguard that the amendment would provide. There is an analogous provision in the Criminal Procedure (Scotland) Act 1995, which creates a positive onus on the officer to contact the parent or guardian in all cases. If there is such a provision in that piece of legislation, we should have one in this bill too.

I move amendment 4.

**Christine Grahame:** Amendment 4 has the laudable aim of protecting children in police custody by requiring the police to intimate to the person with parental responsibilities that the child is being detained. I agree with the thinking behind the amendment, but the bill already states that the police "must" intimate.

In an attempt to save police time, the bill gives the police an element of discretion by providing that the police "must where practicable" intimate. The police must intimate unless it is not practicable to do so. It seems sensible that, without in any way diluting the protection given to a child, we prevent the police from undertaking fruitless attempts to intimate when it is known that the attempt is bound to fail.

Let me give an example. A child of 15 is arrested for being in breach of an interdict. At the police station, he tells the duty officer that his parent or parents are on holiday abroad. Under the amendment, despite the fact that the child has given the police that information, the police would still be required to send intimation to the parent or parents. That seems pointless and would be a waste of precious resources.

As I have said, we are keen to ensure that children are protected. We have made specific provision in the bill to give children extra protection. Very few children will be affected by the bill. It is extremely unusual and possibly almost unique for a child to be interdicted. Even so, protection has been provided.

**Bill Aitken:** Will the member give way?

**Christine Grahame:** Let me conclude. Bill Aitken still has a right to reply.

However, that protection has been tempered with a touch of realism about the duties of the police. The bill states that the police must intimate; only if it is not practicable to do so is the obligation removed.

I ask Bill Aitken to withdraw his amendment.

**Mr Jim Wallace:** I support what Christine Grahame has said. No one questions the motives that underlie Bill Aitken's amendment, but Christine Grahame has given the practical reasons why the bill already meets the need to ensure that children are properly protected. The bill does so in a way that does not place on the police an undue

burden that could be fruitless. For example, if it were known that the parents were abroad but it was not known where, an effort to contact them would still have to be made, even though it was known from the outset that the effort could not succeed.

I will make one further point. Christine Grahame emphasised that the bill states that the officer "must where practicable" intimate. The bill actually states:

"must where practicable, without delay".

That is another safeguard for the protection of children. I invite Bill Aitken to withdraw amendment 4.

**Bill Aitken:** Amendment 4 should be considered. The example that was given by Christine Grahame and the minister is not particularly apposite. Clearly, if a child is arrested whose parents are on holiday in Mallorca or at some unknown destination, notifying the parents will be a practical problem. However, if the parents are abroad, someone will be acting in their place. By definition, someone must be in charge of a child under the age of 16. It would be illegal for the parents to desert the child to go on holiday abroad without leaving someone in charge of him or her. Therefore, the example given does not apply. If a child were arrested whose parents were overseas or could not be traced, the person who was looking after the child in the parents' absence would be notified. Amendment 4 would be a wise piece of protection of the rights of the child. I am firmly of the view that the amendment should be accepted.

**The Deputy Presiding Officer:** The question is, that amendment 4 be agreed to. Are we all agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Aitken, Bill (Glasgow) (Con)  
 Davidson, Mr David (North-East Scotland) (Con)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
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 Tosh, Mr Murray (South of Scotland) (Con)  
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 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 15, Against 71, Abstentions 0.

*Amendment 4 disagreed to.*

**The Deputy Presiding Officer:** Amendment 14 is in a group on its own.

**Christine Grahame:** Amendment 14 follows on from considering the rights given to the accused, which we have just discussed in the debate on amendments 10, 11 and 13. While examining the rights available to an arrested person under section 4(3), we felt that there were some additional matters that should be recorded by the police.

As drafted, the bill requires the police to record the time and nature of any request made by the detained person under section 4(3) and the time and nature of any action taken by the police under that subsection. In addition, the police are required to record the time and nature of any action that they have taken under subsection (4) in relation to a person who appears to be under the age of 16.

Amendment 14 repeats the existing recording requirements, but requires the police to record five additional matters. First, the time of arrest, the police station to which the arrested person is taken and the time of arrival at the police station must be recorded. Those facts could be significant in ascertaining whether the arrested person was taken to a police station as soon as was reasonably practicable, which is a requirement imposed on the police by subsection (2), and whether the procurator fiscal was informed of the arrest as soon as was practicable, as required under subsection (6).

The recording of any other place to which the arrested person is taken is included and reflects equivalent requirements under the criminal law. For completeness, the police are required to record the time the arrested person was informed of their rights under subsection (3). That could be significant in ascertaining whether the police informed them of their rights as soon as they arrived at the police station.

The requirements to record the time and nature of a request to the police and the time and nature of any action taken are in the bill as drafted and are repeated in amendment 14.

Amendment 14 brings the information that the bill requires the police to record into line with what is required under criminal procedure.

I move amendment 14.

**Bill Aitken:** As has been said, the bill is a hybrid, which contains an amalgam of civil and criminal law. Shortly, I shall seek to probe the meaning of the phrase

"as soon as is practicable."

Amendment 14 has merit and we shall support it.

**Mr Jim Wallace:** I am grateful to Christine Grahame for lodging amendment 14, which clearly gives improved protection for the rights of the alleged abuser. We are happy to support the amendment.

*Amendment 14 agreed to.*

**The Deputy Presiding Officer:** Amendment 5 is on its own.

**Bill Aitken:** In amendment 5 I seek to probe the meaning of the phrase

"as soon as is practicable."

Article 5 of the European convention on human rights, which deals with the right to liberty and security of person, states that those who have been deprived of their liberty through arrest should have the right to challenge in court the lawfulness of that deprivation. In the interests of justice, such a challenge should be heard as soon as possible. Therefore, it is essential that the circumstances of any arrest are reported immediately to the procurator fiscal and not simply

"as soon as is practicable."

The case can then be brought before the competent court as in any normal criminal proceedings where there is a statutory obligation on the authorities to do that. I lodged the amendment at stage 2 and withdrew it, because at that stage there was some discussion as to what might come thereafter. At that stage, I was in favour of the use of the term "immediately", but the majority of members of the Justice 2 Committee felt that that would be impractical.

However, on balance, I am of the view that the term "immediately" should be substituted in the interests of justice and the speedy resolution of matters that come to the attention of the authorities. That would ensure compliance with article 5 of the ECHR.

I move amendment 5.

10:15

**Christine Grahame:** As Bill Aitken said, amendment 5 was debated at stage 2 and subsequently withdrawn. Bill Aitken's amendment would require the police to inform the procurator fiscal of an arrest "immediately" following the moment of arrest, which might not be practical. As with amendment 14, there are good reasons for allowing the police some flexibility. At present, section 4(6) states that when the alleged abuser is arrested, the police should inform the procurator fiscal of the facts and circumstances of the arrest

"as soon as is practicable."

In practice, intimation to the procurator fiscal will be given as soon as the fiscal's office is open. There is nothing to be gained by requiring an immediate intimation when the office is known to be closed; we are not dealing with situations in which the immediate attention of the fiscal would have any effect on the alleged abuser.

The concern that was expressed during the Justice 2 Committee debate on the ECHR is misplaced. The bill is fully compliant. Section 4(6) requires the police to take action as soon as they can. The purpose of that is to ensure that the alleged abuser is brought before the court on the first possible date after the arrest. Therefore, the alleged abuser is able to challenge the deprivation of their liberty at the earliest possible opportunity.

Section 5 makes it clear that appearance on the next court day is required. An additional protection can be found in the actions of the procurator fiscal, who must present a petition to the court on that day. The procurator fiscal can therefore be expected to be anxious to be informed promptly of the facts and circumstances so that the petition can be prepared. Because the liberty of the individual is at stake, the courts will be very strict in their assessment of how much leeway is permitted to the police on this matter.

I have no doubt that the courts will interpret the phrase in section 4(6) as requiring the police to intimate to the fiscal almost immediately after the arrest and just as soon as it is feasible to get in touch with the fiscal. The sensible discretion that is given to the police does not in any way affect the protection that is available to the alleged abuser, nor does it delay their appearance at court. I therefore invite Bill Aitken to withdraw amendment 5.

**Mr Jim Wallace:** It is right that, whenever the liberty of the individual is at stake, proper consideration be given to the way in which powers are exercised. I agree with Christine Grahame that there is nothing essential about informing the procurator fiscal immediately. The situation would be different for a murder case, when the fiscal would have to attend the scene of the crime immediately.

Bill Aitken properly indicated the importance of the individual having the opportunity to challenge the withdrawal of his or her liberty. The key protection is in section 5, in which there are strict requirements regarding court appearances. As Christine Grahame said, it will be incumbent on the procurator fiscal to present a petition to the court at the time of the court appearance. Therefore, an early—nearly immediate—intimation will have to be made to the procurator fiscal. However, to stipulate that such an intimation should be made “immediately”, as amendment 5 requires, would not be practical. I therefore again

invite Bill Aitken to reconsider his position.

**Bill Aitken:** I have listened carefully to what has been said, but I am not entirely convinced. We are talking about people being detained in custody. It is clearly essential that such situations should be resolved as soon as possible. I see no difficulty in including the word “immediately” in section 4(6)—doing so would comply fully with what we are trying to do. I am also concerned that there may be problems with ECHR compliance that have not been anticipated. I will press my amendment.

**The Deputy Presiding Officer:** The question is, that amendment 5 be agreed to. Are we agreed?

**Members:** No.

**The Deputy Presiding Officer:** There will be a division.

#### FOR

Aitken, Bill (Glasgow) (Con)  
Davidson, Mr David (North-East Scotland) (Con)  
Douglas-Hamilton, Lord James (Lothians) (Con)  
Fraser, Murdo (Mid Scotland and Fife) (Con)  
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Wallace, Ben (North-East Scotland) (Con)

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 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Welsh, Mr Andrew (Angus) (SNP)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)

**The Deputy Presiding Officer:** The result of the division is: For 17, Against 70, Abstentions 0.

*Amendment 5 disagreed to.*

### Section 5—Court appearance

**The Deputy Presiding Officer:** Amendment 6 is in a group on its own.

**Bill Aitken:** The issue that amendment 6 addresses is straightforward. The amendment would enable the arrested person to instruct legal representation to present information to the court. I am uncertain as to why the provision has not been included in the bill; it may be that it is considered that it is already implied in the bill. Accordingly, I shall wait to hear what Christine Grahame has to say.

I move amendment 6.

**Christine Grahame:** Amendment 6 seeks to ensure that an arrested person who is brought before the court can have their solicitor or counsel speak on their behalf. That is entirely appropriate and is already allowed for in the bill.

Section 5(4) requires the sheriff who is hearing the facts surrounding the arrest and alleged breach of interdict to afford the detained person the opportunity to make representations. It does not say that those representations can come only from the arrested person. As drafted, subject perhaps to the normal civil court rules on representation, anybody could make representations on behalf of the arrested person. The bill places no restriction on that.

That is a natural follow-on from the provision in section 4(3)(e), which allows an arrested person, on request, the opportunity for a private interview with a solicitor before any appearance in court. In addition, I understand that legal aid regulations are being examined to ensure that a duty civil lawyer is available for the arrested person should they wish such a service.

There is also a potential consequence that could flow from the amendment being accepted. The rules on representation at court are less strict in civil proceedings and, on occasion, family members or advice workers appear in order to speak for parties. Although the bill does not encourage that, it would not prevent it from happening where such representation is appropriate. By specifying solicitors and counsel, the amendment could cause the courts to interpret such assistance as being the only alternative open to the arrested person. I hope that it is clear that the amendment is unnecessary and potentially harmful and that solicitors and counsel can appear if required. I hope that the amendment will be withdrawn.

**Mr Jim Wallace:** There is no dispute that we are working to the same end. As Christine Grahame has explained, the bill already allows for legal representation and the acceptance of the amendment could lead to an undesirable restriction. I hope that Bill Aitken will withdraw the amendment.

**Bill Aitken:** Having heard those reassurances, I seek permission to withdraw the amendment.

*Amendment 6, by agreement, withdrawn.*

**The Deputy Presiding Officer:** That concludes the debate on amendments to the Protection from Abuse (Scotland) Bill. We have made extraordinarily good speed and we are in for an early finish this morning.

## Protection from Abuse (Scotland) Bill

**The Deputy Presiding Officer (Mr George Reid):** The next item of business is a debate on motion S1M-2250, in the name of Christine Grahame, on the Protection from Abuse (Scotland) Bill.

10:24

**Christine Grahame (South of Scotland) (SNP):** It gives me great pleasure, both personally and as convener of the Justice 1 Committee, to speak to the motion that the bill be passed. As has been said on earlier occasions, this is the first bill to be introduced by a committee in the Scottish Parliament. That alone makes the bill important, even without the increased protection that it will give to many in society who are at risk from violence and abuse. In a constitutional sense, the bill demonstrates the ability of the Parliament's committees to initiate legislation. That is one of the most important ways in which our system is distinctive from that at Westminster.

Having been a member of the Justice 1 Committee when it first had the idea of investigating the subject, I am well aware of the amount of time and consideration that was given to the original suggestion. I was there, as were others, when a flash of light illuminated the committee during evidence from representatives of the Sheriffs Association. Who would have thought that the Sheriffs Association would be our Damascus? The witnesses suggested that a way forward would be to have a common law interdict to which a power of arrest could be attached. That proposal developed into the bill that we are considering today.

The committee undertook a thorough investigation before reporting to the Parliament and I am glad to say that the proceedings within Parliament have been conducted quickly, but without sacrificing any of the scrutiny that the Parliament requires to undertake.

The current law does not protect all victims of abuse equally. The main civil protection available is the Matrimonial Homes (Family Protection) (Scotland) Act 1981, but that act does not offer protection to all abused persons. A matrimonial interdict ends on divorce and is not available to a divorced spouse. The 1981 act affords limited protection to cohabitants, who may apply for an interdict or exclusion order for an initial six-month period only, and thereafter for a six-month extension. Another limitation of the legislation is that a solely entitled cohabitant cannot obtain a matrimonial interdict against her or his partner

unless the latter first seeks occupancy rights.

The Protection from Abuse (Scotland) Bill addresses those points. The effect of the bill will be to entitle any individual who has obtained, or is applying for, an interdict against another individual, for the purpose of providing protection from abuse, to apply to the court to have a power of arrest attached to the interdict, regardless of whether the interdict is a matrimonial interdict. It will no longer be necessary to demonstrate any particular personal relationship to the alleged abuser. Instead, the court will simply have to be satisfied that granting the power of arrest would be necessary to protect the applicant from the risk of abuse. If the court is so satisfied, it will grant the order.

The effect of attaching a power of arrest to an interdict is that, in the event of the interdicted person being suspected of breaching the interdict, a constable would be entitled to arrest that person and take him or her away from the scene. The constable would also have to be satisfied that if he or she did not arrest the interdicted person, there would be a risk of that person continuing to cause abuse in breach of the interdict.

Once the person has been arrested, if the fiscal decides that there are to be no criminal proceedings, the person must be brought before a court on the first available day following the arrest. The fiscal must present a petition to the court that sets out the facts and circumstances of the case. The sheriff then has discretion to order a further two days of detention. The further period of detention will be ordered only if it appears to the sheriff that the information discloses a prima facie breach of the interdict and the sheriff is satisfied that there would be substantial risk of abuse to the victim if the person was not detained.

The bill is not all one-sided and safeguards have been built in to protect the rights of alleged abusers. I read an editorial in Green's *Family Law Bulletin*, July 2001, which suggested that the loss of the discretion that is given to the police to release an arrested person back at the police station could lead to injustice. With respect to the editor of that journal, I cannot agree. Two safeguards are built into the bill to avoid such injustice. First, the test before an alleged abuser is arrested has been set at a higher level than was the case under the 1981 act. Not only must the constable have reasonable cause for suspecting that the person is in breach of the interdict, but he or she must consider that if the person were not arrested, there would be a risk of abuse or further abuse by that person in breach of the interdict. That alone should answer the suggestion that a one-off momentary loss of self-control would lead to a man or woman spending the weekend in the cells.

In addition, one must consider the background to the granting of a power of arrest that is attached by the courts to an interdict. To obtain an interdict, it is likely that the wife in the situation described by the editor of Green's *Family Law Bulletin* will have suffered abuse previously at the hands of the man, and the terms of that abuse will have been set out in an application to the court. Under the Protection from Abuse (Scotland) Bill, the man will also require to be given an opportunity to contest the application to the court. Thus, rather than dealing with a momentary loss of self-control that will not be repeated, we are dealing with at least two incidents of abuse and, in many cases, more.

The bill also provides the arrested person with rights that are equivalent to their rights under the criminal law. Those include the right to have a solicitor informed of their detention, the right to a hearing with a solicitor to obtain advice prior to any court appearance, and the right to be heard before a sheriff before any further period of detention is ordered.

During stage 2, there was discussion of the requirement on the police to intimate an arrest to the procurator fiscal

"as soon as is practicable."

Pauline McNeill and others were satisfied that those words were appropriate, given that an attempt at immediate intimation would, at certain times, find the procurator fiscal's office closed until the next morning.

The bill provides safeguards against excessive detention by requiring the alleged abuser to appear at court on the first court day following arrest. That could be the same day, and the provision will ensure the earliest possible appearance, at which the procurator fiscal will be required to present a petition to the court. The requirement on the procurator fiscal may also assist in ensuring intimation as soon as practicable, because the fiscal will wish to ensure the earliest possible intimation in order to prepare the petition.

At the end of the day, however, it is necessary to consider the purpose of the arrest and detention. The arrest and detention will be imposed because there has been a *prima facie* breach of a lawful order made by a court. Also, the detention is part of a train of events that is directed at ensuring that the abuser will fulfil his legal obligation not to abuse the victim.

It is worth emphasising that there is no element of punishment. The purpose of the detention is not to punish the person concerned for the breach. In considering whether to order a further short period of detention, the sheriff will weigh up the risk of future substantial abuse in the immediate aftermath of a breach of the interdict, and the need

for a cooling-off period. The Justice 2 Committee considered that to be an entirely proportionate response to increase the protection of the person who is at risk of abuse. In many circumstances, the power of arrest will enable the police to take prompt action to remove an abuser from the scene, which in some cases could prevent matters from escalating into criminal conduct.

This has been a trail-blazing bill in many ways, not least in its passage through Parliament. This is the first time that the procedure for a committee bill has been used and it has been seen to work well—from initial consideration by the Finance Committee, when my predecessor as convener, Alasdair Morgan, was called to give evidence on the financial memorandum, right through to the stage 2 process, when the Justice 2 Committee considered 44 amendments. I thank the Law Society of Scotland in particular for introducing a number of amendments that enabled the Justice 2 Committee to scrutinise all aspects of the bill. The process has shown the Scottish Parliament at its best. The Executive has been extremely supportive during the passage of the bill, and a number of the amendments that I lodged at stage 2 had their origins in suggestions by the Executive.

I thank all members of the Justice 1 Committee and those of its predecessor, the Justice and Home Affairs Committee. In particular, I thank my two predecessors as convener, Roseanna Cunningham and Alasdair Morgan. I have mentioned the Finance Committee, which scrutinised the bill at stage 1. In addition, the Subordinate Legislation Committee gave the rule-making provisions a clean bill of health. Mention requires to be made of the clerks to the Justice 1 Committee and its predecessor. Andrew Mylne, in particular, provided a lot of assistance and encouragement during the inquiry stage. I personally thank David Cullum and Alison Coull of that shadowy group known as NEBU—the non-Executive bills unit—who worked hard and put in long hours in assisting the Justice 1 Committee and me with the bill.

I have already quoted from the *Family Law Bulletin*, but I quote from it again in relation to the drafting of the bill. After commenting on the work of the Justice 1 Committee, the editors stated:

"Another noteworthy feature of the Bill is that it shows the utility of the innovative Scottish Parliamentary Drafting Unit which prepares members' and other non-Executive bills. In Westminster private members' bills are often badly drafted ... and have to be kicked into shape by the official Government drafters during their passage. The Protection from Abuse (Scotland) Bill, drafted by a member of the Scottish Parliamentary Drafting Unit, is by contrast admirably clear and precise from the outset."

That should make for good law. I, and all members of the Justice 1 Committee, echo those sentiments

and express our thanks to the unit and its draftsmen.

It gives me great pleasure to move the motion to pass the first committee bill in this Parliament. I move,

That the Parliament agrees that the Protection from Abuse (Scotland) Bill be passed.

10:35

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** The Protection from Abuse (Scotland) Bill is a good bill, which I have much pleasure in supporting on behalf of the Executive.

As Christine Grahame said, a lot of work was done by the non-Executive bills unit. The bill started off as a good draft. Amendments were made at stages 2 and 3 and have served to strengthen the bill. That that has happened, in many respects, is due to the hard work and good sense of the many people who have been involved with the bill. All members of the justice committees, past and present, have contributed to the bill, but it would not go amiss to pay particular tribute to Maureen Macmillan, whose energy and persistence drove its development from the feeling that something must be done, through the development of policy, to the drafting of the bill. *[Applause.]*

Roseanna Cunningham and Alasdair Morgan are distinguished former conveners of the justice committees, but the task of taking the first committee bill through its final stages has fallen to Christine Grahame, and it is fair to say that she has completed it triumphantly. All have steered the way forward with wisdom and commitment. Pauline McNeill as convener of the scrutinising committee and Iain Gray as the Deputy Minister for Justice both played important parts. The Parliament is indebted to them all.

I pay tribute also to the many experts who gave evidence to the Justice 1 Committee, and to the staff of the committee and the non-Executive bills unit. They have provided excellent analysis, good drafting and good advice. I am particularly grateful for the exemplary manner in which they have co-operated throughout with Scottish Executive officials. That good example is especially important because those who have been involved have been blazing the trail for committee bills. I am sure that we can all learn from the helpful and constructive way in which there has been co-operation not only between the parties, but between the committee and the Executive.

It is interesting to stand here and deal, yet again, with a bill that falls under the remit of the justice committees. I am conscious of the amount of legislative work that the Executive has given to the

justice committees, and it says something that the Justice 1 Committee is the first committee to produce its own bill. Perhaps it is an example of the old adage, "If you want a job done, give it to a busy person." Given the work load of the justice committees, it is to their credit that the bill has come to fruition.

We all know why there is a need for the bill. For a long time, domestic abuse has been a blot on our national life. I recall, in my early days of practice at the Scottish bar, dealing with many matrimonial cases. I used to feel frustrated when I read papers that said that domestic abuse was a civil matter and not something that the police thought that they ought to do much about. The law then was developed by a Conservative Government, with the Matrimonial Homes (Family Protection) (Scotland) Act 1981. Since that time, there has been recognition of just what a blot on our national life domestic abuse is.

Of course, the bill does not confine itself to domestic abuse, but deals with abuse generally. It goes beyond the protection that is given by the Matrimonial Homes (Family Protection) (Scotland) Act 1981 and provides a means of protection to all those who are at risk of abuse. We are indebted to the members of the Justice 1 Committee who had the good sense not to restrict their proposals to fixing the immediate problem of violence in the home.

It is fair to say that changes in the law inevitably help, but only if they are widely known and are part of a wider range of practical assistance to the vulnerable. We have a national strategy to address domestic abuse and an action plan is being implemented. More than £18.3 million has been committed over the coming three years to implementing the strategy and improving services at ground level. That sum includes £10 million for refuge development. It is important that the Executive works hard to ensure that the intention of Parliament is given effect and that those who are at risk of abuse in Scotland have access to new protection.

The bill is a good one. If it is passed by Parliament, it will fall to the Executive to ensure that it is implemented. The bill would be useless if people were not aware of the protection that it offers and its deterrent effect on potential abusers. I assure the Parliament that the Executive will try to ensure that the various agencies, such as the police and the courts, are fully aware of the new procedures and powers. We will co-operate with others in ensuring that the public are well aware of the new legislation and that people can get informed advice from lawyers and voluntary organisations. Through the financial resolution that has been passed, we are committed to meeting the costs that will flow from the legislation.

Protecting the vulnerable is one of the most important duties of any civilised nation. We expect that the bill will provide an important additional shield for vulnerable people. The Executive commends and supports the bill.

10:40

**Michael Matheson (Central Scotland) (SNP):** On behalf of the Scottish National Party, it gives me pleasure to support the Parliament's first committee-initiated bill. I thank those who were involved in producing the bill, those who gave evidence to the committee, the committee clerks and, as Christine Grahame has mentioned, the non-Executive bills unit.

