MEETING OF THE PARLIAMENT

COMMITTEE OF THE WHOLE PARLIAMENT

MEETING OF THE PARLIAMENT

Wednesday 27 February 2002
(*Afternoon*)

Session 1

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PARLIAMENTARY BUREAU

PRESIDING OFFICER—Right hon Sir David Steel MSP
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27 February 2002

Scottish Parliament

Wednesday 27 February 2002

(*Afternoon*)

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

Time for Reflection

The Deputy Presiding Officer (Mr George Reid): To lead our time for reflection this week, we welcome Father Brian Gowans, who is the chaplaincy adviser to the Scottish Prison Service.

Father Brian Gowans (Chaplaincy Adviser, Scottish Prison Service): Last week saw the installation of the new Archbishop of Glasgow, the Most Rev Mario Conti—I caught sight of one of the headlines about his elevation to the post. One newspaper report stated that he hopes to see the day when priests will line the route of an Orange walk and warm to the music, ministers will swell the crowd at Parkhead and priests will cheer on a Rangers goal at Ibrox. There would have been a few wry smiles around Scotland at those thoughts.

Today, I would like to introduce you to one of the young offenders, whom I shall call David—with permission—to protect his identity. When David arrived in Polmont, he would not look in my direction, let alone speak to me. No matter how hard I tried to make contact with him, he would look the other way and make some derogatory remark. Eventually he got a job in the hairdressers work party and I quickly seized the opportunity—I went for a haircut and I asked the officer to allow David to cut my hair.

In typical barber fashion, David soon began to speak to me. “If my granny could see me now,” he said, “she would disown me.” My reply was: “Maybe it’s your granny I should be talking to. Don’t be shaving RFC on the back of my head, now.” “Don’t tempt me,” said David, and we laughed and joked for a while. Within days David was requesting to see me and we struck up a good friendship.

David was liberated and I met him a few weeks later after an old firm match. I had been to the game and met him as I walked back to Queen Street station. He looked gloomy as his side had been on the wrong end of a 6-2 thrashing. I, on the other hand, was ecstatic. “Let’s go for a pint,” he said and we did. He had his blue and white scarf on and I was in shades of green. We drew a lot of attention to ourselves and more wry smiles. “This is how it should be all the time,” he said and I had to agree.

Within seconds of Celtic winning the treble last year, my phone rang and there was David the first to congratulate me, as if I had scored the winning goal. We had come a long way together; the tide had turned. David now works as a hairdresser, his life of crime behind him—a changed man.

Father, may they all be one as you are in me and I am in you, may they be so completely one that the world may believe that it was you who sent me.

Business Motion

14:34

The Deputy Presiding Officer (Mr George Reid): Before we begin, I refer members to the announcements made in the business bulletin this morning on the handling of today's business.

The first item of business is consideration of business motion S1M-2793, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out a revised business programme.

Motion moved,

That the Parliament agrees—

(a) as a revision to the Business Programme agreed on 14 February 2002—

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after the first "Parliamentary Bureau Motions", delete all and insert—

followed by	Debate on an Executive Motion to treat the Criminal Procedure (Amendment) (Scotland) Bill as an Emergency Bill
followed by, no later than 3.05 pm	Parliamentary Bureau Motions
followed by	Stage 3 Debate on the Marriage (Scotland) Bill
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business - debate on the subject of S1M-2597 Dorothy-Grace Elder: Plight of Chronic Pain Patients

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delete all and insert—

9.30 am	Stage 1 Debate on the Scottish Parliamentary Standards Commissioner Bill
followed by	European Committee Debate on its 9th Report 2001: Report on the Governance of the European Union and the Future of Europe: What Role for Scotland?
12.30 pm	Business Motion
2.30 pm	Question Time
3.10 pm	First Minister's Question Time
3.30 pm	Stage 1 Debate on the Education (Disability Strategies and Pupils' Records) (Scotland) Bill
followed by	Financial Resolution in respect of the Education (Disability Strategies and Pupils' Records) (Scotland) Bill
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business - debate on the subject of S1M-2647 Lord James Douglas-Hamilton: Rail Link to Edinburgh Airport—[*Euan Robson.*]

Motion agreed to.

Criminal Procedure (Amendment) (Scotland) Bill

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-2779, in the name of Jim Wallace, on treating the Criminal Procedure (Amendment) (Scotland) Bill as an emergency bill. The debate must be concluded by 3.05 pm.

14:35

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I am most grateful for the agreements that have allowed us to take the Criminal Procedure (Amendment) (Scotland) Bill—a short bill—under the procedures that govern emergency legislation. During the stage 1 debate, we will have time to consider the background to the bill in more detail. In justifying the bill's treatment under the emergency procedures, I will simply outline to the Parliament why I am anxious for the bill to become law as soon as possible.

Members will be aware that in Reynolds v PF Linlithgow, which had the effect of clarifying the law in relation to arrest warrants that are issued at an intermediate diet in summary proceedings, the appeal court ruled that, where such a warrant was issued, it was necessary for the court to discharge explicitly the trial diet that had been set. If that was not done and the fact was not recorded in the court minutes, the case had to be called on the trial diet that had originally been set. Where the case was not called on that day, the instance would fall and further proceedings would be incompetent.

That judgment runs contrary to the understanding on which most summary courts have operated—that issuing a warrant automatically discharges the trial diet. Therefore, it has a major impact on a substantial number of past and present cases. The Crown Office estimates that almost all sheriff courts and a substantial number of district courts have been operating on the basis that a warrant discharges the trial diet. Doubt has been cast on all proceedings that were under way on that basis before the appeal court ruling on 14 February and all cases that were concluded on that basis since the intermediate diets were first formally introduced in 1981.

Most of the current, live cases in summary proceedings in which a warrant has been issued at an intermediate diet—there could be up to 7,000 such cases—will have been progressed on a basis that has been judged to be faulty. In about two thirds of those cases, the warrant has been executed and proceedings continue. However, sheriffs are already beginning to discharge such cases as incompetent when they come back to court. I understand from the Solicitor General that in Dumbarton sheriff court this morning the argument that the accused acquiesced in a subsequent diet did not succeed before the sheriff. At present, 97 cases have been discharged. They include cases that involve driving under the influence of drugs and theft. I am aware of at least one case that involves a statutory sexual offence.

I seek emergency legislation primarily to stop those current cases haemorrhaging out of the system. The problem is particularly acute in relation to statutory offences, many of which are time limited. Such offences tend to come to court fairly close to the time bar because of the demands of the investigative process. In drugs cases, for example, it is vital to have the correct forensic evidence, which takes time. When a case is discharged and reaches its time bar, it cannot under any circumstances be raised again. Obviously, most reasonable people who are interested in proper law and order would be anxious to avoid that.

I accept that the cases in question are not the most serious cases. After all, they are cases that are tried under summary procedure. However, our summary courts try offences such as drink driving, driving while disqualified, careless driving, some statutory offences of a sexual nature and some less serious drugs offences, which matter greatly to the victims and to society as a whole. It is vital for all stakeholders—the accused, victims and the public—not to be denied a trial through a technicality. It is vital that justice should not be impeded by a technical flaw that has nothing to do with the fairness of the proceedings.

Other cases are affected, notably those in which the warrant has been issued but not executed. I need to consider the huge number of cases that are concluded on a basis that is now held to be flawed. We do not think it right that those who have been convicted should be able to apply for their convictions to be quashed purely on such a technicality.

Quite properly, the Parliament will want to examine carefully the justification for retrospective legislation. I will deal with that in more detail in the stage 1 debate. My prime concern with motion S1M-2779 is to seek the emergency legislation procedure to avoid the loss of current cases, many of which could be lost beyond recall. I confirm that only intermediate diets in summary proceedings are affected by the Reynolds v PF Linlithgow ruling. Other summary diets and solemn procedure are unaffected. Nonetheless, we reached the conclusion that we needed to move swiftly.

I move,

That the Parliament agrees that the Criminal Procedure (Amendment) (Scotland) Bill be treated as an Emergency Bill.

14:39

Michael Matheson (Central Scotland) (SNP): The SNP supports the bill. The Minister for Justice has outlined the legal reasons why we find ourselves having to pass the legislation. The bill will return our criminal procedures to the way in which everyone thought they operated in the first place and will put the procedures on a statutory footing. Since the Executive announced its intention to introduce the emergency bill, I have had an opportunity to speak to a number of people who practise in sheriff courts throughout Scotland and to raise the matter with organisations such as the Law Society of Scotland. It is clear that there is strong support for the bill among those who work in our legal system.

This is the second occasion on which the Parliament has had to legislate as a result of a ruling made in Linlithgow sheriff court. Some members may recall the Starrs case, which resulted in the Bail, Judicial Appointments etc (Scotland) Bill having to be brought before the chamber. The matter raises interesting questions about the goings-on of defence solicitors at Linlithgow sheriff court. Members would be forgiven for thinking that there may be an element of competition among them to see who can get the most bills through the Scottish Parliament in a year.

Notwithstanding that, the bill is justified and should be dealt with on an emergency basis. The Minister for Justice has outlined why that is the case. Currently, 2,500 warrants from intermediate diets are outstanding in Scotland and could be at risk if the bill is not passed today. I welcome the provision that will allow the bill to apply retrospectively, because the danger is that, without such a provision, there could be challenges about cases going back as far as 1981, when intermediate diets were introduced. It is in everyone's interest to ensure that the bill is given fair passage this afternoon on an emergency basis.

14:42

Lord James Douglas-Hamilton (Lothians) (Con): I warmly welcome the speed of response of the Deputy First Minister and the Solicitor General on this matter, which was a problem not of their making. The only people in Scotland who will oppose the bill will be the criminals. None of them will be able to vote here this afternoon. I hope that the bill will receive whole-hearted support.

14:43

Johann Lamont (Glasgow Pollok) (Lab): I am happy to contribute, no matter how briefly, to the debate. I regret that it has been necessary to introduce the bill. I accept that the justice system needs to be meticulous, as it deals with issues of innocence and guilt and of crime and punishment, but what has happened is the worst kind of publicity for a system that seems not just to grind exceeding slow but, in the eyes of some, exceeding stupid and in defiance of common sense. I welcome the fact that the Executive has moved swiftly to close the loophole, which was not of its making. I urge the chamber to accept the bill as an emergency.

I confess that my initial reaction on hearing about the consequences of the ruling at Linlithgow sheriff court was fury—fury that, after a diligent search for a loophole, evidence could not be tested in court and crimes could potentially go unpunished. When I was ranting on, the person listening to me said, "Well, that's their job." No doubt the job of a lawyer is to represent the interests of their client, but we have to ask about the broader attitudes and culture that the issue that has arisen reflects and what it actually means to represent the best interests of a client.

The issue is not about the individuals who were involved in the case. Obviously, the lawyers have the important job of protecting clients from corruption and misrepresentation and of ensuring that a defence can be made. It is essential that the rules are maintained, but it is reasonable to say that the rules should be rational. I cannot see the rationality in the ruling. I am not on my own in holding that view, as it seems to have taken the lawyers 22 years to spot the loophole.

I have time to make only a couple of broad points. The legal system is not a game, where someone applies their ingenuity to a puzzle to see what they can achieve for a client. However, there is a danger of its being presented in that way. The challenge to those who are involved in the legal system is to develop a system in which the innocent are protected and miscarriages of justice are prevented, but which is effective, organised and rigorous enough to ensure that the guilty are punished and further crimes in our communities are deterred.

I cannot overstate how important it is to shift the justice system out of complacency and into the 21st century. I have been profoundly struck by the hostility to and despair about the legal system that ordinary citizens in my constituency express. My constituents consistently express a lack of faith in the system. We ignore at our peril those views and the consequence for our society of not addressing what those views reflect of the operation of the law in our communities. I urge members to support taking the bill under the emergency procedure, but we should commit ourselves to addressing the underlying issues that created the situation. My constituents and the people of Scotland deserve no less.

14:45

Tommy Sheridan (Glasgow) (SSP): Will the Minister for Justice elaborate on whether the emergency bill has any other effects? I fully support the passage of the bill, but I wonder whether the opportunity will be taken to examine the use of intermediate diets as a whole. I have been subjected to intermediate diets and one difficulty that I have perceived for several years is the inability to confirm a plea in writing through a legal representative or by writing to the court timeously. That has implications for the use of court time and solicitor resources. Will the use of intermediate diets, and the ability of those who wish to maintain their pleas in writing rather than to appear in person, be affected?

14:46

The Solicitor General for Scotland (Mrs Elish Angiolini): I am grateful for the constructive debate, for the support from Mr Matheson, Lord James Douglas-Hamilton and other members and for the consensus that the bill is essential and swift legislation to deal with a pure technicality. Failure to act swiftly would, as Ms Lamont said, be likely to lead to serious concern about and lack of confidence in the criminal justice system in Scotland.

Phil Gallie (South of Scotland) (Con): I will follow up Johann Lamont's point. On several occasions in recent times, cases been abandoned or convicted people have been released on technicalities. Could those technical difficulties, which arise in the courts and lead the public to hold the justice system in contempt, be examined?

The Solicitor General for Scotland: The system is adversarial. Its nature is such that the defence tries where possible and appropriate to exploit weaknesses in the law on behalf of their clients. It is important that the Executive and the Parliament respond to that by ensuring that the law is waterproof. Technicalities must not erode the possibility of conviction when that is not in the interests of justice. I accept the point that it is important that we constantly review the law to ensure that such technicalities cannot corrode the system.

I reassure the Parliament that we did not embark on this course of legislation lightly. We carefully assessed the impact of the judgment before deciding that emergency legislation was the answer. We concluded that it would be unacceptable not to take action to restore the position to that which was thought to apply before the judgment. It is not in the interest of Scottish justice for convictions to be quashed or proceedings to be rendered null and void on such a technicality. We would reward accused persons who failed to appear at intermediate diets and who thumbed their noses at the system if we allowed them to walk free from charges.

If we are to act, the number and nature of the cases that are live make acting as quickly as possible vital. Every day that we delay, more cases are lost. That is not in the interests of victims of crime, society as a whole or the accused, who has a right to be heard on the evidence.

I am grateful for the Parliament's support. As we move into more detailed consideration of the bill, I will answer Mr Sheridan's point. The bill does not deal with summary justice and intermediate diets, but they must be examined. A major review of summary procedure continues.

The Deputy Presiding Officer: The question is, that motion S1M-2779, in the name of Jim Wallace, on treating the Criminal Procedure (Amendment) (Scotland) Bill as an emergency bill, be agreed to.

Motion agreed to.

That the Parliament agrees that the Criminal Procedure (Amendment) (Scotland) Bill be treated as an Emergency Bill.

Parliamentary Bureau Motions

14:50

The Deputy Presiding Officer (Mr George Reid): We have three Parliamentary Bureau motions to consider. The first is motion S1M-2795, in the name of Patricia Ferguson, to suspend standing orders. I refer members to the announcement in today's business bulletin stating that the question will be put after each of the motions is moved, rather than at decision time. Any member who wishes to speak against motion S1M-2795 should press their request-to-speak button now.

