

**MEETING OF THE PARLIAMENT
COMMITTEE OF THE WHOLE PARLIAMENT
MEETING OF THE PARLIAMENT**

Wednesday 6 March 2002
(Afternoon)

Session 1

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Scottish Parliament

Wednesday 6 March 2002

(Afternoon)

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

Time for Reflection

The Presiding Officer (Sir David Steel): To lead our time for reflection, we welcome the Reverend Jack Holt, who is the minister of Birse and Feughside parish church and moderator of the presbytery of Kincardine and Deeside.

Reverend Jack Holt (Minister of Birse and Feughside Church and Moderator of the Presbytery of Kincardine and Deeside): In the movie "Die Hard", there is a moment when our hero, John McClane, saves the lives of several policemen who are advancing on a building that is in the hands of a criminal gang. They are unaware of the level of firepower that can be directed against them, unlike John McClane, who is working on the inside. To save them, John is forced to blow up the lower floors.

Instead of being thanked for that brave and selfless action that saves lives, he is bawled out on a phone by a police captain for interfering in police business and damaging public property. When the phone is handed to a more sympathetic officer, he asks how John feels. "Deeply unappreciated," is his wounded reply.

I wonder how many of us in our work can think of times when we have felt the same. We give our lives to public service and try to work hard at making a difference, not only for our constituents, but for the nation as a whole. We know from the inside how hard change and the motivation of others are to achieve and we hope that others will recognise that, but we often hear the voices that tell us that something was not good enough, not quick enough and not what was needed. How do we feel? Deeply unappreciated?

As we gather to begin a new week's work, perhaps these words by Jesus might keep us from giving up on giving our best:

"Which of you, with a servant out ploughing or shepherding, will say to him when he comes in from the field, 'Come at once and take your place at table'? Will the man not rather say to him, 'Prepare my supper; get yourself ready and wait on me while I eat and drink; then you can eat and drink yourself'? So also with you, when you have done everything you were told to do, say, 'We are but servants; we have only done our duty.'"

As you stand firm in your duty, regardless of what others may say or think of you, may the words of this prayer guide you:

God grant me the serenity to accept the things I cannot change, courage to change the things I can and wisdom to know the difference.

Parliamentary Bureau Motion

14:34

The Presiding Officer (Sir David Steel): Our next item of business is consideration of a Parliamentary Bureau motion—S1M-2841—to timetable stage 3 of the Sexual Offences (Procedure and Evidence) (Scotland) Bill and stages 2 and 3 of the Fur Farming (Prohibition) (Scotland) Bill.

Motion moved,

That the Parliament agrees that the time for consideration of Stage 3 of the Sexual Offences (Procedure and Evidence) (Scotland) Bill and Stages 2 and 3 of the Fur Farming (Prohibition) (Scotland) Bill be allocated as follows, so that debate on each part of the proceedings, if not previously brought to a conclusion, shall be brought to a conclusion at the time specified below—

Sexual Offences (Procedure and Evidence) (Scotland) Bill

Group 1 to Group 4 – no later than 3.45 pm

Group 5 and Group 6 – no later than 4.15 pm

Motion to pass the Bill – no later than 4.45 pm

Fur Farming (Prohibition) (Scotland) Bill

Stage 2 – no later than 4.50 pm

Stage 3 – no later than 5.00 pm.—[*Euan Robson.*]

Motion agreed to.

Sexual Offences (Procedure and Evidence) (Scotland) Bill: Stage 3

14:35

The Deputy Presiding Officer (Mr George Reid): We will first deal with the amendments to the bill before we debate the motion to pass the bill. For the first part of the business, members should have a copy of the bill as amended at stage 2, the marshalled list containing all the amendments selected for debate and the groupings that have been agreed. An amendment that has been moved may be withdrawn with the agreement of members present. It is, of course, possible for members not to move amendments, should they so wish. The electronic voting system will be used for all divisions. I will allow an extended voting period of two minutes for the first division that occurs after each debate on a group of amendments.

Trish Godman (West Renfrewshire) (Lab): Members who are sitting towards the rear of the chamber cannot hear you, Presiding Officer.

The Deputy Presiding Officer: I will do my best, but the microphone does appear to be switched on. The clerks will speak to the broadcasters.

Trish Godman: That is better.

The Deputy Presiding Officer: Is that sufficient?

Trish Godman: Yes.

The Deputy Presiding Officer: Good.

Section 1—Prohibition of personal conduct of defence in cases of certain sexual offences

The Deputy Presiding Officer: Amendment 7, in the name of Bill Aitken, stands in a group of its own.

Bill Aitken (Glasgow) (Con): The purpose of amendment 7 is to obtain clarification of what, under section 1 of the bill, constitutes the type of offence that the Executive seeks to define as a sexual offence.

It is fair to say that section 1 provided members of the Justice 2 Committee with some difficulty. It is clear that it is undesirable for a woman who has alleged that she has been raped to find herself confronted in the witness box by the person whom she has accused of the offence. The committee accepted that such a situation could be distressing and harrowing.

However, we draw to the attention of the Parliament that that has happened on only two indictable occasions over the past 20 years and,

coincidentally, in cases that involved the same accused and the same judge—Lord Bonomy, who is well known as a robust defender of the rights of victims. In those cases, Lord Bonomy made it clear that, if the complainer had been subject to examination by counsel, she could have been submitted to a more rigorous cross-examination. He also highlighted that the complainer in both cases did not appear to be unduly distressed.

The Justice 2 Committee spent a lot of time considering the matter. The considerations were constructive and produced a lot of free-flowing thought. We concluded that potential complainers are of the view that there is a real risk of being confronted by their assailant. Although it is clear that the facts do not bear that out, members of the Justice 2 Committee agreed that, on balance, it is undesirable to allow cross-examination and the personal conduct of defence in cases of this type. We are prepared to agree to the terms of section 1, subject to the amendment that I have lodged.

We seek to clarify the term “substantial sexual element”. Under the provisions of proposed new section 288C(4) of the Criminal Procedure (Scotland) Act 1995, the court is required to make an order applying those procedures to offences that are not listed in the appropriate subsection. Nothing in any legislation or any ministerial explanation has defined correctly or appropriately the term “substantial sexual element”.

I fully appreciate that such cases are few and far between. It has been well documented that any man who acts as his own lawyer has a fool for a client. Given that such cases have happened only twice in the past 20 years, it is not probable that there will be all that many cases. Nevertheless, it is important to have an agreed definition. We are disappointed that there has been neither a verbal explanation of the term nor an Executive amendment to tighten up the wording.

I hope that, even at this late stage, the Minister for Justice might review the situation and strengthen the bill. Amendment 7 represents a constructive attempt to bolster section 1. Without its provisions, there could be all sorts of difficulties with interpretation and the appeal court might be called in to make determinations. Such a situation might not be in the best interests of justice.

I move amendment 7.

The Deputy Presiding Officer: As no member has requested to speak to amendment 7, I will go straight to the minister.

The Deputy Minister for Justice (Dr Richard Simpson): Amendment 7 is misconceived and unnecessary. New section 288C(4) of the Criminal Procedure (Scotland) Act 1995, as proposed in section 1 of the bill, is perfectly adequate to cover the process by which the court can decide whether

to treat an offence as sexual and therefore to prevent the accused from personally questioning the complainer.

As Bill Aitken has mentioned, the bill's intention is to ensure that an accused charged with any offence with a “substantial sexual element” will be prohibited from conducting his defence in person. The prohibition does not depend on whether there is a relationship between the accused and the complainer or whether the quality of the complainer's evidence would be affected by the fact that the accused was doing the questioning. The Executive believes that, as a matter of principle, complainers in all sexual offences should not have to contemplate the possibility of being personally questioned by the accused. Complainers in all such offences should also have the benefit of the restrictions on the use of evidence about their sexual history or character. In deciding whether to treat the offence as a sexual one, the court needs only to determine whether the offence is to all intents and purposes a sexual one—that is, whether it has a “substantial sexual element”.

Amendment 7 would introduce to the process criteria that are irrelevant to the question whether the offence is a sexual one. Furthermore, they are not relevant to the question whether the bill's provisions apply to the sexual offences included in the main list in proposed new section 288C(2) of the Criminal Procedure (Scotland) Act 1995. As a result, they should not be applied to any other offence that is basically a sexual offence.

Amendment 7 would also greatly complicate what should be a relatively simple process. The prosecution will be aware of the circumstances of the alleged offence and will simply draw to the court's attention the factors that show that the offence has a sexual element. It will then be up to the court to decide whether that element is substantial enough for the offence to be treated as a sexual one. There is no need for a complicated set of criteria to be set out in statute. Accordingly, I ask Bill Aitken to withdraw the amendment.