Credit should also be given to members who were on the Justice and Home Affairs Committee from the outset, who were keen to introduce their own legislation and had the foresight to do so. I looked at the *Official Report* of the first meeting of the Justice and Home Affairs Committee and it was interesting to see what members said at that time. In particular, it was clear that members from all parties were keen to ensure that the Justice and Home Affairs Committee was not just there to scrutinise Executive legislation. The committee wanted to tackle issues that were brought to it as a matter of concern and to initiate its own legislation. At that first meeting, Christine Grahame stated:

"I think that it is very important that we are not simply a scrutinising committee, but that we initiate legislation. It is exciting that this committee can legislate on a number of areas that will affect ordinary people. We all have our pet lists, but I am sure that we can reach consensus on some areas, such as family law or domestic violence, in respect of which measures could be introduced".

She went on:

"That would show that the Parliament is delivering in a very simple but obvious manner."

Today, the Parliament is showing that it is delivering in what appears to be a simple but obvious manner.

As that first Justice and Home Affairs Committee meeting continued, Pauline McNeill, Tricia Marwick and, in particular, Maureen Macmillan—who has been a driving force behind the bill—illustrated that domestic violence was an area of particular concern. Pauline McNeill highlighted the issue when she said:

"I would like to see a women's dimension to our work because it is important, in terms of women's perceptions of the Scottish Parliament, that we deal with an issue that affects women. I know that several members are interested in the issue of violence against women".—[*Official Report*, Justice and Home Affairs Committee, 29 June 1999; c 7.]

The Parliament is illustrating that it takes seriously issues that are of importance to women.

One in four women in Scotland suffers from

some form of domestic violence, and 25 per cent of all violence that is reported to the police is the result of domestic violence. Parliament has demonstrated today that it is willing to take the issue seriously. Until today, not everyone was treated equally in the eyes of the law. By providing greater protection to people who suffer domestic violence, whether they are married, cohabiting or divorced, we have addressed an inequality in our legislation.

The bill illustrates that the Parliament is willing to listen. It also illustrates the value of the committee system. The bill has delivered on an important issue for many people in Scottish society.

10:44

**Bill Aitken (Glasgow) (Con):** I have heard what other members have said and agree that the Protection from Abuse (Scotland) Bill is undoubtedly a good piece of legislation. The way in which the matter has been dealt with, from the debates at its inception, through the committee stages and to this morning's finalisation of the bill, has reflected well on Parliament.

The bill, when passed, will have a meaningful impact on the confidence, safety and security of many vulnerable women in Scotland. That is no bad thing at all. Human relationships can be complex and difficult, but there can be no excuse for resorting to violence and abuse of the sort that has been described in the chamber, particularly by Maureen Macmillan and Dr Winnie Ewing, when the matter was first debated. Accordingly, the bill is a good step forward.

The Sheriffs Association also had some impact. However, sheriffs and judges must regard this bill as a bit of a wake-up call. In criminal instances in the past, domestic abuse has been tolerated much more than it should have been. Had everybody being doing their jobs, it might not have been necessary for us to legislate. Legislate we have, however, and we have done so in a positive and constructive manner that reflects well on all who have been involved. This has been a happy occasion for the Parliament and progress has undoubtedly been made.

10:46

**Johann Lamont (Glasgow Pollok) (Lab):** I am happy to contribute to the debate and I am particularly proud to open on behalf of the Labour party.

It is important to recognise the role of the Justice 2 Committee in developing this legislation and I echo the thanks to all those who were involved behind the scenes and in the committee. I give particular credit to Maureen Macmillan, my Labour sister, for the work that she did on the bill.

There is no doubt that the development of policy in relation to understanding domestic abuse and violence against women has been an important strand in the Labour party and explains why Labour has placed such emphasis on women's representation. Labour and Labour women are clear that women's representation is not an end in itself, but a means by which women's needs and experiences can be addressed in the priorities of government and legislation. The Protection from Abuse (Scotland) Bill stands as testimony to that work.

The work that the Justice 2 Committee took on was important, because it addressed weaknesses in the current legislation and emerged from a deeper understanding of the nature and extent of abuse and a realisation that marriage does not inhibit the abuser and that abuse might not stop when couples separate. Indeed, evidence of women being murdered by ex-partners stands as horrific testimony to the fact that women are often at their most vulnerable when they decide to separate from a violent partner.

It is important to get the legislation right and to be willing to continue to monitor its effectiveness. However, as Bill Aitken said, it is also important that those charged with implementing the legislation and protecting those who face violence and abuse ensure that the procedures are carried out and that the work of the police and agencies involved is closely monitored. We still hear concerning accounts of women who report violence and abuse facing treatment that suggests that their situation is not taken seriously.

The bill has another important role, which is to mark out society's view of what is acceptable and what is unacceptable and the value that we place on the rights of individuals to protection from violence and abuse. We want to manage the abuse, but we also want to challenge the abusers.

The bill is part of a broader body of legislation that seeks to respond to the scourge that is domestic abuse and violence against women and which understands the importance of the police and the justice system in addressing the needs of women. Another element is the Sexual Offences (Procedures and Evidence) Bill, which will come before us soon. It is important to understand that the Protection from Abuse (Scotland) Bill and other bills show that we have reflected on the experience of those who have faced abuse and have responded accordingly.

We have paid tribute to the many people who helped to develop the bill, but in particular I pay tribute to women's organisations that continue to support women survivors of violence and which play a key role in making the case for change. I refer to groups such as Enough is Enough—I understand that they are represented in the public

gallery—Scottish Women's Aid and the Scottish Rape Crisis Network. They do their work, despite limited resources, with a desire to ensure that their first priority remains supporting women who face violence and abuse.

I make one last plea. In the—often complex—debates on legislation that addresses these issues and, more broadly, that seeks to deal with crime and understand the experience of those who suffer crime, the voices of the professionals must be heard, but we must remember that the loudest voices with the best resources should not be the only ones that are heard. Those who have campaigned long and hard for this bill and for other bills campaign for a greater understanding of the causes of abuse. They deserve and need to be heard if we are to legislate against abuse as it presents itself in people's lives and if we are to challenge the attitudes and values that allow abuse to exist.

I voice my party's support for the bill and welcome its being passed today.

10:50

**Lord James Douglas-Hamilton (Lothians) (Con):** I warmly congratulate Maureen Macmillan on the bill. She claimed with typical modesty that it was a flash of inspiration from the Sheriffs Association, but she must take the credit for playing a pioneering role in the Parliament and being a moving force in helping to steer the bill towards enactment.

The bill is the first committee bill of the Parliament. This is a small moment of legislative history, as it underlines the reality that the committees can and will initiate legislation whenever necessary. The bill was sponsored by Christine Grahame of the Justice 1 Committee and scrutinised by the Justice 2 Committee. Considerable input was received from elsewhere.

The bill will improve the law considerably by extending protection for potential victims of abuse by allowing a power of arrest to be attached to an interdict. Many vulnerable people, including divorcees, parents and grandparents, will have protection that did not exist before. If a risk of abuse exists, the police will be able to arrest the interdicted person. That gives better and fuller protection to people who could be at risk.

It is right that Maureen Macmillan's role should be remembered, but it is also appropriate to remember that all parties in the Parliament support the bill. The act will be a credit to the Parliament. It confirms the significance of the Parliament's capability to produce a bill through its committee structure. As a result of this important and successful bill, many who exist in fear will have peace of mind.

I am glad to reaffirm the Conservatives' support for the bill.

**The Deputy Presiding Officer:** The next speaker will be Nora Radcliffe, followed by a speaker whom my computer screen identifies as No 91. Is that you, Mr Paterson?

**Mr Gil Paterson (Central Scotland) (SNP):** Yes.

10:52

**Nora Radcliffe (Gordon) (LD):** I am glad to have the opportunity to speak briefly. The bill is a case study in how the Parliament, its members and committees can work effectively with and for the people of Scotland. A gap in the protection that the law afforded was identified and swift action was taken to address it. The way the bill changed during its progress demonstrated flexibility and common sense. All those involved are to be commended.

I honour all the people outside the Parliament who have campaigned for years to draw attention to the problem with which the bill deals. Some of those people know at first hand and only too well why the bill is needed. I have never forgotten that I was told that the bill should be proceeded with as fast as possible, because delay for some people would be measured in beatings.

Two visitors in the public gallery caught a train at 6 am to be here to see the bill complete its final stages. Kelly and Marie are members of a group called Enough is Enough. The law failed those women and they had the guts to get together to do something about it. Members should make no mistake—it took courage to do what those women did. They campaigned persistently and effectively to obtain the change in the law. More members of the group will be present this afternoon, when I hope that they will see a bill to which they have contributed voted into law.

This is a good day for those people and a good day for the Parliament.

10:53

**Mr Gil Paterson (Central Scotland) (SNP):** I hope that my speech will be short and to the point. It goes without saying that I welcome the bill very much. Many individuals and groups have campaigned on the issue for a long time and we must thank them for their persistence.

The bill deals with the situation of women and children who are down and almost out and who need help. The system used to let them down. Once the bill is enacted, when a woman or a child—those abused are almost exclusively women and children—is being abused or is under

the threat of abuse from a man, the police will do what they and many people in society have always wanted to do, which is to stop the abuse. The granting of an interdict against a man to which the power of arrest is attached will allow the police to do that, no matter what the marital status of the woman is.

There is no doubt that today is a good day for the Scottish Parliament—in fact, it is a great day for the Parliament—but it is an even better day for those women and children who are under threat from abusive men.

10:55

**Donald Gorrie (Central Scotland) (LD):** As a new member of the Justice 1 Committee, I can dispassionately give the committee credit for its work on producing the bill. Procedurally, it is important that a committee bill has passed through the legislative process and helpful that the first committee bill has been the subject of consensus. I look forward with some interest to committee bills about which the Executive is less enthusiastic. They may cause some interesting debates in future in the Parliament.

I will make one constructively critical remark about our proceedings. It was well known that because the bill was the subject of such consensus, debate on it would not fill the whole morning. The Parliament should be sufficiently flexible to have allowed the Parliamentary Bureau to install in the timetable a members' business debate or a new motion on a topical issue such as racial harassment. I hope that that point will be taken up.

The main thrust of the bill is unacceptable activity in the home—violence by men. Johann Lamont made a powerful speech on the issue, as she has done several times. It is an important point and other members dwelt on it. However, as a non-lawyer, I read the bill as helping people outwith matrimonial situations. The bill says that abuse is conduct that is "likely to give rise" to "fear, alarm or distress" and includes speech. It will help people with neighbours from hell who continually make their lives misery and will strengthen people's position in dealing with such neighbours.

The bill will also help those who suffer from persistent racial or religious abuse, such as the shopkeeper from the Pakistani community who must roll up the shutters of his shop every morning to see fresh abuse or whose car is vandalised by a group of children. Such people can obtain assistance from the bill. Its impact will be not just on domestic situations, although that is the most important element; it is wider than that.

It is good that the Parliament is showing that it really cares. I take the point that having more

women in Parliament shows that we really care and that my party is not good at getting women into the Parliament. The bill is good. I am sure that all parties are happy to support it.

10:58

**Maureen Macmillan (Highlands and Islands) (Lab):** It gives me great satisfaction to wind up the debate for the Justice 1 Committee and to see the first committee bill reaching the statute book. The bill is a tribute to the Parliament. As it came through the committee system, political interests were put aside. The bill has total cross-party support.

I thank members of the justice committees and those who were members of the Justice and Home Affairs Committee, who made time in a busy schedule to deal with the bill. The scrutiny to which the Justice 2 Committee has subjected the bill is welcome and worth while. I am confident that the bill has improved as a result.

On behalf of all members of the Justice 1 Committee, I thank clerks past and present for their contribution. They provided invaluable support. Without their help, I do not believe that we would be debating the bill at stage 3. I also thank David Cullum and Alison Coull of the non-Executive bills unit for their immense help and support.

The Executive has always supported the principle of the bill, recognising that the bill progressed its agenda for dealing with domestic violence issues. I thank Jim Wallace and Iain Gray, from the justice department, and also Jackie Baillie and her predecessor Wendy Alexander who, as Minister for Communities, was of great support to me when I was progressing the bill.

The difficulties over who would draft the bill were resolved by the setting up of the non-Executive bills unit. That was a great step forward. Its work has resulted in a bill that is professionally drafted and written in language that is accessible to the lay person.

The bill is also a tribute to those women who have worked to support abused women and their children throughout Scotland. Those women have known for a long time that more needed to be done to protect those whom they sought to protect through societal and legislative changes. I believe, as does Johann Lamont, that the high percentage of women in the Scottish Parliament has played its part in having the issues addressed.

A number of organisations have supported the bill by giving strong evidence to the committee on the need for legislation: the Law Society of Scotland, the Family Law Association, the Scottish Legal Aid Board, the Sheriffs Association, the

police, the Scottish Partnership on Domestic Violence and the Crown Office.

When the Matrimonial Homes (Family Protection) (Scotland) Act 1981 was enacted, many of us who were working to protect abused women welcomed it as a step forward. However, since the early 1980s, it has become clear that there is a need to protect those in relationships other than marriage. When I was elected to Parliament, I was determined to try to bring about a change in the legislation. The bill will protect from violence and abuse those who cannot at present access the protection of an interdict, with its powers of arrest. Those include people who are divorced, were never married or perhaps never cohabited. It will also protect those who are a grandparent, sister, brother or same-sex partner, rather than a spouse.

On Tuesday, I spoke to a worker at Ross-shire Women's Aid. She told me that she has been involved in an outreach project in Caithness and Sutherland that has supported 47 women. Out of those women, only two wanted to go into a distant refuge. The rest wanted to stay at home, in their communities, but they wanted to be safe. The bill will enable greater protection for women who choose to stay in their own communities. It will be of particular advantage to those who live in rural communities some distance from a refuge.

I believe, on this historic day for the Parliament, that an important piece of legislation is about to be passed. I believe that it will make a difference to the people whom we represent—that is what we were sent here to do. I therefore ask members to support the first committee bill. I commend it to Parliament. *[Applause.]*

## Business Motion

**The Deputy Presiding Officer (Mr George Reid):** The next item of business is consideration of business motion S1M-2283, in the name of Mr Tom McCabe, on behalf of the Parliamentary Bureau, to set out a business programme.

11:02

**The Deputy Minister for Parliament (Euan Robson):** As a former member of the Justice and Home Affairs Committee, I am pleased to be here to see completion of the stage 3 debate on the Protection from Abuse (Scotland) Bill. It is a good day.

I move,

That the Parliament agrees

(a) as a revision to the Business Motion agreed on 27 September 2001

Thursday 4 October 2001

after the Executive Debate on Sports Promotion in Scotland's Schools, insert

*followed by* Financial Resolution in respect of the Protection of Wild Mammals (Scotland) Bill

(b) the following programme of business

Wednesday 24 October 2001

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Ministerial Statement

*followed by* Executive Motion in respect of UK Legislation

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business – debate on the subject of S1M-2113 David Mundell: Disabled Access to Railway Station Platforms

Thursday 25 October 2001

9.30 am Scottish National Party Business

*followed by* Business Motion

2.30 pm Question Time

3.10 pm First Minister's Question Time

3.30 pm Executive Debate on National Cultural Strategy – One Year On

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business – debate on the subject of S1M-2279 Tavish Scott: Edinburgh Declaration for Ocean Recovery

Wednesday 31 October 2001

2.30 pm Time for Reflection

*followed by* Parliamentary Bureau Motions

*followed by* Executive Business

*followed by* Parliamentary Bureau Motions

5.00 pm Decision Time

*followed by* Members' Business

Thursday 1 November 2001

9.30 am Enterprise and Lifelong Learning Committee Debate on the Review of Higher Education Teaching and Funding

*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

and, (c) that Stage 1 of the Community Care and Health (Scotland) Bill be completed by 30 November 2001.

*Motion agreed to.*

**The Deputy Presiding Officer:** We have made extraordinarily good speed this morning. It is with great pleasure that I suspend this meeting of the Parliament.

11:03

*Meeting suspended until 14:30.*

14:30

*On resuming—*

## Question Time

### SCOTTISH EXECUTIVE

#### National Health Service (Missed Appointments)

**1. Richard Lochhead (North-East Scotland) (SNP):** To ask the Scottish Executive what action it plans to take to reduce the number of missed NHS appointments. (S1O-3866)

**The Minister for Health and Community Care (Susan Deacon):** Action to reduce the number of patients who fail to attend their national health service appointments is primarily a matter for local NHS management. Reductions can best be achieved through improved communication and by redesigning services around the needs of patients: both are key priorities in “Our National Health: A plan for action, a plan for change”, the Scottish health plan.

**Richard Lochhead:** The minister will be aware that missed appointments at out-patient clinics and general practitioners’ surgeries are a drain on the valuable resources of the NHS and cost society tens of millions of pounds. Will the minister give an undertaking to commission a public information campaign, involving television and newspaper adverts, to urge the public to play their part in helping the NHS to use its resources more productively?

**Susan Deacon:** I share Richard Lochhead’s concerns regarding the number of missed appointments or DNAs—did not attends—both at out-patient clinics in hospitals and at GP surgeries. I welcome the fact that he has raised awareness of that issue in the chamber today.

There are many ways in which awareness can be raised, and much can be done at a local level. Members may be familiar with the steps that GP practices have taken to publicise in waiting rooms the number of people who do not attend for appointments. It is incumbent on us all continually to take steps to ensure that the NHS improves its systems and that patients are aware of the consequences and wider implications for other patients when they do not attend their appointments.

**Elaine Thomson (Aberdeen North) (Lab):** Does the minister agree that part of the cure for missed NHS appointments would be effective deployment of new technology to ensure that the NHS is more responsive to patients—for example, by enabling them to make out-patient

appointments from GP surgeries? Will she give an assurance that the importance of using information and communications technology effectively has been recognised in the NHS and that its use is being progressed with speed?

**Susan Deacon:** I am grateful to Elaine Thomson for raising the important issue of information and communications technology in the NHS in relation to the appointments system. More generally, many aspects of practice in the NHS do not yet harness fully the available technology. I am pleased that that situation is changing. Major projects of which some members will be aware include the electronic clinical communication initiative and the Scottish care initiative, which are multimillion pound developments in the NHS in Scotland that have widespread backing from a range of health professionals. Many of the changes that are taking place, including those that relate to appointments systems, will kick in over the next year or two and I am confident that they will transform the patient experience.

#### Teachers (Recruitment)

**2. Karen Gillon (Clydesdale) (Lab):** To ask the Scottish Executive what progress it is making in recruiting extra teachers. (S1O-3872)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** This year, the teacher education institutions report that all Scottish Higher Education Funding Council targets for intake, including intake to national and local priority subjects, have been met. This week, I launched the second phase of the first national teacher recruitment advertising campaign, which is aimed at increasing the number of Scotland’s most talented people who enter the profession. That builds on the earlier campaign to raise the profile and standing of the teaching profession in Scotland.

The Scottish Executive education department is also working in collaboration with education authorities to achieve a more accurate picture of teacher demand. The improvements that result from the work to match supply to demand will be introduced as part of this year’s teacher work force planning exercise.

**Karen Gillon:** Does the minister accept the fact that in constituencies such as mine, where it is impossible for many mature students to travel to Glasgow or Edinburgh because they cannot uproot their families and move from their communities, distance learning would be a useful tool in recruiting some of the valuable and experienced members of our work force to the teaching profession? What consideration has been given to the introduction of distance learning for initial teacher training?

**Mr McConnell:** I specifically raised distance learning at a recent meeting with the teacher education institutions. I made it clear to them that I would welcome initiatives on that front. Both they and the Open University, which does not currently provide such facilities in Scotland, should examine the issue as a matter of urgency, particularly in relation to Gaelic-medium education but also in relation to other subjects. It should not be outwith the bounds of possibility that our teacher education institutions should provide such facilities.

**Michael Russell (South of Scotland) (SNP):** I am sure that the minister is aware that the number of qualified applicants to train as primary teachers far exceeds the number of places. Is the minister considering increasing the number of places as fast as possible to allow entry into the profession of qualified people who want to teach? At the moment, the entry requirements to the colleges are set extremely high because there is an over-supply of well-qualified young people.

**Mr McConnell:** We are dramatically increasing the number of primary teachers who will be in the system in the next few years. That increase will require an increase in the number of students who train to become primary teachers. It is important that we match supply to demand because the worst thing that could happen to those young people would be for them to discover that there are no jobs for them once they have gone through the course and qualified as teachers.

**Cathy Peattie (Falkirk East) (Lab):** Is the minister aware that a large number of newly qualified teachers this year are failing to find jobs? What will be done to ensure that those graduates—young and mature—stay within the Scottish education system?

**Mr McConnell:** Part of the problem has been that the subjects in which people have been training have not necessarily been those in which there is a demand for teachers. That is why we are currently involved in pilot projects with a number of local authorities to ensure that supply and demand can be better matched. We also want local authorities and the teacher education institutions to work in partnership to deliver better training for the trainee teachers and permanent places for those who have qualified.

**Dennis Canavan (Falkirk West):** Although I welcome some of the minister's comments about a review of entry requirements for teacher training, does the minister accept that he must consult the General Teaching Council for Scotland on this important matter and that it would be a retrograde step to dispense with degree-level qualifications?

**Mr McConnell:** Members will welcome my making it absolutely clear that the review that was

announced on Monday is not designed to make the qualification requirements harder or easier but to make them better. I do not want people who have a degree in a subject relating to information technology, who have worked at the top of their profession for 20 years and who want to make a career change into education to be hampered because the name of their degree does not match the entry requirements that are expected. I want to ensure that the entry requirements in this century match the needs of this century and are not tied to the way in which universities were organised in the previous century.

### Improvement and Repair Grants

**3. Mr Kenneth Gibson (Glasgow) (SNP):** To ask the Scottish Executive what plans it has to restore the overall level of improvement and repair grants to what it was in 1996-97. (S10-3864)

**The Deputy Minister for Social Justice (Ms Margaret Curran):** That is an important question and I appreciate Kenny Gibson's increasing concern with the quality and supply of Scotland's housing stock, which will obviously be needed to match the growing population, if Mr Gibson's efforts are successful. I apologise for making such an obvious joke.

Since April 1996, the amount that is set aside for improvement and repair grants has been for each local authority to determine. The ending of the separate ring-fenced allocation was requested by the Convention of Scottish Local Authorities. If COSLA asked us to revisit the issue, we would be prepared to do so.

**Mr Gibson:** I thank the minister for her amusing, if rather predictable, reply. Does the minister accept that by slashing grants to the private sector from £71 million to £41 million since new Labour came to power, her party has shown contempt for people in private housing, particularly people in pre-war housing, which is desperately in need of refurbishment?

**Ms Curran:** That is quite wrong. I am sure that Kenny Gibson is aware of the fact that, with regard to the Housing (Scotland) Act 2001, we stated categorically that although responsibility for necessary work rests in the first instance with the owner, we are committed to providing assistance for people on low incomes. That is why provisions for the reform of the grant system were included in the act. Those provisions include assistance for people on low incomes at rates of up to 100 per cent.

Kenny Gibson is aware of the housing improvement task force. We have made it clear to many sectors that we are committed to work in the private sector. That approach has won the support of many housing agencies—they are all involved

in the work of the task force—and has been welcomed warmly by the private sector. It is disappointing that the Scottish National Party cannot join in recognising the commitment of the Executive.

**Phil Gallie (South of Scotland) (Con):** Will the minister reflect on the highly successful repairs and improvement schemes that the Tory Government initiated back in the 1980s? Will she consider realigning her repairs and investment programmes with the schemes of the 1980s?

**Ms Curran:** I, like many Scots, have reflected on the work of the Tory Government, which is precisely why the Tories sit where they do.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** In her earlier response, the minister mentioned the housing improvement task force. I would welcome details of when the Executive is likely to report to Parliament on the work of that task force and when the new improved scheme of repairs and improvement grants, as contained in the Housing (Scotland) Act 2001, will be implemented.

**Ms Curran:** As members know, the work of the housing improvement task force is on the Executive website. The task force is currently working in sub-groups from which we hope to hear as soon as possible.

We are negotiating with local authorities to devise a timetable for when work will be undertaken. That is out to consultation. We want to hear the views of the key players before we decide to implement the scheme, which we expect to do in the near future.