Motion moved,

That the Parliament agrees that Rules 9.7.9, 9.8.3 and 9.10.2 of the Standing Orders be suspended for the purposes of the Criminal Procedure (Amendment) (Scotland) Bill.—[*Euan Robson*.]

Motion agreed to.

The Deputy Presiding Officer: Parliamentary Bureau motion S1M-2796, in the name of Patricia Ferguson, is on electronic voting. Any member who wishes to speak against the motion should press their request-to-speak button now.

Motion moved,

That the Parliament directs that under Rule 11.8.3 of the Standing Orders any division at Stage 2 of the Criminal Procedure (Amendment) (Scotland) Bill shall be conducted using the electronic voting system.—[*Euan Robson*.]

Motion agreed to.

The Deputy Presiding Officer: Parliamentary Bureau motion S1M-2797, in the name of Patricia Ferguson, is a motion to timetable the Criminal Procedure (Amendment) (Scotland) Bill. This motion, of course, cannot be debated or amended.

Motion moved,

That the Parliament agrees that Stage 1 of the Criminal Procedure (Amendment) (Scotland) Bill begins immediately and lasts for no more than 30 minutes; that (if the general principles of the Bill are agreed to at Stage 1) Stage 2 begins one hour thereafter and debate on any amendments lasts for no more than 15 minutes and Stage 3 begins immediately Stage 2 is concluded and ends by 5.00 pm.—[*Euan Robson*.]

Motion agreed to.

Criminal Procedure (Amendment) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-2781, in the name of Jim Wallace, on the general principles of the Criminal Procedure (Amendment) (Scotland) Bill. The debate must be concluded after 30 minutes.

14:51

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): In the previous debate, I outlined why we are treating this bill as an emergency; I would now like to describe in some detail the background to the bill.

The issue relates to procedure at intermediate diets. Intermediate diets are hearings set by a summary court with the goal of increasing the overall efficiency of summary procedure. As the Solicitor General said in response to Tommy Sheridan, Sheriff Principal McInnes is considering the whole issue of summary justice. I am sure that intermediate diets will be one of the things that he considers and I have no doubt that Mr Sheridan's point will be taken into account.

It is worth pointing out that evidence from research and statistics shows that intermediate diets have had the effect of focusing the minds of the prosecution and the defence to help to bring cases to an earlier conclusion, if that is the right way ahead. In 1994-95, 27 per cent of intermediate diets brought the case to a conclusion; by 1999-2000, the figure had risen to 37 per cent. That represents a considerable saving in witness time and prevents unnecessary trials. Research shows that witnesses have been the prime beneficiaries of change. There has been a significant increase in the proportion of witnesses who have been countermanded and so who have not had to come to court to make the kind of fruitless appearance that I suspect some of Johann Lamont's constituents may have made. Going to court only to find that the case is not being heard serves only to frustrate people. I think that the Parliament would agree that anything that saves police time is worth while.

The intermediate diet is a useful model; I think that Lord James Douglas-Hamilton was a minister when it was introduced. He may legitimately take credit for what was a worthwhile development in summary justice procedure.

At an intermediate diet, the court tries to establish whether the case is ready to go to trial and whether the accused intends to adhere to a "not guilty" plea. The goal is to reduce the number

of trials that have to be adjourned on the day at huge inconvenience to witnesses.

When an accused does not appear at an intermediate diet, the court may grant a warrant for arrest. However, prior to the intermediate diet, a date for the trial diet will have been set. Realistically, without the accused, it is difficult to know whether the trial will be able to start. Therefore, the court needs to discharge that trial diet when the warrant is issued. When a trial diet is not discharged, and the trial date arrives and passes without a trial getting under way, the instance falls—that is, any further proceedings are incompetent.

Courts have always recognised the need to discharge the trial diet, but most have assumed, on the basis of common sense, that issuing a warrant automatically has that effect. Therefore, they have not routinely recorded formally the discharge of the diet as a separate decision in the court minutes. The appeal court judgment in Reynolds v PF Linlithgow reverses that assumption; it makes it clear that issuing a warrant does not of itself discharge the trial diet and that an explicit order is required to that effect.

In the previous debate, I indicated the substantial impact that the judgment may have on cases that have been concluded or that are under way. In brief, it casts doubt on thousands of cases that have concluded over the past 20 years and on the majority of current cases in which a warrant has been issued at an intermediate diet.

Very simply, the bill restores the position to that which was thought to apply before the appeal court ruling was made. Furthermore, it makes it clear that the issue of an arrest warrant automatically cancels the trial diet, except where the court specifically determines otherwise. We should keep the law flexible. There may be occasions when the court decides that the initial trial diet should stand, for example if no difficulty is expected in apprehending the accused. However, once the bill is passed, the default position will be that an arrest warrant automatically discharges the trial diet in respect of the accused.

The bill is retrospective. As I said before, we should be very careful when we introduce retrospective legislation, and we do so very rarely. However, the reason for retrospection is simple: all the cases at risk were initiated before the appeal court ruling, and many of them were concluded years earlier.

It is possible to ensure without legislation that future cases are not jeopardised; however, without retrospective legislation, it is not possible to ensure that the potentially large number of people who are accused or convicted of crimes do not escape justice on a technicality. After all, the people who are affected failed to appear at intermediate diets. An arrest warrant was required to secure their attendance at trial and it seems extremely unfair that they should benefit from a technicality that does not benefit those who did appear at the intermediate diet to which they were cited. I am therefore content that, in this instance, retrospective legislation is the proper route and that proceeding in this way is reasonable and acceptable under the European convention on human rights.

As always when a bill is presented to Parliament, another issue of interest is finance. As the financial memorandum underlines, the bill does not give rise to costs for the Scottish Administration or for local authorities that have responsibility for the district courts. However, it is worth highlighting that failure to legislate would expose Scottish ministers to financial risk. Without the legislation, it would be open to those convicted under a procedure that is now held to be flawed to seek to have their convictions quashed in the High Court. Fines would have to be repaid and the issue of compensation might also arise. It has recently been estimated that the level of fines that are potentially repayable could be more than £6 million. Financial consequences could arise if we do not legislate; that will not happen if we pass legislation that simply restores the status quo. I commend the bill to the Parliament.

I move,

That the Parliament agrees to the general principles of the Criminal Procedure (Amendment) (Scotland) Bill.

14:58

Michael Matheson (Central Scotland) (SNP): As I said earlier, the SNP supports the bill, which results from the appeal court ruling made on 14 February in the Reynolds case at Linlithgow sheriff court. The minister has also pointed out that the bill will put on a statutory footing a procedure that was presumed to be part of the system. The appeal court ruling in the case might have had a considerable impact on our criminal justice system if the emergency legislation had not been introduced. Indeed, the minister has already outlined the ruling's potential impact. However, the circumstances that gave rise to the problem in the first place raise a number of serious questions about our criminal justice system.

The problem with the Reynolds case appears to be that the style used by the sheriff clerk for granting the warrant for Reynolds's arrest did not include the discharge of the trial diet. The case highlights the variation in the practice of handling such warrants across district courts and other sheriff courts. Some clerks do not automatically issue a discharge of the trial diet when a warrant is issued. I am concerned that such variation has

been able to creep into our criminal justice procedures across Scotland, and it raises the question why the glitch in the system was not picked up earlier.

As I mentioned earlier, about 2,500 warrants are outstanding throughout Scotland from intermediate diets. All the cases are potentially under threat. It is clear that if the legislation were not applied retrospectively, as the minister has said, literally thousands of cases, probably dating back to 1981, could be challenged. As the minister said, we should always be careful in applying any legislation retrospectively. I am sure that someone is currently considering challenging the legislation under the European convention on human rights on the basis of its retrospective application. I do not want to be alarmist, but I would welcome an assurance from the minister or the Solicitor General that they are confident that the bill will stand up to any strong ECHR challenge.

It is important for members to reflect on the pressures that our criminal justice system is under. This challenge in itself has probably added greater pressure to our prosecution and court administration services. The ruling in the Reynolds case might have been unexpected, but sadly it fits a pattern of procedural errors and other mistakes by one party or another that have often resulted in the accused walking free. The responsibility for that problem does not lie with any particular party, but it is an issue that we must address.

The Chhokar case highlighted the pressures under which the Crown Office operates. In August last year, there was the case of Andrew Sands. He was accused of two stabbings and attempted murder but, because the Crown Office had miscalculated his trial date, he walked free. At the end of January this year, Austin and Paula Arthur, who were accused of drug dealing, walked free because the search warrant that the Crown produced in court was found to be a photocopy.

Those cases are all symptomatic of a system that is under pressure. It is not only our Crown Office that is under pressure; our courts, too, are struggling to keep pace with the ever-increasing demands being placed upon them. Over the past two years, sheriff courts have consistently failed to meet their targets for waiting times. The courts face the increasing problem of the adjournment of trials: 42 per cent of trials were adjourned last year—a 6 per cent increase on the previous year. One of the most common reasons for adjournment to another date is pressure of time.

Notwithstanding the technical glitch that has resulted in this piece of legislation coming before us, it is important to ensure that those who are responsible for running our criminal justice system—whether they are court administrators or the prosecutors—have the necessary resources to discharge their duties adequately. Sadly, the variation between one court and another and the fact that our prosecution services were unable to pick up on the procedural anomaly earlier highlight yet again the inadequacies in our system.

The bill should be passed today on the basis that those who are accused should have their day in court and those who are victims should have an opportunity to see justice being done.

15:03

Lord James Douglas-Hamilton (Lothians) (Con): I rise to support the bill. I should start by saying that I supported the policy of introducing intermediate diets in 1980. The purpose of bringing them in was to reduce inconvenience to police and witnesses who might have been called to give evidence, only to find that the accused had pleaded guilty. The existence of intermediate diets was intended to enable courts to establish whether the accused was to plead guilty or not guilty. A study in 1997 indicated that 53 per cent of citations of witnesses were countermanded. That indicates that intermediate diets have worked and have reduced the amount of time that witnesses have to wait unnecessarily for trials. The study, which was called “From Citation to Witness Stand: A Study of Police Witness Duty at Court”, confirmed that intermediate diets have reduced the number of trials that settle on the day, which causes inconvenience to witnesses, police and jurors.

The diets were introduced in 1980 and made mandatory by Henry McLeish at the Scottish Office—in the late 1990s, I think. Practitioners believe that intermediate diets have brought about a fair degree of benefit by reducing disturbance to witnesses’ lives.

As the minister stated, the problem arose when a warrant was issued for the arrest of an accused person who did not turn up for trial. It had been assumed that such an eventuality would automatically discharge the trial diet. However, on appeal from the sheriff court, the appeal court found that the diet was not automatically discharged. That meant that, when the appointed day for the trial arrived, the case fell owing to the absence of both the accused and the prosecutor.

The appeal court judgment has opened up a loophole that had not previously arisen, because the point had not been argued since 1980. Accused persons have not been treated unfairly, but a technical loophole now provides an opportunity for accused persons to prevent a trial from taking place. The only people who can benefit from the appeal court’s ruling are persons accused or convicted and those who have simply not turned up for their trial. If the situation is not attended to, it will give succour to the criminal

community and those accused who prefer not to turn up.

Some accused who have several charges against them before different courts prefer not to appear until all the charges are taken together. I call on the minister to consider initiating appropriate research into that matter. It appears that accused who must appear before several courts to answer a list of allegations and charges think that they will get off more lightly if all the charges are taken together.

In any case, giving the bill retrospective force is a key ingredient. Since 1981, there have been perhaps 5,000 cases that fall within the terms of the appeal court's decision. Those convictions would have been based on a flawed procedure. We wish to prevent thousands of those appeals from succeeding on a technicality. The purpose of the original changes was to prevent unnecessary attendances in court, not to enable accused persons to get off on a procedural technicality—a point that worried my colleague, Mr Phil Gallie. We believe that the bill should ensure that there are no such appeals when accused fail to turn up for trial. We want a system that will work effectively.

I understand that it has been common practice among sheriff courts in summary cases to assume that the issue of a warrant for arrest at an intermediate diet has the effect of discharging the diet. Apparently, virtually all sheriff courts believed that to be the case. The sheriff in question also took the accepted line. If the procedures had not been short-circuited, the case might never have reached the appeal court. In other words, if the judge had discharged the trial diet, the appeal could not have taken place.

The problem was wholly and utterly unexpected. As soon as it emerged, I lodged a parliamentary question to ask the Scottish Executive what action it intended to take if sheriffs did not properly discharge the diet. The response I received was that legislation would be introduced. We are exceedingly grateful to the Deputy First Minister and the Solicitor General, who have seen fit to introduce the bill.

We are a constructive and responsible Opposition, which seeks to improve the lot of our countrymen and countrywomen. We believe that the country benefits when the Deputy First Minister and the Solicitor General have the good sense to respond effectively to our legitimate requests.

15:08

Pauline McNeill (Glasgow Kelvin) (Lab): It is hard to understand the appeal court decision in the case of Reynolds v PF Linlithgow. Many commentators think that the decision is wrong and I support that position. Until that decision, there had been an assumption among sheriffs, procurators fiscal, sheriff clerks and Crown Office and defence lawyers that issuing a warrant to apprehend because of an accused's failure to appear at trial would automatically discharge the trial diet. That is what everyone believed to be the case.

Some sheriffs have already begun to amend their minute to show that their intention was to discharge the trial diet. Michael Matheson rightly highlighted the fact that the style of sheriff clerks varies around the country. It is clear that only the words may have been missing; the clear intention was to discharge the trial diet. It is obvious that the intention of everyone involved was to discharge the court proceedings and set new proceedings, so that once the accused had been apprehended, he or she could be tried in a new trial diet.

As we heard, the appeal court's decision is serious and far-reaching. All common law offences triable by summary procedure—crimes of assault, drink driving, driving without a licence and breach of the peace, for example—are caught by the decision. We are dealing with serious charges.

It has been mentioned—this is crucial—that any person who has been convicted since 1981, against whom a warrant was issued for their arrest following their non-appearance, could use the court decision to challenge the competency of the conviction. In cases in which the accused has already pleaded guilty but awaits sentence, some defence lawyers are already seeking to challenge the competency of the proceedings where a warrant had been issued. To the public and politicians, it is alarming that any person who has admitted guilt to a charge would seek to be admonished on the basis that there is a procedural defect. No one anticipated such a decision.

To many, the decision in Reynolds v PF Linlithgow is unfair, particularly on the many victims who may not get satisfaction as a result. It is of some comfort to victims that, because there is a Scottish Parliament, we can deal speedily with legislation to address the loophole in the law.

I support the bill and the fact that it is retrospective. In response to Michael Matheson's point about whether that makes the legislation challengeable, the Parliament should note that the amendment is procedural and does not relate to substantive law. It is not challengeable under the ECHR.