Bill Aitken: I do not accept the minister's assurances. Although I do not want us to enter into an exhaustive process of defining the minutiae of what is meant by “substantial”, some general criteria should be available. Although numerous offences might be highly offensive and would certainly constitute an assault, they might not be sexual in motive or content. Although courts would certainly have the ability to make such determinations based on the facts of each case, they will take different interpretations on different occasions, as is their wont. That is how the system operates, and it will ever be thus. However, we must recognise that guidelines should be introduced. As amendment 7 seeks to strengthen

the bill and tighten things up, it is justified in all respects, and I will press it.

Roseanna Cunningham (Perth) (SNP): Will the member give way?

Bill Aitken: Sorry.

The Deputy Presiding Officer: Just too late, Ms Cunningham.

The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)

Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 8, Against 75, Abstentions 0.

Amendment 7 disagreed to.

Section 2—Appointment of solicitor by court in such cases and availability of legal aid

14:45

The Deputy Presiding Officer: I call Roseanna Cunningham to speak to and move amendment 9.

Roseanna Cunningham: I am aware that this matter was canvassed in committee at stage 2, but it received only a brief airing at that point and I thought that it was worth having a slightly longer discussion.

There are real concerns among practising solicitors about the position that they will be in when the legislation comes into force. The concern is that there is no specific provision for the regulation of the relationship between the court-appointed solicitor and the client in so far as their professional—and, indeed, statutory—duties to their clients are concerned. There is great concern that the amendment is necessary to define the altered nature of that solicitor-client relationship. There is a new role for solicitors, albeit one that will not occur very often. Solicitors' terms and conditions are, in a sense, already dealt with by

statute—solicitors have statutory obligations in respect of their work. If there is to be a new court-appointed role for solicitors, we should consider regulation of that as well. The real concern is that solicitors could end up finding themselves breaching their professional responsibilities and that a knock-on effect might be internal disciplinary proceedings against them in the Law Society of Scotland. We must consider solicitors' concerns in that regard carefully.

It is fair to say that amendment 9 mirrors similar sections in other pieces of legislation that deal with court-appointed solicitors. It mirrors the Youth Justice and Criminal Evidence Act 1999, which invoked similar provisions in sexual offences cases in England and Wales. In that act, there is a clear indication that a court-appointed solicitor in sexual offences proceedings is not responsible in any way to the accused. The act appears to recognise the altered nature of the solicitor-client relationship in cases such as those that are suggested in the bill.

We must think carefully about where we are going. In other pieces of legislation—and not only in the one that I mentioned—the issue has been addressed more explicitly. The Terrorism Act 2000 has a similar specific provision in respect of solicitors appointed in connection with immigration appeals, which explicitly states that such a solicitor will not be responsible to the client, because the conduct of solicitors is defined by statute.

The amendment tries to bring the bill into line with the practice that appears in other legislation. Such a provision is necessary if we in Scotland are to go down the court-appointed solicitor road.

I move amendment 9.

Bill Aitken: I support amendment 9. It is important to highlight the fact that the relationship that will exist between a solicitor appointed under the circumstances that we are discussing and the normal solicitor-client relationship are quite different. In cases where the solicitor is appointed by the court, he will have no particular duty or loyalty to the client. Indeed, in many cases, he will be dealing with the type of dysfunctional character who frequently appears in our courts.

Where a solicitor has been imposed on a client, the relationship between solicitor and client will, by necessity, be somewhat more difficult and complex and, on occasion, infinitely more fractious. Therefore, it is essential that there is something in the bill to provide protection for solicitors. As Roseanna Cunningham has quite correctly pointed out, other pieces of legislation, including the Terrorism Act 2000 and certain immigration proceedings, incorporate that protection. That is entirely appropriate.

Pauline McNeill (Glasgow Kelvin) (Lab): The Justice 2 Committee examined carefully the role of the solicitor, particularly in cases where there is a difficult relationship between solicitor and client because the solicitor has been imposed on the client. Will Bill Aitken comment on the evidence from the Public Defence Solicitors Office witnesses, who said that there are often initial difficulties, but clients eventually realise that it is in their interests to have a solicitor and so co-operate with the solicitor who has against their wishes been appointed to represent them?

Bill Aitken: Pauline McNeill is perfectly correct to point out that that was the evidence from the public defenders. However, we also heard evidence from the Law Society of Scotland, which flagged up the potential difficulties that could arise in such cases. I know that we are talking in a vacuum to some extent, because the number of such cases will be infinitesimally small, but it is important nevertheless that protection is in place so that solicitors can be reassured. If that protection is not incorporated in the bill, solicitors will be rather reluctant to take up such cases. There is significant merit in amendment 9, and the Conservatives will support it.

Dr Simpson: As Roseanna Cunningham said, amendment 9 attempts to define further the relationship between an accused and his court-appointed solicitor. Section 288D of the Criminal Procedure (Scotland) Act 1995, which section 2 inserts, will impose a duty on the solicitor

“to ascertain and act upon the instructions of the accused”.

It also states that, where a solicitor receives

“no instructions or inadequate or perverse instructions”,

his duty is

“to act in the best interests of the accused.”

Otherwise, a court-appointed solicitor has the same obligations and authority as a solicitor who is chosen by the accused.

Roseanna Cunningham and Bill Aitken both referred to other UK acts. The Terrorism Act 2000 relates specifically to security and terrorism matters, which are quite different from sexual offences. The Youth Justice and Criminal Evidence Act 1999 makes provision for a court-appointed lawyer, but only to deal with cross-examination, whereas the bill that we are now considering will deal with the entire proceedings. Therefore, a corresponding provision in the bill would be difficult to justify.

Roseanna Cunningham: Given that the bill's scope is wider than that of the acts that have been mentioned, is not there even more—rather than less—reason to ensure that the situation is clarified?

Dr Simpson: A solicitor's duty to act in the best interests of his client will cover that. Solicitors must always act professionally, within whatever limits are set, so the matter is already covered.

The first, second and fifth new subsections proposed by amendment 9 would not add to what is already in the bill. The term, "inadequate or perverse instructions", which the bill uses, is adequate to cover instructions that could not be carried out by a solicitor following the normal rules of professional ethics, which it is clear will continue to apply.

The third new subsection proposed by amendment 9 would allow the court-appointed solicitor to withdraw unilaterally from acting. If solicitors kept doing that, the trial of the accused could be prevented from taking place at all.

Bill Aitken: Does the minister agree that questions remain from the case of *Her Majesty's Advocate v Anderson*, which to some extent defined the relationship between a solicitor and their client? Does he agree that part of the finding in that case could impinge on this legislation and that the legislation would be more comfortable if amendment 9 were to be incorporated?

Dr Simpson: I disagree. I want to continue.

It would be a serious discourtesy to the court whose appointment the solicitor had accepted if the solicitor were to withdraw unilaterally. We believe that, if the court appointed the solicitor, only the court should be able to end the appointment.

Section 288D(5A) would allow the court to discharge a solicitor that it had appointed and choose a replacement if the original appointee could provide genuine reasons for being unable to continue. That is an appropriate safeguard for the solicitor.

The third and fourth new subsections proposed by amendment 9 would allow a solicitor who could not obtain appropriate instructions to act according to their own professional judgment, with no responsibility towards the accused. We believe that court-appointed solicitors should continue to owe the accused a duty to act with ordinary professional care and skill.

Roseanna Cunningham: Will the minister give way?

Dr Simpson: I want to finish what I am saying.

It is clear that what that means may be limited if the accused has refused to co-operate fully. However, it would be unfair to the accused to allow the solicitor to escape all responsibility to him if the solicitor had, in fact, been negligent.

Roseanna Cunningham: Solicitors will not act irresponsibly because doing so would be a breach

of the legislation under which they operate. The difficulty is that the minister is perhaps imagining a set of circumstances in which a solicitor is acting capriciously. However, if he acts capriciously, he will be subject to discipline in any case. The difficulty is that what solicitors understand, are well aware of, comfortable with and bound by professionally and statutorily will be taken away. They will be put into a more ambiguous position.

Dr Simpson: That we are having this debate is good. The argument seems to be that, if a solicitor believes that there are genuine reasons for them to be unable to continue to act, they can apply to the court to be discharged. The important point is that it should then be a matter for the court to discuss those reasons. Surely, that should provide adequate protection. A solicitor will not act against his professional interests or ethics. As Roseanna Cunningham pointed out, he will not act capriciously or he would be subject to disciplinary procedures. Therefore, I think that the present measures give adequate safeguards and continue to take the court—which appoints the solicitor—as the point at which the discharge should occur. The solicitor should not be able simply to give up because he feels that he is not managing.

Roseanna Cunningham: That raises another point. The minister's initial comments on amendment 9 related to a situation in which solicitor after solicitor withdrew and the trial did not go ahead. Let us turn that on its head. A solicitor could go to the court and say, "For these reasons, I absolutely cannot continue to represent someone." The court could say, "Okay, we understand." The next solicitor may have exactly the same problem and may come back to court. At what point will the trial not go ahead? If that is the basis of the objection to the amendment, is it not already implicit in the bill?