**The Presiding Officer (Sir David Steel):** Questions 4, 5 and 6 have been withdrawn.

### Education (Inspections)

**7. Mr Duncan McNeil (Greenock and Inverclyde) (Lab):** To ask the Scottish Executive whether inspections carried out by Her Majesty's Inspectorate of Education on the education functions of local authorities will improve standards of education delivered in schools. (S10-3908)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** The new inspections of local education authorities contribute to the improvement of education standards in schools. They provide a rigorous and independent evaluation of the quality of support and challenge that is provided by education services in their work with schools. As a result, local authorities are able to see clearly what they do well, but they are also provided with a number of main points for improvement.

**Mr McNeil:** Is the minister aware of the excellent HMIE inspection of Inverclyde Council that was published on 25 September and which found that, of the 11 performance measures, Inverclyde Council was very good in seven and good on the remaining four? Does he agree with me that—given that Inverclyde Council continues to face the challenges of poverty and deprivation—the director of education, Bernard McLeary, and his staff deserve our special congratulations on the achievement?

**Mr McConnell:** Yes, and I understand that Mr McLeary is here today. I take the opportunity to congratulate him and his department on their hard work. I visited schools in the Inverclyde Council area and saw their efforts, sometimes in buildings that are in urgent need of modernisation and renewal. The work of staff and pupils in the Inverclyde Council area is first class. The department deserves much credit for its efforts to support that.

**Alasdair Morgan (Galloway and Upper Nithsdale) (SNP):** I am glad that the minister acknowledges the link between inspection and education standards. Is the minister aware of inspections in three schools in Wigtonshire earlier this year—Drochduil Primary School, Lochans Primary School and Castle Kennedy Primary School—that produced absolutely glowing reports? As a reward, the local council proposes to close them. Will the minister speculate on how that will improve the standards of education?

**Mr McConnell:** As Alasdair Morgan is well aware, it would be wrong of me to speculate on the outcome of the consultation in Dumfries and Galloway on future provision of schools. However, I would be very surprised if that local authority—or any other—made decisions on future school provision in its area that were designed to harm, rather than to improve, educational standards. I am sure that improving standards is Dumfries and Galloway Council's intention.

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** Will the minister tell us about the timetable for HMIE's visit to the Borders and what he hopes to gain from that visit.

**Mr McConnell:** As I have outlined in answers to written parliamentary questions, it would not be appropriate for HMIE to inspect the Scottish Borders Council education department while the Accounts Commission for Scotland investigation is under way. When that investigation is completed and is being acted upon, the time will be right for HMIE to examine education management in that authority. I assure Ian Jenkins that the inspectorate will inspect Scottish Borders Council.

**Mr John Home Robertson (East Lothian) (Lab):** I welcome the inspectorate's constructive

report on problems in secondary schools in East Lothian. Will the minister acknowledge the major efforts that teachers, pupils, parents and East Lothian Council have made to address those problems? Will he be prepared to visit schools in East Lothian to discuss the HMIE recommendations?

**Mr McConnell:** Yes. Let me also say that East Lothian Council's response shows the best that can come from the new local authority inspections. The council has taken the report on board and has dealt with it constructively and positively. It is now acting on the outcome in the same way that East Dunbartonshire Council did earlier this year, following a similar report that demanded improvements. I think that I have an invitation outstanding for the end of this month to visit Haddington Primary School, which recently won a national award for its school ethos. I am considering whether I can rearrange my diary to accommodate that.

#### **Shetland Islands Council (Housing Debt)**

**8. Tavish Scott (Shetland) (LD):** To ask the Scottish Executive when it will make a decision on writing off the housing debt of Shetland Islands Council. (S1O-3879)

**The Deputy Minister for Social Justice (Ms Margaret Curran):** The Executive remains committed to providing funding to tackle Shetland Islands Council's housing debt if it transfers its housing into community ownership. Discussions with the council will take place soon.

**Tavish Scott:** I thank the minister for finding time yesterday to meet a delegation from Shetland Islands Council. Does she accept that there is considerable uncertainty among tenants and that there is a clear need to sort out the housing debt details as quickly as possible? Bearing in mind that the council will meet next on 24 October, will she ensure that those details will be sorted out as well as can be managed by that time?

**Ms Curran:** I am aware of Shetland's tenants organisations, because I had constructive discussions with them when I visited the islands in the summer. That constructive dialogue has continued between the relevant partners. I am confident that those matters will be brought to an early resolution that is to the satisfaction of all those who are involved.

#### **Education (Appeals)**

**9. Christine Grahame (South of Scotland) (SNP):** To ask the Scottish Executive whether it will investigate the circumstances surrounding the appeals procedure used by Scottish Borders Council under the Education (Scotland) Act 1980 to refer the case of Victoria Nichol from Peebles,

who suffers from cerebral palsy, to HM Inspectorate of Education. (S1O-3880)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** Under the Education (Scotland) Act 1980, a local authority education appeal committee has the legal right to make a reference to Scottish ministers, if it considers that a determination on the terms of the record of needs is required before it can reach a decision on a school nomination. As the case to which Christine Grahame referred is now the subject of a reference to Scottish ministers and supporting papers are awaited, it would not be appropriate for me to comment on it specifically.

**Christine Grahame:** I hope that the minister has received the full letter and file of papers that I gave. I dispute the competence and legality of the referral and I ask the minister to consider the matter urgently. Many children in the Borders are suffering because of the cuts. I hope that he will be able to give me an undertaking that, in line with the Parliament's policy on mainstreaming, Victoria Nichol and others like her will be included in their local schools, which they attend with their friends and which, in Victoria Nichol's case, she attended with her sister.

**Mr McConnell:** As I said, it would be wrong for me to comment on the details of that particular case. However, I received the documentation from Christine Grahame, which I will study as part of the normal process. The normal process also includes a proper look at the competency of the referral. That will be followed through and, if it is so deemed, the final appeal will also be looked at.

#### **Tourism (Marketing)**

**10. Mr David Davidson (North-East Scotland) (Con):** To ask the Scottish Executive whether it will detail its plans for the marketing of Scotland in other countries as a tourist destination following the recent terrorist attacks in the United States of America. (S1O-3910)

**The Deputy Minister for Enterprise and Lifelong Learning and Gaelic (Mr Alasdair Morrison):** The most immediate task is to find out the scale and nature of the problem that we face. We also need to take action to make the most of our important markets within the United Kingdom and Europe. We have asked visitScotland to consider urgently whether it can switch some of its anticipated spend in the United States to those markets.

**Mr Davidson:** I welcome the proposals for the redirection of marketing effort. The UK market is a major market, from which more than half of the industry's income comes. What specific proposals has the Executive made to visitScotland to develop the UK market further? What additional resources

are being diverted from within the £20 billion budget to sustain and improve Scotland's largest industry during its hour of need?

**Mr Morrison:** David Davidson rightly highlights the importance of the English market. It is right that visitScotland reprioritise its marketing to exploit the potential of the English and European markets. It is not for ministers to direct visitScotland on operational matters, but I met Peter Lederer and Philip Riddle this morning and we discussed informally the arrangements that they are putting in place. It goes without saying that flexibility in marketing will have to be the name of the game.

**Andrew Wilson (Central Scotland) (SNP):** Does the minister agree that this time of crisis is a time for us to be marketing more aggressively than we had planned previously? Is the planned cut to the Scottish Enterprise budget sensible? Surely we should be boosting resources to business and tourism at this time, rather than reining them in.

**Mr Morrison:** Andrew Wilson will no doubt reflect on the fact that we have almost doubled the budget of visitScotland in the past 18 months. That money will be well spent by visitScotland, which now has some £35.5 million to get on with marketing and other initiatives. It will work closely with its counterpart, the British Tourist Authority, in carrying out the kind of work that I expect Andrew Wilson would welcome and endorse.

**Patricia Ferguson (Glasgow Maryhill) (Lab):** Does the minister agree that the Parliament has an opportunity to continue to raise not only its own profile, but the profile of Scotland as a whole? In that connection, will the minister join me in welcoming the legislators from Nebraska, Minnesota and Kansas who are in the VIP gallery? [*Applause.*]

**Mr Morrison:** I am happy to associate myself with the welcome extended by Patricia Ferguson.

On the point that she raised, the Parliament can do some serious work on behalf of the country. Patricia Ferguson led a delegation from the Parliament to Washington during tartan week. That was a successful visit and I would be happy to discuss with Patricia Ferguson, in her capacity as Deputy Presiding Officer, what more can be done.

**Mr Keith Raffan (Mid Scotland and Fife) (LD):** Does the minister agree that a strong local area network is crucial to effective marketing and the effective delivery of services to visitors? Will he tell us the current position on what the chairman of visitScotland has described as informal discussions on the network and its structure, funding and boundaries?

**Mr Morrison:** Obviously, it is an important time for the tourism industry and we work closely with visitScotland. We all appreciate the importance of a network. We expect visitScotland to do most of the international marketing and, as I said in response to Andrew Wilson, visitScotland is working closely with the British Tourist Authority on that.

### **Farming (Quality Assurance Costs)**

**11. Alex Johnstone (North-East Scotland) (Con):** To ask the Scottish Executive what action it plans to take to limit the costs associated with quality assurance so that Scottish farmers are not placed at any competitive disadvantage with their English counterparts. (S1O-3893)

**The Minister for Environment and Rural Development (Ross Finnie):** I am not aware of any circumstances that would place Scottish farmers at a competitive disadvantage with their counterparts south of the border in relation to such schemes. Indeed, as we are pioneers of farm assurance schemes in Europe, it is arguable that our farming industry is better placed to exploit the commercial opportunities that the schemes provide.

**Alex Johnstone:** Is the minister aware that, in England, the remit of the farm-assured British beef and lamb scheme has been widened from being livestock-only, so that it is now able to verify arable farms to assured combinable crops scheme standards? The introduction of competition will result ultimately in a reduction in assurance costs. As a result, there will be a disadvantage here that will ultimately impact on the Scottish industry.

**Ross Finnie:** Mr Johnstone makes two assumptions. The first is that the schemes are equal. I put it to him that the quality assurance schemes in Scotland are incredibly more rigorous than those that exist in England. They are also inspected more frequently—at least annually, as opposed to every 18 months in England. His second assumption is that standards are constantly upgraded, which is not the case in England and Wales.

Mr Johnstone will be aware that it is only a year since Scottish Food Quality Certification investigated the possibility of combined investigations. Those are being done in sectors. However, the outcome of the organisation's report showed that it was not beneficial to combine various sectors and that it was difficult to do so.

### **European Convention on Human Rights (Costs)**

**12. Bill Aitken (Glasgow) (Con):** To ask the Scottish Executive whether it will conduct an audit on the effect on the resources of the Crown Office

and Procurator Fiscal Service of incorporating the European convention on human rights into Scots law. (S1O-3870)

**The Lord Advocate (Colin Boyd):** No. Convention rights do not form a separate stream in our law but rather soak through and permeate it. To isolate their effects for audit purposes would be exceptionally difficult and unlikely to provide useful information. I have announced a major review of the management and planning resources of the Scottish Executive justice department. The effects of the incorporation of the ECHR will be taken into account in that review. Those effects will also be considered in the wider inquiry that the Justice 2 Committee is conducting.

**Bill Aitken:** I am obliged to the Lord Advocate for that answer, but is he aware of reports—all of which cannot be apocryphal—of lengthy delays and, indeed, adjournments in both the solemn and summary courts because of debates on devolution matters? Those delays must have resource implications. In the circumstances, will the Lord Advocate arrange for those to be quantified?

**The Lord Advocate:** There are delays in both summary and solemn business, which is a matter of concern. However, to suggest that those delays are wholly or even principally the result of ECHR issues would be wrong.

The number of employees of the Crown Office and Procurator Fiscal Service has grown by more than 25 per cent in the past three years. That is a sign of the importance that we place on prosecution.

**The Presiding Officer:** We come to question 13. I am glad to see Mary Scanlon back in the chamber. [*Applause.*]

#### National Health Service (Waiting Lists)

**13. Mary Scanlon (Highlands and Islands) (Con):** Thank you for your good wishes, Sir David. I appreciate the good wishes that have been sent by members from all sides of chamber.

To ask the Scottish Executive how many people are currently on NHS patient waiting lists. (S1O-3878)

**The Minister for Health and Community Care (Susan Deacon):** I, too, welcome Mary Scanlon back.

On 30 June 2001, 83,487 people were waiting for hospital in-patient or day-case treatment.

**Mary Scanlon:** That figure is about 13,000 higher than it was when the Parliament began. I understand that some of the NHS underspend came from resources that were allocated to alleviate bedblocking. With patients unable to leave hospital and other patients unable to get into

hospital for surgery, how will the minister ensure that councils give patients the care that they need and allow hospitals to do the job that they want to do?

**Susan Deacon:** Let me make it clear that every penny that was carried forward from last year's health budget to this year's health budget is being put to work for the benefit of the health of the Scottish people and the NHS. Indeed, as part of the package that Angus MacKay announced recently, further resources from across the budget have been identified to address the issues that Mary Scanlon raises, including delayed discharge.

I am pleased that, in many parts of the country, subsequent to additional investment being made both in local authorities and in the NHS for that purpose, new services are being developed that are impacting on delayed discharge. There is no question that more needs to be done and that is why I have repeated my desire to ensure that the NHS and local government get around the same table to consider what more needs to be done to tackle the issue.

**Dr Richard Simpson (Ochil) (Lab):** Given the continuing and intransigent problem of delayed discharges—which contributes to the waiting problem—what steps is the minister taking with her colleague the Minister for Finance and Local Government to ensure that local authorities that are not spending up to their grant-aided expenditure allocation for community care are encouraged to do so and that those that are already spending up to or beyond their GAE allocation are rewarded? Will the Executive publish as soon as possible—and, thereafter, annually—the budget and expenditure for community care for GAE and resource transfer from the health boards?

**Susan Deacon:** I can assure Richard Simpson that my colleague Angus MacKay and I regularly discuss issues of common concern, including how the NHS and local authorities work together to improve and develop community care. Several significant changes are taking place. I point to the outcome agreements that are currently being developed between local authorities and the NHS, which focus not only on how money is being spent, but on ensuring that that money delivers results and improvements.

I accept that it is important that we continue to gather data on how resources are allocated; indeed, we do that across the Executive. However, our clear emphasis has been on ensuring that the significant resources that are available to the NHS and local government are put to good use. I am confident that the outcome agreements that I referred to and older people services in particular are significant steps forward in that regard.

**Ms Margo MacDonald (Lothians) (SNP):** The minister referred to the collection of relevant data. This afternoon I attended with other members an excellent presentation by the Chartered Society of Physiotherapy. The society explained the requirement for all-Scotland data to be collected so that the interface between local authority care services and physiotherapy care services can be made more effective and efficient. Will the minister comment on that?

**Susan Deacon:** First, I recognise the key role that physiotherapists play in a wide range of services, in particular in older people services and community care services. Other staff groups, such as occupational therapists, also have a key role to play. Sadly, in our discussions we often forget that. The big package of work that is going on, which follows on from the work of the joint future group a year ago, recognises the need to ensure that those staff groups and individual staff members are able to use their skills to best effect, irrespective of who employs them. We will continue to work with professional groups to ensure that we move forward with them so that that is achieved.

### Energy Efficiency

**14. Mr Andy Kerr (East Kilbride) (Lab):** To ask the Scottish Executive what progress it is making in improving energy efficiency in buildings. (S10-3873)

**The Deputy Minister for Transport and Planning (Lewis Macdonald):** New regulations were laid in Parliament on 24 September. They will considerably improve the thermal insulation standards for new buildings and require more efficient heating and lighting systems.

**Mr Kerr:** I welcome that announcement. How do those standards compare with those in the rest of Europe? We often hear about standards in Europe and how we compare with them and I hope that the announcement will improve our standing with regard to our European colleagues.

**Lewis Macdonald:** I can confirm that implementing the new technical standards will improve Scotland's position on building insulation in absolute terms and relative to the rest of Europe. On the latest figures that are available, and if we make the necessary technical adjustments for external temperatures, our position in the European insulation league will move from mid-table to the top three. In fact, with the adjustments, only Denmark and Sweden will have tougher standards for energy efficiency in buildings.

**Karen Whitefield (Airdrie and Shotts) (Lab):** Does the minister agree that local housing regeneration programmes, such as the one in

Petersburn in my constituency, provide an excellent opportunity substantially to improve the energy efficiency ratings of many of Scotland's homes? Will he join me in congratulating Link Housing Association and the builder D Campbell and Co on delivering warm and energy efficient homes in my constituency and ensure that other housing associations follow their lead?

**Lewis Macdonald:** Yes. That is a good example of what can be done with regeneration to advance energy efficiency standards throughout our housing stock. That has needed to be done for some time and it is now being achieved.

**Donald Gorrie (Central Scotland) (LD):** Will the minister consider bringing together funds from various budgets for a rolling programme to increase insulation and energy conservation in existing buildings? Because that sort of work is semi-skilled, will take many years and will provide real jobs that we can offer to people, will he consider using training funds, especially as that would be better value for money than using some training schemes, which are of dubious value?

**Lewis Macdonald:** I agree with the principle that we need to co-ordinate the work that is being done. Indeed, a number of initiatives are under way to address standards in existing buildings, including the central heating programme, the warm deal and the duty that the Home Energy Conservation Act 1995 places on local authorities to take a lead and bring together policies in a number of areas. From my experience in my constituency, I can confirm that the energy efficiency agency there provides a high standard of training and has given many of the young people who trained with it skills that they have successfully taken into the wider work place.

### Construction (Recruitment and Training)

**15. Pauline McNeill (Glasgow Kelvin) (Lab):** To ask the Scottish Executive what action it is taking to recruit and train in Glasgow the additional skilled workers needed for the construction of the M74 extension, the Glasgow harbour development, the schools building programme and the housing repairs programme following any housing stock transfer. (S10-3911)

**The Deputy Minister for Enterprise and Lifelong Learning and Gaelic (Mr Alasdair Morrison):** There was a 15 per cent increase in the number of construction modern apprenticeships last year in Scotland. We have commissioned a report, which is due later this month, on how to realise training programmes to meet construction skills gaps.

**Pauline McNeill:** Does the minister agree that the initiatives from Glasgow City Council and the Executive are signs of Scotland's continuing

economic progress? Will he also consider the need to move urgently to ensure that, when the time comes, this country is equipped to take advantage of the new job opportunities that will be created? Will he assure me that he will involve the relevant colleges, industries and trade unions in working up a plan?

**Mr Morrison:** I happily endorse what Pauline McNeill suggested in her first question. Next week is national construction week. It will focus on attracting young people into the industry and will comprise a series of events targeted at 14 to 19-year-olds. We have abolished the upper age limit on modern apprenticeships, which will allow people of all ages to be matched to the jobs that are available.

**Dorothy-Grace Elder (Glasgow) (SNP):** We cannot impress enough on the minister the extreme shortage of skilled workers in Scotland. Only the other day, a development firm told me that all their plasterers are over the age of 65 and that there is no one to replace them. All had been imported from the south of England. If the minister thinks about Glasgow's unemployment problem—

**The Presiding Officer:** Order.

**Dorothy-Grace Elder:**—will he please in particular pay attention to the Glasgow College of Building and Printing, which has said that we are extremely short of gas plumbers?

**The Presiding Officer:** Miss Elder, you have made your point. We must have a question.

**Dorothy-Grace Elder:** In view of the Executive's warm deal, will the minister ensure that we have enough gas plumbers?

**Mr Morrison:** I suggest that, if Dorothy-Grace Elder is looking for a plumber, she should refer to the "Yellow Pages".

### **Schools Option Appraisal Process (Funding)**

**16. David Mundell (South of Scotland) (Con):** To ask the Scottish Executive what funds it will make available to Dumfries and Galloway Council to implement the outcome of its schools option appraisal process. (S1O-3907)

**The Minister for Education, Europe and External Affairs (Mr Jack McConnell):** I recently announced that bids for the next round of public-private partnerships to improve Scotland's school buildings should be submitted by 14 December 2001. Allocations of funding will be decided and announced by April 2002.

**David Mundell:** Does the minister accept that it is difficult for parents and communities to respond to the Dumfries and Galloway Council schools option appraisal document, not just because the format is incomprehensible, but because they do

not understand what the Scottish Executive's financial contribution to the outcome will be? Will the minister clearly set that out so that parents and communities can respond to the current appraisal?

**Mr McConnell:** If Dumfries and Galloway Council agrees to submit a proposal and that proposal is acceptable and correct in its technical detail, our role will be to provide revenue support for it. We are hoping to do that at about the level of the previous round, which was about 80 per cent of the annual costs.

As I am sure that the subject will come up regularly in the chamber over the next few months, I must stress that those matters are initially for the local authorities, which are responsible for the buildings and the schools and for what happens in them. We cannot keep saying that we recognise the importance of local education authorities and of not controlling schools from the centre and then try to usurp their roles by taking over every time there is any problem locally.

**Dr Elaine Murray (Dumfries) (Lab):** I appreciate that the minister cannot write a blank cheque for Dumfries and Galloway but will he assure me and others from the area that, when considering any application from Dumfries and Galloway Council for gap funding, he will take into account the fact that school rationalisation is significantly more difficult in rural areas than in urban areas? Will he assure us that he will consider the issues that are particular to rural communities?

**Mr McConnell:** Absolutely. Having grown up on an island where it would have been impossible to rationalise the one school that existed, never mind close it, I fully understand the difficulties of discussing rationalisation in a rural context. However, I must stress again that those matters are initially for the local authority. We are happy to look at providing financial support for changes and for new buildings that are required, but the local authority and the local people have to get involved in the discussion at this stage. Our role will come later.

### **Proposed Title Conditions (Scotland) Bill**

**17. Dr Sylvia Jackson (Stirling) (Lab):** To ask the Scottish Executive how shared equity within sheltered and retirement housing will be dealt with in its proposed title conditions (Scotland) bill. (S1O-3909)

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** The position of shared equity within sheltered and retirement housing is being considered in the light of responses to the Executive's consultation paper on the proposed title conditions (Scotland) bill. Suitable amendments will be made to the draft bill before

introduction, if those are thought to be necessary in the light of that consultation.

**Dr Jackson:** I thank the minister for that reply and for his letter to me about shared equity. However, the Sheltered and Retirement Housing Owners Confederation—SHOC, for short—is still concerned that if the owners, which in the case that I am talking about are the resident and the developer, are not in agreement, their vote will not count. Will the minister assure me that that issue is being addressed? Can more direct dialogue be established with the confederation to discuss the many constructive points that it would like to make?

**Mr Wallace:** I am aware of the representations that SHOC has been making. We accept that there is an issue with shared ownership. Only a relatively low number of the 5,000 to 6,000 sheltered houses in Scotland are in shared ownership. Nevertheless, for those involved, the issue is important. The point was not fully considered in the Scottish Law Commission's work on the draft bill. We are seeking further advice on such points as there are different legal interpretations of who would have a vote in any scheme decisions.

## First Minister's Question Time

### SCOTTISH EXECUTIVE

#### Cabinet (Meetings)

**1. Mr John Swinney (North Tayside) (SNP):** To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S1F-01275)

**The First Minister (Henry McLeish):** The next Cabinet meeting is planned for 8 October, when the Cabinet will discuss issues of importance to the people of Scotland.

**Mr Swinney:** Two weeks ago, I visited a mosque in Dundee and heard the priest there condemn the atrocities in the United States. Yesterday, I sat in the Parliament and heard the high priest of the World Islamic Mission in Glasgow condemn the atrocities as attacks

"on integrity, on civilisation and on humankind."—[*Official Report*, 3 October 2001; c 3021.]

In the light of those remarks, does the First Minister agree that Margaret Thatcher's remarks, reported today, and her attack on the Islamic community in Scotland and in the rest of the United Kingdom are offensive and beneath contempt? [*Applause*.]

**The First Minister:** I think that the whole chamber shares the sentiments that John Swinney expressed. [MEMBERS: "No."] I would have had some misgivings if no one disagreed with the points that were made. I endorse John Swinney's comments. If there is a time for sensitivity in dealing with this important issue, it is now. It would be easy for me to condemn Margaret Thatcher further, but suffice it to say that she should start to take retirement seriously.

**Mr Swinney:** I appreciate the First Minister's remarks. He will be aware, as we all are, of the attack on a Muslim place of worship in Edinburgh and of the desecration of Muslim gravestones in the west of Scotland. We are witnessing attacks based on religion that revive rather sad aspects of our national history of religious conflict. Will the First Minister consider strengthening the Crime and Disorder Act 1998 to create an offence on religious grounds to equate with racially aggravated harassment?