A few cases will still be time-barred, which is disappointing for many victims of crime. However, as a result of the devolution settlement, we have been able to act quickly. We can take the bill through three stages today and I hope that the Parliament passes it in the interests of victims.

The Deputy Presiding Officer: This is a 30-minute debate. The Solicitor General must be called by 15:19, so the three remaining speakers must take less than three minutes each.

15:12

Bill Aitken (Glasgow) (Con): The bill is necessary and the fact that it had to be introduced in this manner in no way reflects on the Executive. However, I want to break from the consensus for a moment and criticise the Minister for Justice. He criticised the High Court in saying that its appeal decision was surprising. It was not surprising; an accident was waiting to happen.

Straightforward procedures should have been followed. It is up to the Crown to make a motion for a warrant if there is a failure to appear at the intermediate diet. If that warrant is granted, the Crown should also move for the discharge of the intermediate diet. If the depute fiscal fails to pick that up at that stage, it should not be beyond the wit of sheriffs—who, in most cases, earn almost £100,000 a year—to pick up the problem, discharge the diet and have that minuted appropriately. That is where the problem began. It did not begin with the setting up of the principle of the intermediate diet or with the Executive's doing anything wrong—it has not and should be congratulated on taking speedy action to remedy matters. Slipshod court procedure throughout Scotland has led to the difficulty. I am sure that the Solicitor General will take on board the fact that there is a requirement to ensure that systems in respect of minuting court disposals and procedures in sheriff courts throughout Scotland are standardised to ensure that such a situation does not arise again.

I was intrigued by the statistics that the Minister for Justice gave on the effectiveness of intermediate diets. Once they were introduced, there is no doubt that there were considerable savings in time and money and a reduction in stress for witnesses. Initially, at any rate, a considerable number of pleas were made at the intermediate diet, which saved a lot of court time. The most recent figures that I have indicate that intermediate diets are perhaps less effective than they used to be. I wonder whether the figures that Mr Wallace gave include cases disposed of by means of the issue of warrants rather than by means of the final conclusion of trials. Perhaps that point can be returned to in the debate.

In conclusion, there is nothing to take issue with in the way in which the Executive has handled the matter and we support its proposals enthusiastically.

15:15

Donald Gorrie (Central Scotland) (LD): Like other members, I congratulate the Executive on coming forward so quickly with this bill, which reinserts into the bath the bath plug that everyone thought existed but which some judges thought did not.

There seem to be two reasons why the bill is necessary. The immediate cause is the unexpected and rather difficult-to-understand decision by some judges. The underlying cause is the delays and unsatisfactory procedures that exist in our court system—despite the good efforts of Lord James Douglas-Hamilton and others in the past. As Johann Lamont said, the system is not friendly to witnesses, victims or to police time, although it is perhaps more friendly towards lawyers and criminals. We must put reasonable pressure on the accused and the lawyers, without removing democratic and civil rights. As Johann Lamont said, we should not play games—politics should not be a game, although some people think that it is, and the law should not be a game.

I ask the Minister for Justice and the Solicitor General for Scotland, who I understand is particularly skilled in these matters, to give us an assurance that, when this stooshie is over, they will have a serious look at improving our court system.

15:16

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I will make two points in rising to support the bill. First, intermediate diets are only as effective as the preparation that goes into their conduct. Most important of all, that preparation must be done by the procurators fiscal who are entrusted with the case load that has to go before the intermediate diets. It is axiomatic that if the fiscal carrying out a particular intermediate diet has not, for example, had sufficient opportunity to consider the papers, the intermediate diet will not only not help, but may well be a complete waste of time and expense.

My colleague Michael Matheson has mentioned that on a visit to Glasgow sheriff court—the busiest court in Scotland—the impression given by the Glasgow Bar Association was that intermediate diets frequently had to be adjourned because the fiscal had not had enough time to prepare properly. Preparing to prosecute a case of any complexity is by no means a simple matter and is a great responsibility. Lord James Douglas-Hamilton was right to argue that the point of intermediate diets was to save time and money and prevent police officers' time from being wasted. Before the introduction of intermediate diets, police officers regularly had to spend days hanging around the courts, instead of being on the

beat where everybody wants to see them. However, the system grinds to a halt unless the Procurator Fiscal Service is properly resourced.

I had limited experience of intermediate diets as a criminal practitioner, but in my experience, they were a curate's egg: some went extremely well, as they enabled the solicitor to have discussions with the procurator fiscal that allowed for a decision that dispensed with the need to waste court time; however, others resulted in the case being adjourned. I put it to the Executive that it is a false economy to under-resource the Procurator Fiscal Service. The cost of unnecessary adjournments is massive.

Johann Lamont (Glasgow Pollok) (Lab): Will Fergus Ewing give way?

The Deputy Presiding Officer: He is in his last minute.

Fergus Ewing: My second point is that we see today the benefit of having a legislature in our own country. Until the Parliament was created, Scotland had the only legal system in the world without a legislature. Thank goodness we now have one, because it means that we will be able to close this loophole later this afternoon.

15:19

The Solicitor General for Scotland (Mrs Elish Angiolini): I am grateful to the Parliament for the constructive and positive debate on this important bill. I will deal with some of the points that have been raised.

I am grateful to Mr Matheson and to Lord James Douglas-Hamilton for their points. It is clear that the decision of the appeal court will have a considerable impact on the criminal justice system unless legislation is passed swiftly to address the loophole. Mr Matheson raised who is to blame for the loophole and the different styles of procedure. In this case, the issue is not one of blame. The Criminal Justice (Scotland) Act 1980 is now 22 years old and there are a number of skilled practitioners—defence lawyers, procurators fiscal and judges at the shrieval level. Modestly, I include myself in that group—I am not necessarily skilled, but I am a practising prosecutor who has conducted intermediate diets.

As Mr Ewing pointed out, the courts are sizeable. The issue is not pressure or resources. A different interpretation has been placed on the legislation. The appeal court is perfectly entitled to make that interpretation, but it has caught the whole system by surprise. It is not constructive to attribute blame to any part of the system.

Section 150(3) of the Criminal Procedure (Scotland) Act 1995 is silent on the issue of discharge, although the statute explicitly provides for apprehension warrants to be granted. The appeal court has placed an interpretation on that section. We must address that interpretation.

Michael Matheson asked whether the bill is compatible with the ECHR. The bill would not be before Parliament if it were not compatible with the ECHR. The Executive can act only in a matter that is intra vires, which must be compatible with the ECHR. The concern might relate to retrospection and the possibility that article 7 of the ECHR provides some basis for a challenge. However, article 7 relates to substantive criminal law not to procedural criminal law, so it does not apply to the bill.

Mr Aitken, Mr Gorrie and Pauline McNeill raised important points about the system of intermediate diets. There are issues of resources, management and pressure in the system, but I suggest that we are unfair on ourselves—perhaps that is a Scottish characteristic—when we consider only our system. The Scottish criminal justice system is one of the finest in the world. It deals more swiftly with solemn crime than any other criminal justice system in the world, other than those in China and Macedonia. In other European jurisdictions, it is common for a person to be on remand for two to three years. In Scotland, people are in custody for 110 days. Sometimes we do not pat ourselves on the back for our achievements and for the fact that we deliver justice on a daily basis.

There are pressures on the summary system. It is clear that we must take action and we are doing so. The Lord Advocate is considering a major review of the internal structure of the system of prosecution and Sheriff McInnes is conducting a review of the summary system. We are acting on that front.

I thank members. Intermediate diets are useful; they reduce the number of witnesses and police officers who must go to court. We want to build on that model. The bill seeks to ensure a flexible system of intermediate diets. I stress that the prime focus of the bill is not the future; the bill is designed to deal with the difficulties that the appeal court ruling creates here and now.

I commend the bill to the Parliament.

The Deputy Presiding Officer: The question is, that motion S1M-2781, in the name of Jim Wallace, on the general principles of the Criminal Procedure (Amendment) (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Criminal Procedure (Amendment) (Scotland) Bill.

Parliamentary Bureau Motion

15:24

The Deputy Presiding Officer (Mr George Reid): The next item of business is consideration of a Parliamentary Bureau motion. I ask Euan Robson to move business motion S1M-2801, which is a timetabling motion for stage 3 of the Marriage (Scotland) Bill.

Motion moved,

That the Parliament agrees that, at Stage 3 of the Marriage (Scotland) Bill, debate on each part of the proceedings shall be brought to a conclusion by the time limits indicated (each time limit being calculated from when Stage 3 begins immediately after the conclusion of Stage 1 of the Criminal Procedure (Amendment) (Scotland) Bill).

Group 1 - no later than 30 minutes

Motion to pass the Bill - no later than 1 hour—[*Euan Robson.*]

Motion agreed to.

Marriage (Scotland) Bill: Stage 3

15:25

The Deputy Presiding Officer (Mr George Reid): We move to stage 3 proceedings of the Marriage (Scotland) Bill. I shall dispense with the usual long preamble and simply remind members that they should have with them the bill as amended at stage 2, the marshalled list that contains the amendments that I have selected for debate and the grouping that I have agreed. Each amendment will be disposed of in turn. The electronic voting system will be used for all divisions. I shall allow an extended voting period of two minutes for the first division that occurs after debate on the two amendments.

Section 1—Solemnisation of civil marriages at places approved by local authorities

The Deputy Presiding Officer: Amendment 1, in the name of the minister, is grouped with amendment 2. I call the minister to move amendment 1 and to speak to both amendments in the group.

The Deputy Minister for Parliamentary Business (Euan Robson): The purpose of amendment 1 is technical. The substantive amendment is amendment 2. Amendment 2 will place in the bill a right of appeal against decisions made by local authorities with regard to the locations of civil marriages. The importance of a right of appeal was noted by the Local Government Committee. The Executive lodged an appropriate amendment at stage 2, but the committee considered that the amendment was too widely drawn; therefore, amendment 2 narrows the scope of the grounds for appeal, which are set out in proposed subsection (2B). The grounds of appeal are:

"(a) that the local authority's decision was based on an error of law;

(b) that the local authority's decision was based on an incorrect material fact;

(c) that the local authority has acted contrary to natural justice; or

(d) that the local authority has acted unreasonably in the exercise of its discretion."

As members who study such things and members of the committee will know, that is almost exactly the text of the Civic Government (Scotland) Act 1982, which provides for similar procedures. That is a repetition of regulation 17 of the now-replaced regulations that were made under the bill, and it was acceptable to the working group on the regulations, which included representatives of the Convention of Scottish

Local Authorities and registrars' representatives. I do not think that I need to add anything to that.

I move amendment 1.

Tricia Marwick (Mid Scotland and Fife) (SNP): The SNP will support both amendments. I welcome the minister's amendment 2, which will place the right of appeal in the bill instead of in regulations, as was originally anticipated. The suggestion that the right of appeal would be put in regulations was of concern to the Local Government Committee and to the Subordinate Legislation Committee, and I welcome the fact that the minister has now taken the right steps.

It is right and proper that the grounds on which an appeal can be made are narrow and that it is not left to the sheriff to arrive at his own judgment of what is the right location. We welcome the clear definition of the areas of appeal and will therefore support both amendments.

Iain Smith (North-East Fife) (LD): The Liberal Democrats will also support the amendments. At stage 1, the Local Government Committee supported the request of the Subordinate Legislation Committee that the appeals mechanism should be included in the bill. An amendment was lodged at stage 2, which the Local Government Committee felt went too far. It is valuable that the Executive has taken account of the views of the Subordinate Legislation Committee and the Local Government Committee and concluded that the sensible way in which to proceed is to echo the provisions that exist in other legislation—namely the Civic Government (Scotland) Act 1982—and which are readily understandable. It is sensible to ensure that the right of appeal exists but is limited to errors in law and fact. I thank the minister for lodging amendment 2, which will tidy up the bill.

The bill is ready to be approved, so I am unsure how you are going to fill the next 35 and a half minutes, Presiding Officer.

15:30

Lord James Douglas-Hamilton (Lothians) (Con): I had not anticipated speaking, so my colleague Keith Harding will take over in a moment.

We welcome the bill and believe that amendment 2 is appropriate and wise. The right of appeal is not only appropriate, but will ensure fairness and justice for all concerned. We are grateful to the minister for lodging amendment 2.

The Deputy Presiding Officer (Mr Murray Tosh): I think that I am expected to call Keith Harding, but his button has not been pressed.

Mr Keith Harding (Mid Scotland and Fife) (Con): I would like to be called, but I do not know where we are.

I apologise for the delay, but I was called rather quickly. The Conservatives support amendments 1 and 2 and welcome the fact that the minister has taken on board issues that we raised. We will support the bill at the end of the day.

The Deputy Presiding Officer: I am sure that we all agree that that was worth waiting for. I call the minister to respond to the debate.

Euan Robson: I am pleased that amendment 2 has met with the acceptance of all parties, and of the Local Government Committee and the Subordinate Legislation Committee. It was important to include in the bill a right of appeal. The Local Government Committee and the Subordinate Legislation Committee proposed that important consideration and we are grateful for that. The scope of the bill is now correctly drawn.

I point out that that an appeal beyond a sheriff to the Court of Session is, as it says in proposed section (2E), limited to points of law only. There is nothing further to add, other than to thank members again for their help in constructing the amendments.

Amendment 1 agreed to.

Amendment 2 moved—[Euan Robson]—and agreed to.

Marriage (Scotland) Bill

The Deputy Presiding Officer (Mr Murray Tosh): We move to the next item of business, which is a debate on motion S1M-2780, in the name of Jim Wallace, which seeks Parliament's approval that the Marriage (Scotland) Bill be passed. I invite members who wish to speak in the debate to press their request-to-speak buttons now—or at least very soon. I call Euan Robson to speak to and move the motion.

15:33

The Deputy Minister for Parliamentary Business (Euan Robson): I want first to thank members of the committees who have taken a keen interest in the Marriage (Scotland) Bill, in particular the Local Government Committee, which was the lead committee. That keen interest and the responsiveness of the Executive to members' views resulted in a bill that will provide considerable service to the people of Scotland.

I want briefly to remind Parliament about the policy objectives of the bill, which are to permit civil marriages to be solemnised at locations other than registration offices; to authorise local authorities to approve locations for that purpose; to authorise local authorities to charge fees to meet related costs and for connected purposes; and to enable the registrar general for births, deaths and marriages to give guidance on the above to local authorities.

The bill will extend the choice of marriage venues for brides-to-be and bridegrooms-to-be. The bill's principles have been widely supported in the Parliament and beyond.

Members have, in addition to considering the bill, paid close attention to the draft regulations and guidance that were published when the bill was introduced. It was important that members of the lead committee had access to the regulations and guidance in order to compare and contrast them as they developed, and to assist the committee in its consideration of the bill. The drafts have been revised and amended in response to the views of the working group that the registrar general formed. I thank for their work the working group's members who are representatives of local authorities and registrars.