15:00

Dr Simpson: We are dealing with something that is not highly defined and Roseanna Cunningham is trying to define it in absolute terms. It is capable of being defined, but it should be defined by the court, which will make the appropriate decision. In the interim, in appointing a new solicitor, arguments about whether he or she would find themselves in the same circumstances will have to be examined. I accept part of Roseanna Cunningham's argument, but I do not see the situation occurring.

The final new subsection proposed by amendment 9 refers to a code of practice drawn up by the Law Society of Scotland. The society already has the power to produce codes, which its members are expected to follow, so it is unnecessary to give it such a power again.

For all those reasons, I feel that amendment 9 should be rejected.

Roseanna Cunningham: We have had enough to-ing and fro-ing to hear the substantial differences between us. I press amendment 9.

The Deputy Presiding Officer: The question is, that amendment 9 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Cunningham, Roseanna (Perth) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)

Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)

ABSTENTIONS

Harper, Robin (Lothians) (Green)

The Deputy Presiding Officer: The result of the division is: For 35, Against 62, Abstentions 1.

Amendment 9 disagreed to.

After section 3

The Deputy Presiding Officer: Group 3 relates to restrictions on the reporting of proceedings in cases where rape is alleged. Amendment 10 is grouped with amendment 17.

Phil Gallie (South of Scotland) (Con): It perhaps goes against my image as a hanger and flogger to lodge an amendment such as amendment 10, but I have no hesitation in doing so. I believe intensely in the fairness of the justice system. That extends not only to a fair trial, but to fairness across the board. I make no apologies for wanting to see a justice system that puts the

interests of the victim and the protection of society at the top of the list of priorities.

Rape, sexual abuse and abuse of children are the most heinous of crimes. The justice system recognises that to be a factor by giving anonymity to complainers before the trial, during the trial and, in many circumstances, after the trial. I want the conviction of criminals to go unhampered by technical transgressions and procedures that, at times, prevent justice from being served. When guilt is proved, I ask no favours for the convicted. In fact, the penalties that I seek in many cases go beyond those for which most members would wish.

However, because of the seriousness of the charge of rape or child abuse, there is a need to give anonymity to those who are complained against but whose guilt has not been proven. The stigma attached to the crime does not stick only to the individual; it spreads to their families and associates. The accused's friendships, social standing and, at times, job are affected. Stains on a reputation last a lifetime, even when guilt is not finally proven. There is a wide range of examples.

Johann Lamont (Glasgow Pollok) (Lab): Does Phil Gallie agree that the proper place to debate anonymity for the accused in relation to particular crimes is in a debate about the rights of the accused in relation to a series of crimes? Phil Gallie is in danger of equating the rights of the accuser and of the accused for a specific crime such as rape. The danger of Phil Gallie's line is the suggestion that the situation of a complainer in a sexual offence case is different from that of other victims of crime. I would be concerned if Phil Gallie suggested that. I accept that there is a legitimate debate about the anonymity of the accused in some cases, but that must be seen in the context of the debate about the rights of the accused, not in the context of sexual offence cases. To discuss the issue in that context implies that there is something different about the complainer in such cases.

Phil Gallie: I am concerned about those who feel that they are the victims of rape, but the guilt of the accused must be proved in court. In rape cases, those who make the accusation have the benefits of anonymity. Like Johann Lamont, I recognise the seriousness of the charge of rape and its effect on people, which is why I ask that anonymity be extended. Rape charges have a gross aspect.

I bring members' attention to the experiences of one of my constituents—John McLaughlin of Ayr—who took his own life. A few months after that, the person who accused him admitted that the accusation that she had made was false. She was convicted in court and given 100 hours of community service for wasting police time. She

spent 100 hours doing community service; he took his own life. There are numerous other such cases.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): Will the member give way?

Phil Gallie: Sorry, I have limited time. I will try to come back to the member.

The Deputy Presiding Officer: We have some time.

Phil Gallie: I will give way.

Alasdair Morgan: I thank the Presiding Officer for that helpful intervention.

As Phil Gallie knows, the Justice 1 Committee considered the matter of anonymity when it received a petition on the subject. To justify amendment 10, Mr Gallie must show why the anonymity provision should apply only to the offences that are listed in the bill. He must show why the provision should not apply to other offences with which a person might be charged, such as murder.

Phil Gallie: The answer is the seriousness of the crime and, above all, the fact that the accuser enjoys anonymity from the start. That is a telling factor in cases of rape. I realise that amendment 10 would cut across standard practice, but the bill is concerned with rape and sexual abuse, which are the most horrendous of crimes.

Maureen Macmillan (Highlands and Islands) (Lab): Will the member give way?

Phil Gallie: I will give way shortly. I recognise Maureen Macmillan's input to the bill.

I want to refer to other cases in which members might take an interest. Two policemen from Edinburgh were falsely accused and, according to Lord Prosser, were seriously damaged. The way in which the information came out probably ruined their careers.

Elaine Wyper from Kilmarnock was acknowledged to have falsely accused James Crawford and she eventually received 180 hours of community service. James Crawford received £500 from Elaine Wyper, but she had claimed £11,000 from the state for criminal injury. I have every sympathy with those who are abused—I believe that they should receive such support—but there is a disparity in that example.

Jim Fairlie, who is a member of the Scottish National Party, was unfairly labelled. Members of that party should recall his case and consider it.

Maureen Macmillan: Mr Gallie seems to be arguing that the accused should be allowed anonymity because rape is a serious crime. What about murderers? Should someone who is charged with murder be allowed anonymity, or is

he implying that women who allege rape are more likely to be lying than any other kind of victim?

Phil Gallie: No. Women who have been affected by the crime of rape deserve anonymity. They should not have their names plastered across the press. Anonymity is not offered to anyone in cases of any other crime that I can think of that comes before a court. Rape is a special instance, which is why I emphasise the point.

I ask members to read the story of Andrew Bond in the *Daily Mail* of 23 February. At times, when the police get involved in a case, they see the interests of the victim as those of the woman against whom the crime has been perpetrated—as they feel to be the case—and they are a little bit slow in looking at all the aspects. That was certainly the situation in the case of Andrew Bond. The police had evidence before their eyes that proved his innocence from the start, but he lost his university career and had his life turned upside down although he was totally innocent from beginning to end. Those are the kinds of cases that we must examine.

I have concentrated on the crime of rape. I was tempted to speak about the sexual abuse of children, but if the message were to be put out that anonymity would be granted in rape cases, perhaps judges in our courts would take account of that. I point to the case in Ayrshire, last July. The case collapsed in the Court of Session and left individuals without the opportunity to prove their innocence. They have been left stained. That is wrong. I feel sure that many members have a lot of sympathy with the Cairns family and others who were caught up in that case. Had a level of anonymity been offered to them and maintained throughout the trial, a lot of damage would not have been done.

I move amendment 10.

Pauline McNeill: I wondered how long Mr Gallie was going to get to speak. I will not take up as much time: my points are quite simple.

I am suspicious and concerned that Phil Gallie has lodged amendment 10 at stage 3. I agree with some, but not all, of what he says, but it is wrong in principle for Parliament to debate at stage 3 a principle that has never been scrutinised or debated in committee, and I am opposed to that. I questioned whether the amendment should have been admitted, but I am told that it is admissible.

The Sexual Offences (Procedure and Evidence) (Scotland) Bill is about protecting victims from unnecessary criticism and from facing their accuser in court. That is at the heart of the bill, which is where it should be. Phil Gallie is getting some of his cases mixed up. Feeling in the Parliament is strong. We await the decision for which the Lord Advocate has called on the

Abernethy ruling, which is on another point of law altogether. I am sure that we will be anxious to discuss what the law in relation to rape should be.

The members who intervened on Mr Gallie are correct. There may be merit in debating the anonymity of accused persons, but that anonymity should be debated in relation to every crime, not just sexual offences. The fact that that principle is in amendment 10 makes me suspicious of Mr Gallie's motives. He is saying that this is the bill that we should use to protect male persons who are accused, but let us debate the matter in its proper context—let us not confuse it with the principle of the bill that we agreed at stage 1, which is that the victim should be protected, by the appointment of a court solicitor, from having to face their accuser in court directly.

15:15

Roseanna Cunningham: I sympathise with some of Pauline McNeill's comments. I do not want to go too far down the procedures road, but we know that sometimes members do not lodge amendments at stage 2 because they feel that, if those amendments are debated but not accepted, they will not be able to lodge similar amendments at stage 3. Perhaps we should consider that issue, because it means that amendments that deal with serious issues, such as amendment 10, are lodged at stage 3 with little forewarning, with no evidence to back them up and with little time in which to be debated—only 10 or 15 minutes in a stage 3 debate such as this.