**The First Minister:** I will be positive again in replying to John Swinney's questions. I paid a private visit to the mosque in Edinburgh yesterday afternoon when I returned from Brighton. The attack was appalling. The consequences could have been much more serious but, mercifully, they were not. It was appalling that the attack was on

an area that was used for prayer and by children in the mosque. The floor on which children prayed had melted. The stench of burnt plastic filled the air. Sacred pictures and prayer mats were all damaged. As John Swinney rightly says, an incident also occurred in Lanarkshire.

Those attacks are disgraceful. The whole Parliament agrees about that. There can be no haven for hatred. That is why I am pleased to say that we stand shoulder to shoulder with the Westminster Government in taking action to change legislation to accommodate religious crimes. In our opinion, those crimes should be treated as severely as race crimes. They are hate crimes and are committed by bigots, extremists and those who have no place in a modern Scotland.

I have consulted the Deputy First Minister and can tell the chamber that we are working to ensure that religion-motivated crime is covered by legislation. We will do that at the earliest opportunity, in a way that is consistent with that of our colleagues at Westminster. We embrace the spirit of John Swinney's comments, which I hope the whole Parliament shares.

**Mr Swinney:** I warmly welcome the First Minister's remarks and recognise them as a development of the Executive's position yesterday. In the light of those remarks, does the First Minister accept that, whatever legislation on the subject emanates from the parliamentary process, it must be rigorously enforced in all parts of Scotland, to guarantee that a clear message is received that the country is intolerant of racial and religious intolerance?

**The First Minister:** I am happy to confirm that. Yesterday, when I met Muhammed Aslam, chairman of the Edinburgh and East of Scotland Pakistan Association, I told him that Scotland was united against racism and bigotry.

It is one thing to legislate; it is another to ensure that enforcement is as good as it can be. I hope that the full force of the law will pursue the zealots, racists and bigots whenever a breach of the proposed legislation takes place. Before that happens, I expect the police who are investigating the Lanarkshire and Edinburgh incidents to ensure that the full force of the law is pursued.

We all welcome the constructive comments that John Swinney has made. In the 21<sup>st</sup> century, the Scottish Parliament is sending a powerful message that this kind of behaviour will not be tolerated. If that message goes out to every part of Scotland, it will help in the enforcement of the new legislation, when it is enacted.

## Secretary of State for Scotland (Meetings)

**2. David McLetchie (Lothians) (Con):** To ask the First Minister when he will next meet the Secretary of State for Scotland and what issues he plans to raise with him. (S1F-01277)

**The First Minister (Henry McLeish):** I last met the Secretary of State for Scotland on 3 October and we have no immediate plans to meet.

**David McLetchie:** I beg the pardon of the First Minister for confusing the sex of the Secretary of State for Scotland in my question.

In the light of the economic downturn, which has been aggravated by the terrorist attacks in the United States, I hope that the First Minister gets round to discussing with Mrs Liddell the current state of the Scottish economy. Does he agree that, at this time, we should be doing everything to boost consumer confidence and to encourage business investment in Scotland? Will he and his Executive consider reducing the burden on all Scottish businesses by cutting business rates, which, thanks to his friend Mr McConnell, are higher in Scotland than in England?

**The First Minister:** The question was going well until the last point. Business rates are a matter that the Executive always has under review. As David McLetchie rightly says, business rates are an issue. However, at the present time, bigger issues face the Scottish economy.

In the past few weeks, I have continually said that what we are talking about is solidarity with the international community and the safety and security of our citizens. We must also seek stability for the economy. I share David McLetchie's concerns that we need to turn now to the sectors of the Scottish economy that may be affected by the global downturn and by the events of 11 September. Given those circumstances, we are trying to understand and anticipate what is happening to the Scottish economy and to those major sectors.

Tomorrow, at a business breakfast, we will publish the report that I talked about last week. I would like to put it on record that the leaders of the Conservative party and the Scottish National Party are welcome to attend that meeting. They are invited, along with the convener and deputy convener of the Enterprise and Lifelong Learning Committee.

There is no room for complacency. We face tough and testing times. The report to be published tomorrow—"The Impact of Terrorist Attacks on the Scottish Economy"—has been produced by the chief economic adviser to the Executive. It provides a full analysis of what has been happening to business sectors, including the aviation industry. I hope that this is a matter that

unites the Parliament and the country, so that we can tackle the issues that lie ahead.

**David McLetchie:** I thank the First Minister for his answer. I hope that he will seriously consider the rates burden in Scotland. I look forward to learning the details at tomorrow's presentation, to which he has kindly invited Mr Swinney and me.

I want to move on to an issue that is related to job creation. The First Minister may have seen this week's report of the Parliament's European Committee, which calls for the immediate implementation of a European Union directive on worker consultation. The committee's position is contrary to that which has been adopted by the Prime Minister and the United Kingdom Government. Although we accept the need for good management practices, does the First Minister agree that now is not the time to introduce yet more regulations and red tape for our businesses? To do so would save not one job in Scotland, but it would undermine the competitiveness of our businesses.

**The First Minister:** This week, the Prime Minister said that he wanted a combination of factors to be in place in the United Kingdom and hence in Scotland. He said that he wanted the enterprise of the United States to be linked to the social solidarity that we see in Europe. Surely to goodness in the 21<sup>st</sup> century, good employment conditions, good consultation, good wages and good prospects are entirely consistent with a prosperous, growing nation.

I would like David McLetchie to think deeply about the constant carping on the subject of employee regulations. We live in a time when employment is high and unemployment is low. We have growth in the Scottish economy and interest rates are at historic low levels. Surely to goodness it is important that everyone share in the wealth and prosperity of the nation. I take the point seriously. Of course we do not want to burden industry, but burdens are often opportunities, which is why Europe is moving forward.

The Prime Minister also said this week that there is no point in our being at the heart of Europe if we do not want to subscribe to the aspirations of the EU. I support those aspirations; obviously, the Conservative party still has a major problem.

### Identity Cards

**3. Lord James Douglas-Hamilton (Lothians) (Con):** To ask the First Minister whether the policy on the introduction of voluntary or compulsory identity cards will be the same in Scotland as in England and Wales and what discussions the Scottish Executive has had with Her Majesty's Government on this matter. (S1F-01276)

**The First Minister (Henry McLeish):** National security is reserved to the United Kingdom Government, which has indicated that it has no immediate plans to introduce an identity card scheme as part of its response to the atrocities in the United States. The Executive is being kept informed by the UK Government of its thinking in that area and will be fully consulted if it decides to proceed.

**Lord James Douglas-Hamilton:** Does the First Minister accept that, if the British Government makes any attempt to bring the issue back on to the British agenda, he should, as First Minister, be fully consulted? Alternatively, does he support the apparent view of the Deputy First Minister that the issue could be dealt with as a devolved matter?

**The First Minister:** I have outlined the current position in terms of national security. It is important to recognise that, although there has been a flurry of activity in the media and elsewhere about ID cards, the issue is not part of the current focus in relation to the atrocities in the United States. We can reassure Lord James this afternoon that, if there is any movement on the issue, there will be full consultation, involvement and participation in any possible outcome. The key at the moment is for us to settle down and deal with the main issues arising from the terrorist attacks; the ID debate may come at a later stage.

**Dr Winnie Ewing (Highlands and Islands) (SNP):** The Scottish Parliament might not approve of a proposal or policy on the matter, so why on earth is Lord James so anxious that we should slavishly follow what the House of Commons says on it? People seem to keep forgetting that we have our own system of law here.

**The First Minister:** It is important to recognise that the Deputy First Minister was talking in the context of national security and social security, which are clearly reserved matters. It is true that the operation of such a scheme on a UK basis would involve intimate discussions in the Parliament and the Executive. That is what we hold out for everyone involved in this.

### Drug Misuse (Funding)

**4. Mr John Home Robertson (East Lothian) (Lab):** To ask the First Minister what impact the recently announced £5 million funding for social inclusion partnerships will have on the campaign against drug misuse. (S1F-01286)

**The First Minister (Henry McLeish):** The additional £5 million is aimed at widening and deepening the actions on drug misuse that are already being taken in social inclusion partnership areas. The funds will allow social inclusion partnerships to target the areas where there are gaps in our broader efforts to tackle drug misuse

and they will assist communities in SIP areas across Scotland to complement the activity that is already being taken forward by other agencies.

**Mr Home Robertson:** Does the First Minister agree that the supply of hard drugs, which killed 340 people in 1999, into Scottish communities is a murderous trade based on a criminal disregard for human life? I welcome Margaret Curran's announcement of the extension of funding for social inclusion partnerships, including the SIP in Tranent. However, will the First Minister assure the chamber that drug action teams and other agencies will take their message and particularly their enforcement activity into every community in Scotland, especially the deprived communities that are suffering most from this scourge?

**The First Minister:** I am pleased to take advantage of the opportunity provided by John Home Robertson to say that I, too, am grateful for the extension to the work that is being done in his constituency. However, let us recognise that, of the 340 drug deaths in 1999, 163 involved heroin. That is a tremendous figure. We await with interest the results for 2000. Let us also acknowledge the words of the Prime Minister, who said that 90 per cent of the heroin circulating in this country is courtesy of the Taliban in Afghanistan. That has been confirmed by experts.

When we are fighting the menace of drugs, we will do everything possible to tackle it at home, but let us also tackle the source. That is one good reason why all the discussion about the coalition is worth while. We are tackling terrorism. However, when I see people being killed on the streets of Scotland by heroin, I know that we must not only take action, if we can, to apprehend those who sell it and to deal with its victims, but ensure that we act at an international level to tackle its source.

**Richard Lochhead (North-East Scotland) (SNP):** Any new resources for tackling drug misuse in Scotland are welcome, although we all agree that much more needs to be done. Is the First Minister aware that, in the north-east of Scotland, there has been a particularly dramatic increase in drug misuse in recent years, which is reflected in a record level of drug deaths and drug-related crime? Will he ask his officials to investigate the situation in the north-east of Scotland to ascertain whether the increase in the resources that are applied to the issue matches the increase in the problem?

**The First Minister:** I agree with Richard Lochhead's analysis. There are specific problems in the north-east of Scotland, which reflect wider problems in other parts of Scotland. We want to match up resources with the difficulties that we find. A considerable investment is going into the drugs issue, including for education, for rehabilitation and for enforcement, and that level

of commitment will continue. It will be of interest to members from the north-east of Scotland and from other areas that we are moving at Westminster on the confiscation of assets bill, which is hitting hard those who launder money and provide the finance that allows drug dealing to happen. It is in the overall interests of Scotland that we proceed with that legislation and implement it as soon as possible.

### Golf Tourism

**5. Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** To ask the First Minister what steps are being taken to promote Scotland as a centre of golf tourism in light of the decision that Scotland will not host the Ryder cup golf championship until 2014. (S1F-01289)

**The First Minister (Henry McLeish):** visitscotland remains committed to promoting Scotland as the home of golf. It is spending £1.5 million in the current financial year and at least £500,000 per annum thereafter to do so.

**Ian Jenkins:** I am sure that we are all pleased that we will have the tournament in 2014. Does the First Minister recognise the fact that golf is a particularly strong and resilient niche market and that, in the current downturn after the events of 11 September, there is still, as David Davidson said, a massive home market in the United Kingdom, the British isles and Europe, which should be targeted in the meantime?

**The First Minister:** There was disappointment that we could not land 2010, but we have 2014. Between now and then, we will certainly make progress in promoting golf tourism. One of the hallmarks of the best bid was that we would develop junior golf to ensure that, by nine years of age, boys and girls would be able to participate in golf. That commitment stands; it is being implemented and we shall develop it. At this time, it is important for the confidence of the country that we have five of the eight open championship courses in the United Kingdom, that we have 500 courses, some of which are gems, in countryside and rural areas, and that we have the home of golf. We have the best worldwide assets to sell the game and it is important for visitscotland and all of us to ensure that tourists come, play golf, bring income and bring jobs.

**Irene McGugan (North-East Scotland) (SNP):** What reassurances can the First Minister give that the major private sector backers remain fully committed to all aspects of the bid, including golf tourism?

**The First Minister:** That is a good question. I am confident that the major backers will be involved. Indeed, the prospect of having the tournament at Gleneagles means that the

company that owns Gleneagles will be involved. I do not want to say too much about forward sponsorship. Suffice it to say that it is an important matter for us, which we will pursue very vigorously indeed.

### **Tobacco Advertising**

**6. Nicola Sturgeon (Glasgow) (SNP):** To ask the First Minister whether the Scottish Executive will introduce legislation to ban tobacco advertising in Scotland should Her Majesty's Government not do so and, if so, when. (S1F-01278)

**The First Minister (Henry McLeish):** The Executive has never ruled out a Scotland-only ban but believes that a UK-wide ban would be more effective and enforceable. We are anxious to see a ban in place as soon as practicable and will continue to press the UK Government to move quickly in that area.

**Nicola Sturgeon:** Does the First Minister agree that, however desirable a UK-wide ban may be, there appears to be no realistic prospect of one in the foreseeable future? I am glad that the Scottish Executive now seems to have accepted that the Parliament could make real progress on the matter and that it has not ruled out doing so. Will he therefore today lay out a timetable for action? Will he tell us how much longer he intends to wait for Westminster to take action and will he give a commitment that, if Westminster has not acted by the deadline, the Scottish Executive will support Scottish legislation without further delay?

**The First Minister:** I will not answer no to all the questions because I do not accept the premise that there is no realistic prospect of action at Westminster. The Minister for Health and Community Care and I have discussed the matter with the Chief Whip, the Leader of the House of Commons and a large number of key players at Westminster and there is every indication that they want to pursue the matter and will look for a legislative slot. How much more effective and serious an attack on the problem would be if there were a UK-wide ban enforceable throughout the UK. We are enthusiastic and committed to achieving that, but we must be realistic. We will, of course, press Westminster hard to move as quickly as possible.

## **Sports Promotion in Schools**

**The Presiding Officer (Sir David Steel):** The next item of business is a debate on motion S1M-2285, in the name of Allan Wilson, on sports promotion in Scotland's schools, and two amendments to the motion.

Many members want to speak so time limits will be strictly enforced. If members can finish before their time is up, so much the better.

15:32

**The Deputy Minister for Sport, the Arts and Culture (Allan Wilson):** I am delighted to open the debate, which emphasises the importance that the Executive places on sport in Scotland's schools. I am committed to making Scotland a nation that provides opportunities for all to participate in sport and that identifies and nurtures its sporting talent.

The debate is primarily about sports in schools, but I would like to open it out and consider physical activity in general. I am aware that sport switches some young people off and that not everyone is attracted to competitive, team or outdoor sports, but aerobics and dance can be very attractive options, particularly to young, teenage girls.

That is recognised by sportscotland, which provides funding to Fitness Scotland and through the TOP programme. We must provide a range of opportunities and encourage more young people to become more active more often. To use the modern idiom, a lifestyle that includes physical activity must be seen as cool and attractive. Once that is achieved, increased participation in sport will follow as night follows day.

The ultimate aim is to develop good habits and practices in young people that will set lifelong patterns of physical activity and produce the world champions of tomorrow. An added benefit will be that the population will be healthier in body and mind and less of a burden to the health service in old age. All members should encourage others and strive to achieve that.

The Standards in Scotland's Schools etc Act 2000 includes a duty on authorities to ensure that education is directed to the development of the personality, talents and mental and physical abilities of the child or young person so that they achieve their full potential.

It is accepted that young people and the rest of the population are not as active as they should be—that has prompted us to set up the national physical activity task force under the chairmanship of John Beattie.

**Tommy Sheridan (Glasgow) (SSP):** So far, I agree with everything the minister has said—I do not know if that is good or bad. Does the minister agree that the fact that there are no specific physical education teachers in our primary schools is a major disadvantage and does not encourage young people to become involved early in sport and physical activity?

**Allan Wilson:** I do not know whether Mr Sheridan's agreement is good or bad, but it is probably progress.

I agree with Mr Sheridan's substantive point. Jack McConnell, who has primary responsibility for PE teachers in primary schools, and I are considering how the existing resources can be used to best effect.

The task force is made up of a range of interested specialists with areas of expertise that include health, sport, education and local government. The aim is to produce in the spring of next year a strategy for increasing physical activity in Scotland.

Numerous reports have been produced and a lot of research has been carried out on sport in schools. The Education, Culture and Sport Committee, of which my friend and colleague Karen Gillon is the convener, produced a useful report on the subject last year, which included a number of important recommendations. We have given careful consideration to the report and its recommendations and we will shortly submit our formal response to the committee.

Action has been taken on a number of the recommendations. For example, we have provided an additional £2.8 million to sportscotland to expand the active primary schools programme.

**Michael Russell (South of Scotland) (SNP):** My question is about procedure. It strikes me that as the deputy minister has initiated a debate on sports promotion in schools, and as the Education, Culture and Sport Committee has produced a report on sport in schools, it would have informed the debate if the Executive had responded to the report before the debate, rather than having the debate before responding to the report. The order does not help the Parliament.

**Allan Wilson:** That is a fair point—I would have preferred to have the response in advance of the debate, but that is not the situation in which we find ourselves. The sport policy unit has been heavily engaged in the past few weeks and months on matters such as the bid to host the Ryder cup and the Euro 2008 football championships, but the response will be produced in due course.

As I said, we are implementing a large number of the measures that are in the Education, Culture

and Sport Committee's report. I will make an announcement in the next minute, if members are patient, which will address another important aspect of that report.

**Dennis Canavan (Falkirk West):** We wait with bated breath.

**Allan Wilson:** You should. We are providing opportunities and we call on local authorities and others to engage fully in the initiatives.

One of Karen Gillon's recommendations was that consideration should be given to the establishment of a central body to co-ordinate the delivery of sport in school and to provide evaluation and monitoring of best practice. I am delighted to announce that we accept the need for that body. We will soon establish a school sport alliance involving interested groups. The precise remit and membership of the alliance is yet to be determined, but work is under way and the alliance will be established and operational in the new year.

Sport in schools can bring wider educational benefits. Most important, sport in schools can equip pupils with the foundation skills, attitude and expectations necessary to prosper in a changing society.

**Cathy Jamieson (Carrick, Cumnock and Doon Valley) (Lab):** Will the minister take an intervention?

**Mr Kenneth Gibson (Glasgow) (SNP):** Will the minister take an intervention?

**Allan Wilson:** I will take Cathy Jamieson's intervention.

**Cathy Jamieson:** Does the minister agree that it is vital to target resources to those areas that have suffered the most social deprivation? The children in such areas tend to need their confidence built up and need sport as a way of integrating themselves into the local community.

**Allan Wilson:** As ever, I agree with my good friend and colleague Cathy Jamieson. Through sportscotland we are targeting £3 million to social inclusion partnerships for the promotion of sport in deprived areas because we recognise that the children there are the most disadvantaged in our society.

**Mr Gibson:** Will the minister give way?

**Allan Wilson:** If the member does not mind, I would like to move on. Interventions militate against the amount of time that I have.

The many benefits that are gained from sport and physical activity should make it clear that sport and other forms of physical education are not an add-on, but an integral part of the school curriculum. It is up to all of us to work together to

ensure that sport and physical education play their part to the full.

The agreement on teachers' conditions and pay marks a watershed after years of instability and destruction. Teachers have a positive contribution to make to the successful promotion of sport in schools. That is why I am happy to accept Brian Monteith's amendment. The McCrone settlement has introduced a framework for continuing professional development for teachers. That framework will enable teachers and schools to identify and address individual training needs, including those relating to sport and physical activity.

**Margaret Jamieson (Kilmarnock and Loudoun) (Lab):** Will the minister take an intervention?

**Ms Margo MacDonald (Lothians) (SNP):** Will the minister take an intervention? It relates to McCrone.

**Allan Wilson:** I will take an intervention from Margaret Jamieson.

**Margaret Jamieson:** I thank the minister. He was talking about the impact of McCrone on the education of our young children. Does he accept that we should take the opportunity of modernising the pay structure for teachers to modernise sport in our schools, to encompass non-traditional sports and provide, for example, skateboarding facilities? I understand that that is currently one of the cool sports for young people.

**Allan Wilson:** I am nothing if not a moderniser. I agree with Margaret Jamieson. That is in large part included in our new opportunities fund programme, which I will say more about later. It is about investing in community facilities. As I understand it, kids who prefer to skateboard are not likely to do so within the confines of their school but want to do so in their local community.

**Mr Gibson:** Will the minister take an intervention?

**Allan Wilson:** I would like to make progress.

Through sportscotland, we have introduced several programmes and initiatives that will help to deliver our aims. The school sport co-ordinators programme is proving very successful. To date, sportscotland has offered awards to 23 local authorities and 13 individual secondary schools for co-ordinator cover. Funding has been committed for co-ordinator cover in 297 secondary schools in Scotland.

At the beginning of the year I announced the first awards under the TOP programme, which, for example, will benefit children aged from four to 11 years in 65 primary schools and four special educational needs schools—£2.8 million is

earmarked for the programme over four years

On the new opportunities fund and links between schools and the community, by 31 August this year, sportscotland had made—through the school facilities strand of its lottery facilities programme—87 awards, totalling £17.6 million. sportscotland has recently announced the results of its audit of swimming pools and will also conduct an audit of the rest of Scotland's sports facilities.

We are conscious of the need—as Margaret Jamieson pointed out—to maintain and enhance the facilities that are available to our young people, especially playing fields. sportscotland plays a pivotal role in that and takes its responsibility seriously.

Members will be aware of the massive investment in physical education and sport in schools by the new opportunities fund: it totals £87 million. Of that investment, £43.5 million will be allocated to the refurbishment of existing or the building of new indoor and outdoor sports facilities for school and community use. In addition to that, up to £21.75 million will be committed to supporting programmes and facilities designed to promote the role of sport in diverting young people from criminal activity. Up to a further £21 million will be committed to supporting out-of-school-hours programmes based on school facilities and organised through schools, which offer children and young people a wide range of sporting and cultural activities.

I am aware of the oft-repeated call for sport to be guaranteed in the curriculum. National guidance recommends that a minimum of 15 per cent of time is spent on expressive arts, which include physical education, but leaves it to individual education authorities and schools to decide how much of that time is allocated to PE. In addition, schools have the option of devoting additional time to PE from the 20 per cent flexibility time that is built into the guidelines.

**Mary Scanlon (Highlands and Islands) (Con):** Will the minister give way?

**The Deputy Presiding Officer (Mr George Reid):** No. Allan Wilson is in his last minute.

**Allan Wilson:** Following the distribution of a Scottish Executive education department circular on flexibility and innovation in the curriculum, schools have been encouraged to deliver a curriculum that meets the needs of individual pupils, which includes the provision of physical education.

I will conclude on the key role of local authorities. One of sport 21's four key recommendations was that local authorities should publish a strategic plan for sport and recreation. I

am encouraged by the work of local authorities that have already developed or are developing such strategies. A strategy on playing fields should form part of the wider sport and recreation strategy.

sportscotland and I stand ready to assist local authorities with that work and I hope that over the next year or two we will see progress. That is important in building the effective local partnerships that enable sport in schools to be enhanced.

I move,

That the Parliament recognises the contribution sport makes to both the physical and mental health of young people as well as providing a positive and attractive alternative to anti-social and offending behaviour; endorses the various initiatives, such as the School Sports Co-ordinator and Active Primary School Programmes put in place by the Scottish Executive through sportscotland and the increasing opportunities for young people to participate in sports in schools; and calls on local authorities, and others, to engage fully with these initiatives.

15:44

**Irene McGugan (North-East Scotland) (SNP):** Everyone agrees that the provision of sport and PE in schools contributes significantly to a healthier, more dynamic and proactive population and a more interesting and exciting way of life for our young people. However, Scottish children are among the least fit in Europe. There can be only one conclusion—that the current physical education programme is inadequate, as it is failing to deliver physical health and well-being to the young people of Scotland.

Allan Wilson's motion contains nothing new or radical to address that fact. It calls for very little progress or innovation and, quite frankly, praises initiatives that, although well-meaning, have not gone nearly far enough in accomplishing what is necessary to ensure that Scotland's youngsters are fit and healthy and have adequate access to sport and sporting facilities. In effect, the motion achieves nothing, although the announcement of the school sport alliance is very welcome. It would have been useful to include that announcement in the motion.

The first review of Scotland's sporting strategy, sport 21, found that the lack of regular physical education and sport in primary schools was still a major concern, despite the fact that one of the strategy's initial targets was

"to ensure that every primary school provided a minimum of two hours of physical education per pupil per week".