A new draft of documents has been produced for members' information in time for this debate. I am sure that the efforts of the working group will prove to be valuable when the Parliament finally and formally considers the regulations after the bill has been enacted. Copies of the latest version are available in the Scottish Parliament information centre and on the General Register Office for Scotland website. Copies have been sent to the committees that have been considering the bill.

It is also important to say at this stage that we are pleased to acknowledge the Local Government Committee's concerns, and that we will use the affirmative order process for the regulations.

I close by reminding members of the key advantages that the bill will bring. The main benefit is that the bill will significantly extend choice. Many members receive letters from couples who are planning their weddings, asking when it will be possible for them to be married in a civil ceremony in a place of their choice. We want to allow them to do that as soon as possible. Another benefit is that the institution of marriage will be strengthened if the couple's memorable day is in a place of their own choosing.

There will be incidental gains. Scotland is doing a great deal to promote itself as an excellent place to visit. Romance and an historical connection with marriage will add significantly to that. The bill will allow greater choice to visitors as well as to people who live in Scotland.

Because the Marriage (Scotland) Bill will extend choice and bring benefits to Scotland, I commend it to Parliament.

I move,

That the Parliament agrees that the Marriage (Scotland) Bill be passed.

15:36

Tricia Marwick (Mid Scotland and Fife) (SNP): As the Marriage (Scotland) Bill returns to Parliament in the last stage before it becomes law, I again put on record my party's support for it. I congratulate Euan Robson on the bill, which started out as his proposal for a member's bill before it was adopted by the Executive. When the bill was first debated in the chamber, I said that I was pleased that we would be able to act to make the happy occasion of marriage happier still for the individuals involved. During that debate, I was please to be able to put on record the good Scots word "winching".

In too many cases, couples who are considering marriage have been forced to make a choice between faith and location. In a multicultural society, we should not allow the matter of personal religious belief—or the lack of it—to put limits on where a wedding should take place. One in three people who were married in a religious ceremony would have had a civil ceremony if a suitable location had been available. The bill will offer people such a choice, which is why it is important.

To fill in time in a previous debate on the bill, we highlighted many tourist spots in our

constituencies. I will not do that again, but I point out that we have some nice castles in Fife.

The legislation is relatively uncontroversial and members should be able to unite in support of it. I welcome the Executive's sensible amendments on the matter of appeals over decisions that are taken by local authorities on the designations of approved places.

When first the bill was discussed, we had a problem with the fact that many of the provisions would be dealt with in regulations. The Subordinate Legislation Committee said that the bill did not strike the correct balance between primary and secondary legislation. The Local Government Committee was forced to consider a set of draft regulations, but would have preferred to consider more provisions in the bill. The minister's stage 2 amendments to make such regulations subject to parliamentary approval is a welcome step, but it falls short of allowing the Parliament and its committees fully to scrutinise and amend the regulations as we could have done had we been dealing with primary legislation. Those are minor points at this stage, but I hope that the Executive will consider them when introducing other bills.

I am pleased to support the bill, which should allow the Scottish Parliament to make the nation a happier place for those who happen to find themselves engaged and those rosy romantics in pursuit of marriage.

15:39

Mr Keith Harding (Mid Scotland and Fife) (Con): Once again, I apologise for my late arrival. However, it is quite normal at weddings.

I congratulate Euan Robson on introducing the bill to Parliament and the Executive on its taking on board of many of the amendments that were suggested by the Local Government Committee. Any legislation that helps to promote marriage and to increase the stability in family life that marriage offers is to be welcomed. However, the bill will not cover all eventualities or all problems; indeed, current legislation for church ceremonies does not do so either.

I recall my own marriage in Africa some 28 years ago. We wished to marry in the Church of Scotland church, but it was closed because the congregation could not get a minister. The Dutch Reformed Church agreed to our using its church, but it had no minister either. Eventually, the Salvation Army agreed to consider marrying us, but to finalise arrangements, we had to drive 200 miles into the African bush to meet a major at a leper colony that he ran with his wife. What we do for love!

The bill is worthy and the Scottish Conservatives are pleased to support it.

15:40

Trish Godman (West Renfrewshire) (Lab): The Local Government Committee welcomes the objectives of the bill, which will permit civil marriages at locations other than registration offices, authorise local councils to approve locations for that purpose and to charge fees to meet costs, and enable the registrar general to give guidance to local councils.

There is no doubt that, as other members have said, passing the bill will allow couples who choose a civil ceremony to choose from a wider selection of locations for their weddings. However, during the bill's progress through the Parliament, I have received rather interesting letters from people, some of which I certainly cannot repeat in the Parliament. However, I will mention one in which I was asked whether I considered that a descending, exploding platform above a circus ring would be "seemly and dignified". I felt that that was an exploding platform too far.

There are positives in the bill. For example, it will allow islanders who desire a civil marriage in their own community that option, which did not exist in the past.

I am pleased that the minister has listened to the Local Government Committee's concerns and addressed them to our satisfaction. I am particularly pleased that he rejected the notion that the registrar general, who is an unelected official, should be given the power to revoke a local authority's approval of a location. The local authority should be given legal responsibility for such decisions.

Although the committee was of a mind not to lose sight of the significance of the marriage ceremony, it is nearly impossible to define "seemly and dignified". My example of the exploding platform perhaps clarifies that. I am pleased that the minister has taken "seemly and dignified" out of the regulations and will rely on the sensible decisions of registrars.

The two amendments that were agreed to today, concerning the right of appeal to the sheriff on the appropriateness of the proposed marriage site and the outlining of the grounds of appeal on points of law, are helpful. Those grounds relate to local authority decisions that are based on errors of law or incorrect material facts, or where a local authority has acted contrary to natural justice or acted unreasonably in the exercise of its discretion.

When the bill was introduced, the Local Government Committee had concerns, which we

expressed at stages 1 and 2. Those concerns have been addressed to the committee's satisfaction.

I thank Euan Robson for introducing the bill to the Parliament and urge members to support it.

15:43

Iain Smith (North-East Fife) (LD): I welcome the bill. It is a very good example of the sort of thing that the Parliament can do that would not have happened before the Parliament was set up, because such a small piece of legislation would never have found time in the Westminster timetable.

The bill started life, as has been said, as a member's bill proposal from Euan Robson. When greatness was thrust upon him, he managed to persuade the Executive to take over and make it into an Executive bill. The fact that the Executive was willing to do that is also to be welcomed.

I am pleased with the way in which the matter has been dealt with through the committee structure, because it has shown that that structure works. As Trish Godman said, the Subordinate Legislation Committee and the Local Government Committee both expressed a number of concerns at stages 1 and 2. The minister considered those concerns and brought back positive amendments.

The draft regulations that were published a couple of days ago are very different from those that we saw at stage 1, about which we had great concerns. I, in particular, had concerns about their heavy-handed nature. The new draft regulations have a much lighter touch. I asked whether we needed regulations at all and was told that local authorities wanted them. Local authorities seem to feel that they must be regulated and the new draft regulations allow them a framework rather than a prescriptive set of rules. That is a much better way forward.

The amendments to the provisions that cover the appeal procedure are also sensible. It would be nonsense were sheriffs able to second-judge the appropriateness of discretionary decisions that have been taken by local authorities. It is obviously up to local authorities to take account of all the factors, some of which sheriffs might not take into account, for example in relation to health and safety. Local authorities have a duty to protect the health and safety of their employees—the registrars who will carry out the ceremonies at the various places. A sheriff might decide that he is not particularly concerned about that issue in determining the outcome of an appeal. It is right that sheriffs will no longer be able to second-judge the discretionary element. They will be able to judge only on questions relating to whether there has been an error in law, questions concerning material facts, questions of natural justice or questions whether there has been inappropriate use of discretion. That marks an improvement.

I was a bit disappointed with Tricia Marwick's speech. I had hoped that she would go a bit further than she did in her summing-up speech during the stage 1 debate, in which she made some very interesting points about some of the locations in Fife that she visited as a youth. In that debate she said:

"I shall stop at that point, in case my youthful indiscretions come tumbling out."—[*Official Report*, 17 January 2002; c 5571.]

I hoped that we would hear episode 2 today but, sadly, she decided to be more discreet on this occasion—perhaps bearing in mind the solemnity and dignity of the occasion. It is useful that the words "seemly and dignified" have found their way out of the regulations. They are replaced by a more appropriate phrase:

"that the place will not compromise the solemnity and dignity of civil marriage".

That marks a much more sensible approach than a phrase whose meaning no one really knew.

The bill is now very good. It is overdue in this country, and will allow a great boost for the tourism industry. I will not repeat the passages in the *Official Report* about the many excellent locations in North-East Fife where weddings can now take place. I know that we have plenty of time left—members could probably spend the next 40 minutes or so advertising tourism in their areas.

I hope that members will take advantage of this opportunity, and that we will get some excellent wedding venues registered. I again congratulate Euan Robson on introducing the bill. I thank him, the Scottish Executive and the Local Government Committee officials for the way in which the bill has been handled.

The Deputy Presiding Officer: I call Alasdair Morgan. [MEMBERS: "Alasdair Morgan?"] Your name was on screen, Mr Morgan. I conclude that you possibly did not wish to contribute.

15:47

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): I will certainly rise to speak briefly in favour of the motion, even though I do so simply because I pressed my request-to-speak button by mistake.

The Deputy Presiding Officer: Be careful never to get married by mistake.

Alasdair Morgan: In any case, it is entirely appropriate that another member from the SNP benches rises to support the proposed legislation. Thank you.

The Deputy Presiding Officer: I think that that was an "I do." I call Euan Robson to respond to the debate.

15:47

Euan Robson: This has been an interesting, if short, debate. I am grateful for the support that the bill has received from the Parliament. When I looked at today's business bulletin, I was anxious that if we did not get the procedure right, people might end up having a civil marriage in the middle of an intermediate diet, and that accused persons might suddenly be able to have their intermediate diets held at a location of their choice in Scotland. I think, however, that we have got the procedure straight and I am pleased that that is the case.

In response to the Parliament's wishes, the Executive has fine-tuned the bill. We lodged stage 2 amendments to provide that, on the first occasion when regulations are made under the bill, they will be subject to the affirmative procedure. Today, the Parliament has passed our amendments to include in the bill the right of appeal against a decision made by a local authority, but—as the Local Government Committee and the Equal Opportunities Committee suggested—on limited grounds.

We have amended the draft regulations and guidance to take into account members' views, and so that they fit more closely the procedures that local authorities currently use in licensing locations. I agree with Iain Smith that the regulations as they were originally drafted looked cumbersome, but I was pleased to hear that he feels that they have been simplified considerably.

With your indulgence, Presiding Officer, I turn now to the comments of the convener of the Local Government Committee on the nature of the regulations. I know that it is not strictly within the scope of the debate on the bill, but it would perhaps be useful to dwell on a couple of points that arose from the discussion about the regulations.

First, the draft regulations were made available so that the committee had them when it was considering the bill, rather than having to proceed in some form of vacuum. I appreciate Tricia Marwick's point about the balance between regulations and primary legislation, but I think that that balance was struck incorrectly to start with. I am pleased that she feels that the balance has tilted back in the appropriate direction.

I was prompted to write to the convener of the Local Government Committee because of views that were expressed in the stage 1 debate on 17 January. That debate focused on two aspects of the draft regulations, which will be published when the bill is enacted. In my letter, I indicated what the Scottish Executive planned to do to address the concerns that were expressed.

As previously drafted, the regulations required a local authority not to approve a place of solemnisation of civil marriages unless that authority was of the opinion that the place was a "seemly and dignified" venue for the solemnisation of the marriage. The regulations required that an authority be

"satisfied that the place has no recent or continuing connection with any religion or religious practice which would be incompatible with the use of that place for the solemnisation of civil marriages".

The clear preference of local authorities and registrars is that the draft regulations should continue to include provisions to guide local authorities on the suitability of places for civil marriages and to draw a clear demarcation line between civil marriages and religious marriages.

As has been discussed, there was concern about the rather antiquated language of "seemly and dignified". There was also concern that the use of that language would require local authorities to make an essentially subjective judgment. In making such a decision, local authorities' main focus should be on the primary use of a location. A local authority should reach a view about whether the primary use of a location would render it unsuitable if that use could be regarded as demeaning marriage or bringing it into disrepute.

Bearing that in mind, we have—as Iain Smith said—amended the draft regulations to provide that the location should not be approved if a local authority is of the opinion that it would

"compromise the solemnity and dignity of civil marriage".

That provides local authorities with adequate guidance and deals with the matter of exploding platforms, which were mentioned earlier.

With regard to the religious connection, there was concern about the provision that a place should have no

"recent or continuing connection with any religion or religious practice".

The stage 1 debate focused on that aspect, but did not fully acknowledge that the provision in the draft regulations is essentially a two-stage test.

First, a location must have

"no recent or continuing connection with any religion or religious practice".

The second test is that the location must not be

"incompatible with the use of that place for the solemnisation of civil marriages".

That means that a place that is used occasionally for religious practice, but whose primary purpose is non-religious, may be suitable

for the conduct of civil marriages. A place in which a religious group meets occasionally would be suitable if its primary use was secular. Similarly a place that has the appearance of a religious building, but which is currently used primarily for secular purposes, might be suitable. In determining whether such places might be approved as venues for civil marriages, local authorities would examine and take into account present-day circumstances.

Although the Executive appreciates the comments that were made during the stage 1 debate, we feel it necessary to restate the purpose of the Marriage (Scotland) Bill, which is to make arrangements for civil marriages.

The arrangements for religious marriages are unaffected by the bill, so couples who wish to have a religious dimension to their marriage may opt for a religious marriage. The bill addresses the needs of those who would prefer religion not to be part of their marriages. Therefore, we still consider it necessary for the draft regulations to draw a demarcation line between the arrangements for civil and religious marriages. I hope that what is now provided in the draft guidance will be of better assistance to local authorities.

In both the matters of a place having no religious connection and being a "seemly and dignified" venue, the Executive believes that the local authority that is considering the application is the best arbiter of whether a place meets the conditions. We acknowledge that in some circumstances it might be difficult for a local authority to make such a decision, but we also feel that it is an important part of local democracy that such decisions are taken by the local authority concerned, rather than by the Executive. I hope that that has been of some assistance to members.

I would like to thank all those who have supported the bill. I am particularly grateful for the continuing support of those who supported the original proposal for a member's bill back in March 2000. I was interested to hear of Keith Harding's nuptials; his fortitude in getting married has clearly sustained him in his 28 years of marriage. I am grateful for the cross-party support that the bill has received and I would like to thank the Local Government Committee for its thorough consideration of the bill. Although it is a small bill and a modest measure, it is important. I commend the Marriage (Scotland) Bill to the Parliament.

The Deputy Presiding Officer: That concludes the stage 3 debate on the Marriage (Scotland) Bill. I advise members that as a result of the business motion that was agreed to earlier, we can begin our committee proceedings on the Criminal Procedure (Amendment) (Scotland) Bill no sooner than 4.24 pm.