SNP members will not vote for amendment 10, but not because Phil Gallie has no good, supporting arguments. We should debate restricting the reporting of an accused's identity in a rape case. It is important to recognise that issue; we should not pretend that we can simply run away from it. I gently suggest to Phil Gallie, however, that the way in which he presented his argument did his cause no favours and probably made members shut their minds to what is a serious issue. Another concern is that the amendment was introduced so late in the bill's passage. That is one of the main reasons why we will not vote for it.

Amendment 10 represents a valid argument, but it could open the door to granting anonymity for accused persons across the board. It is difficult to justify anonymity for the accused in one case but not another. Members should consider that issue.

However, the amendment could also lend anonymity to a victim. There must be many cases in which openly identifying the accused also reveals the victim's identity, particularly in smaller communities.

Members indicated disagreement.

Roseanna Cunningham: Members are shaking their heads. For people who live in cities such as Glasgow, anonymity might be protected, but for those who live in much smaller communities, it is extremely difficult to maintain anonymity, even when the court has imposed anonymity. We must accept that as a fact of life.

There should be a debate on the issue, but it is too late in the passage of the bill to have one now. Phil Gallie did himself no favours by the way in which he presented his arguments. The SNP will not support amendment 10.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I am pleased to support amendment 10, as it deals with the question of balance, which is an important component of justice. It is entirely appropriate that Phil Gallie lodged the amendment for debate at stage 3; I see nothing wrong in his doing that. The argument that he should have lodged the amendment at an earlier stage is simply a procedural smokescreen.

Rape is undoubtedly a serious crime. No member has argued differently and I do not expect any member to do so. It is regrettable that rape conviction rates are low. However, the prime reason for that is the lack of witnesses or corroborating evidence. Having a low conviction rate—as sad as that is—is no excuse for punishing the accused, who remain innocent until proven guilty. Phil Gallie outlined some of the many cases in which men have been unjustly accused of rape and have had their lives deeply affected by those false accusations. Some of those men took their lives.

Because rape is a heinous crime that involves sex, it is widely reported. Moreover, because a rape case often involves one person's word against that of another, even a finding of not guilty can leave doubts in people's minds. That can cause immense damage to reputations and lives.

Let us compare rape cases with less heinous but nonetheless serious cases that involve crimes such as burglary and car theft. In those other cases, the public knowledge of a verdict of innocence is not generally damaging to the person who was accused. Even being found guilty in such cases and serving a conviction can be less damaging for the accused than when an accused is found innocent in a high-profile rape case.

Johann Lamont: I wonder whether Mr Monteith is not in imminent danger of suggesting that we ought not to take rape cases to trial at all because the accusation of rape is so damaging to someone. Everyone is aware of that fact. Does he agree that part of the reasoning behind the position that we are discussing is a belief that it is more likely that a woman will lie about rape than about any other crime? Does he also agree that

that attitude is dangerous and sends the wrong message to women who might wish to complain but who are afraid to do so because of that attitude?

Mr Monteith: I have never heard anything so preposterous. The reason why we grant anonymity to the alleged victim is to ensure that they feel comfortable about coming forward. Phil Gallie's proposal relates to the crime of rape and not to murder or other crimes because anonymity exists for the alleged victim of rape. Like Phil Gallie and many others, I do not believe that the granting of anonymity to people who have been accused of rape will open any floodgates. We do not see people battering down the doors of Parliament requesting anonymity for victims of other crimes. Likewise, I do not expect that people will say that there should be anonymity for people who are accused of other crimes. Rape is a special and particularly nasty crime that we have decided to treat differently because of the difficulty of bringing the prosecution. However, because of the often damaging outcome for those who have been found innocent, it is worth providing anonymity for the accused.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I want to know why the amendment was not lodged earlier in the process. Comments from across the chamber indicate that many members believe that the amendment has been lodged too late to be subject to proper scrutiny.

Mr Monteith: My experience of serving on committees does not convince me that stage 2 offers the opportunity for great scrutiny. Stage 2 is whipped and is often quick. I suggest that stage 3, which takes place in a meeting of the whole Parliament, provides for better debate than stage 2 in committee. I have no difficulty with members of any party lodging amendments—serious or not—at any time. Members are allowed to do that and I applaud Phil Gallie for lodging amendment 10. I cannot say why it was not lodged earlier, but it is wrong to suggest that it should have been lodged earlier. Many of us have lodged amendments that have been disagreed to by a small number in committee even though we know that the amendment would have had more support at stage 3.

George Lyon (Argyll and Bute) (LD): Surely the point of stage 1 and stage 2 is to bring forward evidence and find out what the various bodies who would be affected by the legislation think about the amendments. That is the point of the exercise, not the decision that is made at stage 2. Members have the opportunity to bring the subject of the amendment back to the chamber in another amendment at stage 3.

Mr Monteith: Actually, there is—

The Deputy Presiding Officer: It might help you to know, Mr Monteith, that I intend to make a statement on that matter at the end of your remarks.

Mr Monteith: Mr Lyon should be aware that stage 1 and stage 2 are quite different processes. Stage 1 is undoubtedly about evidence gathering; stage 2 is about debating amendments. It is often difficult to ensure that subjects that were dealt with in amendments that were disagreed to at stage 2 are considered at stage 3. The selection of amendments is, quite properly, for the Presiding Officers, but that is why members sometimes choose to raise subjects only at stage 3 or to word amendments quite differently at that stage.

As I said, I do not believe that amendment 10 will open up the floodgates. The amendment makes the serious points that false accusations of rape are being made across the UK; that people's lives are harmed by that, even when the accusations are proved to be false; and that that harm lasts beyond the immediate exposure. If we are to ensure balanced justice, we should support Phil Gallie's amendment.

Every false accusation of rape betrays every genuine rape victim. Phil Gallie's amendment helps the cause of exposing genuine rapes. The people who have questioned his motives should plainly state what they think his motives are. No one has dared to say that they are anything other than a desire to bring balance and justice to our criminal procedures. I support Phil Gallie and will be pleased to do so in the vote.

The Deputy Presiding Officer: I will comment on the question of stage 2 amendments that Roseanna Cunningham, George Lyon and others raised. Members most certainly should not hold back on amendments at stage 2 on the assumption that having them considered at stage 2 will lead to their not being considered at stage 3. That is not how the selection process works. Many amendments that are considered and disagreed to at stage 2 are, after due consideration by the Presiding Officers, selected for consideration again at stage 3.

Mr Gil Paterson (Central Scotland) (SNP): My starting point is the fact that the reporting of rape is abysmally low and the conviction rate is even lower. I make it clear that I speak on my own behalf and on no one else's—including my party's.

The fact that an alleged accused is named has an impact on a victim. Roseanna Cunningham mentioned the fact that, in a small community, it is perfectly possible—in fact, it is likely—that, if an accused is named, the victim is named at the same time through the gossip-mongering that takes place. That is because most rapists are known to their victim. That is a cold, hard and fast fact.

However, I say to Phil Gallie that stage 3 is an awfully late point at which to lodge such a controversial amendment. I would like to hear a lot of evidence and solicit a lot of advice from people who know much more than I ever will about the matter. For that reason, I advise members to vote against amendment 10.

Bill Aitken: Some interesting points have come out of the discussion. We should go back to what the Minister for Justice said at stage 1, when he stated that the bill is all about balance and fairness. No one would disagree with that.

We must therefore examine amendment 10 and see how it will impact on fairness. Let us be clear: rape is a despicable act. However, that does not mean that we should jump to the automatic conclusion that those who are convicted of rape are always guilty. Similarly, I stress that I am not naive enough to think that some 80 per cent of those who are acquitted of rape charges are innocent. One must consider the question with balance.

Phil Gallie has ably articulated the arguments for extending anonymity to accused persons, as proposed in amendment 10.

Trish Godman: Will Bill Aitken give way?

Bill Aitken: If Trish Godman will let me finish the point, I will.

The offence of rape attracts a degree of odium—and rightly so—that few other offences attract. As such, the accusation, never mind the conviction, reflects on the individual, although he may be quite innocent.

Trish Godman: I would like some clarification. Did Bill Aitken say that those who are convicted are not always guilty? I think that that is what he said.

Bill Aitken: Clearly, I must have misled myself. I meant to say that I am not satisfied that many of those who are acquitted are innocent. I think that most people who listened to the content of my remarks would have made that assumption, but I am grateful to Trish Godman for allowing me the opportunity to clarify what I said.

The fact remains that those who find themselves charged and are subsequently acquitted carry with them a degree of odium that can impact profoundly on their lives. That is a real argument for extending anonymity to the accused in such cases.

Roseanna Cunningham's argument has considerable merit, although I know that she was coming from a different direction. In small communities, when we name the accused, by implication we name the victim, too. That must be considered.