The review exposed the fact that the target has not been met; in fact, it has been only 50 per cent fulfilled.

In reply to my question about how the Executive

would ensure that sport was given priority in the school curriculum, since it does not feature as one of the national priorities in education, Jack McConnell said:

"Increasing the amount of time devoted to sport could ... only be done at the expense of other areas of the school curriculum.

There are no plans to review current arrangements for providing physical education programmes in the school curriculum."—[*Official Report, Written Answers*, 8 March 2001; Vol 11, p 127.]

That is despite the fact that a decent allocation of time for PE with properly trained teachers would help to counteract the unhealthy lifestyle adopted by many young people today, which is of great concern to health professionals.

**Mr Gibson:** Will the member accept an intervention?

**Irene McGugan:** A brief one.

**Mr Gibson:** I thank the member for having the grace to give way, unlike the minister.

Does the member agree that it is important that children are allowed to be children? Our children go to school at a much younger age than do the children of many of our continental neighbours. Is it not somewhat shocking that five and six-year-olds are being burdened with homework when they should be out playing on their bikes, climbing trees, picking brambles and enjoying themselves? The issue is not just about school and sport; it is about children having the ability and time to play, enjoy themselves and be children.

**Irene McGugan:** Exactly. I will make that very point later in my speech.

Section 3 of the consultation document on the new opportunities fund is dedicated to PE and sport in schools and prioritises increasing the participation of children and young people in physical education and sport. However, much of what would be achieved by throwing lottery money at the various initiatives outlined in that section could be accomplished simply by introducing a set number of hours of PE in our primary schools. That would lay the foundations of a sporting culture.

**Allan Wilson:** Is the member proposing a statutory curriculum for Scottish schools?

**Irene McGugan:** I am proposing that the sport 21 recommendation of ensuring a minimum of two hours of PE a week for every pupil should be introduced.

**Hugh Henry (Paisley South) (Lab):** By statute?

**Irene McGugan:** It is recommended in the Executive's sporting strategy.

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

**Irene McGugan:** I must get on.

If a comprehensive physical education programme were implemented in our primary schools, fewer than 8 per cent of Scotland's boys and 7 per cent of Scotland's girls would be considered obese. Scotland has one of the highest incidences of heart disease in Europe. The lowest incidence of heart disease is in France, where there are 11 hours of PE in the curriculum. The trend is confirmed by the experience of other countries.

If it is recognised across the spectrum that changing lifestyles is the key to improving Scotland's health, why wait for the NOF to identify sport in schools as a priority? Why not implement sport 21's recommendations?

**Mary Scanlon:** Will the member give way?

**Irene McGugan:** I am sorry; I must get on.

PE in the curriculum is just the starting point. If we want children to develop their talent for and enjoyment of a particular activity or sport, there must be—as Kenny Gibson pointed out—an opportunity for them to do so outwith the school day. The McCrone report has raised its own concerns on this point, saying:

"Teachers will spend more time on courses, pursuing their careers and the hard educational agenda, probably at the expense of the extracurricular".

Although school sport co-ordinators are designed to counteract that possibility, what does it mean for schools at which teachers are either unable or unwilling to devote time to out-of-school activity or which have no money to fund such co-ordinators? The programme relies heavily on local authorities or schools having enough money to provide 50 per cent of the funding for the posts.

We know that, in areas such as Aberdeenshire, where there have been financial difficulties, it is hard for schools to deliver such funding. That must contradict the recommendation in another Executive document, which states:

"it is essential that resources are committed to physical education and provision for sport is targeted at both primary and secondary schools in socially deprived areas and that such schools should not be deprived of the proposed school sport co-ordinators because of lack of funding."

Can the minister also tell us how many of the current school sport co-ordinators have been given disability awareness training so that the needs of disabled children are taken into account and met? Is sufficient specialised or adapted equipment available in Scotland's schools, and how many of our schools have changing rooms and facilities that are fully accessible?

A recent report from the Scottish school of sport studies found that children at one in seven secondary schools no longer have access to a

grass playing field; that 40 per cent of schools do not have a football pitch; and that 18 per cent of state school students take part in extra-curricular activities, compared with 60 per cent of students in the private sector. Are those statistics on which the Executive and sportscotland should be congratulating themselves? I do not think so.

The amount of green space, especially in urban areas, continues to decrease. If parks and pitches are sold off for housing and retail development, where is there left for children to go and play or practise when the school gates are closed? The loss of space in itself will have a detrimental effect on much of the good that is being done elsewhere to promote physical activity. It serves to underline the need for sport to be made a priority in schools.

Let us hope that the findings of the recent study into our crumbling swimming pools and the likely results of the forthcoming audit of best practice in the use of schools' sports facilities will allow the Executive to see the error of its ways and take meaningful action to prioritise sport in schools and ensure that facilities are available and accessible to all.

I move amendment S1M-2285.1, to insert at end:

"; notes that other European countries prioritise sport in the curriculum but that Scottish schools do not even offer the recommended minimum of two hours of physical education per week and that children at one in seven secondary schools no longer have access to a grass playing field; further notes that almost 40% of schools do not have a football pitch and that the already unacceptably high obesity rates among young Scots are still rising, and therefore calls upon the Scottish Executive to cease lodging self-congratulatory motions, to take meaningful action to prioritise sport for children and young people and to ensure that locally available and appropriate facilities are accessible to all."

15:52

**Murdo Fraser (Mid Scotland and Fife) (Con):** I have the pleasure of moving the amendment in the name of Brian Monteith on behalf of the Scottish Conservatives. The amendment seeks to strengthen the motion by highlighting the key role that the promotion of the merits of sport in schools must have if we are to make progress. That progress can come only from increased awareness and participation by all those who are involved in sport and education in Scotland, not least through its promotion among parents and pupils. Our amendment is meant to make a positive contribution and I am delighted that it will be accepted by the Executive in that light.

The principle that sport in school is valuable is unlikely to be challenged today, although I am wary of the thought police in the collectivist education establishment who tried to remove competitive sport from the Scottish education

system because they believed, for ideological reasons, that any form of competition was elitist. Thankfully, that approach is finally receding, as its basis was clearly nonsense. It failed to recognise the important lessons that competition teaches about future life and valuing others, whatever their outcomes. School sport should encourage competition and epitomise that philosophy, to allow everyone to take part and find a sport and a level of participation that fits their abilities and to encourage physical activity.

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** Mr Fraser is talking about competition. Some children are good at sport and have high self-esteem, but what would he suggest for the children who are not good at sport?

**Murdo Fraser:** My concern is that, in the 1980s, there was a trend towards anti-competitive education, which meant that some schools, for example, did away with sports days altogether. That was a sad thing for the children who were good at sports, especially those who did not excel in other areas, but who could have had the opportunity to compete and win prizes. Competition is good because it equips children for later life.

The Conservatives oppose the SNP amendment because it suggests a prescriptive, top-down approach to the provision of sport in schools. We want to encourage participation in sports from the bottom up; therefore we would have schools setting the priorities. That would allow, for example, an emphasis on minority sports, which may vary from school to school.

When I was at school in Inverness, I participated in the school shinty team. That opportunity was made available, not as part of the curriculum, but through an after-school club run by a physics teacher. I would like schools in the Highlands and elsewhere to be able to include in the curriculum shinty and other minority sports for which there was a demand. However, we do not need a national curriculum telling us what to do.

**Michael Russell:** Will the member take a positive intervention?

**Murdo Fraser:** That would be unusual.

**Michael Russell:** Mr Fraser must get used to surprises in the chamber.

I commend Mr Fraser's views on shinty and suggest that it is a great pity that the innovations in shinty, for example those made by schools in Argyll, are not spread more widely in Scotland. I hope that the member will join Fergus Ewing and me in arguing for much greater support for shinty, to get it into schools and to have it recognised as the exciting sport that it is, although, as Mr Fraser no doubt knows, it can lead to damage to the head

from time to time.

**Murdo Fraser:** I am glad to acknowledge both how exciting shinty is and how dangerous it can be. I shall be happy to discuss with Mr Russell how I can help to promote the cause of Scotland's traditional sport.

To improve standards, we must allow schools to set local priorities. It would be tempting to set standards for specialist teaching involvement but I do not think that that is the way forward for the culture that we need. Decent budgets for specialist provision must be devolved to clusters of schools. That would allow schools to choose the amount of specialist provision that they need, involving parents in the decision.

It will come as no surprise that we argue for parental involvement. The case for that in relation to sport and PE is overwhelming. In the independent sector, PE is usually taught for three periods a week in primary and sport is a major part of school life during and after school hours. Sport is used as a selling point for many independent schools and applications this year indicate that more and more parents want to buy into that type of education. Academic standards are not affected—indeed, they are extremely good in the independent sector—and parents will pay more on top of their taxes for what they feel is a more rounded education.

Not all parents are in the fortunate position of being able to opt into independent education—my parents could not afford to do so. However, we should use the ethos of the independent sector to improve sport in state schools, get the parents involved and allow them to help improve the facilities. Let the parents participate. We must change the culture and have specialist teaching of primary PE, which should be seen as indispensable rather than as an add-on for interested head teachers, those with spare money in their budget and those who cannot access specialist music tuition.

The Scottish Conservatives want there to be greater diversity in education through community school boards. There is no reason why they should not encourage far greater sporting participation in state schools through local control of budgets, which I have talked about. We would encourage schools to specialise in sport, as already happens, to an extent, at Bellahouston Academy.

We must allow all our children to achieve through the most appropriate type of schooling for their needs and potential. For many children, PE and sport will play a major part in that. Doing so will require a culture change in Scotland rather than more Government direction. That culture already exists in the independent sector, where it

is successful and encourages sport, which sells schools to parents. There is no reason why that culture should not exist in the state sector.

Our amendment encourages the required culture change and I urge Parliament to back the opportunities that we speak of and support the amendment.

I move amendment S1M-2285.2, to leave out from “and others” to end and insert:

“head teachers, teachers, school boards and other sports and educational bodies to embrace and participate fully in these healthy initiatives.”

15:58

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** Since dangerous sports were mentioned, I should point out that I have a badly deformed finger from the time when I saved a penalty in the last minute for Scotland against England in the back green of Jimmy Stewart, one of my pals.

A week or so ago, we had an informal meeting of the Education, Culture and Sport Committee. When we were discussing curriculum matters, I referred to a book by Professor Stanley Nisbet of Glasgow University called “Purpose in the Curriculum”, in which subjects that contributed to the development of youngsters were analysed and a case was made for why they should be included in the curriculum. Karen Gillon did something similar when she produced her report for the Education, Culture and Sport Committee on sport in schools. She pointed out the importance of sport for the individual in terms of health, self-esteem and self-confidence, which I think is one of the most important things that we can give our youngsters. She also pointed out that sport was important in terms of weight control and obesity, and academic achievement, although I know that the link between sporting participation and academic achievement is slightly doubtful.

Our society benefits from sport in schools as a result of increased social inclusion, community development, crime reduction and improved infrastructure, as there are dedicated facilities in the community. In no other subject do we get a battery of items that improves individuals and the community more than sport does. I am therefore delighted that the Executive is gathering force and driving forward its agenda on sport in schools. I am extremely pleased by the minister’s upbeat speech and all the initiatives that are being drawn together to form a range of opportunities, such as social inclusion partnerships—to which Cathy Jamieson alluded and which are being directed at areas in which youngsters are not readily assimilated into sporting activity—and the physical activity task force. At the meeting that I mentioned,

it was also good to meet Ian Robson from sportscotland and to see that he is focused on all those activities.

Irene McGugan talked about the timetable. I would love to embed two hours of physical activity into the timetable in primary schools. I would, however, be extremely upset if that impinged on drama, which I would like to encourage, music or modern languages, which we talked about last week. It is no use us all talking. Somebody must, at some time, bite the bullet and make decisions about such things.

**Michael Russell:** Mr Jenkins is aware that one of the big issues in education is the question of its purpose. Discussion of that issue unites him, me and other members of the Education, Culture and Sport Committee. One aspect of that question is what goes in where. My colleague Irene McGugan’s point is that there is strong evidence from abroad, and in the Executive documents, that two hours is the right amount. We take that as one of the building blocks. I am sure that Mr Jenkins would welcome—as I would—an initiative to talk about the overall purpose of education, which would enable us to make progress on the matter. In fact, I think that the Education, Culture and Sport Committee is now going to take such an initiative.

**Ian Jenkins:** I am happy to accept that. I was going to make just that point in the last sentence of that part of my speech.

I was pleased that Irene McGugan also mentioned disability in her thinking about sport, because it is vital. The examples that we saw in the Paralympics were heartwarming, inspiring and should teach us lessons about how we treat those who are further down the scale of sporting ability.

Training for teachers is important. The McCrone report is an opportunity. We can encourage those who want to become chartered teachers to take qualifications in sport as part of the process of becoming a chartered teacher and should not confine such qualifications to subject-specific training. Continuing professional development is one of the best aspects of the McCrone report and I hope that it will be implemented in the way that I have suggested.

In school, we found residential outdoor education, which is not often mentioned, extremely helpful in developing self-awareness and self-respect and in offering physical activity to youngsters. We used to send first and second-year youngsters for a week away that allowed them to get the kind of experience that we are talking about without it having to be two hours in the timetable. Those experiences were not always team sports, but included activities such as canoeing and climbing.

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

**The Deputy Presiding Officer:** No, he is in his last half minute.

**Ian Jenkins:** We are trying to get sport into the daily lives and the mindsets of pupils. We want Scotland to give the proper place to sport.

A visionary element came into Allan Wilson's round-up of initiatives. I was pleased to hear the First Minister say that the golf initiative that was associated with the Ryder cup bid would go ahead. I look forward to going out for a game of golf in 2014 and then seeing some of the youngsters who have learnt golf under the initiative helping Great Britain and Europe to beat the Americans in the Ryder cup.

**The Deputy Presiding Officer:** We now move to open debate. We have lost some time on this debate, so I ask members to keep their speeches as close as possible to three minutes.

16:05

**Mr Frank McAveety (Glasgow Shettleston) (Lab):** Sport's contribution in schools has moved on substantially from the popular images from films such as "Kes", in which Brian Glover played the role of the typical PE teacher. I welcome the minister's statement, which is the beginning of a continuing process to address how we improve the range and quality of sport in schools.

Brief as my time is, I want to spend it by considering some of the points that other members have raised. I do not accept that we should consider the independent or private sector as a model, as if it were the only way in which sport and schools should be connected. The Deputy Minister for Sport, the Arts and Culture identified a much more interesting development, which is the way in which many councils have utilised the opportunity to redefine how they deliver quality services and have provided facilities that are much better than anything that I ever experienced when I was a youngster.

For example, there is a popular mythology in Glasgow's soccer arena that there was a golden age when people could play in wonderful facilities, but I recollect red blaes and black coal dust as the regular experience. Like my Liberal Democrat colleague, I was daft enough to be a goalkeeper, and it strikes me that diving into a shard of concrete can only deliver harm. That may explain Ian Jenkins's political contributions, but it was certainly not an appropriate way to develop sport.

I want to pay tribute to the work that has been undertaken by the schools and council in my constituency to develop facilities.

**Mary Scanlon:** Will the member take an intervention?

**Mr McAveety:** I would prefer Margo MacDonald to intervene, if she is invited to do so. I await that opportunity, but she has been lapped five times already today, so it has been a wee bit unfortunate.

In my constituency, the sports and leisure centres have prioritised key integration with schools. Glasgow City Council has developed the kidzcard, which facilitates access for free swimming. The card has made a substantial difference and youngsters' access to swimming has increased by 300 per cent.

The quality of advice and support that is provided by teachers and those who support youngsters in the development of sport must also be developed. Perhaps if I give Margo MacDonald a second invitation to intervene, she can enlighten me on that? I await her contribution with interest.

**The Deputy Presiding Officer:** Does Margo MacDonald want to intervene?

**Ms MacDonald:** I thought that you would never ask.

Although I agree with my generous colleague that the provision of facilities and hardware in Glasgow has, along with the sports card, been excellent, I wonder whether the sport co-ordinators on their own will be enough. Does my colleague agree that the employment of more PE teachers by Glasgow City Council would provide an all-round package that would be bound to raise standards in Glasgow's sport?

**The Deputy Presiding Officer:** I ask Frank McAveety to answer and close.

**Mr McAveety:** It was almost like that other sport, dancing. I was asking and she was contributing. I thank Margo MacDonald for her intervention.

The allocation of PE teachers is a legitimate point that needs to be looked at. I have raised that matter with Glasgow City Council and its education service needs to address the matter.

We are in an environment in which academic and leisure pursuits always compete with one other for youngsters' time. I have a nine-year-old who does sport five times a week. The difference between his life experience and mine is that he does five different sports each week, whereas only one sport occupied my time. The other day, I was trying to encourage him to do some homework, but he said, "Da, gonnæ get off my back a minute. Ah'm an active sort of guy." A balance needs to be achieved between the two aspects. I hope that, through the initiatives that the Executive has announced and through the work of volunteers and of local authorities, we can get a more coherent position on sport.

I am sorry that I had to race round. My speech may have sounded more like a sprint than a middle-distance effort.

**The Deputy Presiding Officer:** If I am to get everybody in and balance the debate, there can be only one intervention per member during the three minutes. That is the only way that it can be done.

16:09

**Richard Lochhead (North-East Scotland) (SNP):** As Ian Jenkins said, today's debate is about not only sport in our schools, but the self-fulfilment of our children. It is about building their self-confidence, self-development, personal development, health and fitness. As far as society is concerned, the debate is also about how to save the national health service a fortune. All our children, especially those in primary schools, would, if I had my way, get a taste of all sports so that we could try to get them hooked at an early age.

Without a doubt, the minister and coalition members will give us lots of warm words, but the reality in the country is very different. For many sports facilities in many schools in parts of Scotland, there has been no capital expenditure by local government over the past four years. In many rural communities, in particular, there are no community facilities for kids or the rest of the community to turn to. That issue has to be addressed.

**Mary Scanlon:** Although in some areas there is great investment, in many areas the facilities are withering on the vine. I ask that throughout the debate we do not limit consideration of sport to schools, but focus on community education as well.

**Richard Lochhead:** That is a fair point.

I turn to my area of north-east Scotland. In Ellon Academy, one of the biggest schools in Scotland, there is a severe shortage of PE changing facilities. That situation has not been addressed for years. There might be 70 girls changing in a tiny space at the same time. The assembly hall has to be used for PE, so when exams take place, PE is simply curtailed.

In Aberdeenshire, the situation in the primary sector is deplorable. The minister will be aware that the five-to-14 guidelines recommend that 20 per cent of the working week should be spent on expressive arts—PE, art, drama and music. That works out at five hours per week in the upper stages of school, which means an hour and 25 minutes for PE. The situation on the ground is that, because of the time that it takes to get changed, the pupils are lucky if they get 40

minutes a week. Time is tight and there is a great deal of demand.

Often in primary schools, particularly in Aberdeenshire, the gym hall doubles up as the dining hall. That means that PE has to be curtailed before lunch time. That situation is serious and has to be addressed.

Local government cuts have, for example, decimated the number of specialist teachers in schools in Aberdeenshire. That has had a knock-on effect on the ability to deliver sport in our schools. The children in our primary schools often encounter the expertise of specialist PE teachers for only one term per year. At a rate of 40 minutes a week, that does not amount to a lot of time. Class teachers do not feel confident taking the kids for difficult PE lessons, which has implications for the range and quality of those lessons.

I say to the minister—if he would like to listen—that putting money into sport in schools is an investment in our children that will save cash in the national health service. Sport in schools makes our children happier, fitter and healthier. We must put more cash into employing specialist teachers. If we invest now, Scotland will reap major economic and social benefits and might also do better on the sports field.

16:12

**Alex Johnstone (North-East Scotland) (Con):** As members can no doubt tell from the athletic figure before them, I was something of a sportsman when I was at school. My sport of preference was football, but people thought that the way I played looked more like rugby—so I went and played that instead.

The opportunity to play rugby at my school—Mackie Academy in Stonehaven—came along weekly because there was an appropriate allocation of time within the curriculum. The school team was not all that successful all of the time, but it was supported by enthusiastic members of the teaching staff who were willing to give of their time to ensure that boys of every age were able to get out and play rugby on a Saturday morning. The man who was most involved was a chemistry teacher—the head of the chemistry department—whose name was Alan Cameron. I pay tribute to him and to the hundreds if not thousands of teachers who, in the 1970s, devoted themselves to ensuring that young people got the opportunity to get involved in extra-curricular sport.

As it happens—this connects with what Richard Lochhead said a moment ago—Alan Cameron unfortunately left Mackie Academy in Stonehaven and became the head teacher at Ellon Academy. After retiring, he went on to develop a political involvement—

**Richard Lochhead:** In the SNP!

**Alex Johnstone:**—but the less said about that the better.

In the late 1980s and early 1990s, my children attended the same schools that I had attended in my younger years. An unfortunate change had occurred: when my children were at the schools, sport happened as part of the curriculum, but no longer happened as an extra-curricular activity. That was because of decisions that were made—by teachers themselves in many cases—during the 1980s. It is sad that the opportunity to take part in extra-curricular sport was lost to my children.

Opportunities may be afforded us by the McCrone settlement. However, while ministers on the one hand are saying that this is the greatest opportunity for sporting activity in years, with the reduction in teaching hours, many people in schools believe that the cut in class time means that teaching contact time is limited and becomes even more concentrated on literacy and numeracy. I would be grateful if the minister could indicate how that conflict could be resolved. The whole Scottish Parliament is looking for firm direction to reassure us on the issue.

I am delighted to support the Conservative amendment.

16:15

**Hugh Henry (Paisley South) (Lab):** At the risk of damaging Allan Wilson's local reputation, I say that the minister is renowned for having a catholic interest in sport, art and culture. I am glad that when he talked about sport in schools he took the opportunity to broaden its definition.

Wide consensus about the significance of sport in life generally has developed in recent years. No one would argue now that sport does not contribute to improving self-esteem and health or that sport does not lead to increased educational achievement in schools. It is a tremendous step forward that we are using that as a starting point for our debate.

However, it is regrettable that instead of focusing on some of the positive things that have been done and can be done, the SNP, and Irene McGugan, yet again indulged in its own adage whereby "a whine a day keeps the voters away." Instead of considering the opportunities, the SNP always considers the negative side. What about the opportunities that are presented by the £6.6 million from the sports lottery fund?

**Richard Lochhead:** Will the member acknowledge that he does not live on the same planet as schools in many areas of Scotland, which, as a result of local government cuts

imposed by the Government, have been unable to develop sport?

**Hugh Henry:** I cannot speak for how SNP councillors develop facilities locally, but Frank McAveety has mentioned the positive contribution that is being made by Labour councillors in Glasgow. I can speak about some of the positive initiatives that are taking place in Renfrewshire Council area.

**Michael Russell:** Will the member give way?

**Hugh Henry:** I am sorry, but the Presiding Officer has said that we can take only one intervention per speech.

There is positive partnership between the lottery, schools and many other local organisations. We could have focused on the positive things that have been happening, but the SNP has fixed on the negative things instead.

I want to finish by talking about what is happening in my constituency. I was pleased to launch the health improvement through sports initiative—the minister is aware of it—at St Peter's Primary School in Glenburn. That initiative was eventually rolled out to 20 primary schools, involving 600 children from social inclusion partnership areas, throughout Renfrewshire. I was delighted that the First Minister was able to meet many of those children at an event at Love Street. Indeed, not only was the First Minister able to display his soccer skills at that event, he probably performed to more than twice the average attendance that he had when he was playing for East Fife.

There is partnership with schools and many good things are happening, such as Total Soccer Experience, through the work of Tony Fitzpatrick. The debate should have been taken as an opportunity for us to look forward and to move forward.

16:19

**Donald Gorrie (Central Scotland) (LD):** I am happy to support the motion because it says some sensible things and does not seem to be unduly self-congratulatory. As Hugh Henry was saying, I wish that the SNP had stuck to making some of the specific points in its amendment, which are true and relevant, rather than calling on the Scottish Executive to do things that no Executive would ever do. There is no prospect of the Executive supporting the amendment because of those words. I presume that the purpose of the amendment is artificially to divide the chamber, which is quite unnecessary.

**Michael Russell:** For the avoidance of doubt, the purpose of the amendment is to reiterate some facts about the situation, and to reiterate the fact

that self-congratulation is no praise, a point that Hugh Henry demonstrated amply in the past five minutes.