Meeting closed at 15:56.

Committee of the Whole Parliament

[THE CONVENER *opened the meeting at 16:24*]

Criminal Procedure (Amendment) (Scotland) Bill: Stage 2

The Convener (Mr Murray Tosh): I open this meeting of the Committee of the Whole Parliament to consider stage 2 of the Criminal Procedure (Amendment) (Scotland) Bill. For the purposes of the meeting, the occupant of the chair is the convener.

I thank members for their forbearance during the interval. I invite any members who have questions on the procedures to be followed to raise them now before we begin. I invite any member who wishes to speak to either section of the bill to press their request-to-speak button when we move to the relevant section.

No amendments have been lodged for this stage, so the only requirement is to consider and dispose of the two sections of the bill and the long title.

Sections 1 and 2 agreed to.

Long title agreed to.

Meeting closed at 16:26.

Scottish Parliament

[THE DEPUTY PRESIDING OFFICER *opened the meeting at 16:26*]

Criminal Procedure (Amendment) (Scotland) Bill: Stage 3

The Deputy Presiding Officer (Mr Murray Tosh): This is an interesting trip through the procedures.

The next item of business is a debate on motion S1M-2782, in the name of Mr Jim Wallace, which seeks agreement that the Criminal Procedure (Amendment) Scotland Bill be passed. The debate must be completed by 5 pm. I invite those members who wish to speak in the debate to press their request-to-speak buttons now.

16:26

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I do not want to over-elaborate on what has been said, although there may be cause to do so.

I acknowledge that it is unusual for a bill to proceed through all its stages in the course of an afternoon. I thank the business managers of all parties for helping to facilitate that, and I thank Michael Matheson and Lord James Douglas-Hamilton in particular—and others who have taken part in the debates that we have already had—for their constructive approach to the bill, their recognition that an emergency had arisen and their co-operation in ensuring that the Parliament could address the matter speedily. I also thank the Solicitor General for Scotland, not only for supporting me today and helping to get the bill through but for some valued advice and discussion in the days since 14 February, when the appeal court delivered its judgment. I thank officials in the justice department and the Crown Office, who responded promptly to the situation that arose.

One of the options we considered was to find another case in the system that could be brought before the appeal court—perhaps a five-judge appeal court. It was thought that that was not appropriate, not least because the answer might have been the same. Every day, sheriffs were hearing more cases and cases were being discharged. It was therefore important that we brought the bill to Parliament as soon as possible.

The appeal court ruling was unexpected. Bill Aitken said that it was a mistake waiting to happen and others have called for a more systemised approach throughout Scotland. I have discussed the matter with the Solicitor General and have

asked whether we need to improve early-warning procedures in general. It is fair to say—the Solicitor General will make this comment when she winds up—that even if there had been the best early-warning system, no one thought that this case would bring about this result. It was completely unexpected.

In many respects, the approach was a systemised one, as it was the procedure in most sheriff courts. That meant that when it happened, more cases fell than would otherwise have been the case. Systemised approaches have great strengths and merits, but if a flaw is identified in the process, the consequences are often much greater.

Numerous cases would have been lost if we had not introduced the bill. Justice would not have been served if cases had collapsed for purely technical reasons. As I said, we could have faced an unquantified financial pressure from claims for compensation from those whose convictions might have been quashed on appeal. It is estimated that at least £6 million from fines might have had to be returned.

The Crown Office estimates that 15 per cent of intermediate diets end in the issue of an arrest warrant. Although statistics are not collected centrally, such an estimate closely accords with evidence from a sample of four sheriff courts that were studied in 1997-98. Over the period studied, the issue of an arrest warrant was the outcome in 14 per cent of intermediate diets. In 2001, there were 25,253 intermediate diets at sheriff courts alone. On the assumption that in 75 per cent of such cases in the sheriff courts and in around 50 per cent of cases in the district courts, the trial diet would not have specifically been discharged when the warrant was granted, the potential number of cases affected in any year would have been almost 3,000. It is clear that the bill is necessary.

By definition, the bill needs to be retrospective. The Crown Office took prompt action to ensure that, in all cases that were due to come to intermediate diet since 14 February, the trial diets were expressly discharged when warrants for apprehension were issued. Therefore, the problem lies not with future cases but with the present and with the past. After careful thought, we concluded that introducing a bill with a narrowly targeted effect was a legitimate way to proceed, as it would be in the interests of all stakeholders. As our intention was to legislate, it obviously made sense to do so as quickly as possible.

I commend this brief, simple and useful bill to the Parliament.

I move,

That the Parliament agrees that the Criminal Procedure (Amendment) (Scotland) Bill be passed.

16:32

Michael Matheson (Central Scotland) (SNP): During the course of our debates on the bill, a number of extremely important contributions have been made. Several individuals have raised important points, in particular about resources, which I hope ministers will reflect on. We are all conscious of the good work that is done by our procurators fiscal and court administrators, but we need to ensure that they have the resources to do their job as well as possible.

Members also recognise that responsibility for the situation does not lie with particular organisations or individuals, such as the Crown Office or the sheriffs. All departments that play a part in the administration of justice in Scotland need to work closely together to ensure that such problems do not occur.

I listened to what the minister said about the standardisation of procedures in courts and the potential problems that can be encountered. We need to weigh up whether, as well as removing problems, standardisation would create other potential difficulties. An evaluation needs to be made of the best approach to allow different courts to have the necessary flexibility. However, it is important that the public have confidence in the system. The potential for difficulties exists, but I am of the view that we should seek standardisation so that public confidence in our justice system is maintained. There may be merit in pursuing standardisation where that is necessary.

Several members have highlighted the value of the Scottish Parliament, which has responded to the situation so rapidly. I would be surprised if Westminster could have responded as quickly. It is to the credit of the Executive and the Parliament—and all the parties within it—that we have been prepared to move so quickly.

Mr Jim Wallace: It is always fair to be fair. On 2 April 1998, when another glitch in the system of intermediate diets was identified, the House of Commons managed to pass the Criminal Procedure (Intermediate Diets) (Scotland) Act 1998 after a debate that started at 6.59 pm, when Mr Henry McLeish rose to move the motion on second reading, and concluded at 7.23 pm, I think. The House of Commons therefore did its work a bit quicker than we have.

Michael Matheson: Well done, Westminster. However, I think that we probably do things better than Westminster, irrespective of the time taken.

Several members mentioned that the reason for passing the bill on an emergency basis is that the victims of crime could suffer most if they saw a person accused of committing a crime walking away as a result of an administrative problem. An

accused person should have their day in court to justify themselves and put their case. It is important that victims have confidence in the Scottish criminal justice system and see justice being done.

I thank the minister for making his officials available to Opposition spokespersons for background briefings and I await the latest instalment from Linlithgow sheriff court.

16:36

Lord James Douglas-Hamilton (Lothians) (Con): I, too, thank the minister and the Solicitor General. The Law Society of Scotland has confirmed that the bill will put in statutory form procedure that has been followed in practice by sheriff courts since the advent of intermediate diets in 1981. That will ensure that those accused or convicted of crime will not benefit from their failure to appear at an intermediate diet to which they have been lawfully cited. The bill provides a quick and effective solution that an appeal to a five-judge court might not have provided.

Johann Lamont drew attention to a number of issues relating to the subject that are worthy of consideration outwith the context of the bill. I would like to draw one procedural matter to the attention of the Deputy First Minister and Minister for Justice. I received written answer S1W-22672 from the Lord Advocate, which showed an alarming rise over the past four years in the time taken between appearance on petition and the service of the indictment in bail cases. Indeed, the *Daily Mail* reported that, in 1997-98, 40 per cent of cases took over nine months. That has grown to 51 per cent, which is a record about which we should all feel substantial concern. The figure is a clear indication that an increase of resources for procurator fiscals' offices may be required. I request that action be taken at the first available opportunity. The First Minister gave a positive response at First Minister's question time on the matter a few days ago—he gave a sympathetic reply. I hope that, between the Solicitor General, the Deputy First Minister and the First Minister, there will be a positive outcome on that matter, too.

16:38

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Given where we meet, we should probably avoid the indulgence of over-self-congratulation. However, this business is part of what the Parliament is here to do. Our job is to make good law, improve law and amend or repeal bad law. The Parliament's speed of response is positive proof again—were it needed—of the need for, and the benefits from, the devolution settlement.

I recognise and share the strength of feeling about the inadequacy at times of our criminal justice system. Our system is based on the rule of law and depends on the counsel for the accused being a relentless advocate on his client's behalf without fear or favour of the judiciary, public opinion and even of legislators, on time scales that are unequalled in any western democracy.

We may look to other countries for comparisons, but China has little to teach us about the dispatch of summary criminal business. Our system of independent advocacy is part of our rights-based judicial system, which includes recourse to an appellate structure and a legislature to correct or amend flaws, at the heart of our democracy and the relationship between state and citizens. Like Pauline McNeill, I doubt that any reasonable citizen—for present purposes I will include most trial advocates in that definition—was not at least surprised by the terms of the opinion of the appeal court.

I commend the Executive for moving to remedy the defect, because I accept the Deputy First Minister's point that we should not sit around waiting for another suitable vehicle to try to get a bench of five to overturn what is at least a questionable decision. One might have seen the sense in the decision if there had been a co-accused with Mr Reynolds at Linlithgow. In those circumstances interests other than those of the non-attending accused might have come into play, but that was not mentioned in the five-page judgment that brings us to this afternoon's business. Where was the prejudice in this case? I do not especially want to deal with the circumstances of a particular case—it seems that it did not trouble their lordships in the appeal court too much either—but is it suggested that Mr Reynolds, a man who did not turn up to answer a charge of theft while already on bail, was in some sense prejudiced? Does anyone suggest that Mr Reynolds really wanted to turn up on 30 June?

Michael Matheson, when speaking to motion S1M-2779, made a very welcome point in showing the SNP's support for the use of emergency procedures and for putting the existing procedure on a statutory footing. I say the same for Lord James Douglas-Hamilton. The support of all parties in the chamber and the work of the officials to get the bill through is to be welcomed. As Johann Lamont pointed out, the loophole is not of our making but it is our responsibility to close it.

A different Mr Matheson spoke in the stage 1 debate—or perhaps he was speaking from a different draft. The present case has nothing to do with pressure on procurators fiscal or on the system, nor did the Crown Office have anything to do with the case until the appeal came forward. An entirely different and better set of circumstances

applies in the High Court of Justiciary, where a warrant is taken, the accused is apprehended and the instance does not fall. Fergus Ewing made a similar error. As Jim Wallace said, the bill restores us to the position that was thought to apply.

The bogey of article 7 of the ECHR has been raised in relation to the provisions on retrospectivity at section 1(3). Pauline McNeill made the important point that there will, of course, be arguments on the borders between substantive and procedural and as night follows day there will be ECHR challenges, not least in Linlithgow—perhaps there will be a new body of vexatious litigants. The real question is whether those challenges will succeed. I hope that the Solicitor General will give us comfort on that point.

In conclusion, there are worrying aspects to how this decision came about at the court that sat on 14 February and delivered a singularly inappropriate Valentine's day present to the people of Scotland. Will the justice ministers and the law officers examine closely, in tandem with the Lord Justice-General, the requirements for the manning of the appeal court? Will they consider again the incidence of retired judges, as in the present case, sitting in the appeal court? We sometimes want their experience, but perhaps not all the time. Will they also consider again the incidence of outer house judges sitting in the appeal court? Will they confirm later whether the demands of Lockerbie have any implications for the resources of manning the appeal court?

My bee in the bonnet on the matter is that we should ensure that we re-examine the benefits or otherwise of codification of the criminal law. That has been done partially in relation to the statute base, but a better exercise for the Parliament would be to consider the benefits of codification.

The proposed section 150(3B) of the Criminal Procedure (Scotland) Act 1995 is a welcome provision. We should not forget the circumstances that allowed people to think that the trial diet was not proceeding. There was always the hope that the accused might be apprehended and brought before the court before the trial diet. That proposed section is a welcome retention. We should not throw out the baby with the bath water.

I commend ministers on the speedy introduction of an important bill, although I still scratch my head as to why, post-devolution, we refer to amendment bills as being for Scotland. Where else are we legislating for? Aside from that, I commend the bill and urge members to do likewise.

16:46

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): I want to speak briefly, but perhaps at slightly greater length than I did on the Marriage (Scotland) Bill. I am prompted by two events during the debate on the Criminal Procedure (Amendment) (Scotland) Bill.

The first event was the speech by Johann Lamont and Phil Gallie's intervention. I hope that I do not misinterpret them, but I think that they said that lay people—I include myself in that—cannot understand the acquittal of guilty people on technicalities. There have been all sorts of such technicalities lately, ranging from the one that we are discussing today to technicalities in defective warrants.

The second event was the subsequent statement by the Solicitor General for Scotland on article 7 of the ECHR. She said that that article does not apply to the bill because it applies only to substantive criminal law and not to procedural criminal law. Until today, I was blissfully ignorant of the existence of those two kinds of law, but I understand the point. Is it beyond our ability to devise a system that does not allow flaws in the application of the technical procedural law to overturn the manifest evidence of the substantive criminal law? If those two are separate for purposes of the ECHR, they must be separate for the purposes of our courts when they arrive at a verdict.

When we debate the detail of bills, particularly when we query words such as "reasonable" or, in connection with the Freedom of Information (Scotland) Bill, "substantial", members are often told that those words do not have to be defined in the bill because the courts are used to interpreting their meaning. We hope that in interpreting what Parliament means by those words, the courts will use their common sense. In some cases, that common sense flies out of the window when the courts deal with their procedure. Our constituents need reassurance from the Parliament that we will move to a system in which common sense will apply in our courts and in which procedure will not be the end as well as the means.

16:48

Bill Aitken (Glasgow) (Con): It is worth while reflecting on what might have happened if the bill had not been introduced. Johann Lamont articulated well the point that the most serious consequence would have been a further loss of confidence in our legal system. Without the bill, people who should be locked up would be on the streets, drivers who should be disqualified would be driving and the Exchequer would take a hit of £6 million because of fines that would have to be remitted back to those who paid them. It is unlikely that the fines would have been paid back at the rate of £4 a week—the rate at which most of them were paid. There might have been value in that injection of cash into some economies, but paying

back the fines would have caused considerable procedural difficulties for the authorities involved. We have done a good afternoon's work.

Leaving aside the fines, the real issue is the confidence that people should have in our judicial process. Alasdair Morgan was correct to point out that, as people see criminals getting off on what are perceived as mere technicalities, our judicial process comes in for a degree of criticism that none of us particularly likes.