The other side of the argument, which was well articulated by Johann Lamont and Maureen Macmillan, is that fear must not be inculcated into victims under any circumstances. That must always be taken into consideration. Victims may feel that, if the accused is not named, there is not the same disincentive against people committing such offences. I accept the argument that has been made about that.

15:30

There are many different ways of looking at the issue, but I defend Phil Gallie resolutely on his lodging amendments 10 and 17 at stage 3—he has the right to do so. I accept the other side of the argument, as expressed by Gil Paterson, that such a matter should perhaps be subject to more detailed examination and that stage 2 might be more appropriate for that. However, Phil Gallie is perfectly within his rights and is abiding by the democratic standards of the Parliament in raising the matter at this stage.

There are arguments on both sides of the fence. Conservative members will vote on the amendments as individuals, because we recognise that there are differences on the issue. We feel firmly, however, that irrespective of the results of the votes, the matter should in time be revisited. When that is done, a more detailed examination of the principles that Phil Gallie has ably espoused today may well result in a change to the legal system.

Mr Rumbles: Bill Aitken has just said that Phil Gallie had the right to lodge amendment 10 at stage 3. No one is questioning Phil Gallie's right to do that; we are questioning the appropriateness of his choosing to raise the issue at this stage.

Phil Gallie highlighted some instances where there have been false accusations and where there is a real issue of anonymity. I sympathise with that point, but I will vote against amendment 10, because of the process that has been applied. Members from all parts of the chamber are genuinely sympathetic to the anonymity issue. However, the issue is big and needs to be examined thoroughly.

Committees can call evidence at stage 1. I would like to see the Justice 2 Committee's evidence on the subject of anonymity. Such evidence could even have been called at stage 2. I do not accept the points that Brian Monteith made. Although votes on amendments are taken at stage 2, it is possible to call for further evidence at that stage if the committee so desires.

There is no doubt about it: if individual MSPs such as me have to come into the chamber for a stage 3 debate to see amendments such as amendments 10 and 17, that is not sufficient. I

acknowledge that the amendments were published in the business bulletin, but I did not see them. Phil Gallie's approach is no way to make law.

The Deputy Presiding Officer: A number of members have asked to speak at the last minute, but we have to get through this group and the following one by 3.45 pm, so I go straight to the minister.

Dr Simpson: We have had a useful debate on this subject, but, like other members, I am slightly concerned. The committee process is vital in a unicameral legislature and issues of this magnitude should be addressed at stage 2, which allows for the appropriate amount of consideration. I will return later to some of the arguments that Roseanna Cunningham put forward, which I found interesting.

Amendment 10 would give the accused in rape cases a presumptive right to anonymity and amendment 17 would adjust the long title accordingly. In our view, it would not be right to grant anonymity to the accused in those cases, because the reasons that underpin the anonymity of complainers do not apply to the accused.

Complainers are allowed to remain anonymous because of the humiliating nature of the evidence that they have to give. A victim of a sexual attack has to be taken through the detail of what was done so that the Crown can establish that the crime was committed in the manner libelled. There is also the prospect of evidence about the victim's sexual history being led. We hope that the bill will make that less common, although it will still happen in some cases. If victims have to face the prospect that the nature of what happened to them and the detail of their private lives could become public knowledge, sexual offences would become even more under-reported than they are today.

The accused is not in the same position as the complainer and can choose whether to give evidence. His consensual private life is generally regarded as irrelevant. If the accused were given anonymity in rape cases, it could be difficult to resist granting anonymity to those who have been charged with other offences that the public regard as serious. Our system of open justice could be undermined.

More important, amendment 10 would create some anomalies. For example, it is not clear why anonymity should be given to those who are accused of rape but not to those who are accused of the sexual abuse of children. At present, complainers have no automatic right to anonymity. My understanding is that anonymity is granted to the accused in cases of abuse only in circumstances in which naming the accused would reveal the child's name. Anonymity is allowed only

for the protection of the child.

Roseanna Cunningham made a similar point. If naming the accused were automatically to lead to the revelation of the name of the victim, there might be a need for anonymity of the accused. It is regrettable that we were unable to have that interesting debate at stage 2 because the amendments were not lodged for debate at that stage. The amendments would give the accused a clearer right to anonymity than the complainer.

I draw members' attention to the list of offences under proposed new section 288C(2) of the 1995 act. Why has rape been singled out as opposed to sodomy or clandestine injury to women? Singling out rape does not create the balance that Bill Aitken referred to.

On all those grounds, I ask members to reject the amendments.

The Deputy Presiding Officer: I call Mr Gallie to respond and ask him to bear it in mind that, as he had a remarkably good whack when he opened the debate, he should keep his comments tight.

Phil Gallie: Let me take members through the history of the bill. Before the Justice and Home Affairs Committee was split into two committees, it discussed Maureen Macmillan's proposal for a sexual abuse bill. At that time, I raised the issue that amendment 10 highlights. If members read the stage 1 debate on the Sexual Offences (Procedure and Evidence) (Scotland) (Bill), they will find that I raised the same issue. I did not lodge the amendment at stage 2 because I felt that others had heard evidence and were considering the bill.

More than anything else, what changed my mind was a story in the *Daily Mail* on 23 February. I felt that it would be wrong for the Parliament to ignore such an omission in the law, which needed to be addressed. That is why I have lodged amendment 10 at this stage. As far as I am concerned, the amendment has been lodged precisely according to the rules of the Parliament.

I give my thanks to the several members who have said that they recognise the need for the change that amendment 10 would make. If the amendment is voted down, perhaps it will induce an examination of the situation, which might be dealt with in another bill in the not-too-distant future.

The minister mentioned the fact that the amendment would not apply to those who are accused of the sexual abuse of children or other crimes. I considered that issue, but felt that, at this late stage, I should take a simple approach. That is why I did not spread the load across the range of other offences.

I thank the Presiding Officer for giving me the

opportunity to respond. I hope that members who are sympathetic to the amendment will vote with their consciences. If the amendment is unsuccessful, I will look forward to a future debate.

The Deputy Presiding Officer: The question is, that amendment 10 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Young, John (West of Scotland) (Con)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)

McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Andrew (Central Scotland) (SNP)

ABSTENTIONS

Fergusson, Alex (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)

The Deputy Presiding Officer: The result of the division is: For 10, Against 80, Abstentions 2.

Amendment 10 disagreed to.

Section 8—Exception to restrictions under section 274 of 1995 Act

The Deputy Presiding Officer: The knife falls at 3.45 pm. We move to group 4. Amendment 1 is grouped with amendments 2 and 3.

Dr Simpson: Amendment 1 is purely a drafting amendment that results from the removal of a subsection by an Executive amendment at stage 2. The words “such an application” no longer make sense and amendment 1 spells out the type of application that is meant.

Amendment 2 is a tidying-up amendment. The bill amends section 71 of the Criminal Procedure (Scotland) Act 1995 to allow a pre-trial hearing in a sheriff-and-jury case to be used for the determination of a character or sexual evidence history application. Amendment 2 moves the words that achieve that effect to a more logical space within section 71 of the 1995 act. They will now come after section 71(2), which contains

other matters that the court may consider at a pre-trial hearing.

Amendment 3 adds character and sexual history evidence applications to the list.

I move amendment 1.

Amendment 1 agreed to.

Amendments 2 and 3 moved—[Dr Richard Simpson]—and agreed to.

Section 8B—Disclosure of accused’s previous convictions where court allows questioning or evidence under section 275 of 1995 Act

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

Pauline McNeill: I support the inclusion of section 8B on previous convictions. It is consistent with the current position whereby if the defence were to attack the victim’s bad character, the prosecution could then refer automatically to the accused’s previous convictions. The perception is that that is not well used. The evidence that the Justice 2 Committee heard at stage 2 is that prosecutors assume that it is the role of the judge and the judge assumes that it is the role of the prosecutor. It is important to ensure that it fits into the legislation.

The Justice 2 Committee heard evidence from Professor Gane, who is a leading academic in criminal law, and from the Law Society of Scotland. They voiced concerns about the effect of the provisions in section 8B. Professor Gane claimed that the bill does not bring out the important distinction between the evidence of previous convictions that goes towards proving what lawyers would call sufficiency—that which proves that the accused committed the crime and evidence that attacks the credibility of the accused. In his evidence Professor Gane suggests that some previous convictions are likely to have a significant impact on the jury’s perception.

That might assist the Executive’s overall intention, given that it wants to ensure that there is proper weighing up of the evidence. However, I also note that the Executive’s intent is to ensure a deterrent effect—if the defence attacks what it believes to be the complainer’s bad character, any relevant previous convictions of a sexual nature are likely to be revealed in court. That is a good principle, which I support. For too long, victims have been attacked by defence agents who have used evidence of their sexual history or bad character. I want to ensure that there is clarification and that the purpose of disclosing the accused’s previous convictions is not to establish sufficiency of evidence but to determine the credibility of the accused’s evidence.