**Donald Gorrie:** Mr Russell is an experienced politician. He knows perfectly well that the points that are made in the last few lines of the SNP amendment would, if said in a speech, be perfectly okay—I personally have said them in a speech—but to put them in writing and expect people in the Executive to vote for them is absolutely idiotic. I am quite sure that the SNP is not idiotic, therefore the wording of the amendment was deliberate and merely stirs up the issue, which is not helpful.

**Michael Russell:** That is opposition.

**Donald Gorrie:** It is the gentleman's interpretation of opposition. I thought that we came here to try to improve things for Scotland, so for God's sake let us try to do that.

**Karen Gillon (Clydesdale) (Lab):** Will the member give way?

**The Deputy Presiding Officer (Patricia Ferguson):** One intervention only was the Presiding Officer's injunction, Miss Gillon. We are not taking any more interventions.

**Donald Gorrie:** Sorry, my ration has been used.

My other point is somewhat similar to Hugh Henry's. Sport in schools cannot be looked at in isolation. I was involved in a review of voluntary organisations and listened to a lot of sporting bodies, which pointed out that with some local initiatives, schools in certain areas may get pupils all excited about curling, for example, but the curling clubs cannot possibly cope. There is no point in stirring up enthusiasm that cannot be satisfied, so the Executive must examine more widely how it funds sports clubs and community education, which are part of the sports parcel.

In many schools, and for many pupils, a half-hour spent on sport would improve their maths, for example, much more than would another half-hour spent on maths. We must consider the whole person. Evidence has shown that doing music helps pupils enormously with maths and many other activities. Sport is exactly the same. Let us consider the whole person and use sport in schools. Above all, let us have outlets for pupils to use when they are older and in the wider community, and develop sports. If we do that, someday we may have a decent team to represent Scotland in some sport.

**The Deputy Presiding Officer:** Three members wish to speak, and I intend to call them all, but they really must stick to three minutes.

16:22

**Dennis Canavan (Falkirk West):** Earlier this year, the Scottish school of sport studies at the University of Strathclyde produced a report, which was the most comprehensive survey of physical education in Scotland for a decade. The report is a damning indictment of the state of physical education in our schools, as can be seen from some of the findings: less than 20 per cent of pupils in local education authority schools take part in out-of-school sport; 42 per cent of schools offer no core physical education or games to 5<sup>th</sup> and 6<sup>th</sup>-year pupils; 53 per cent of schools never report pupils' fitness scores to their parents; one third of schools have no access to a swimming pool; 31 per cent of schools have no access to an athletics track; and access to a football pitch has declined from 82 per cent to 61 per cent.

No wonder we cannot beat Belgium and Croatia in the world cup, and no wonder that in last Sunday's old firm encounter, only three Scottish players started the match. No wonder that a quarter of 11 to 14-year-old children have signs of heart disease. No wonder that child obesity has more than doubled during the past decade.

What is at stake is not just the nation's sporting prowess, but the health of the nation. The Scottish Executive must face up to its responsibilities. Irene McGugan mentioned the parliamentary reply that she received from Jack McConnell, which stated:

"There are no plans to review current arrangements for providing physical education programmes in the school curriculum."—[*Official Report, Written Answers*, 8 March 2001; Vol 11, p 127.]

That reveals a staggering degree of complacency on the part of the Scottish Executive. Urgent action is needed now to improve participation levels and standards in school sport.

The appointment of school sport co-ordinators has been welcomed, and I also welcome it. It will help, but it is not enough. The problem will not be solved if we rely entirely on school sport co-ordinators and physical education staff. Every teacher in our schools must be made aware of the importance of sport and encouraged to help out in some way. The implementation of the McCrone report is a golden opportunity to offer teachers some incentive to give some of their time to the promotion of sport.

It is interesting to note that, in private schools, 10 times more teachers of subjects other than physical education help out with school sport, compared with teachers in local education authority schools. Perhaps that has something to do with the schools' priorities and the fact that staff in private schools are paid an average of 5 per cent more. I am not arguing for private schools. I am arguing for more opportunity and higher

standards in our local education authority schools, which serve 96 per cent of the children of Scotland. Our children deserve nothing but the best and, if we give them the best, they will be the winners in sport, in health and in education. Who knows? Maybe one of these days we will win the world cup.

16:26

**Ms Margo MacDonald (Lothians) (SNP):** If members will indulge me, I will conduct a wee exercise of my own so that we do not just preach without practice. Hands up those members, apart from me, who took part in organised sport or exercise before they came to work today?

I knew that Frank McAveety was a good boy.

That response was an indication of how seriously we politicians are taken when we try to tell people that we can organise sport. One of my few good habits is that I have maintained my interest in exercise and sport—I think I am the only professionally qualified physical educationist in the Parliament. Exercising regularly is one of my few good habits. You do not need to be a wee skelf to exercise. That should be some comfort to some of the shyer members in the chamber.

I am glad that my bandwagon for more PE teachers is finally coming home to stay. The minister assured me in his speech that the Executive will consider again the provision of PE teachers and specialists in primary schools. Dennis Canavan is right. Every teacher should be encouraged to take part in the development of every child in every way.

So much benchmarking and administration is done now, particularly in primary schools, that primary school teachers who may not have a background in PE cannot be expected to participate. For the past 20 years, a huge gap has developed between the people who had the opportunity to play sport in schools and the folk who were educated in the 70s and 80s and did not have that opportunity.

The minister must go back to basics—if he will excuse the expression—and get PE specialists into the primary schools, where they will do three things: they will properly teach and coach the pupils; they will teach and support the teachers; and they will co-ordinate with the parents, because parents, too, must be brought into this. The message must be sold all over again to parents, because they probably did not take part in organised school sport. The key to all this—I hope that the minister hears me—is more PE specialists in primary schools. I am glad that the minister is nodding, because I did not want to hear once again in a debate that we have school sport co-ordinators. I am glad that we have them, but they

were meant to co-ordinate something that was already there; they were not meant to be coaches, teachers and sport developers.

If the minister wants to add to the welcome announcement that he made about the sport alliance, I suggest that he looks at the example that was set by the British Airports Authority youth games, which were held in Edinburgh at the weekend. I attended them and I was absolutely knocked out by how good they were. The games involved parents, coaching to a high standard, organisation and hundreds of active children. By the way—I am sure that Murdo Fraser will be pleased to hear this—all those children understood competition and understood that competition is a part of growing up that allows them to learn to win and to lose, and to learn to do both with equal grace.

Further to the idea of the sport alliance, it might be a good idea for the minister to set a target for the sport co-ordination strategy to look forward to an all-Scotland youth games for all Scotland's young people. That would be a target and an innovation. That is why I will probably support the motion, because it talks about innovation.

16:30

**Karen Gillon (Clydesdale) (Lab):** I am delighted to participate in the debate. Sport and physical activity play a vital role in our schools, for all the reasons that have been outlined—given the time available, I do not intend to go into them. Sport is undervalued and does not sell well enough what it can do in our schools.

Like Alex Johnstone, I was an active participant in sport, although members will probably not believe that now. I tried anything—even country dancing, which was certainly a sport in my school—and that has set me up well. I was a wee bit worried when Margaret Jamieson said that skateboarding was cool in 2001, because it was also cool when I was a teenager. This morning, I received a letter from a young boy in my constituency who is anxious for facilities to be developed in his village. That puts the debate in context.

It is disappointing that the Education, Culture and Sport Committee's report on sport in schools has not received a response from the Executive. I understand that the response is coming, but it would have been better to have it before the debate. It is also disappointing that a minister with responsibility for education is not present for the debate, because much of what members have said relates to the school curriculum. I hope that the deputy minister will feed back to the education ministers the points that have been made.

I welcome the deputy minister's commitment to

developing a school sport alliance. An array of good practice is out there—I am not as down on Scottish sport as some people are. We need to develop that best practice and ensure that the materials that are being used in some of our schools can be disseminated to others, so that we do not keep reinventing the wheel and can co-ordinate school sport better and more constructively.

I will offer another couple of constructive suggestions that I hope the deputy minister will consider. Given the vital role of local authorities in developing and delivering much of what has been talked about, will consideration be given to asking the Convention of Scottish Local Authorities to facilitate an audit of best practice in the use of school and sports facilities in all local authorities, to ensure that local resources are used in the best and most imaginative way? We have many good resources; let us not pretend that they do not exist. We should use and co-ordinate them better. We should also have better community use of schools and better use by schools of community sports facilities. We should also find a better way of involving national governing bodies in the support and development of sport in our schools.

If kids are involved in sport at an early age, they and, ultimately, Scotland will benefit. Some examples of good practice exist. The Scottish Rugby Union even involves girls in some of its programmes, although it is too late for me. The Scottish Football Association has an excellent partnership with North Lanarkshire Council. Those initiatives are bringing invaluable experience and a significant number of volunteers to sport.

Local authorities should be told in guidance, not in a national curriculum, about the importance of physical activity, particularly in primary schools. We need to bring about a change of hearts and minds so that people can and will participate in sport. Excellent initiatives are occurring in Biggar High School and Carlisle High School in my constituency. Good work is being done.

I welcome the debate, but we must continue to progress. I hope that the Executive will work with me and the Education, Culture and Sport Committee, as we aim to produce another report to follow the report on sport in schools that we have already produced.

16:33

**Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD):** I have greatly enjoyed the debate—my last before the recess. In responding on behalf of my party, I point out that, as many members will gather from looking at me, I was no great shakes at sport. I was always the last to be chosen for football when the class was split in two.

I was the guy who never scored a goal and whose specs fell off when he ran while playing rugby.

Sport was anathema to me. There are some kids like that—I will return to that point. I hated sport so much that I took up the fiddle to avoid gym periods. Mr Keith Harding told me that he took up the fiddle to avoid dancing with women in dancing classes, but we will draw a discreet veil over that.

I will put a pertinent point to Murdo Fraser. He goes in for competition, competition, competition, but some children lose out and are not as good as others. Because of a fairly enlightened regime at my school, I was sent out to dig the garden or to go hillwalking. There are ways of staying fit other than kicking a ball or running. We must be mindful that young people have a broad spectrum of ability and that we need to fine-tune provision.

Mary Scanlon made a good point that it is more than just school that is important. In Invergordon, in my constituency, a gentleman by the name of Mr Sutherland Rhind has formed a gymnastic group on an entirely voluntary basis. The young children in that group are doing fantastic things in gymnastics. That is related to, but is not entirely the same as, mainstream kick-the-ball type sport.

I shudder when I hear talk about compulsory, statutory, two hours per week PE. When the SNP sums up, I hope for some guidance and hope that its summing-up will be as free-ranging as my outline of the other ways of staying fit has been.

We are short of time and I have been asked to keep my remarks short. I will conclude by saying that the debate is not solely about football pitches; it is also about indoor, wet-weather facilities. Coverage in Scotland in that respect is patchy. Up until local government reorganisation in 1995, the Highlands was forging ahead; building sports leisure centres in certain areas, but not in others. Since then, the situation has been pickled in aspic. Caithness, for example, lacks any form of acceptable sports leisure centre, as does my home town, Tain.

I fully recognise the points that Cathy Jamieson made about deprived areas that are the most in need, but rural areas, too, need to be targeted. When the minister audits the good work that sportscotland is doing, I hope that he will examine that issue. If the minister does not care to respond to that point in the debate, will he bear it in mind for the future?

I have kept my comments to close to three minutes. As this is the last time that I will speak before the recess, it falls to me to wish all my colleagues a happy recess. As one who is in the autumn of his life, I will be playing a little autumnal golf. I hope that all members have a rewarding break.

16:36

**Mr Brian Monteith (Mid Scotland and Fife) (Con):** I thank Jamie Stone for his good wishes. I am sure that members will bear them in mind.

I welcome the debate and have no difficulty in complimenting the Executive and sportscotland on the initiatives that they have taken. Many of them began with my friend Raymond Robertson, when he was minister with responsibility for sport.

Traditionally, a bi-partisan approach has been taken to sport in Scotland. Sadly, the SNP's aggressive posturing has made that impossible. Sport—be it team or individual physical exercise, including dance—is to be encouraged. Not only is it good for physical health, it can be good for interpersonal skills and the understanding of rules and of how to plan ahead. That is why physical exercise can be of so much benefit in schools such as the Church of Scotland's Ballikinrain residential school at Balforn, which looks after children with difficult family circumstances and where outdoor pursuits play a particularly helpful role. If we consider the needs of looked-after children, we will find that 61 per cent of 13 to 18-year-olds in care have a mental disorder. Sport and physical exercise have a role to play in enhancing their lives. We must ensure that we help to improve that work.

There are a number of problems that relate to the delivery of sport in school. I introduce these in a constructive manner, so that the minister might address them in the future. As my colleague Murdo Fraser has said, the involvement of parents is crucial. It is proving difficult to give parents a role in primary schools. In the many conversations that I have with parents, I am told of the offers of help that are refused. Teachers often cite the Cullen report, possibly without justification, as the reason for that refusal. I ask the minister, or the new school sport alliance, to examine the difficulties in involving parents, in extra-curricular work in particular, to see whether those problems can be overcome.

I want to warn of the dangers of relying on lottery funding to back sports programmes. It is more honest for the Government to use taxpayers' money to fund initiatives, as that money is more reliable. Real difficulties arise if lottery income drops—and a drop is expected. What will happen to programmes? I also question the amount of in-service training for primary teachers. I share the concerns of my co-parliamentarian Margo MacDonald. I would far rather that there was more investment in the provision of specialist PE teachers than in training teachers who previously showed no inclination to become involved in sports in schools.

Many schools use devolved budgets to make

their PE provision. If those budgets are tight, it is often specialist provision for PE that goes first. I agree that we should argue for PE teachers in every school, but let us not force the issue. Some schools prefer to provide funding for music, arts and drama and for different aspects of specialist provision. Who is to say that they are wrong? Those schools rely instead on the availability of extra-curricular sport for those pupils who want it.

The SNP may argue otherwise, but its amendment suggests that sport in school would be forced. That would be wrong, for if talent is to succeed, it should be allowed to flourish. I say let Scotland flourish.

16:40

**Michael Russell (South of Scotland) (SNP):** Before I come to the burden of our amendment, I will comment on some of today's speeches. Hugh Henry demonstrated yet again his reputation from his days at West Renfrewshire Council. He is unable to tolerate opposition of any description—it is regrettable that that intolerance was apparent today.

Donald Gorrie reminded me of an article that I think appeared in *The Scotsman* some years ago, headed "What on earth are the Liberal Democrats for?" The article was written by Peter McMahon, who I think is the First Minister's spin-doctor. Listening to Donald Gorrie, he would have realised that to be involved with the Liberal Democrats is incredibly foolish. However, I will say something nice about Mr Jenkins in a minute.

The purpose of our amendment is to address reality. There are facts—something that the Tories were rather short of—in our amendment. If those facts were in dispute, Mr Canavan provided further facts to support them. There are things that are wrong. The present strategy has not succeeded, nor did the strategy of the person whom Mr Monteith described as his good friend Raymond Robertson. There is a failure to give young people the opportunity to participate in sport and there is a failure to build sporting excellence.

**Karen Gillon:** Will the member give way?

**Michael Russell:** In a minute.

Our amendment draws attention to that failure. We are not saying that everything that the minister announced was wrong—I will say something nice about him in a minute—but that he cannot avoid the facts. Our amendment represents a slight frustration on the part of my mild-mannered colleague Irene McGugan, which is that the self-congratulatory motions must stop. If things are wrong, let us decide what the problems are and tackle them. Let us not just congratulate ourselves again and again.

**Karen Gillon:** I cannot see Irene McGugan as Penry, the mild-mannered janitor.

Would it not have been more helpful if, instead of condemning the Executive, Mike Russell had offered a constructive suggestion on the way forward? It would have helped to move the debate on and been part of the process and it might well have been accepted by the Parliament.

**Michael Russell:** There are very constructive ways to move forward, but they do not all have to come from the SNP; some can come from the Education, Culture and Sport Committee. I remember that the committee's report was endorsed by all its members, including me. I am not assuming that the SNP has a monopoly on wisdom, but I am looking for a recognition of reality.

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

**Michael Russell:** No.

Procedurally, there should have been a response to the Education, Culture and Sport Committee's report and then a debate on the report. As with the debate on the architectural strategy, we debate these matters in a vacuum. However, I welcome the minister's announcement about the school sport alliance, which I am certain will become known as the Gillon institute, given Karen Gillon's contribution to it.

There have been important contributions that demonstrate the correctness of the SNP's position, although they come from individuals who will not support our amendment. Mr Jenkins, for example, was correct in the conclusion of his speech when he talked about the need to analyse the whole purpose of education and to find out how sport fits in. The recommendation of two hours a week in primary schools comes not from the SNP but from the sportscotland document. The Executive supports that document. We support the recommendation because it seems about right. One of the coming ideas in education is to consider things as a whole, including the ability of school communities to decide on their priorities.

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

**Michael Russell:** No.

Although Mr Jenkins will not support our amendment, he could do so because it recognises the problems and seeks to address them. Karen Gillon could support our amendment—many of the points that we raise are well-known to her and to anybody who has studied the matter as she has. Those are the circumstances in which we are saying, "Address the real issues." We will support the minister in the chamber when he makes welcome announcements and talks about initiatives that are making a contribution. However,

when he moves an anodyne motion that simply congratulates the Executive on what has happened and does not continue to press forward, set new benchmarks, say that there are things still to be achieved or address Dennis Canavan's crucial point about moving from our current position to the hoped-for attainment not just of sporting excellence, which is perhaps the icing on the cake, but of good health—a healthy mind in a healthy body, to use a Latin tag in English—as a continuing activity, we cannot support him. I would welcome the Executive's motion if it were more ambitious and more keen to succeed, instead of resting on its laurels—to use yet another sporting phrase. We still have a lot to do, the SNP amendment recognises how much we have to do, and the Parliament should support ambition rather than self-congratulation.

16:45

**Allan Wilson:** I am delighted to have had this debate and to take on full-frontal the charge that we are self-congratulatory and are patting ourselves on the back, as Donald Gorrie said. That is not what we are here to do. The purpose of the debate is to discuss what is happening in schools with sport and the wider aspects of more general physical activity. The Executive has been working to improve the general well-being of our young people and we look to key players to engage fully in a process that aims to deliver a change in attitude to the concept of sport and physical activity. That is why we are happy to accept the Conservative amendment, as it identifies some of those key players without any ideological bias.

**Mr Stone:** I thank the minister for allowing me to intervene—it is a pity that Mr Russell did not do so.

Does the minister agree that the doctrinaire approach of two hours' compulsory physical jerks does not address the real concerns that I and other members have outlined and that, frankly, the SNP is living in the dark ages?

**Ms MacDonald:** On a point of order, Presiding Officer. As someone who is qualified in physical education, I take great exception to my subject being referred to as "physical jerks" by that jerk on the other side of the chamber.

**The Deputy Presiding Officer:** I do not think that you will be surprised when I say that that was not a point of order. Please continue, Mr Wilson.

**Allan Wilson:** I will not get involved in the to-ing and fro-ing, but I shall answer Mr Stone's point. When I saw the SNP amendment, I checked that glorious document, the SNP general election manifesto, whose cover features a doe-eyed John Swinney and which is the most recent policy

document of the nats. I looked for the words "school" and "sports" and how many references did I find? [MEMBERS: "None."] Not a single one.

I judge people by what they say and by what they do, so I checked up with Angus Council, which received a 6.9 per cent increase in its grant-aided expenditure last year. I knew that, on average, there had been a 3 per cent increase in GAE across Scotland's local authorities in investment in leisure and recreational facilities. What was Angus's glorious contribution? It was less than the national average at only 2 per cent—less than a third of the increase in many councils, such as Glasgow City Council and other Labour-controlled local authorities.

We take seriously our responsibility to ensure that the education system produces well-rounded individuals who will contribute to society. That is made clear in our five national priorities for education. We are providing opportunities for more young people to become more active, more often. We are not complacent. We know that there is more to be done, but we cannot do it alone. Local authorities have a key role to play and I look to them to play their full part and to take advantage of the opportunities to which I have referred. The benefits that are to be gained from being more active are not in doubt. I hope that with encouragement and a guarantee of fun, which is important, more and more young people will take part in some form of physical activity.

Some progressive points have been made in the debate. As Margo MacDonald, Richard Lochhead and Tommy Sheridan said, visiting PE specialists in primary schools can make an important contribution to the quality of provision in that area, particularly when they have the support of class teachers and when there is consultation and staff development activity. However, there is not yet a national requirement for education authorities to provide such specialists. It is therefore up to the education authorities to decide on the allocation of resources in that area of the curriculum.

Karen Gillon is right to say that this is about hearts and minds. Cultural change is required across the spectrum.

**Ms MacDonald:** Will the minister take an intervention?

**Allan Wilson:** I have very little time left and I have other important points to make.

On sport for the disabled in schools, the remit of co-ordinators includes sporting opportunities for all pupils, including the disabled in mainstream education. Co-ordinators are appointed in many special educational needs schools. The TOP programme provides equipment adapted for use by the disabled.

On playing fields, we are conscious of the need to maintain and enhance facilities for young people. That does not mean that we are against development per se, but we must be satisfied that there is a demonstrable case for the loss of any playing field. Local authorities have a key role in that respect and should consider preparing a playing field strategy that will help to inform future development proposals.

"Working Together for Scotland: A Programme for Government" highlights significant achievements in sport. Many members have made the point that young people who are fit and healthy are more able to concentrate, learn and do well in school. Research highlights the clear links between good health and higher attainment and achievement.

The Executive's commitment to raise standards and attainment every year can be achieved only if we take care of our children's health and accentuate the link between sport and health. Dennis Canavan and others identified the key, almost pivotal, role that is played by head teachers and sports organisations in fostering the mental, physical and social well-being of our children. He will agree that sport plays an important part in ensuring that every child has the best possible start in life.

Cathy Jamieson and others talked about social justice. To achieve social justice, we must address issues that affect every aspect of life, such as poor health, poor housing, unemployment, lack of stability, lack of opportunities, isolation and exclusion from communities. Sport can make a significant impact on health, community regeneration, social inclusion, education, lifelong learning and many other areas of Scottish life.

More cultured members will know that this is national poetry day. As I am the Deputy Minister for Sport, the Arts and Culture, it would be remiss of me not to finish with a short poem. It is written in the medieval chanson d'aventure mode much favoured by Auden. I apologise in advance to all poetry lovers and to our Liberal colleagues, as it contains some partisan references.

As I was walking down the street,  
I met a Nat who loves to greet.  
Said she, "I like to girn and groan,  
Just like a dog without a bone.  
Today," quoth she, "my girn will be  
That kids in school don't do PE.  
The minister with my tongue I'll lash,  
Demanding another pile of cash."  
Said I, "Yes, we have a lot to do  
And lots of allocated resources too  
For co-ordinators, fields and games  
And academies for football fame."  
At this, the Nat was sore depressed.  
Inside, she knew that Labour was best  
At making sport in schools succeed  
So all a better life may lead.

So all you Scots that vote take heed  
 It's Labour who know what you need.  
 The Nats will moan in history  
 When we win again in 2003.  
 In this debate on sports promotion,  
 I ask you all to support the motion.  
 Why the Nats oppose it, who can tell,  
 So please give their amendment the soldier's farewell.

**The Presiding Officer (Sir David Steel):** I thank the minister and am glad that he is not applying to be poet laureate.

## **Protection of Wild Mammals (Scotland) Bill: Financial Resolution**

**The Presiding Officer (Sir David Steel):** The next item of business is a financial resolution. I ask Angus MacKay to move motion S1M-2280, on the financial resolution in respect of the Protection of Wild Mammals (Scotland) Bill.

*Motion moved,*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Protection of Wild Mammals (Scotland) Bill, agrees to—

(a) the expenditure payable out of the Scottish Consolidated Fund of the expenses of the Scottish Ministers in consequence of the Act; and

(b) any payments made to the Scottish Ministers under the Act.—[*Angus MacKay.*]

16:55

**Mr Murray Tosh (South of Scotland) (Con):** Some members might recall that, when the Parliament debated stage 1 of the bill, I raised the following point because I believed at that stage that a financial resolution would not be forthcoming. There was debate in the Rural Development Committee about the extent of the financial and economic impact of the bill on the south of Scotland, particularly the Borders. My concern is based on the fact that it has been made clear that there will be distinct implications for some businesses and areas of employment in the region. I assume that the motion, if passed, will make it admissible for the bill to be amended to allow compensation schemes to be introduced.