That said, perhaps the opportunity should be taken to reconsider the intermediate diet process. With characteristic modesty, Lord James Douglas-Hamilton downplayed his own part in the introduction of that process, but it was well thought out and there were undoubted savings. However, I question whether those savings now apply. It seems that the criminal classes are increasingly intent on postponing the evil day as long as possible. Brian Fitzpatrick was right to say that, in the case of Reynolds v PF Linlithgow, Mr Reynolds seemed to have no great degree of enthusiasm to thole his particular assize.

It was apparent from Brian Fitzpatrick's thoughtful contribution that he is no longer totally reliant on appearances before senators of the College of Justice for a living, as he had some hard words to say about them. He could well receive a response on his next appearance, but I am sure that he will cope with it more than adequately.

It has been a good afternoon's work. The Parliament has shown that it can cope effectively and speedily with problems of this type when they arise. The situation was nobody's fault. From the start, we recognised that the Executive was not responsible for the difficulties. Some blame might be allocated to the Crown authorities, sheriffs and magistrates, but we have plugged the loophole and we can be content with the way in which we have dealt with the matter.

16:52

The Solicitor General for Scotland (Mrs Elish Angiolini): I am grateful to members and I have listened with interest to the mature and consensual debate on an issue that is vital to confidence in the criminal justice system in Scotland. This short and simple bill is necessary to correct a procedural flaw based on the explicit nature of interlocutor made by a judge in the context of a summary court, albeit that the intention of the judge and other practitioners in those courts over 21 years was that the trial diet should be discharged and that that was a common understanding. It is therefore important that, when an appeal court has decided that such an interpretation is not accurate, we act swiftly. That is what we are doing today and I am grateful for members' assistance in our doing so.

I turn to some of the points that have been made in the debate and address Mr Matheson with a degree of trepidation. When the word Linlithgow is heard, it conjures up pictures of a Bermuda triangle as far as legal points are concerned. However, the fastidiousness of the solicitors in Linlithgow should not be underestimated. It is important that these points are explored. As Mr Gallie rightly said, it is important also that the legislature moves to close technical loopholes where they can be anticipated. The Executive is reviewing summary procedure and has appointed Sheriff Principal McInnes to do just that. I hope that, in future, we will have a system that will not allow technicalities—which the public cannot understand—to result in an acquittal.

I also commend Mr Matheson for his point regarding the good work of procurators fiscal and sheriff clerks. That work is often not recognised; instead, the headlines focus on the mistakes that are made by the prosecution and the courts. However, day in, day out, prosecutors and the courts are working efficiently to get through a large volume of business as effectively as, if not more effectively than, any other criminal justice system in the world. They are to be commended for that work.

Although there has been a degree of delay in some of the cases on petition, we must consider what is being done to address that. A major review is being undertaken into the preparation of High Court and serious cases to ensure that we address the matter, and we undertake to do that as swiftly as possible. A significant review is also being carried out by Lord Bonomy into the operation of the High Court. Together with an internal review of the management structure and resourcing of the Procurator Fiscal Service, those reviews should produce recommendations that will enable us to look forward to increasing the efficiency of the system.

Intermediate diets play an major part in that improvement in efficiency and it is important that they are allowed to work effectively. There has been a significant reduction in the number of witnesses who are required to come to court at trial diet and in the number of police officers who are so required. Research showed that 40 per cent fewer police officers are required to come to court trials in a summary context since the introduction of the new style of intermediate diet. It is a huge benefit to the public of Scotland not to have those police officers in court. However, there should be no complacency about the matter. More can be done. The Minister for Justice and the Lord Advocate are taking steps to ensure greater efficiency throughout the criminal justice system,

so that it works much more like a well-oiled machine.

On the issue of the bill, Brian Fitzpatrick's points are commendable. It is the case that the bill is not due to pressure, but to an issue that could not have been anticipated and that has taken the system by surprise. That is why we are acting swiftly to address that issue.

On article 7 and the division between procedural and substantive law, Mr Morgan made a point that I want to ponder. A sharp division between procedural and substantive law is not prevalent in all systems of criminal justice. The essence of my earlier point about article 7 is that it was created to ensure the protection that a person who commits an offence must be punished only when there is certainty that the offence was a crime at the time when it was committed. The ECHR attacks retrospection that makes crime retrospective so that something can be enforced and punished. That is not the case with this bill. We are simply curing a procedural law, not creating a crime.

The bill is a reaction to ensure that there is confidence in the criminal justice system. There should be confidence in it, as we are responding swiftly to the problem and ensuring that the public do not think that people accused of a crime will get off on a technicality.

Alasdair Morgan: I was not questioning in my speech the retrospection's validity. I agree with that. I was asking whether the same principles that underline the fact that the retrospection is within ECHR provisions might not find an application within the Scottish criminal justice system.

The Solicitor General for Scotland: The great benefit of the Human Rights Act 1998 and the Scotland Act 1998, which incorporates the ECHR in our domestic law, is that that they provide the opportunity for the Criminal Procedure (Amendment) (Scotland) Bill, which is a dynamic piece of law, to be interpreted by the courts according to the ECHR. I hope that we see that progress take place gradually in the courts and in the chamber.

The bill is needed and must be passed swiftly. The Minister for Justice mentioned the financial implications of failing to pass the bill, but there are other implications. The procurators fiscal and the courts are dealing with a heavy work load. The implications of failing to pass the bill are profound for procurators fiscal throughout the country who have had to assess the implications of the Reynolds case and take action in respect of them. The bill will swiftly call that process to a halt and allow prosecutors to get on with their business of prosecuting and investigating crime. I therefore commend the bill to Parliament and ask it to pass the bill as introduced.

Parliamentary Bureau Motions

The Deputy Presiding Officer (Mr Murray Tosh): The next item of business is consideration of two Parliamentary Bureau motions. I ask Euan Robson to move motion S1M-2798, in the name of Patricia Ferguson, which is on the designation of a lead committee.

Motion moved,

That the Parliament agrees the following designation of Lead Committee—

the Justice 2 Committee to consider the Damages (Personal Injury) (Scotland) Order 2002 (SSI 2002/46).—[*Euan Robson.*]

The Deputy Presiding Officer: The question on motion S1M-2798 will be put at decision time.

I now ask Euan Robson to move motion S1M-2794, in the name of Patricia Ferguson, which is on the approval of a Scottish statutory instrument.

Motion moved,

That the Parliament agrees that the following instrument be approved—

the draft Forth Estuary Transport Authority Order 2002.—[*Euan Robson.*]

The Deputy Presiding Officer: While we tick off the 20 seconds to decision time, I want to say that we much regret the hiatus in this afternoon's business. The clerks will look carefully at the procedures that were used for the first time today to assess whether, if they are required in the future, we might avoid what was an unfortunate break in our business.

Decision Time

17:00

The Deputy Presiding Officer (Mr Murray Tosh): There are four questions to be put as a result of today's business. The first question is, that motion S1M-2780, in the name of Jim Wallace, which seeks agreement that the Marriage (Scotland) Bill be passed, be agreed to.

Motion agreed to.

That the Parliament agrees that the Marriage (Scotland) Bill be passed.

The Deputy Presiding Officer: The second question is, that motion S1M-2782, in the name of Jim Wallace, which seeks agreement that the Criminal Procedure (Amendment) (Scotland) Bill be passed, be agreed to.

Motion agreed to.

That the Parliament agrees that the Criminal Procedure (Amendment) (Scotland) Bill be passed.

The Deputy Presiding Officer: The third question is, that motion S1M-2798, in the name of Patricia Ferguson, on the designation of a lead committee, be agreed to.

Motion agreed to.

That the Parliament agrees the following designation of Lead Committee—

the Justice 2 Committee to consider the Damages (Personal Injury) (Scotland) Order 2002 (SSI 2002/46).

The Deputy Presiding Officer: The fourth question is, that motion S1M-2794, in the name of Patricia Ferguson, on the approval of a Scottish statutory instrument, be agreed to.

Motion agreed to.

That the Parliament agrees that the following instrument be approved—

the draft Forth Estuary Transport Authority Order 2002.

Chronic Pain

The Deputy Presiding Officer (Mr George Reid): The final item of business today is a members' business debate on motion S1M-2597, in the name of Dorothy-Grace Elder, on the plight of chronic pain patients.

Motion debated,

That the Parliament considers that the Scottish Executive and health boards should move the plight of chronic pain patients up the health agenda, chronic pain being regarded as the most neglected health issue in Scotland and possibly the biggest in terms of numbers as, according to the Pain Association Scotland, some 500,000 people suffer long-term pain through problems such as back pain and arthritic conditions, and agrees with health professionals who have appealed to the Parliament that the wreckage of many lives through lost jobs, and the loss of millions of pounds to the economy, could be relieved by ending the dire shortage of specialised pain clinics and staff in Scotland.

17:03

Dorothy-Grace Elder (Glasgow) (SNP): The large bundle of mail that I have with me is just this morning's responses from people who have taken part in the interactive discussion forum on the Parliament's website, which opened on Monday. I have not even properly printed them all out yet. The public's letters and postings, which have come showering in, must shock politicians into action.

What does chronic pain feel like? James MacDonald, a former soldier who lives in Glasgow, has severe and untreated back pain. He contacted Parliament to tell us pretty much the same story that we heard from all over:

"Pain has ruined me … All I've ever wanted in life was a home, a family of my own and a job. These I cannot have, all due to pain. I live as a virtual prisoner, out of my mind with pain and the loneliness that I have to put up with … at 2 a.m., sitting at the end of my bed, weeping with pain and unable to cope with pain, I feel so damned alone and frightened … We sufferers have no voice! We, the sufferers, feel impotent, neglected, invisible, third class citizens."

He says that he looks to Parliament to

"fight, fight and fight again for us, the invisible people who have no champions".

Surely we were all elected to be champions on just such immense human issues.

I welcome to the public gallery the people in pain who have made long journeys to come here today and the doctors, nurses, physiotherapists and others who back them. All those people wish to see the Scottish Parliament haul up chronic pain from the very bottom of the health agenda.

Thanks to the fact that the Scottish Parliament

has the world's most advanced parliamentary website, this debate is being watched live all over the globe. I welcome watchers from everywhere. We have had postings on the Parliament website from as far afield as Europe, California and Detroit. Pain is an international issue. As the Scottish Parliament has the first parliamentary cross-party group on chronic pain—Westminster does not have one—perhaps people in other countries are getting the message that we are trying to take a lead.

Chronic pain is a monster that devours lives. It wastes £1,000 million a year in the Scottish economy by destroying jobs and preventing people from working. However, the Parliament can start to tame the monster by, for a start, expanding chronic pain services throughout the country.

Chronic pain is the biggest single health issue in the country. A multitude suffers: 550,000 people, according to the Pain Association Scotland, which has just updated its previous estimate after a three-year study. Those people mainly suffer at home from conditions that are often not terminal but can be agonising. Those conditions range from back pain, which is an epidemic in itself, to arthritic conditions, bowel problems, almost all degenerative diseases, multiple sclerosis and ME. The public have been hitting the website to mention other conditions, such as endometriosis and repetitive strain injury.

I ask members to imagine that, instead of suffering from those conditions, 550,000 Scots had broken their arms at about the same time. If that happened, the Parliament would panic. We would ask, "How will the health service cope?" We would say, "The economy is going to crash with all those 550,000 out of work." Broken arms mend eventually. Why are 550,000 people just written off because their pain is long term? No wonder the floodgates have opened since the debate was announced.

I am delighted that members of all parties—and, indeed, the enthusiastic staff of the Parliament—have shown good heart and banded together in the common cause of trying to help those patients. I give special thanks to my assistants Gordon Anderson and Evelyn McKechnie, whose utter dedication to the cross-party group on chronic pain is exemplary.

Everyone knows someone who is in pain. Only a fraction of the 550,000 are given modern relief at national health service pain clinics. Only an estimated 5,000 a year are treated by a doctor, nurse or physiotherapist who is trained in the subject. Even cancer patients do not get enough pain control or advice. People want action, not more sugar-coated, platitudinous pills.

Our pain services are few and patchy, but I pay tribute to the people who are making major advances, such as those at the Royal hospital for sick children in Glasgow, who cope with children in pain from all over Scotland. They want to improve services and to have local clinics for suffering children. Glasgow clinics for adults are so overworked that some Glasgow patients are sent to Edinburgh, which then overloads the Edinburgh service. In Dundee, waiting lists are up to six months. Aberdeen sometimes has to send patients to England. Some areas have nothing.

Last night, a heart-rending note was posted on the website from a 20-year-old woman in Nairn, Kerry McEwan. She is not a terminal patient, but she has been referred to a doctor in a hospice because there is no one else in her area to treat her pain. She writes:

"The Highlands and Islands are a disgrace to the NHS"

for lack of specialised services.

"I developed chronic pain because my pain was untreated for many years."

Dr Denis Martin of the Scottish network for chronic pain research, who is in the gallery, estimates that only 5 per cent of long-term pain sufferers get back into a job because they are caught early enough. The vast majority could have a life.

I pay tribute to those people from Lochaber who are in the gallery and who are fighting for a hydrotherapy pool in their area. They are not getting much backing from their health board.

Rheumatology is kicked to the bottom of the pile, but we appeal to the Executive to deal with other things, too. Dr Charles Martin of Crosshouse hospital and Dr Penelope Fraser posted messages on the website and named two major studies that have been conducted in the past few years showing how chronic pain could be better treated in Scotland. Neither of those reports has been implemented; they are gathering dust while people suffer.

I implore the Deputy Minister for Health and Community Care to take five steps. First, will she please promise to study those two reports, and then consider how we might begin to implement them? Secondly, we ask her to request every health board in Scotland to tell Parliament where chronic pain is on their agendas. Some of them do not mention it. Thirdly, will she please ask our few pain clinics to report on waiting lists and on what services they offer? Fourthly, will she please consider cancelling fees? Does she know that nurses and physiotherapists who want to help patients in pain often have to raise the money needed for that themselves, paying up to £5,000 from their own pockets? Fifthly and finally, the Pain Association Scotland needs the funds that it receives from the Executive to be renewed this

year and an extra £20,000 so that it can spread its vital work throughout Scotland. We are setting up a citizens monitoring group within the cross-party group on chronic pain in order to watch what progress is made.

Let us—from every party—bond together in the noble cause of alleviating pain. Let us be the first Parliament in the world to declare that long-term pain is a priority. Thank you. [*Interruption.*]

The Deputy Presiding Officer: I say to the public in the gallery that our standing orders do not allow applause—this is not a public meeting. I do not mean to be rude, but if we have applause, we will get criticism later. I ask them please to restrain themselves.

17:11

Mr John McAllion (Dundee East) (Lab): I congratulate Dorothy-Grace Elder on securing this important debate and on her initiative in setting up the cross-party group on chronic pain. I also congratulate her on the website to which she has referred, which has given a voice to those who are in pain, and on the elaborate arrangements for the web broadcast of the debate. If she is not careful, she will be called a moderniser, which she would not necessarily welcome.

This is an important and serious debate. The motion refers to

"the plight of chronic pain patients".