15:45

A further point of clarification is required, although amendment 14 does not address it. There is a principle of weighing the evidence of both the victim and the accused and there is a test that establishes the probative value of evidence of the victim's bad character or sexual history. However, there does not seem to be a corresponding test for determining whether evidence of the accused's previous convictions can be used.

I felt that I should lodge an amendment in order to ask the Executive to clarify that point, given that members of the Justice 2 Committee heard evidence on it only last week. When judges determine in advance of the trial what evidence to allow—as they will do under the bill's provisions—it is important that they are clear about the intentions behind the legislation. It is also important that, when judges direct the jury, they are clear that their direction means that the jury can use evidence of the accused's previous convictions to establish the credibility but not the sufficiency of the evidence.

I want to ensure that, in redressing the balance, we get the balancing act absolutely right, so that the interests of the accused and of the victim are treated evenly. I am interested in the comments that the Executive is prepared to put on the record on that point.

I move amendment 14.

Mr Duncan Hamilton (Highlands and Islands) (SNP): I will make a brief contribution in support of amendment 14, although my reasons are slightly different from those of Pauline McNeill. I support all that she said, but I recognise that two specific points were made in the evidence that the Justice 2 Committee heard last week. I ask the Executive for clarification on those points, as such clarification could be useful.

First, the deputy convener, Mr Aitken, suggested that the use of previous convictions could be extended and could amount to corroboration. Of course, that would be a further extension of the Moorov principle, which has already caused some debate. I would be interested to hear from the Executive that that is explicitly not the intention and that previous convictions could never be used in that way. It would be useful if the Deputy First Minister—I believe that he is responding to the debate on amendment 14—would put on the record the Executive's views on that point.

Secondly, I bring to the attention of the Deputy First Minister the words of Gerry Brown, who is from the Law Society of Scotland. Gerry Brown related subsection (2) of new section 275A of the 1995 act to subsection (4) of that section—the only exemptions to subsection (2) are outlined in

subsection (4). Under paragraph (b) of subsection (4), a legitimate objection to the disclosure of the accused's previous convictions would be when such disclosure would be

“contrary to the interests of justice”.

Gerry Brown said:

“The words ‘interests of justice’ are used but there is no guidance as to what is meant by them. Other legislation and regulations refer to interests of justice, but include guidance as to how a judge is to interpret that. That must be clarified in the bill.—[*Official Report, Justice 2 Committee*, 27 February 2002; c 1065.]

I ask the Deputy First Minister to clarify why that guidance was not given in the bill. Given that that evidence was received only last week, will he take the opportunity—either today or in the near future—to clarify precisely what the phrase “interests of justice” means?

Bill Aitken: It is fair to say that the Executive amendment that inserted section 8B at stage 2 has caused the Justice 2 Committee real problems. Once again, we are back to the question of balance. It is open to any accused—in a rape trial, for example—to attack the character of the witness. When he does so, it is in the certain knowledge that, on the basis of that attack on a Crown witness, the prosecutor can introduce evidence that relates to his character. At that stage, it seems to me that the position is in kilter and is balanced, fair and reasonable.

The presumption of innocence is a basic and important principle of Scots law. Everyone is entitled to a fair trial and the fact that an individual has previous convictions, which may be either analogous or quite distinct, is not relevant to the judicial process. We are quite firmly of that view. It is not good enough for the Executive effectively to attempt to do a Moorov in that respect. We fully accept that there are significant difficulties with corroboration in rape cases. Apart from the occasional bizarre circumstance, there are only two witnesses to acts of that type—the complainer and the accused.

During the period of our Administration, we introduced changes to the rules of evidence that enabled corroboration to become much easier, through the demonstration of distress or personal injury. However, it strikes us that the provisions in section 8B go too far. What is the purpose of introducing previous convictions? Is it to corroborate the evidence of the complainer by means of those convictions? If that is the case, there is a serious risk that we will prejudice the basic principle of Scots law that we all cherish—the entitlement to a fair trial and the entitlement for the case to be considered in isolation. The disclosure of previous convictions raises significant difficulties.

The bill is not of major portent. Although Conservative members feel that there is some value in a number of the matters that have been raised, we genuinely feel that judges do a reasonably good job and, for example, would protect the complainer against a cross-examination of a type that would be distasteful. At the same time, we feel that we should stand by the basic principle of the presumption of innocence.

Pauline McNeill: If we could resolve what the Executive's intention is with the provisions that it has introduced, and if the Executive were to say that previous convictions will not amount to a primary or a secondary source of evidence, would the Conservative party support the principle of the inclusion of previous convictions? It seems to me to be only fair that if the defence can attack the character or the sexual history of the victim, the defence should think about the disclosure of the history of the accused. That seems to be a balanced position. What concerns me most is what the disclosure of convictions is then used for. It would be wrong to use that for corroboration.

Bill Aitken: That was a useful and constructive intervention. I understand where Pauline McNeill is coming from. However, we still do not know where such evidence is going. As I have said, the protection exists whereby if the character of the complainer is attacked, the prosecutor can respond. That must have an inhibiting effect on those who are likely to attack the character of a complainer. Someone with a series or a schedule of convictions for rape or sexual assault is hardly likely to attack the sexual character of the witness for fear of those convictions emerging in evidence. That is the existing position.

We must ask what the purpose is of extending the existing provisions. The only conclusion that I can come to is that the Executive seeks to use the narration of such convictions as corroboration of the offence concerned and to extend the Moorov principle beyond a stage that most members would regard as being acceptable. I will listen very carefully to what the Minister for Justice has to say in response. I must flag up the fact that we are extremely uneasy about the proposals in question.

Roseanna Cunningham: I wonder how many people who are present understand what "doing a Moorov" means. I know that a few members do, but I suspect that many do not. We are entering discussions that are quite complicated for those who do not have legal backgrounds.

I would be interested to hear the Executive's view on amendment 14. It seems that a serious debate has taken place in the Justice 2 Committee on the disclosure of previous convictions. There is a real debate about the way in which evidence of PCs will be used. Will it be used as corroboration, which most people understand, or will its use go

further, to provide a sufficiency of evidence? Although that is a slightly different matter, it is related. Will such evidence be used primarily, or even solely, in relation to the credibility of the accused?

A fine balance is involved, which Bill Aitken talked about. Pauline McNeill's amendment 14 is useful, because it makes it explicit that we are talking about credibility and that it is not expected that evidence of PCs should be used in a corroborative manner. I would be surprised if the Minister for Justice argued that PCs ought to be used in a corroborative manner, and I look forward to hearing what he says.

I am bound to echo concerns that once PCs are in evidence, the point becomes moot. The famous phrase concerning an elephant in the jury room describes the situation. Matters can become difficult to disentangle, but courts must deal with the impact on a jury all the time. I was interested in the brief discussion of jury studies in the Justice 2 Committee's meeting last week. We ought to return to how juries handle such evidence. That is a more difficult matter to handle and the bill cannot do that. At present, I am much disposed towards supporting Pauline McNeill's amendment. I am interested in hearing what the minister says.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I thank Pauline McNeill for lodging amendment 14, which has given us a worthwhile and useful opportunity to discuss an important aspect of the bill that exercised the minds and the time of the Justice 2 Committee and has generated considerable interest and useful discussion.

I will make clear the Executive's position on the use of previous convictions, as I believe that Pauline McNeill invited me to. Sections 266 and 270 of the Criminal Procedure (Scotland) Act 1995 allow the disclosure of previous convictions in some circumstances. That is not quite the novelty that some of Bill Aitken's comments suggested that it was. It is significant that the sections do not spell out the use that can be made of such evidence.

Those sections are not often used. I do not think that it has ever been argued that previous convictions that were admitted under those sections might be used to provide corroboration. Textbooks contain statements to the contrary. Previous convictions that are admitted under those sections go not towards proof of the offence that is charged, but towards the credibility of the accused. In other words, the sheriff or jury can take them into account in deciding what they make of the accused and whether they believe him.

Nothing in new section 275A of the 1995 act would alter the position, which the Executive has

never intended to alter. Previous convictions cannot supply corroboration. If the Crown does not have a legally sufficient case, previous convictions will not take it over that hurdle. I hope that I have described the situation explicitly.

Pauline McNeill's amendment has a slight danger. As I said, sections 266 and 270 of the 1995 act are not qualified. If amendment 14 were passed, it would raise questions about those sections and could create the possibility of using them to provide corroboration, because that would not have been ruled out expressly. I hope that the Parliament will welcome the reassurance that I have given.