The bill is a matter of grave concern to many people in the Borders and it would be appropriate for the minister to say whether the Executive—although I appreciate that the bill is not an Executive bill—will allow it to be amended to permit an appropriate compensation scheme to be introduced for those whose businesses and employment will close down should it be implemented.

16:57

**Mike Watson (Glasgow Cathcart) (Lab):** That is not the response from Murray Tosh that I had anticipated. Those questions were asked at an early stage of the bill—the drafting stage. Assurances were given that such an amendment would not be necessary. I cannot give assurances, nor can the minister I suspect, about whether amendments to the bill will be accepted, because that is a matter for the convener of the Rural Development Committee at stage 2.

The evidence that was taken at stage 1 was conflicting. The financial resolution seems to deal with the areas for which additional costs—rather than compensation—might be necessary. The questions that Murray Tosh asked cannot be answered today. I hope that the Parliament will recognise that the bill requires a financial resolution, as the Finance Committee decided.

**The Presiding Officer:** Forgive me for correcting one thing, but the question whether a financial resolution is needed is decided by me, not by the Finance Committee.

**Mr Tosh:** On a point of order, Presiding Officer. My question was not about the admissibility of an amendment to allow compensation schemes. I said that I assumed that such an amendment would now be admissible. My question to the Minister for Finance and Local Government, who moved the resolution, was whether at the point at which amendments are voted on the Executive will allow amendments that provide for the principle of compensation to be passed. I do not think that that is a question for Mr Watson; his intentions will not be relevant. The Executive will decide whether it is prepared to fund compensation.

**The Presiding Officer:** It is the Minister for Finance and Local Government's turn to speak.

16:58

**The Minister for Finance and Local Government (Angus MacKay):** The rules of the Parliament are clear. The Presiding Officer decides whether a member's bill requires a financial resolution; only Scottish ministers can lodge such a resolution, which is why we are doing so today.

It would be entirely inappropriate for the Executive to refuse to move a resolution in the circumstances. The Parliament voted in favour of the principles of the bill on 19 September. The financial resolution is not about the wider economic impact of the bill, but about the possible costs to the Executive, payable from the Scottish consolidated fund. We are ensuring today that that is provided for. The bill as it is currently drafted contains licensing provisions. There may be modest costs, which might fall to the Executive, associated with setting up licensing conditions and a licensing scheme.

It is absolutely not for me or the Executive to determine what the Parliament or its committees will accept by way of amendments. That is a matter for the will of the Parliament.

## Parliamentary Bureau Motions

16:59

**The Presiding Officer (Sir David Steel):** There are two Parliamentary Bureau motions to consider. The first is motion S1M-2281, on the approval of statutory instruments.

*Motion moved,*

That the Parliament agrees that the following instruments be approved—

Special Grant Report (No.4) and Guidance for Local Authorities: The Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2001 (SE 2001/132);

the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No.3) Regulations 2001; and

the draft Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2001.—[*Euan Robson.*]

**The Presiding Officer:** The second motion is S1M-2297, on committee membership. Euan Robson might take a little longer on that one.

**The Deputy Minister for Parliament (Euan Robson):** There is a change to committee membership.

*I move,*

That the Parliament agrees that Brian Fitzpatrick be appointed to replace Des McNulty on the Enterprise and Lifelong Learning Committee.

## Decision Time

17:00

**The Presiding Officer (Sir David Steel):** We now come to decision time. There are seven questions to be put as a result of today's business.

The first question is, that motion S1M-2250, in the name of Christine Grahame, on the Protection from Abuse (Scotland) Bill, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the Protection from Abuse (Scotland) Bill be passed.

**The Presiding Officer:** The second question is, that amendment S1M-2285.1, in the name of Irene McGugan, which seeks to amend motion S1M-2285, in the name of Allan Wilson, on sports promotion in Scotland's schools, be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

### FOR

Adam, Brian (North-East Scotland) (SNP)  
 Campbell, Colin (West of Scotland) (SNP)  
 Canavan, Dennis (Falkirk West)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Elder, Dorothy-Grace (Glasgow) (SNP)  
 Ewing, Dr Winnie (Highlands and Islands) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Lochhead, Richard (North-East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 McGugan, Irene (North-East Scotland) (SNP)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Paterson, Mr Gil (Central Scotland) (SNP)  
 Quinan, Mr Lloyd (West of Scotland) (SNP)  
 Reid, Mr George (Mid Scotland and Fife) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)

### AGAINST

Aitken, Bill (Glasgow) (Con)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)

Davidson, Mr David (North-East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Douglas-Hamilton, Lord James (Lothians) (Con)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Fergusson, Alex (South of Scotland) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Harding, Mr Keith (Mid Scotland and Fife) (Con)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)  
 Johnstone, Alex (North-East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McGrigor, Mr Jamie (Highlands and Islands) (Con)  
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
 McLeish, Henry (Central Fife) (Lab)  
 McLetchie, David (Lothians) (Con)  
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)  
 McNeill, Pauline (Glasgow Kelvin) (Lab)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Morrison, Mr Alasdair (Western Isles) (Lab)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Mundell, David (South of Scotland) (Con)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Radcliffe, Nora (Gordon) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)  
 Young, John (West of Scotland) (Con)

**The Presiding Officer:** The result of the division is: For 29, Against 75, Abstentions 0.

*Amendment disagreed to.*

**The Presiding Officer:** The third question is, that amendment S1M-2285.2, in the name of Brian Monteith, which seeks to amend motion S1M-2285, in the name of Allan Wilson, on sports promotion in Scotland's schools, be agreed to.

*Amendment agreed to.*

**The Presiding Officer:** The fourth question is, that motion S1M-2285, in the name of Allan Wilson, on sports promotion in Scotland's schools, as amended, be agreed to. Are we agreed?

**Members:** No.

**The Presiding Officer:** There will be a division.

**FOR**

Aitken, Bill (Glasgow) (Con)  
 Barrie, Scott (Dunfermline West) (Lab)  
 Boyack, Sarah (Edinburgh Central) (Lab)  
 Brankin, Rhona (Midlothian) (Lab)  
 Brown, Robert (Glasgow) (LD)  
 Butler, Bill (Glasgow Anniesland) (Lab)  
 Canavan, Dennis (Falkirk West)  
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)  
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)  
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)  
 Davidson, Mr David (North-East Scotland) (Con)  
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)  
 Eadie, Helen (Dunfermline East) (Lab)  
 Ferguson, Patricia (Glasgow Maryhill) (Lab)  
 Fergusson, Alex (South of Scotland) (Con)  
 Finnie, Ross (West of Scotland) (LD)  
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)  
 Fraser, Murdo (Mid Scotland and Fife) (Con)  
 Gallie, Phil (South of Scotland) (Con)  
 Gillon, Karen (Clydesdale) (Lab)  
 Godman, Trish (West Renfrewshire) (Lab)  
 Goldie, Miss Annabel (West of Scotland) (Con)  
 Gorrie, Donald (Central Scotland) (LD)  
 Grant, Rhoda (Highlands and Islands) (Lab)  
 Gray, Iain (Edinburgh Pentlands) (Lab)  
 Harding, Mr Keith (Mid Scotland and Fife) (Con)  
 Henry, Hugh (Paisley South) (Lab)  
 Home Robertson, Mr John (East Lothian) (Lab)  
 Hughes, Janis (Glasgow Rutherglen) (Lab)  
 Jackson, Dr Sylvia (Stirling) (Lab)  
 Jackson, Gordon (Glasgow Govan) (Lab)  
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)  
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)  
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)  
 Johnstone, Alex (North-East Scotland) (Con)  
 Kerr, Mr Andy (East Kilbride) (Lab)  
 Lamont, Johann (Glasgow Pollok) (Lab)  
 Livingstone, Marilyn (Kirkcaldy) (Lab)  
 Macdonald, Lewis (Aberdeen Central) (Lab)  
 Macintosh, Mr Kenneth (Eastwood) (Lab)  
 MacLean, Kate (Dundee West) (Lab)  
 Macmillan, Maureen (Highlands and Islands) (Lab)  
 Martin, Paul (Glasgow Springburn) (Lab)  
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)  
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)  
 McLetchie, David (Lothians) (Con)  
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)  
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)

McNeill, Pauline (Glasgow Kelvin) (Lab)  
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)  
 Mulligan, Mrs Mary (Linlithgow) (Lab)  
 Mundell, David (South of Scotland) (Con)  
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)  
 Murray, Dr Elaine (Dumfries) (Lab)  
 Peacock, Peter (Highlands and Islands) (Lab)  
 Peattie, Cathy (Falkirk East) (Lab)  
 Radcliffe, Nora (Gordon) (LD)  
 Robson, Euan (Roxburgh and Berwickshire) (LD)  
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)  
 Scanlon, Mary (Highlands and Islands) (Con)  
 Scott, John (Ayr) (Con)  
 Scott, Tavish (Shetland) (LD)  
 Simpson, Dr Richard (Ochil) (Lab)  
 Smith, Iain (North-East Fife) (LD)  
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)  
 Thomson, Elaine (Aberdeen North) (Lab)  
 Tosh, Mr Murray (South of Scotland) (Con)  
 Wallace, Mr Jim (Orkney) (LD)  
 Watson, Mike (Glasgow Cathcart) (Lab)  
 Whitefield, Karen (Airdrie and Shotts) (Lab)  
 Wilson, Allan (Cunninghame North) (Lab)  
 Young, John (West of Scotland) (Con)

#### ABSTENTIONS

Adam, Brian (North-East Scotland) (SNP)  
 Campbell, Colin (West of Scotland) (SNP)  
 Crawford, Bruce (Mid Scotland and Fife) (SNP)  
 Cunningham, Roseanna (Perth) (SNP)  
 Elder, Dorothy-Grace (Glasgow) (SNP)  
 Ewing, Dr Winnie (Highlands and Islands) (SNP)  
 Ewing, Mrs Margaret (Moray) (SNP)  
 Fabiani, Linda (Central Scotland) (SNP)  
 Gibson, Mr Kenneth (Glasgow) (SNP)  
 Grahame, Christine (South of Scotland) (SNP)  
 Harper, Robin (Lothians) (Green)  
 Hyslop, Fiona (Lothians) (SNP)  
 Ingram, Mr Adam (South of Scotland) (SNP)  
 Lochhead, Richard (North-East Scotland) (SNP)  
 MacAskill, Mr Kenny (Lothians) (SNP)  
 Marwick, Tricia (Mid Scotland and Fife) (SNP)  
 Matheson, Michael (Central Scotland) (SNP)  
 McGugan, Irene (North-East Scotland) (SNP)  
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)  
 Paterson, Mr Gil (Central Scotland) (SNP)  
 Quinan, Mr Lloyd (West of Scotland) (SNP)  
 Reid, Mr George (Mid Scotland and Fife) (SNP)  
 Russell, Michael (South of Scotland) (SNP)  
 Sheridan, Tommy (Glasgow) (SSP)  
 Stevenson, Stewart (Banff and Buchan) (SNP)  
 Sturgeon, Nicola (Glasgow) (SNP)  
 Ullrich, Kay (West of Scotland) (SNP)  
 Welsh, Mr Andrew (Angus) (SNP)

**The Presiding Officer:** The result of the division is: For 72, Against 0, Abstentions 28.

*Motion, as amended, agreed to.*

*Resolved,*

That the Parliament recognises the contribution sport makes to both the physical and mental health of young people as well as providing a positive and attractive alternative to anti-social and offending behaviour; endorses the various initiatives, such as the School Sports Coordinator and Active Primary School Programmes put in place by the Scottish Executive through sportscotland and the increasing opportunities for young people to participate

in sports in schools; and calls on local authorities, head teachers, teachers, school boards and other sports and educational bodies to embrace and participate fully in these healthy initiatives.

**The Presiding Officer:** The fifth question is, that motion S1M-2280, in the name of Angus MacKay, on the financial resolution in respect of the Protection of Wild Mammals (Scotland) Bill, be agreed to.

*Motion agreed to.*

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Protection of Wild Mammals (Scotland) Bill, agrees to—

(a) the expenditure payable out of the Scottish Consolidated Fund of the expenses of the Scottish Ministers in consequence of the Act; and

(b) any payments made to the Scottish Ministers under the Act.

**The Presiding Officer:** The sixth question is, that motion S1M-2281, in the name of Tom McCabe, on the approval of statutory instruments, be agreed to.

*Motion agreed to.*

That the Parliament agrees that the following instruments be approved—

Special Grant Report (No.4) and Guidance for Local Authorities: The Domestic Water and Sewerage Charges (Reduction) (Scotland) Regulations 2001 (SE 2001/132);

the draft Advice and Assistance (Assistance by Way of Representation) (Scotland) Amendment (No.3) Regulations 2001; and

the draft Criminal Legal Aid (Scotland) (Prescribed Proceedings) Amendment Regulations 2001.

**The Presiding Officer:** The final question is, that motion S1M-2297, in the name of Tom McCabe, on committee membership, be agreed to.

*Motion agreed to.*

That the Parliament agrees that Brian Fitzpatrick be appointed to replace Des McNulty on the Enterprise and Lifelong Learning Committee.

## Special Educational Needs (Borders)

**The Presiding Officer (Sir David Steel):** The final item of business today is a members' business debate on motion S1M-2098, in the name of Christine Grahame, on Borders children with special educational needs.

*Motion debated,*

That the Parliament notes with concern that despite parental opposition Scottish Borders Council at its meeting on 1 August 2001 authorised, by a majority vote, further cuts of £1,579,255 to its education budget; notes that £200,000 was previously cut from the budget for the provision of special education auxiliaries; is concerned that part of these further cuts will impact on the provision of transport for children with special needs and that the intention to vire £525,000 from the Excellence Fund budget to the National Grid for Learning budget will impact directly on special education needs provision by raiding the budget for classroom assistants, early intervention and learning support; believes that this matter is causing undue distress and uncertainty to parents of children with special educational needs; further notes the recommendations in the 3rd Report 2001 by the Education, Culture and Sport Committee, Report on Inquiry into Special Educational Needs, in particular, recommendation 1 on "Maximising the participation of all children in mainstream schools", and therefore believes that the Scottish Executive should ensure that the provision of education for Borders children with special needs is not sacrificed to rescue the Borders administration from financial mismanagement and, if necessary, should provide additional, ring-fenced funding on appropriate terms in order to secure a fair and inclusive education for these vulnerable children.

17:04

**Christine Grahame (South of Scotland) (SNP):** I welcome all those who have managed to travel from the Scottish Borders today for this debate. [Applause.] For those who could not manage to come to the Parliament—and there are many, especially parents and carers of children with special educational needs—the hope is that they can follow the debate at home on the webcast.

The debate is but another step in a continuing campaign to reverse the cuts approved by the Liberal Democrat-Independent coalition of Scottish Borders Council at its meeting on 1 August. It is therefore interesting to see that Euan Robson will reply to the debate.

Today, Borderers have presented a petition with 10,000 signatures to the Parliament's Public Petitions Committee, asking the Education, Culture and Sport Committee to undertake an inquiry into the cuts and their causes. In particular, I praise Augusta Greenlees who was co-ordinator of the petition, which contains signatures from communities all over the Borders. For example,

there are 423 signatures from Coldstream; 591 from Duns; 1,975 from Galashiels; and 290 from Walkerburn. All the signatories are united in their determination to reverse the cuts. I know the Public Petitions Committee and believe that this petition will be given a sympathetic hearing en route to the Education, Culture and Sport Committee. The petitioners hope that their 10,000 signatures will speak loud and clear to the Education, Culture and Sport Committee so that when it visits the Borders, parents and others can have their say to committee members in person.

Last Saturday, thousands of Borderers, local politicians—including me—trade unionists, teachers, parents, children, cleaners, auxiliaries and others marched in stair-rod rain through Galashiels to protest against the cuts. We marched behind the banner of the Educational Institute of Scotland and the tall figure of Jock Houston, who is the secretary of the institute and the head of Hawick High School.

As for the Association of School Boards, all 17 school boards in the Borders had a unanimous vote of no confidence in the director of education, the director of finance—who is currently acting chief executive of Scottish Borders Council—and the entire Liberal Democrat-Independent administration. Furthermore, the Borders Headteachers Association condemns the budget cuts.

Why such people power? The impact to date of the as yet unexplained overspend of £3.9 million and the subsequent £2.5 million in cuts has resulted in job losses among cleaners and dinner ladies and cuts in auxiliary and speech therapist hours. Children at Broomlands Primary School in Kelso have even been fighting to prevent the partial sale of their playground.

I want to focus on some telling individual examples of how the cuts are impacting children with special educational needs. Jared Johnstone is eight years old; he is blind and does not speak. He has been attending the Royal Blind School in Edinburgh since he was four, travelling by taxi all the way from Kelso with an escort. He used to be picked up at 7.45 am and was at his school, on time, by 9 o'clock. He was a happy child.

In August, all that changed as a result of the cuts to the education transport budget. We should note that the cuts were made to the transport budget, because Scottish Borders Council keeps claiming that it has not made cuts to the SEN budget—which might technically be true.

Jared Johnstone now leaves home at 7.25 am and travels by taxi to St Boswells, where he transfers to a minibus. The bus picks up other children en route to Edinburgh, which means that Jared reaches school at 9.30 am. In effect, he is

late for school every day. The change has had a noticeable effect on him. His father, who is in the gallery today, says that, from being a child full of life and energy, Jared comes home tired and moody. He is suffering because of the incompetence of others and, as any parent or non-parent would understand, his family are desperately concerned and anxious.

Victoria Nichol is six and has cerebral palsy—I asked a question about her at question time this afternoon. Her parents want her to attend her local primary school at Halyrude in Peebles, where she could mix with her friends and older sister, as she does at the local girl guides. She is currently travelling four days a week with her mother or grandmother to the Craighalbert Centre in Cumbernauld with a half day at her Peebles school, where she wants to be permanently. Her parents are quite prepared for her attendance at the local school to be phased in. What has the local authority done? It has kicked the parents' application into touch by sending it to the Scottish ministers and into a process that will take almost a year to resolve. Like many other parents, Victoria's father is in the gallery tonight.

There are other examples. Donna Allen's son, who is five and a half, currently attends a school that is part of the early intervention programme. That programme also is losing out, because of the virement of £525,000 from the excellence fund. Early intervention is one of the categories in the excellence fund. Donna Allen is seriously concerned that her son, who is being assessed for Asperger's syndrome, will not receive support.

The once proposed autism unit is now—in local authority-speak—postponed, yet the Minister for Education, Europe and External Affairs has agreed the virement because the council has assured him that it will not impact on children with special educational needs. Scottish Borders Council may live to regret that assurance, as there are autistic children who are losing out now because of cuts from the excellence fund. The list goes on.

The audit report will be published soon. I hope that it will be robust and tell us the why, the who and the where of how the money was spent, but that is only part of what is required. The purpose of this debate is to call on the minister and his Cabinet colleagues—I have previously written to both the Minister for Finance and Local Government and the Minister for Education, Europe and External Affairs—particularly in light of the £718 million underspend in the Scottish budget, to redress the impact of the cuts by providing a financial rescue package, on appropriate terms and ring-fenced, so that these and other children do not pay for the failures of others.

I refer the minister to the third report in 2001 of the Education, Culture and Sport Committee, on special educational needs. Recommendation 1 of that report is:

“Maximising the participation of all children in mainstream schools”.

Section 15 of the Standards in Scotland's Schools etc Act 2000, which will come into force in due course, contains a

“requirement that children be educated in mainstream schools”.

The act states that, where there are exceptions to that,

“it shall be presumed that those circumstances arise only exceptionally.”

I trust that the mismanagement of a local authority does not constitute an exception. There is a presumption for mainstreaming.

The minister has a responsibility for these children over and above the council's responsibility. In the spirit of that legislation and in conformity with the report of the Education, Culture and Sport Committee, Jack McConnell—and I regret that he is not here to hear this—should ensure that the word “mainstreaming” is given its worth, by proper funding so that Jared and Victoria and all the other Jareds and Victorias, and all those concerned parents and carers, can know that it is not the cost of their children that counts, but their value.

17:13

**Mr Murray Tosh (South of Scotland) (Con):** I give Christine Grahame my whole-hearted support for the case that she has made today. It is clear that Scottish Borders Council has grievously mismanaged its education budget over the past two years and that services have been cut severely. Christine Grahame has demonstrated that it is through the back door of transport cuts rather than through direct education cuts that the impact on special educational needs pupils has been felt most severely.

All members who represent the South of Scotland and those whose constituencies are there have been bombarded with complaints and representations on this issue. We all feel very strongly that Scottish Borders Council has let down its electorate, its local parents and its pupils. I therefore commend Christine Grahame for raising this issue and for working with constituents. I appreciate that many people who are in the public gallery will be pleased to have this matter debated today. Had the diligence that she has shown in pursuit of this cause been shown by members of the council's education committee over the years, including the SNP councillors, the

difficulty might have been averted. Councillors are entitled to ask for financial information and it is their responsibility to manage it on a meeting-by-meeting basis—that is what they are paid for.

I also congratulate the local newspaper, the *Southern Reporter*, on its campaign and commend the parents for their tenacity. However, there is an item in the motion and in the petition that is problematic for the Parliament. When I saw the petition, I assumed that it was a petition to Scottish Borders Council and I would happily have signed it myself. It is up to the Public Petitions Committee to decide whether a petition is admissible, but the guidance that is issued to petitioners and outlines what is competent suggests to me that it is extremely unlikely that this petition will be accepted. It is not the role of the Scottish Parliament to second guess the judgments and decisions of local authorities.

**Christine Grahame:** To the best of my knowledge, the wording is admissible. Before it was drafted, I confirmed the wording on behalf of the petitioners with the Public Petitions Committee clerk and I have his assurance that it is in an admissible form.

**Mr Tosh:** That remains to be seen. I hope that Christine Grahame is right.

The Education, Culture and Sport Committee has already agreed to go and study the situation in the Borders. That is entirely correct and it has been decided without reference to the petitioners. The Education, Culture and Sport Committee is to be commended for its decision.

It is not within the remit of the Scottish Parliament to investigate the conduct of local councils; that is the responsibility of the Scottish Executive. The Executive is accountable to us, and councils in discharge of their statutory duties are accountable to the Executive. That is the line of responsibility. I understand that the Executive has already set in motion the process of external audit, which is entirely correct, and the process of an educational inspection, which is what it is entitled and obliged to do. As far as I can tell, what the Executive can do is being done and what the Parliament can do is being done. I am delighted to support that position.

I expect the public to get answers. I expect all the information to come out. I expect those who have made the mistakes and those who have failed to discharge their responsibilities to be held to account. The councillors responsible and, if it is appropriate, the senior officers should be made to pay—that is not in dispute. No harm at all can come of Scottish Borders Council's leadership getting a good going over for the mismanagement of the budget. It has been getting that all year and more is coming. I expect that, at the next local

elections, some councillors may pay the price for what has happened. All those things are entirely appropriate because we are dealing with local matters.

All of us in this chamber know why it is unreasonable to expect the Scottish Executive simply to stump up the cash. The situation is the responsibility of the council and, if the Scottish Executive were to bail out councils willy-nilly, it would teach local authorities a baleful lesson.

**Tommy Sheridan (Glasgow) (SSP):** Will the member give way?

**Mr Tosh:** I do not think I have time.

While I agree that Christine Grahame has done an excellent job, on which I congratulate her, of voicing the concerns of constituents, I stress that I am concerned that the Scottish Parliament will be brought into disrepute if expectations are aroused about what we can or should properly do. Some of the things that have been suggested today are not appropriate. The answers to the problems that have been outlined lie in the decisions and actions of the council—that is where the wrongs will be righted, the remedies sought and those responsible properly punished. The Scottish Parliament has little direct role in that.

**The Deputy Presiding Officer (Patricia Ferguson):** Before I call Mr Russell, I must say a gentle word to our visitors from the Borders. I do not want to be discourteous, but I must point out that applause from the public galleries is not allowed in this chamber.

17:18

**Michael Russell (South of Scotland) (SNP):** As I was listening to Mr Tosh, for whom I have a great deal of respect, I heard a comment from a man who is sitting behind me and for whom I also have a great deal of respect: Alex Neil—although he will be surprised to hear me say that. In the middle of Murray Tosh's speech, Alex Neil said, "What about the weans?" That is the only possible answer to what Murray Tosh has just said.