In the many briefings on the subject that most members have received from various organisations over the past week, reference has been made to a hidden epidemic of chronic pain in Scotland. Chronic pain is certainly suffered in epidemic proportions. The briefings that I have read indicate that a large number of Scots are affected. Dorothy-Grace Elder said that 550,000 people—about 10 per cent of the entire population of Scotland—are affected. Each one is an individual who has to live with serious pain, which simply does not go away, whatever its cause or source—cancer, arthritis, back pain, multiple sclerosis, ME or any of the other conditions that could contribute to it. The fact that chronic pain arises from so many different sources is partly why the health service is not approaching the problem in a unified, coherent manner. Long-term pain caused by ME—although ME is not treated properly—or cancer, for example, are treated separately. The approach is divided.

The plight of chronic pain sufferers is costing the country dearly in jobs lost, unpaid taxes and the benefits that have to be claimed. Many individuals have lost their independence through chronic pain; chronic pain generates dependence. The issue should be placed high on the political agenda and on the NHS Scotland agenda. Tragically, as we know, it has not been and we must ask why.

Pain management is not a new idea. The first pain management clinics in Scotland were set up about 30 years ago. A proper network across Scotland for pain management is perfectly feasible. However, the will does not yet exist to make it happen. That is why the debate is important.

Current provision of hospital-based services is patchy. Whether sufferers can get access to pain management depends on the part of the country in which they happen to live. There are a limited number of pain management programmes in Scotland, of which only half have a specialist nurse attached to them. Almost all the clinics that assist in treating chronic pain have poor managerial and secretarial support and the waiting lists are, of course, far too long. Dorothy-Grace Elder referred to the waiting list in Dundee, which is unacceptably long. That is because the resources that have been allocated to pain management in the NHS are simply nowhere near enough.

As the motion says, more resources require to be allocated and pain management and chronic pain must be moved up the NHS agenda. However, we have to ask ourselves seriously whether that will happen. The NHS is becoming one of the biggest businesses in this country—and I am not referring to private sector involvement. The year after next, it will have a revenue budget of almost £7,000 million. It has a building programme that is worth another £0.5 billion. It employs thousands of nurses and doctors. The service is delivered through 15 health boards that deal with an even larger number of trusts. There is management at every level and politicians are screaming in from every direction about their priorities for it.

We know that the NHS is meant to be patient centred and driven by patients' experiences, but increasingly in the political din that surrounds the issue it is difficult for patients' voices to be heard. That is why this debate is so important. It is also why cross-party groups are so important, as they give a voice not just to MSPs, but to people who are not MSPs, who can then engage with the Parliament.

I congratulate Dorothy-Grace Elder and tell her that I will certainly support her in everything that she does in respect of chronic pain for the rest of the session.

17:16

Mary Scanlon (Highlands and Islands) (Con): I, too, thank Dorothy-Grace Elder for securing the debate. She is one of Scotland's seasoned campaigning journalists and, when she gets the bit

between her teeth, she does not let go. That is the case with chronic pain. We all congratulate her on the consistency and persistency with which she has pursued the topic.

I travelled down from Inverness today, having been in recess last week. When I arrived back at the Parliament, I discovered that, like other members, I had received loads of mail and e-mail. I am afraid that I cannot do justice to the number of people who have written to me and other members. However, I will go through the mail and respond to it in time.

We often talk in the Parliament about joined-up talking and thinking. Surely pain management is an excellent example of a service that could span the NHS and the independent sector as well as complementary medicines and techniques in order to address all the conditions that John McAllion and Dorothy-Grace Elder mentioned.

I was surprised to find that, although there is a Scottish intercollegiate guidelines network document called "Control of Pain in Patients with Cancer", there are no guidelines for the many other conditions that cause enormous pain. I hope that the minister will consider that at the close of the debate.

Greater integration between the health care professions, particularly the huge untapped potential of osteopaths, physiotherapists and other professionals, could do much to help people with chronic pain to lead fairly normal lives.

The alleviation of pain would not only help the individual and their family to have a better quality of life; it would help many to get back to work and to gain independence, self-esteem, dignity and confidence.

Like others, I was shocked to find out that 10 per cent of the population of Scotland suffer from chronic pain. I have spoken in many members' business debates and I can think of none that has covered an issue that affects such an enormous number of people.

I commend the Pain Association Scotland for the measures that it is taking and for its emphasis on medical and social welfare problems relating to chronic pain. I hope that the emergence and establishment of local health care co-operatives will be another opportunity for general practitioners to specialise in pain management.

I was shocked and pleased to hear that the Scottish Executive health department currently funds six projects on chronic pain and that a further 229 projects are continuing or have recently been completed. I hope that, as a result of our call today, there will be joined-up thinking and a bringing together of research and expertise to help us to arrive at conclusions and recommendations in order to address many of the points that Dorothy-Grace Elder's researcher, Gordon Anderson, made.

I will give some of the statistics. Nearly two thirds of adults in the UK have had experience of back pain—that figure is enormous. Back pain is cited by 15 per cent of jobless people as a reason for not working. I refer to the points that John McAllion made: we need to bring people back into the world of work, away from loneliness and isolation. In the UK, back pain accounts for 119 million days of certified incapacity annually.

There is no doubt that physiotherapists have an enormous role to play. I hope that the minister will examine the vacancy rate of 7.8 per cent in physiotherapy, a profession that can be of great help to people in pain.

Finally, I thank Dorothy-Grace Elder once again for raising awareness of the issue. I look forward to a positive response from the minister.

Alex Neil (Central Scotland) (SNP): On a point of order, Presiding Officer. In light of the number of members still to speak and the great interest in the public gallery, I would like to move a motion to extend the business.

The Deputy Presiding Officer: We should just about fit everyone in. However, if the minister is agreed, I would be minded to extend the debate to 6 o'clock to give us a bit of leeway.

Motion moved,

That, under Rule 2.2.6(d), the debate be extended until 6.00 pm.—[*Alex Neil*.]

Motion agreed to.

17:21

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): The applause from the gallery earlier was no accident—Dorothy-Grace Elder is to be congratulated on securing the debate. It has been mentioned that she is a great crusading journalist. I remember when the name of Dorothy-Grace Elder would strike fear into the hearts of colleagues of mine and John Farquhar Munro on Highland Council. By way of a change, it is good to be on the same side as Dorothy-Grace today.

Today, I was re-elected as vice-convener of the cross-party group on chronic pain. That is a great pleasure and I extend my thanks to those who voted. When Dorothy-Grace Elder asked me to join the group almost a year ago, I accepted with alacrity. As John McAllion said, cross-party groups such as the group on chronic pain are an example of what the Scottish Parliament does so well. The fact that we having today's debate, and that the gallery is as full as it is, is a feather in our cap. Getting into detail on such a topic and doing it the

justice that we do it today would never happen at Westminster.

I have some personal experience of chronic pain and therefore speak with a certain amount of knowledge. As has been said, pain can be a very lonely and personal thing. When we help people who are in pain—with care, support and kindness—it can make an enormous difference. We all remember from when we were wee kids that it helped, when we banged our shins, if someone said "There, there," acknowledging our pain. I shall return to that important point.

We are on this planet for only a short time—three score years and 10 if we are lucky. That is not a long time; it is just one grain of sand in the desert of eternity. It is a basic right that we should enjoy the best possible quality of life while we are here. Anyone who is in pain is very far from that ideal. Those of us who are not in pain and who are fit owe it to our fellow human beings to do everything that we can to alleviate their suffering.

If we were to hand out medals for bravery, those who are in permanent pain and know that there is no end to it—they will wake up with the same pain tomorrow and the day after and the day after that—would deserve recognition. That is true bravery in the face of impossible and endless odds. We should remember that when we see people who are suffering.

Reference has been made to 550,000 sufferers in this country; that figure represents nearly one in 10 of the population. We Scots—indeed human beings wherever they are in the world—have a stoical nature. Many people do not like to grumble. It is not done to grumble about being in pain, and people think that they should just get on with life, saying, "Och, I'll cope." I would bet that the real figures are a wee bit higher than the statistics suggest. We shall see.

I will pack up speaking in a minute. I know that John Farquhar Munro would like to touch on the specific Highland aspects of the problem, which—given the constituency that I represent—are dear to my heart.

When the minister replies, perhaps she will remember that we have an enormous resource of experts out there who could and should be co-ordinated in their approach to chronic pain. There are also people like me and others—for example, the lady who comes to bath a person, the home help or even just the mum—who know a little bit about helping with pain. I suggest to the minister that those people, if they were co-ordinated and directed, would amount to a huge resource—spread throughout Scotland, from John o' Groats to the Borders—that could be unleashed to help her and our fellow human beings.

I congratulate Dorothy-Grace Elder. Well done. If she has done one great thing in her time as a member of the Scottish Parliament, today's debate is it.

The Deputy Presiding Officer: We have time in hand. If members could aim for three minutes, or a little more, that would be helpful. Adam Ingram will be followed by Elaine Smith. I am sorry, that was wrong—the next speaker is Gil Paterson.

17:26

Mr Gil Paterson (Central Scotland) (SNP): Adam Ingram is a lot better looking than me, Presiding Officer.

I thank Dorothy-Grace Elder. I will explain why my thanks are personal. Some years ago, I had an accident. Although I thought nothing much of it, I woke up one morning to find that when I raised my neck from the pillow, I blanked out because of the pain. For two days, I was unable to raise my head above the pillow. I was in pain lying on the pillow and every time that I raised my neck, the pain was so great that I literally flaked out. I went to hospital and had all the usual tests, but the doctors could find nothing wrong with me. I ended up being braced and strapped—that was the only way that I could proceed through life for seven weeks.

As a result of my being braced, some of the muscles in my neck were wasted and I had to stay off work. One or two politicians who are present will appreciate what I am going to say. Having worked a lifetime in the Scottish National Party, I had eventually got on to the national executive and had been elected to an executive vice-convener's post. Giving up that post was probably the hardest aspect. Members will understand that the pain that I went through was double-sided.

I feel particularly lucky now, because I get pain only every so often. In fact, last week I was in the mountains for a whole week's snowboarding. Being able to get round the pain certainly allows one to do things.

I will spell out the real problem by talking about a constituent who lives with severe pain. She worked until 15 years ago, when the illness struck. There has been continual deterioration. The pain has been so severe that for nine years she has been on a high morphine dosage, which has resulted in morphine poisoning. She is wheelchair bound and is fed through a tube. She suffers from depression because of the constant pain and her difficulty in coping with it. In her words, there is a perception that it is mainly the elderly who suffer constant chronic pain, but that is not so. There are many young sufferers. The disabled housebound are continually cold and need the heating on all the time. If they are not eligible for income support, they get no help with their heating bills. As a group, such people would benefit from inclusion in

the heating allowance scheme for senior citizens.

Pain management is needed desperately, especially by those who have difficulty in getting about. If my constituent lived in England, she would have been admitted to a pain management unit for a month to have the pain level monitored and to receive the appropriate treatment. Some health boards in Scotland seem to be making progress in the field, but in Lanarkshire in particular, where the lady in question lives, thousands of patients are living each day with chronic pain.

To the minister, I say that we need action and we need it swiftly. We also need resources, but most of all we need action that alleviates the pain, so that chronic sufferers get help and some respite from the pain.

17:30

Elaine Smith (Coatbridge and Chryston) (Lab): I join others in congratulating Dorothy-Grace Elder on securing the debate on this important subject. I know that she has been trying for some time to have the plight of chronic pain patients debated in the chamber.

The most common type of severe pain, which is experienced by nearly everyone at some time, is toothache, which is

"the hell o' a' diseases".

Strong painkillers might alleviate the suffering, but as the effects wear off, the pain returns. We should imagine suffering that pain every day with no prospect of relief.

In Scotland, as we have heard, about 550,000 people experience long-term pain. John McAllion described it as a hidden epidemic. Chronic pain can result in job loss, family relationship breakdown, despair and even suicide. In terms of numbers, chronic pain is one of the country's biggest health and social welfare issues, but it tends to be seen as a symptom rather than a condition. That point must be made this evening.

As we have heard, there is considerable variation in the health service in the provision of services for the treatment and management of chronic pain. For example, many general practitioners are unaware of the existence of chronic pain services in some of our hospitals. Many health professionals are committed to the principle of effective pain management and treatment, but some medical practitioners do not provide patients with information on the varied range of medication and other treatments, such as alternative therapies and hydrotherapy, which was mentioned by Dorothy-Grace Elder; nor do they give information on self-help or support groups.

In my area, there was until recently a Monklands group of the Pain Association Scotland, but unfortunately the group has temporarily disbanded, primarily as a result of accommodation problems. The individuals involved are still members of the Pain Association Scotland, and I hope that the group will soon be operational again. Monklands hospital has kindly offered to make a room available, but there are access difficulties for those people who have mobility problems, which we have to overcome.

There is no doubt that more funding and better support mechanisms are needed for such groups and other voluntary organisations that work in this field. We should recognise and congratulate people such as my constituent Joan Woods, who is with us in the gallery this evening, who suffer themselves but who are motivated to help others by undertaking invaluable voluntary work in their communities.

It should be remembered that children also suffer from chronic pain, and their families can experience the social and emotional consequences of their child's suffering. Pain in childhood, if untreated, can develop into adult chronic pain. The American Pain Society suggests that education of the public would increase community awareness of, and encourage support for, children who are suffering from chronic pain, alongside helping to influence public policy. The society recommends that chronic pain in children should be highlighted in the media. The Executive has funded for one year a children's pain clinic at the Royal hospital for sick children at Yorkhill, with on-going funding to be provided by the national health service. However, will the minister comment on the possibility of establishing a Scottish child pain centre, which could network with communities throughout Scotland? Public awareness is vital in pushing the issue of chronic pain up the health agenda. The use of the media is logical in raising awareness about all chronic pain sufferers.

Pain management and appropriate and effective prescribing could help to reduce the prescription bill; that point has not been touched on this evening so far. For example, in Lanarkshire in 1999-2000, about £7.3 million was spent on analgesics.

The minister might wish to comment on the possibility of having a high-profile awareness-raising media campaign, similar to other campaigns that have been run by the Scottish Executive. She may also wish to consider organising a citizens jury on this matter.

Chronic pain is a hidden epidemic, so let us expose it. Let the public know of its prevalence. Let them see those who until now have suffered in silence, and let them know the cost of this condition in monetary and human terms. Chronic

pain should be a high-priority area for the Scottish Executive and the health service. I am pleased to associate myself with Dorothy-Grace Elder's motion this evening.

17:34

Linda Fabiani (Central Scotland) (SNP): First, I thank everyone, headed up by Dorothy-Grace Elder, who has taken part in the debate on this issue in the three years since the Parliament was set up.

I apologise to everyone as I will have to leave early, just after my speech.