New section 275A will apply only when the accused has applied successfully to bring in material about the character or past behaviour of the complainer. In that situation, disclosure in evidence of any previous convictions of the accused for sexual offences will automatically be considered by the court. Pauline McNeill was right to say that, at present, there is a stand-off or uncertainty about whether the question belongs to a judge or a prosecutor. The presumption will be in favour of disclosure, but the accused will be able to overturn that if he satisfies the court that it would not be in the interests of justice in the circumstances of a case to do so. I will deal with the interests of justice in a moment.

16:00

Given the existence of tests for the character or past behaviour of the complainer, one of the questions that Pauline McNeill asked was about the absence of a similar test with regard to the admission of previous convictions. One of the fundamental reasons for that is that, once such a test has been triggered by the admission of evidence as to the past character or behaviour of the complainer, there is a presumption that the test is not about whether previous convictions should be admitted. That is because of the presumption that such evidence should be admitted, which puts the onus on to the accused to give cause to the court, sheriff or judge as to why the convictions should not be admitted.

Gerry Brown of the Law Society raised the question of the interests of justice in his evidence to the Justice 2 Committee. Duncan Hamilton quite properly asked him what was understood by the phrase. As I indicated earlier, what is understood is that the accused can overturn the presumption by satisfying the court that it would be contrary to the interests of justice in that case.

The breadth of the phrase "interests of justice" will benefit the accused. It will allow the accused to present a reasonable argument against disclosure. Given those circumstances, there is always a risk in some future case that we may find that the

circumstances that are presented against disclosure are found reasonable by a judge. However, if the definition did not fit the test, the judge would have to proceed with disclosure. That could make the new provision more complicated.

Previous sexual offence convictions will be disclosed automatically unless the accused objects. Although the interests of justice test is a broad one, the reality is that a court will be considering the specific grounds for objection as advanced by the accused in that particular case. It will be for the court to determine whether in all the circumstances the grounds weigh up sufficiently to prohibit disclosure.

Bill Aitken: Does the minister accept that the matter may not have been handled very well? If members had known much of what he has just said at an earlier stage, the degree of concern that has been expressed over the past couple of weeks would not have been expressed. Had we received the minister's assurances at the time, and had that wording been included in the bill that was considered at an earlier stage, we would have been suitably reassured.

I ask the minister to underline the commitment that he has given that there is no change in the existing position, which is that previous convictions could in any event have been brought into a court of evidence. I ask the minister to confirm that he seeks to make that compulsory, as opposed to leaving it to the discretion of the prosecutors.

Mr Wallace: I support presumption rather than compulsion. It is also fair to say that when the matter was dealt with at the time that an amendment was first lodged at stage 2, I accept and apologise for the fact that we did not include the provision in the original bill. It is clear that the issue is complicated. We were anxious that the drafting of the wording was correct. For a number of reasons, not least of which was a wish to make progress, we did not want to hold back other parts of the bill.

When Richard Simpson dealt with the matter at stage 2, the specific question of corroboration was not raised. It has now been raised and I repeat that it has never been the intention of the Executive, nor is it the Executive's intention, to use the provision to provide corroboration. Previous convictions cannot supply corroboration.

The Justice 2 Committee asked Professor Gane about compatibility with human rights legislation. He said:

"I think that the bill is ECHR compliant. As it is drafted, I cannot see what the ECHR objections would be."—[*Official Report, Justice 2 Committee, 27 February 2002; c 1061.*]

That has always been a consideration for the Parliament and it is helpful to have the views of Professor Gane on the matter.

I hope that I have provided the assurance that is sought by Pauline McNeill and other members who spoke in the debate. Given those circumstances, I hope that Pauline McNeill will not press amendment 14.

The Deputy Presiding Officer: I call Pauline McNeill and ask her to be brief, as I have two further amendments to fit in before 4.15 pm.

Pauline McNeill: I am more or less satisfied with what the minister has said this afternoon. He cleared up the two points that were raised—first, the question of what evidence can be used for and, secondly, the question of what is contrary to the interests of justice.

I was slightly unhappy with the wording of new section 275A(2) of the Criminal Procedure (Scotland) Act 1995, which says:

“Any conviction placed with a judge ... shall, unless the accused objects”.

It is not clear that that is an automatic presumption. However, the minister has clarified on the record that there will be an automatic presumption that, if the tests are successful—including those relating to the victim’s sexual character and history—previous convictions will be taken into account unless the accused can demonstrate that that would be contrary to the interests of justice. As a result, I will not press amendment 14.

Amendment 14, by agreement, withdrawn.

Schedule

NOTICE TO ACCUSED ABOUT EFFECT OF SECTIONS 288C AND 288D OF 1995 ACT AND SPECIAL PRE-TRIAL PROCEDURES:
AMENDMENT OF 1995 ACT

The Deputy Presiding Officer: We move to the final group of amendments. Amendment 4 is grouped with amendments 16, 5 and 6.

Mr Wallace: Amendment 4 allows a trial to be postponed at a second or subsequent pre-trial hearing in a sheriff or jury case. The bill provides for a first pre-trial hearing to be used to establish whether the accused is legally represented. The power already exists to postpone the trial at that hearing. However, a solicitor might be dismissed by the accused or withdraw from acting after that hearing had taken place. The bill obliges such a solicitor to notify the court, which would then fix a further pre-trial diet to sort out legal representation. It might be necessary to postpone the trial at that further diet, as the solicitor newly appointed by the court might need additional time to prepare. Amendment 4 allows the court to postpone the trial.

Amendment 5 allows the court to postpone the trial at a pre-trial hearing in a High Court case. The bill provides for a new pre-trial hearing purely to

deal with the issue of the accused’s legal representation in such cases. It might be necessary to postpone the trial at such a hearing, and again a solicitor who has been newly appointed by the court might need more time to prepare.

Amendment 6 is a consequential amendment following the passing of emergency legislation on intermediate diets in the Parliament last week. The bill creates a new pre-trial hearing called an interim diet in sheriff court summary cases, which specifically deals with the accused’s legal representation in a sexual offence case. It can be conjoined with an intermediate diet. Amendment 6 is designed to ensure that the loophole closed by the emergency legislation is also closed in relation to new diets provided for in the bill. In other words, it ensures that the emergency legislation which we passed last week is extended to reverse the effect of the appeal court decision on new interim diets.

Although amendment 16 is well intentioned, it is unnecessary, as the situation that it is intended to address is already covered by new section 71A(1) and (2) of the 1995 act, as proposed in paragraph 6 of the schedule. New section 71A(6) of the 1995 act allows a new solicitor appointed by an accused to ask the court to dispense with the further pre-trial diet. As most accused will appoint another lawyer, that measure will save court time by doing away with unnecessary hearings.

However, the solicitor who asks the court to dispense with the further pre-trial diet might be dismissed or withdraw before the diet has either been held or dispensed with. In that event, the solicitor is required under new section 71A(7) of the 1995 act to advise the court of what has happened. The court would then simply not dispense with the diet and would proceed as originally planned, with the accused required to attend to explain to the court his intentions regarding legal representation.

Subsections (1) and (2) of new section 71A deal with the situation where a solicitor is dismissed or withdraws before the trial, but after the further pre-trial diet has either been held or dispensed with. The solicitor must inform the court of what has happened and, under subsection (2), the court must order a further pre-trial diet.

In those circumstances, I ask members to reject amendment 16 and support amendments 4, 5 and 6.

I move amendment 4.

Roseanna Cunningham: I have tried to follow what the Minister for Justice has just said about amendment 16. If I was struggling a little through his speech, I suspect that everyone else was as well. As a result, I think that I will go ahead and move amendment 16.

Amendment 16, which is supported by Bill Aitken, provides for a further pre-trial diet to ascertain whether the accused has representation in circumstances where the solicitor has been dismissed or has withdrawn prior to the trial in terms of new section 71A(7) of the Criminal Procedure (Scotland) Act 1995, as proposed in paragraph 6 of the schedule of the bill.

This is not an unusual procedure; it is recognised and well known. Basically, the schedule makes detailed provision on the procedural steps that will be invoked to implement the proposals set out in the bill. Paragraph 6 creates a further pre-trial diet in solemn cases to enable the court to ascertain whether the accused will be represented for trial. The amendment has the effect that, on being informed that the solicitor is being dismissed or has withdrawn in terms of new section 71A(7), the court shall order a further diet to ensure that procedures are put in place in advance of the trial to instruct a court-appointed solicitor. It is really an intermediate diet to ensure that everything is working and that we will get to where we intend to go in respect of any trial.

The amendment also reflects the procedure that is to be adopted under new section 72A(9) of the 1995 act, as proposed in paragraph 7 of the schedule, and under new section 148A(9) of the 1995 act, as proposed in paragraph 11 of the schedule, and at least has the argument of consistency behind it.

The Deputy Presiding Officer: We have three minutes in hand.

Bill Aitken: I will not take up the three minutes, Presiding Officer.