What we have heard is an extraordinary abdication of responsibility. Although I respect Murray Tosh, what we heard from him was an abdication of a desire to care for those who are suffering. He provided no answer for those who come to us and ask for a solution. People who come to the Parliament in genuine distress have no use for technical answers.

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

**Michael Russell:** In a moment.

There is a precedent for what Murray Tosh is talking about: the Education, Culture and Sport Committee inquiry into a process of school closure

in Argyll. The process was halted by the council on the basis that its consultation process was inadequate. Before Murray Tosh responds to my points, I must say that I am astonished by his accusations about the Education, Culture and Sport Committee.

I heard from a Scottish Borders councillor last week who wanted to blame not the director of education and not the administration of the council, but the churches and the teachers' representatives because they sat on the education committee. The people to blame are those who ran the Scottish Borders Council budget and the councillors. We should blame them and not try to blame those who are blameless.

Murray Tosh may intervene.

**Mr Tosh:** Having sat on a council and knowing what information is given to councillors and what my responsibilities were, I can assure Mike Russell that he is utterly wrong.

On the Education, Culture and Sport Committee's intervention in Argyll, I understand that the committee examined the procedures in that case. That is entirely appropriate. The committee can examine the procedures in the Borders, but the fairest way to help those who are in the gallery is to tell them what the truth is, who is responsible and how they might get redress. Telling them anything other than that is to mislead them.

**Michael Russell:** That is an angels-on-the-head-of-a-pin comment. The reality is that a great deal of damage and suffering has been caused. The Executive can take a variety of measures. Let us talk about that for a moment. It could use some of the vast underspend that exists to help real people—the real people who are in the public gallery.

The Executive could also take the example that Comhairle nan Eilean Siar set when it had a disaster lending money to the Bank of Credit and Commerce International. In that situation, the council was given a special borrowing power because the effect of the loss of the £27 million it lost would have been so grievous as to decimate the education service. Mr Peacock will remember that. I believe that he was in the Highlands at the time. He was not in the Western Isles. I freely acknowledge that he was completely blameless in that matter. He was not in the Labour party, as Mr Ingram points out. I will return briefly to the core of the question.

I want the minister to respond to two points. The minister is brave to close the debate, particularly as he is a Liberal Democrat minister. I admire him for it.

First, how did the situation happen? I have

worked with our councillors. I pay strong tribute to Christine Grahame, whose work on the situation has been outstanding and who is standing up for people in a way from which Murray Tosh should learn. There has been no explanation. There has been no acknowledgement of responsibility. There has been no apology. That is completely unacceptable. Who is responsible and will they put their hand up, please? Somebody has to find out who is responsible. What is happening at the moment is a disgrace to local government.

Secondly, and even worse, the weakest—the poorest of the poor in society—those who are really suffering are being made to suffer more. The Education, Culture and Sport Committee produced a report on special educational needs that assumed that the bad days in that sector were over. We were trying to show the rest of Scotland that there is a lot to be done and that we were overwhelmingly impressed by the work that is being done in every part of Scotland by people who really care. We could not have imagined that within weeks of the report being issued, the first option of a council would be to cut services for those who need them most. That is a disgrace. No member should rest until that wrong has been redressed.

17:23

**Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD):** As members know, I taught in the Borders for almost 30 years. I continue to be a member of the EIS and I had every right to walk behind its banner on the march the other day. The background to the debate and the effects of the cuts to Scottish Borders Council's education budget have a real resonance for me because I know what it is like to teach with restricted resources. I recall from a long time ago how demoralising it can be to work in classrooms that are dusty, grubby and sometimes worse.

As an MSP, it is a distressing and new experience to have former pupils come to me now as young mothers with children who have special educational needs telling me how they fear that the council's provision for special education, and therefore for their children, will be cut. Similarly, constituents have written to me or come to surgeries to tell me of cases in which auxiliary support for the youngsters has been cut by some hours or will now not be put in place.

Council claims that SEN budgets have not been reduced in money terms and may even have been increased simply do not ring true in the face of such reductions. The truth is that the budgets were inadequate in the first place. Although the figures may not have been cut, they are not adequate to fund the provision that was needed last year. The cuts are real. To pretend otherwise is sophistry.

Similarly, we hear—as in Christine Grahame's example—of transport arrangements that fail to recognise the complex needs of individual children. When those personal cases are brought to our attention, it becomes clear that those are unique children with individual needs. We cannot and must not involve them in a simplistic numbers game. To various degrees, those youngsters are vulnerable, but each is infinitely valuable. We must recognise that in our provision for them. If, following Scottish Borders Council's disastrous failure in financial monitoring, cuts are needed—unfortunately, I believe that cuts are needed—the cuts should certainly not fall on our most vulnerable children.

**Alex Neil (Central Scotland) (SNP):** Will the member give way?

**Ian Jenkins:** No, not just now.

From the beginning, I have made clear to council leaders and officials my serious concerns about the provision for children with special educational needs. As a member of the Education, Culture and Sport Committee, I am committed to the improvement of SEN provision, which is embodied in the recommendations that followed our inquiry.

I regret the council's decision to postpone improvements in its services for pupils with autistic spectrum disorder. I am anxious that any delay in improving that provision should be short. I understand that some debate may now take place about the precise nature of any provision, but it is important that the council recognises that autism is becoming more readily diagnosed. The need for extra resources will undoubtedly grow. The special needs of autistic children cannot be put aside.

I am similarly unhappy about the transfer of resources from the various budgets that are mentioned in the motion. As an old-fashioned English teacher, I am temperamentally inclined to prefer investment in people to investment in computers. I know that that is simplistic and that financial and contractual matters surrounded that decision, but I regret in particular the loss of finance for classroom assistants and early intervention.

It is ironic that, until the recent problem arose, I felt that Scottish Borders Council was moving forward positively in recognising and responding to the new statutory requirements and to other developments in special educational needs provision. As a recent briefing from Children in Scotland acknowledges, rural authorities have some significant problems in implementing all the latest proposals. Much good work is being done by teachers and advisers in the Borders. I am sad that a service that is staffed by hard-working and dedicated individuals is now facing difficulties

when the Scottish Parliament and the Scottish Executive are making genuine efforts to raise standards and expectations.

This is a transitional phase in our country's way of thinking about special educational needs. At this time, it is important that pupils and teachers get our full support. They need assistance in the classroom. Teachers need training opportunities. I should point out that many teachers are nervous about the new changes and the thrust towards mainstreaming. Proper SEN provision is difficult to budget for. The provision for individual pupils can sometimes cost up to £100,000. If two such pupils come into a local authority, the budget can go haywire without the local authority being at fault. We must recognise that.

There is a moral duty on all of us to offer such youngsters a caring and positive educational environment that will allow them to grow and develop their full potential. We must not allow the council's financial problems to get in the way of the long-term future of such vulnerable children. Once the auditors and HM Inspectorate of Education have made their reports—and after the Education, Culture and Sport Committee has been to the Borders to take evidence—Scottish Borders Council and the Scottish Executive should look at the implications for the funding of special educational needs.

17:28

**Robin Harper (Lothians) (Green):** I rise to support the motion.

Sometimes, issues arise that highlight other issues at the same time. At the moment, children living in England and Wales are protected by a duty on education authorities to prepare and implement accessibility strategies for children with special educational needs and disabilities. Such protection is not afforded to children in Scotland. That highlights the fact that if we had similar legislation in place now, those children would not be the first people to suffer hardship and discrimination because of the cuts that Scottish Borders Council feels it must make.

Section 15 of the Standards in Scotland's Schools etc Act 2000 creates a presumption of inclusion and places new duties on education authorities to provide school education for all children in a mainstream setting, unless particular circumstances apply. The Special Educational Needs and Disability Act 2001 extends the Disability Discrimination Act 1995 to cover education—schools and further and higher education. Further and higher education must ensure that auxiliary aids and services are provided or make physical alterations to buildings to avoid discrimination.

**Michael Russell:** There is an additional point, which is germane to the member's argument. Mainstreaming is particularly effective when the parents positively support it. In the cases in question, parents are demanding mainstreaming. That makes all the legislation in the world almost irrelevant—it is the parents' demand for the best for their children that adds the voracity to the argument.

**Robin Harper:** Indeed. At present, however, that requirement does not apply to schools. Instead, auxiliary aids or services should be provided under the Scottish special educational needs system. According to Government documentation, physical accessibility should be planned for systematically over time.

The 2001 act requires schools and local education authorities in England and Wales to draw up accessibility plans and strategies. No such requirement has been placed on schools and education authorities in Scotland, as the issue is devolved. No such legislation has yet been proposed in Scotland. I feel that there is no justification for the present differences in access legislation between schools and higher and further education. The debate has highlighted an issue that must be addressed as soon as possible.

The Education, Culture and Sport Committee has already publicly recognised the geographical inequities experienced—particularly in rural areas—by children with special educational needs and their families. I hope that the implementation of a planning duty will be the minimum step to improve basic standards of accessibility across Scotland. I was asked by Children in Scotland to make that point because of my responsibility as co-chair of the cross-party group on children. I hope that members feel that that point is important in the context of the debate.

17:32

**Karen Gillon (Clydesdale) (Lab):** The situation is serious. As I was educated at Parkside Primary School and Jedburgh Grammar School, I know the benefits of a good Borders education. I go back to Jedburgh regularly and am familiar with the real strength of feeling that exists in the Borders. Some of that feeling is based on personal experience; some is based on word of mouth; some is based on the very worthwhile reporting of the *Southern Reporter*.

The concerns are genuine, which is why I wholeheartedly support the entirely appropriate investigations that are taking place on behalf of the Scottish Executive—especially the independent financial inquiry by the Audit Commission and, as ministers indicated today, by HM Inspectorate of Education. It is also why I

support the inquiry by the Education, Culture and Sport Committee into the current financial situation at Scottish Borders Council. I will go into that inquiry with an open mind; I will consider all the areas within our competency; I will consider all the information that is put to us; I will consult the council—members and officials; I will consult the teaching staff, ancillary staff and clerical staff, all of whom are affected; and I will listen to pupils and parents. I will then have an informed basis on which to make recommendations from the Education, Culture and Sport Committee to the Parliament.

During the inquiry, one question that I will ask Scottish Borders Council is why it decided to make all its savings from the education budget instead of spreading the savings across all the council's budgets. That is a valid question to which an answer is required.

Another question that I will be asking is what steps Scottish Borders Council is taking to address the genuine concerns of many individual cases—some of which we have heard about today and others that are known to some members. All members of the Parliament hear about individual cases of special educational needs children who are not getting the type of provision that their parents would like. All of us are required to make representations to our local authorities to ensure that those children are getting the level of support they need. Scottish Borders Council will have to be accountable for the actions it takes in each case.

**Alex Neil:** Will the member give way?

**Karen Gillon:** I am sorry, but I have only three minutes.

**The Deputy Presiding Officer:** I am letting members' speeches run to about four minutes.

**Karen Gillon:** In that case I will take the intervention.

**Alex Neil:** I am very pleased with the comments that Karen Gillon has made as convener of the Education, Culture and Sport Committee: it is important to bring in Scottish Borders Council officials and councillors and hold them to account. Will the committee also interview the relevant ministers? It seems a bit daft that two weeks ago an underspend of £718 million was announced, yet the tragic stories that we have heard about from Christine Grahame could be solved by a few pounds in relative terms. It seems incomprehensible that we have such an underspend and yet allow this to go on in the Borders.

**Karen Gillon:** We have already asked for evidence from the Scottish Executive and, if it is appropriate, we will invite ministers to come to the

committee to give evidence. However, what I will not do is allow vulnerable children to be used in a game of politics between political parties. Other people—adults—have messed up the situation and the children deserve the best from us.

Unfortunately, I cannot support Christine Grahame's motion. I cannot accept that the Parliament should give Scottish Borders Council extra money for the issue; we would send a very inappropriate message to local authorities, all of which are faced with continuing and excessive demands on their budgets. If we give extra money to one authority, we may be storing up substantial problems for ourselves in the future. We would be giving a green light to authorities, telling them that if they mess up and overspend we will bail them out, regardless of the consequences to the Scottish block. That would be a dangerous precedent.

Scottish Borders Council must be investigated and the Scottish Parliament's Education, Culture and Sport Committee will do that. We will investigate thoroughly and bring back a report to the Parliament. It will be the Parliament that makes a decision, on the basis of that report, on how we move forward on the issue. In the meantime, I urge everyone in the Borders to get their heads together to ensure that these kids do not suffer any more. There are solutions out there. Let us find them and work with everyone to ensure that the kids do not suffer.

**Michael Russell:** May I move a motion to extend the business?

**The Deputy Presiding Officer:** Yes.

*Motion moved,*

That the meeting be extended by up to 10 minutes.—  
[Michael Russell.]

*Motion agreed to.*

17:38

**Tommy Sheridan (Glasgow) (SSP):** Karen Gillon's last comments were a nonsense.

**Karen Gillon:** Will the member give way?

**Tommy Sheridan:** For goodness' sake, let me develop the point. It is nonsense to suggest that because we make a special case for what has happened in Scottish Borders Council, every other council will be lining up to overspend their education budgets. Karen Gillon said that she does not want vulnerable children to become pawns in a political game. The problem is that if we do not intervene, those vulnerable children will become victims. That is the question that must be addressed in relation to Christine Grahame's motion.

**Karen Gillon:** I have two points for Tommy Sheridan. First, how do we know that the Borders is a special case? We do not know why it got into its current situation. Secondly, that is just the kind of financial prudence that I would expect from the Scottish Socialist Party: to chuck good money after bad.

**Tommy Sheridan:** Karen Gillon asks how we know that the Borders is a special case and then says that I want to chuck good money after bad. Until she has carried out the investigation, she does not know whether it is good money going after bad. I know that we will have to intervene now to prevent people who have had absolutely no role in creating the problem becoming the victims of that problem. That is the point.

Murray Tosh and Karen Gillon share a philosophy here: the idea that the Scottish Parliament should not interfere. Generally speaking, there is absolutely no doubt that local government should be allowed to govern, but there are exceptions, and there are exceptions beyond local government. We have had debates here on the fishing industry. We have had debates on the tourism industry. We have had debates on the farming industry. Each and every time there were special circumstances, we agreed to intervene to help the industries. What we have before us—

**Mr Tosh** *rose*—

**Tommy Sheridan:** I am sorry, but I have taken one intervention and I will not be able to take another. Mr Tosh would not take one of mine earlier.

We are looking for the same principle to be applied in this case. My worry about what Ian Jenkins said is where the cuts will be deflected. The children are already suffering. Ian Jenkins said instead of the children suffering, let us look for cuts elsewhere. The problem is that low-paid workers will suffer. It is the class auxiliaries and the dinner ladies—the people who can ill afford to suffer any longer—who will suffer because of the overspend.

Murray Tosh asked a rhetorical question about raising expectations. Surely the Scottish Parliament exists to try to put things right. That is what the Scottish Parliament is here for. When we have a role to play and the competency to do so—which we clearly do—we should say that we will make good the cuts and carry out the investigation. Let us have the investigation. Let us get those who are responsible for the overspend. Let us punish them in relation to their jobs and their futures because they have mismanaged the council—there is no doubt about that—but do not punish those who do not deserve to be punished. Unless we intervene, a vulnerable group in

Scottish Borders Council's area will be abandoned, which is not what this Parliament should do.

17:41

**Mr Lloyd Quinan (West of Scotland) (SNP):** There is not much I can add to what Christine Grahame, Michael Russell and Tommy Sheridan have said. Frankly, I find it absurd that the Labour and Conservative parties believe that the writ of the Parliament—the writ of Scottish democracy—stops at the door of every local authority, irrespective of their competence.

**Mr Tosh:** Will Mr Quinan give way?

**Mr Quinan:** No. We have heard quite enough from Mr Tosh for one day.

Borders region has suffered incredibly over a long time and even during the lifetime of the Parliament, due to the damaging effects of foot-and-mouth disease and, before that, the problems with Viasystems and other electronics companies. A sense is developing that the Parliament cares little for rural areas and for the Borders in particular. That has been communicated to me on a number of occasions and I am sure that it has been communicated to other members.

The fact is that we have an opportunity to show that the Parliament works for people. In addressing the subject of this debate, which clearly is incompetence, there is an opportunity to bind together the Borders community and the community of the country. If we operate on the basis suggested by Murray Tosh and Karen Gillon, the Parliament will simply talk about technical matters—as Mr Tosh did—and will not deal with the problems that have brought people to this place on this day.

**Mr Tosh** *rose*—

**Mr Quinan:** If Mr Tosh wishes to turn round and say to his constituents that he will wait for the outcome of an inquiry—

**Mr Tosh:** There is no choice.

**Mr Quinan:** Mr Tosh says that there is no choice, but I say to him that he has abandoned the principles of democracy. If there is bad government, it should be dealt with. If bad government means that individuals are suffering, we should intervene—

**Mr Tosh:** I want to intervene.

**Mr Quinan:** We should intervene, as Wendy Alexander did yesterday, when she agreed to use some of the surplus to write off the debts of further education colleges that are badly run. If Mr Tosh is suggesting that we should at no time interfere when local government fails its electorate and fails

to manage funds correctly—

**Mr Tosh:** Mr Quinan will recall that I said the line of responsibility for the proper discharge of local authority duties was to the Executive, and the Executive is charged with reporting on the matters that it is investigating. Will Mr Quinan confirm that the SNP supported the declaration to which all political parties in the Parliament subscribed that the Parliament was the equal of local government? Does he agree that the Parliament therefore has no right to go round sorting out local government, any more than local government has the right to come and sort us out?

**Mr Quinan:** If Mr Tosh finds it impossible to recognise that he has a responsibility and that when rules are inappropriate in the circumstance, they should be bent or changed, I cannot understand why anyone would vote for him or his party in future. In effect he is saying, "It is not my problem; it is someone else's problem. Do not come to me; knock on the door of the local authority."

Mr Tosh's harking back to something that is irrelevant to people who are suffering does our democracy no good whatever. There is an enormous underspend in Scotland, in the Parliament and at the disposal of the Executive. Is Mr Tosh trying to say that we should not make use of that underspend to address directly the needs of some of the most vulnerable people in our country without first having an inquiry and finding out where local authority responsibility lies? That is an absolute abdication of responsibility. It is not an advert for democracy and it is certainly not an advert that will lead the Tory party back to power here or anywhere else in Scotland.

17:46

**The Deputy Minister for Parliament (Euan Robson):** I confess that I am somewhat surprised to be here, but it is because of happy circumstances. My colleague Nicol Stephen and his wife had a baby daughter on Sunday. I am sure the chamber will join me in congratulating them. I suppose it is one way for him to ensure the continuation of his portfolio, if a fairly drastic one.

Before I start, I should declare a sort of interest, because I contribute—I think uniquely among MSPs—two of the 15,700 children who are in the Scottish Borders Council education system. Therefore, I have a considerable interest in the matter as a parent, let alone as an MSP or as a Government minister. I have also signed—twice, I think—the Borders residents' petition, because irrespective of whether it is defective or whether there is due process in it, it is an important expression of Borderers' opinions. That is important for our democracy to recognise. I have

no particular concerns about that.

**Tommy Sheridan:** The member supported the petition.

**Euan Robson:** Well, I would not have signed the petition if I did not support it, would I?

The Borders educational situation is a matter for serious worry, as all MSPs know from their postbags. Ensuring good educational provision for all children, including those with special educational needs, is a demanding task for all local authorities, not just for Scottish Borders Council. Making such provision, however, is precisely what the people of Scotland expect councils to do.

The Standards in Scotland's Schools etc Act 2000 states that education authorities have a duty to ensure that the education that they provide is directed to developing the child or young person to their fullest potential. Parents and children want to see that duty fulfilled in its entirety. The Executive has put in place a legislative framework and guidance to assist and encourage authorities in their improvements.

I have a response to Robin Harper's important point. My understanding is that the duty in the Special Educational Needs and Disability Act 2001 to prepare accessibility strategies will come into force in England and Wales in September 2002. Scottish ministers are committed to imposing a similar duty on education authorities in Scotland. They expect to announce those proposals shortly.

**Mrs Margaret Ewing (Moray) (SNP):** When? Give us a date.

**Euan Robson:** I regret that I cannot give the member a date, because the matter is not in my portfolio. However, I assure the member that ministers intend to address that point.

We should not forget that this issue has arisen at a time when the Scottish Executive is committing substantial additional resources to local government and to improving educational standards in particular. We met and exceeded our commitment to fund the McCrone recommendations.

I will put on record a few figures that relate to the Borders. We have provided for further increases in unhypothecated general grant support. Overall, total Executive revenue grant support to Scottish Borders Council has increased this year by about £8 million, or 6.6 per cent, to more than £125 million and further above-inflation increases have been confirmed for each of the next two years. I understand that that amounts to a 19 per cent increase over the three years for which allocations have been made. In addition, we have announced further financial provision for schools from this year's budget consequentials and the school

buildings improvement fund. Resources of £220,000 and £255,000 have been set aside for the Borders from those funds. Last November, £416,000 was made available. That is a total of nearly £1 million in a calendar year.

The investment that we have provided through the settlement and additional allocations shows the Executive's commitment to raising standards in education. It is vital that local authorities aim to manage effectively the additional resources that we are providing for education and other services.

**Christine Grahame:** One month after £416,000 was allocated to Scottish Borders Council, the council cut £350,000 from its budget, so the net amount was the difference. An official has admitted that in a letter to me. The figures are all very dazzling, but they conceal the truth.

**Euan Robson:** There is no doubt that Christine Grahame is correct. That fact was found out not only by her. It is clear that Scottish Borders Council removed the money. That was well known at the time. I do not think that that decision was particularly wise, but that was the decision that was taken locally.

Decisions need to be made at a local level. Local authorities need to maintain autonomy to allow them to respond to the diversity of local circumstances. The Executive wants to maintain that approach to keep the creativity and innovation that many authorities already show.

That does not mean that if councils compromise the quality of children's education, the Executive will stand by and do nothing. I will now make an important point, which it is useful to put on the public record. Well-established procedures exist for investigating difficulties that arise in a council's management of its resources. As we know, the Accounts Commission is utilising those procedures and investigating the authority's finances. Following initial investigations by the controller of audit, the Accounts Commission will consider his report and what further action, if any, it wishes to take. My understanding is that the report may be available next week. That will be helpful.

In addition, as Mr McConnell made clear this afternoon, Her Majesty's Inspectorate of Education will inspect the education department after the Accounts Commission has completed its inquiry. We are not far from hearing answers to some of the questions that members posed this afternoon.

**Michael Russell:** I am sure that the Accounts Commission, like HMIE, can apportion blame. The Accounts Commission can also punish. However, we are talking about a point that several SNP members have made—how do we put in resources to help children who are suffering? The minister has almost finished his speech. Between

now and the end of the speech, I and many in the chamber will look for an indication of some money to help the children whom Christine Grahame talked about. If we do not get that, I am sorry to say that the minister's performance will not have been good enough.

**Euan Robson:** I thank Mr Russell for his intervention. It will not have escaped his attention that I am not the Minister for Finance and Local Government. I can say that if additional resources are allocated from end-year flexibility, I have an assurance from Mr McConnell that they will be directed in the best way possible to the schools concerned.

Some facts in the debate have not been accurate. For example, the virement was not £525,000 but £358,000. I have considerable concerns, which I have raised with my colleagues, about the autism unit at Howdenburn Primary School. The council decided not to proceed. That decision may have some benefit. That is because extra travelling might be involved if the children who currently use Denholm and St Ronan's primary schools have to go to Jedburgh. Given the unfortunate circumstances, the council may be able to rethink its position. The Executive will monitor the situation.

I will conclude by addressing the points that Christine Grahame made about special educational needs transport, which has caused a great deal of grief to the individual parents concerned. I have made representations. It would have been courteous of the member if she had informed the constituency representatives that she was dealing with the cases. That might have enabled us to share in the action that has been taken on the matter.

I say to Scottish Borders Council that it must examine the situation. I have written to the convener of the council, asking him, given the circumstances, to take a political decision to assist. As Christine Grahame rightly says, the position with regard to those children and others is unacceptable and should be altered. I look forward to receiving a favourable response from the council.

I believe that I have taken up more than my allocated time. The debate was useful. It was also useful to have it at this time. Perhaps we will be able to return to the subject when some of the reports that are due out imminently have seen the light of day. It is welcome and perhaps opportune that the Education, Culture and Sport Committee is going to Galashiels. That might give the committee an opportunity to consider the reports. I look forward to it doing so.

*Meeting closed at 17:56.*



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