I am not an expert in the field, but I have listened to Dorothy-Grace Elder as she has persevered over the past couple of years, as Mary Scanlon said. I have learned with horror about the prevalence of chronic pain and about its many causes. From speaking to other people, I have learned that the cost of chronic pain to the national health service cannot be measured only in hard cash terms, because physical and sometimes emotional and mental illnesses can result from suffering chronic pain.

The social cost was mentioned by Elaine Smith and many others. I wonder whether we should take a much wider view of chronic pain, its causes—of course—and its effects. We should consider other ways of dealing with and managing it. For example, the Chartered Society of Physiotherapy is keen for workplace physiotherapy to be put in place. That could help people to manage their pain and remain in the employment market, which is what they want to do. It must be awful to have the will to carry on with life normally, as everyone else does, but to suffer chronic pain and be unable to do that.

I am keen that we take a step back and take a holistic approach. We should think about a bit of innovation. We should look at alternative therapy, complementary medicine and preventive strategies. Throughout the health service, we do not take enough account of the prevention of illness and place too much emphasis on curing illness.

Pain management programmes and a national framework and guidelines for the management of pain, whether in specialist pain clinics or existing resources, have been discussed. As I said, I am not an expert, but I contend that bodies such as the Chartered Society of Physiotherapy and the Pain Association Scotland, which Dorothy-Grace Elder mentioned, are experts. They are strong on considering such measures, which could have added benefits for the NHS in general, because no one talks about many conditions that cause chronic pain.

Many people suffer chronic pain from various illnesses that are never talked about and on which records are not held centrally, for example. I have asked the Executive about a condition called scleroderma, which is sometimes called systemic sclerosis. The Executive told me that it did not hold figures centrally on various aspects of the illness and that the illness is very rare. Many such illnesses might be rare, but to the people who suffer the illness and its resultant pain, it does not matter that the illness is rare. What matters is that no resources exist to help them. I feel strongly that a national pain strategy and centres could help to unearth some of the hidden illnesses and suffering in our society.

I pay tribute to the voluntary sector, which does a wonderful job all over our country in assisting the national health service and helping people to manage their day-to-day lives while they suffer chronic pain.

The Deputy Presiding Officer: One or two additional speakers have come on board. The minister must start to speak by 17:50, so I am afraid that speeches must be three minutes long from now on.

17:38

John Farquhar Munro (Ross, Skye and Inverness West) (LD): I am glad to participate in the debate. I had prepared an extended speech, and if it is cut to three minutes, that will be unfortunate.

The Deputy Presiding Officer: In your case, we will manage the extra minute, but other members will have three minutes.

John Farquhar Munro: Thank you. I am sure that we all accept that there should be no barrier to the treatment and relief of pain, particularly chronic and persistent pain. Many patients are not given sufficient information about pain control, and many more are not involved or encouraged to become involved in making decisions on how their pain problem should and could be managed. It is unfortunate that patients lack information about pain relief and the options that are available to them. As we enter the 21st century, it must be possible to ensure that medicinal support and treatments are available and are applied, and that all pain sufferers are happy and comfortable, and understand their pain-free treatment.

Many patients throughout Scotland are disadvantaged by living in some of our remote rural areas where support and services are limited or—worse—non-existent. Treatment for such people often involves lengthy and uncomfortable journeys to distant hospitals or clinics. Return journeys of some 200 miles are quite common. As members will appreciate, such journeys quickly erode any treatment that the patients might have had.

In south Skye and Lochalsh, a self-help group of multiple sclerosis sufferers and their carers have raised funds and established a hyperbaric chamber that is attached to the Strathcare medical centre at Broadford. That has helped those pain sufferers and has eliminated hundreds of miles of travel. I understand that the community of Lochaber is attempting to establish a hydrotherapy pool to provide a useful facility for regular exercise and therapy, which would aid sufferers in that area. That group has been campaigning actively for several years and has raised the magnificent sum of £150,000 in the community. That money will go towards the total cost of £500,000. The group has a site and the support of general practitioners and the local community but, so far, it has failed to secure the support of Highland NHS Board for its project, which, if completed, would serve a wide area of south-west Inverness-shire and would eliminate unnecessary expense and travel for many patients.

It appears that visible wounds are sympathetically and quickly treated, but that when people complain of invisible pain, it is regarded with some scepticism—like backache and the sore-head syndrome. That culture must change.

The aims and objectives of the Pain Association Scotland must receive wider recognition. We in the Scottish Parliament must encourage all shades of the medical profession and the health boards to be far more considerate and proactive in relation to the many and varied needs of chronic and persistent pain sufferers.

17:42

Ms Margo MacDonald (Lothians) (SNP): I congratulate Dorothy-Grace Elder on her persistence and determination in bringing such a worthwhile debate to the Parliament.

As John McAllion suggests, if we consider the numbers that have been mentioned, chronic pain would appear to be an epidemic. I cannot recall any other health debate in which so many people were mentioned as suffering from the same symptoms or condition. It is self-evident that we must have a much-improved strategy for the self-management and self-help of pain sufferers.

However, although a great many people are involved, I would like to make a special plea for one particular group of people—those who have multiple sclerosis and who use cannabis to alleviate their pain. There has been much discussion over whether using cannabis is desirable or, indeed, efficacious. I will not go into that discussion. All I know is that I am impressed by the number of people who for a number of years have been helping themselves to manage pain that in some cases is intolerable. Those people have been subjected to the full rigours of the law because of their use of cannabis.

I ask how we can help those cannabis users to alleviate their pain. Their present behaviour should be decriminalised. They should be able to help themselves—as they have been doing—with more security. And while we determine the best way in which to use cannabis or cannabinoids to help MS sufferers, can we please not be judgmental or punitive in our approach? If by smoking cannabis, or by having it baked in cookies, people gain just a bit of pleasure or just a bit of relief from the dreadful drudgery of the pain that is imposed on them, let them do so. How many of us here would deprive someone of a glass of red wine if that would take the edge off their pain when they were desperate to get some sleep at night? As well as being sensible in our approach to a strategy for pain management, can we be humane in the way in which we apply it?

17:44

Ms Sandra White (Glasgow) (SNP): I also congratulate Dorothy-Grace Elder on securing this excellent debate and thank the people who have turned up to listen to it. I cannot think of anything worse than being in constant pain day after day and sometimes year after year. I pay tribute to the many people who, although they suffer, still have plenty of time to get involved in voluntary work and other issues. In fact, there is a lady in the gallery whom I took home from Faslane after she had been demonstrating for a few hours. I do not know whether my driving or my car was to blame, but I think that she was in worse pain when she got out of the car than she was when she arrived at Faslane. As I said, it is marvellous that, although those people suffer pain, they still involve themselves in so many other issues.

As Elaine Smith pointed out, the fact that chronic pain is debilitating is well documented. She also mentioned that other long-term acute illnesses are associated with chronic pain. That issue is not so well publicised, and it would be an excellent idea to publicise it more. Of course, chronic pain also leads to relationship break-ups, which are terrible, and to long-term unemployment, which can be debilitating not just to one's health but to one's state of mind. We must recognise and publicise the impact that long-term pain can have on the country's economy and on people's well-being.

Dorothy-Grace Elder's motion suggests that the Executive should get together with health boards and push chronic pain patients to the top of the agenda, and also highlights the dire shortage of pain clinics and staff. I urge the minister to take those serious points on board. The Beatson clinic was mentioned earlier; Malcolm Chisholm intervened on that situation. I hope that, in her summing-up, the minister can give some hope to

the many people in the gallery that she might take the same action. Health boards and trusts have been running the agenda for too long, and people have been suffering. I ask the minister to give us something positive and to tell us that she will push the issue up the health boards' agenda. I also hope that she will tell us that the Parliament, not the health boards, will run that agenda.

17:47

Dr Winnie Ewing (Highlands and Islands) (SNP): I had a very dear brother who died of motor neurone disease, which causes great pain and results in a terrible lack of dignity for sufferers. Indeed, the whole family suffered with him. That dreadful disease has not yet been mentioned in the debate; however, as I am involved with the Scottish Motor Neurone Disease Association, I thought that I would bring it up.

Obviously, MS comes to mind. I have visited and talked to a Morayshire group of MS sufferers, all of whom want the drug interferon. Some of them get it; some do not, and I do not find the explanations given to those people satisfactory. There has been some economising in the way in which the drug is awarded. Interferon is definitely very palliative; in some cases, it completely arrested the disease for some time. It worries me that we are economising on available palliative drugs.

As for the hyperbaric pool that was mentioned, I attended a meeting of Highland NHS Board and complained about its attitude on that very matter. When I was told that the pool was not curative, I said, "Well, I know that it's not curative, but it is palliative. It makes people feel better. Are they not entitled to feel better?" There is a pool in Wick; the Lochaber people have made a wonderful effort and should be encouraged. I have criticised Highland NHS Board's attitude in writing.

I agree completely with Margo MacDonald. Cannabis should be available on prescription to alleviate the pain that people suffer.

Finally, Gil Paterson mentioned young people. We tend to think that chronic pain affects older people, and very often it does. However, after I lost my first seat, I got involved with the issue of the dreadful rheumatic pain suffered by very young people, who can be crippled by it. Let us remember that all ages can suffer from chronic pain. I thank Dorothy-Grace Elder for securing the debate.

17:50

The Deputy Minister for Health and Community Care (Mrs Mary Mulligan): I join in congratulating Dorothy-Grace Elder on her success in securing the debate. It is the reward of several years' perseverance. Dorothy-Grace has been lodging questions and motions on chronic pain at regular intervals since the Scottish Parliament came into being, and was instrumental in getting started the cross-party group on chronic pain. I acknowledge also the number of people in the gallery this evening. That just goes to show how important the issue is to many people.

I need hardly say that the Executive and the NHS in Scotland recognise the misery that constant pain can cause, and the importance of effective pain relief and management. As the motion recognises, there are also economic implications for sufferers and the economy generally, when chronic pain prevents attendance at work or inhibits people's ability to work at all. It would be disingenuous, however, to suggest that there is a quick or easy solution that can help everyone who suffers from chronic pain. However, we must consider some options.

Chronic pain is a symptom that is present in a wide and varied range of conditions. There are literally hundreds of chronic conditions that can lead to severe pain. The most common of those are arthritis and back problems, but there are many others, some of which have been mentioned. The conditions have different causes—although we do not know the cause of some—and bring with them different kinds of pain. They all have other symptoms, some common to more than one condition and others unique. Controlling pain is only one part of the treatment for such illnesses and it is suggested that that would best be handled as part of an holistic approach, in which the whole condition is tackled.

As part of its response to a petition by Dr Steve Gilbert, the Scottish Executive health department carried out a survey of NHS boards to find out how they handled chronic pain. As expected, the department found that every board was conscious of the need for pain management. All except Highland NHS Board, which has arrangements for referral to other areas, provide some form of chronic pain management service. There are many means of delivering that service, of which analgesia and physiotherapy are the most common. I am more than happy to take away Mary Scanlon's query about physiotherapist vacancies. However, boards also provide other means of pain management, such as transcutaneous electrical nerve stimulation—or TENS—relaxation therapy and, in some areas, complementary therapies such as acupuncture and homeopathy.

Alex Neil: I note the survey to which the minister referred. Will she also read the messages that have been pouring into the Parliament's website on the matter and, where appropriate, pass on the comments to health boards so that they become fully aware of the intensity of public feeling on the issue?

Mrs Mulligan: I am happy to do that. We await health plans from the health boards and we hope that within those plans there will be further indications on how each board will address the issue. I should also add that the boards' responses to the health department's informal survey would have focused on pain management only where it was possible to identify that as a separate service. We will use the health plans to consider that in more detail.

The motion calls for more specialised pain clinics and staff and I can understand why; however, a specialised clinic does not exist in isolation but must be led by a suitably qualified clinician. Pain management is not a recognised medical specialty and cannot be turned into one by any action on the part of the Executive. The establishment of any new specialty must be led by clinicians—usually by the appropriate royal college—because the first step is the creation of a suitable curriculum for training new specialists.

The identification of a lead clinician is only a first step. All operational matters are best handled by the NHS boards, which are funded by the Executive to plan and prioritise services in their areas. I remind members that, in the coming financial year, NHS boards will receive an average increase of 7.2 per cent over their 2001-02 allocations.

In "Our National Health: A plan for action, a plan for change", the Executive promised that we and the NHS would work closely with patient support groups to ensure that the needs of those who suffer from chronic conditions are met. An important part of implementing that promise is the continuing development of managed clinical networks—a concept that emerged from the acute services review that was published in June 1998 and which has been well received throughout the NHS. MCNs are a means of designing services so that all points at which patient care is delivered are linked. MCNs cross the traditional boundaries between primary, secondary and tertiary care and put patients' needs at the heart of the service that we are trying to deliver.

In time, a number of the conditions that cause chronic pain might become candidates for the development of managed clinical networks, under which the control of pain would be included as part of the treatment. Because of its diffuse nature, chronic pain is not itself a likely candidate for an MCN, but the related field of palliative care was one of the first to be developed.

As Mary Scanlon mentioned, a considerable amount of research into various aspects of chronic pain is being carried out. I am glad to say that some of the funds that are directly controlled by the Executive through the health department's chief scientist office are supporting such research. The national research register contains details of 99 current research projects, of which nine are in Scotland. That does not include the two projects that are financed by the CSO in Scotland. It will be of considerable interest to medical researchers, not least those in Scotland, that such work is being carried out.

Before I conclude, I will pick up some of the points that Dorothy-Grace Elder made, but which I have not dealt with so far. The Pain Association Scotland is at liberty to make grant applications at any time under section 16(b) of the National Health Service (Scotland) Act 1978. It is not only the Pain Association Scotland that receives such grants; I could list 12 or 15 other organisations.

Dorothy-Grace Elder also asked for additional pain clinics throughout Scotland, but that decision must be left to individual health boards. However, I would like to look more at examples of good practice throughout Scotland, especially of pain clinics that have been developed and operate successfully.

I am happy to consider what can be gained from examining the reports that Dorothy-Grace Elder mentioned. I will clear up with her later to which two reports she referred.

The management of pain is a huge issue, as the figures that have been quoted prove. We need to see the management of pain being part of a package of care that is delivered to people throughout Scotland. I congratulate Dorothy-Grace Elder again on securing the debate, which has sought to raise the profile of chronic pain in Scotland. Judging by the number of e-mails and letters that she has received, the debate has already started to do that.

The Deputy Presiding Officer: That concludes the debate on chronic pain. The debate has been followed not only by the public in the gallery but by people throughout Scotland, the UK, Europe and the wider world via webcast and via the interactive bulletin board. The opportunity to contribute to and comment on the debate remains open for at least another week. Access can be obtained via www.scottish.parliament.uk.

Dorothy-Grace Elder: The address is www.scottishparliamentlive.com.

The Deputy Presiding Officer: As Dorothy-Grace Elder has pointed out, access can also be obtained through that secondary address. The bulletin board is available through both web addresses. Have a look. If members want to contribute, they, too, can respond.

Meeting closed at 18:00.

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