It might be argued that this is a belt-and-braces provision. Nonetheless it is still worth while because there could be a situation in which there would be unnecessary delay in a trial because of the lack of representation. We must have the additional diet to ensure that everything is in good running order and that there are no further delays. There is merit in the amendment, which the Conservatives will support.

Mr Wallace: I reiterate the Executive's view that the amendment is probably belt, braces and something else too. It is unnecessary, in that the kind of circumstances referred to by Roseanna Cunningham and Bill Aitken would be covered by what is already in the bill. I do not think that this is a life-and-death matter. I would argue that the situation is provided for by the provisions already in the bill.

Amendment 4 agreed to.

Amendment 16 moved—[Roseanna Cunningham].

The Deputy Presiding Officer: The question is,

that amendment 16 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. *[Interruption.]* There has been a problem with the voting equipment. We will take the vote again.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Cunningham, Roseanna (Perth) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Harper, Robin (Lothians) (Green)
Hyslop, Fiona (Lothians) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Sturgeon, Nicola (Glasgow) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)

Lamont, Johann (Glasgow Pollok) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)

The Deputy Presiding Officer: The result of the division is: For 33, Against 61, Abstentions 0.

Amendment 16 disagreed to.

Amendments 5 and 6 moved—[Mr Jim Wallace]—and agreed to.

Long Title

Amendment 17 not moved.

The Deputy Presiding Officer: That concludes consideration of amendments at stage 3.

Sexual Offences (Procedure and Evidence) (Scotland) Bill

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-2829, in the name of Jim Wallace, which seeks agreement that the Sexual Offences (Procedure and Evidence) (Scotland) Bill be passed. Members who want to contribute to the debate should press their request-to-speak buttons now.

16:16

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): The Parliament will be pleased that, after some useful debate this afternoon, we have reached the final stage of the bill. I remind the Parliament that the pre-legislative consultation document that led to the bill was issued in November 2000. That we have reached stage 3 in less than 18 months is a tribute to the commitment of everyone concerned to improve as speedily as possible the treatment in court of victims of sexual offences. We know from what we have heard of victims' experiences of the system that too many people still feel that they are failed by the system and that the law needs to be reformed.

I thank members of the Justice 2 Committee for all the hard work that they have put into the bill. The principles underlying the bill are straightforward and were supported by a cross-section of the whole Parliament at stage 1 without the need for a vote. However, some procedural aspects of the bill are complex and the committee members are to be congratulated on having carefully picked their way through a substantial amount of technical detail in a relatively short time. I also add my personal thanks to my deputy, Richard Simpson, who took the bill through stage 2, and to the officials who have been involved in preparing the bill. It is quite obvious from the amount of detailed information that we have discussed that they have put in a lot of hard work.

The bill will ban alleged sex offenders from conducting their own defence at trial and prevent them from cross-examining complainers in person. The bill implements a commitment given in the Executive's programme for government. It also requires there to be advance notification of any defence of consent or belief in consent. The bill greatly strengthens the existing restrictions on the use of character and sexual history evidence about the complainer. Following an Executive amendment at stage 2, which we have discussed again this afternoon, the bill also provides for a presumption in favour of disclosure of the

accused's previous convictions for sexual offences, where he has brought in material about the complainer's past. As I indicated when we dealt with the matter at stage 3, the bill was thus amended at stage 2 because we thought it important to strike the right balance between the accused and the complainer. We became convinced that there were difficulties with the original version of the new section and felt the need to examine it afresh to get it right.

Situations in which the accused seeks to conduct the trial himself and to harass the complainer do not often arise. Nevertheless, when they do, they undoubtedly cause harassment to those who have already gone through considerable pain and anxiety. Although there may be few occasions on which it will apply, the bill ought to right a wrong that, sadly, a number of women have experienced in recent times. It is fair to say that reports of such incidents can have a detrimental effect and can deter women who have been the victims of abuse or rape from reporting crimes.

It can be seen from the bill that, although the principles that we are seeking to establish are relatively straightforward, procedures are not as simple. They have required detailed discussion and the Parliament can take pride in work that is the product of much deliberation.

The bill is an important step in improving the rights of victims of crime. It is one link in a chain that is gradually becoming longer and stronger. I would be the first to accept that more has still to be done. In piloting victim impact statements and consulting on measures to protect vulnerable witnesses in general, we recognise some items on the agenda to improve the lot of victims of crime. In dealing with a particular issue that has manifested itself and occasioned considerable grief to people, the bill has taken an important step. I commend the bill to the Parliament

I move,

That the Parliament agrees that the Sexual Offences (Procedure and Evidence) (Scotland) Bill be passed.

The Deputy Presiding Officer (Mr Murray Tosh): A number of members who have advised of their wish to speak have not pressed their request-to-speak buttons. The remaining speakers should keep to three minutes.

16:21

Roseanna Cunningham (Perth) (SNP): It is relevant that we are debating the Sexual Offences (Procedure and Evidence) (Scotland) Bill on international women's day. Another debate will follow, but this is the kind of debate that before the Parliament was established we hoped that we would have. I would like to think that such a

debate would have taken place even if the Parliament did not have a relatively high number of women, but I am not 100 per cent certain that it would have.

Matters relating to criminal justice are always controversial. A fine balancing act must be performed between the right of the accused to a fair trial and the right of the victim to be treated with dignity. Our discussions this afternoon show how fine that balancing act can be. That is never more true than in respect of sexual offence cases. Frequently, victims are made to feel that they are on trial. The problem is compounded in the—admittedly few—cases in which the accused chooses for one reason or another to carry out their own defence, which can often include extended cross-examination of the alleged victim.

I have no doubt that the scales of justice have been out of kilter and have needed readjustment in sexual offence cases. It does not take a genius to work out that there is something far wrong with how rape and sexual assault cases are prosecuted. Only a tiny percentage of crimes that are committed result in convictions. That undermines the confidence that women—the overwhelming majority of victims of such crimes are women—have in the judicial system. The result is that fewer women will even report a crime, let alone put themselves through the undoubtedly traumatic process of a trial.

If we are to build women's confidence in the system's ability to prosecute rape and sexual assault, we need to make changes. My profound hope is that the bill will go some way to doing that.

The trial that brought the issue firmly into the spotlight took place in my constituency. People will remember the trial of John Anderson. That gentleman was finally acquitted and it subsequently emerged that he had previously been on trial for rape and had used the same tactic in his defence.

The bill tackles only one aspect of the problem of lack of confidence in how the system deals with sexual offences. A great deal more needs to be done. I make no apologies for again stressing that we need specialist fiscals who are trained in dealing with rape and sexual assault cases so that we emulate the successes in the Californian system.

I think that we were first promised a review more than three years ago, following the high-profile Jacqueline Radin case. The debate on leading evidence in court on the complainer's sexual history and character has continued for much longer. The bill has been a long time coming and is only a small step along the road.

We cannot be complacent. The bill deals with two specific aspects of court procedure in sexual

offences trials, one of which—self-representation by the accused—occurs in only a handful of cases, albeit high-profile cases. Addressing the two problems is important, but should not blind us to the fact that much more needs to be done in respect of the crime of rape.

16:24

Lord James Douglas-Hamilton (Lothians)

(Con): The subject matter of the debate is extremely sensitive. There have always been difficulties in striking the best balance between protecting the complainer and likely victim of an extremely serious crime on the one hand and the rights of the accused on the other. It is about striking a balance between securing the ends of justice and fairness to the accused. It is our job to make certain that we get the balance right.

The Justice 2 Committee is to be warmly congratulated on dealing with the bill with great care and giving it careful attention. My colleague Bill Aitken has played a key role in that task. At stage 1, several witnesses in the legal profession told the Justice 2 Committee that they thought that the current legislation was adequate. We know that judges have a duty to ensure that correct procedures are adhered to and that complainers are properly protected during trials and are not subjected to unnecessary distress, which I regret to say has happened at times in the past. On 26 September 2001, Alistair Duff of the Law Society of Scotland stated to the Justice 2 Committee:

"the current legislation is perfectly adequate to deal with the concerns that it is said that the public and politicians have. The question may be whether the rules have been properly applied. That is an issue of training and education."—[*Official Report, Justice 2 Committee*, 26 September 2001; c 426]

Arguments such as those have come in considerable abundance from the legal profession, but now those same professionals will be charged with a duty of carrying out those changes in legislation. We have heard an enormous number of searing and harrowing accounts of women who have been through horrendous experiences. However, we will want to know how successful the bill is in leading to a higher rate of convictions. The disturbing reality for all of us is that the conviction rate in rape cases stands at little more than 20 per cent.

We believe the bill to be a sensitive and important, if relatively small, piece of legislation. The court process must be made easier and more acceptable for victims. Rape is an appalling crime and we do not want victims to suffer unnecessarily after the crime. The bill may appear to be a relatively minor measure, but the principle is important: appropriate protection should be given to the rights, liberties and privileges of not just the

victim but all parties who are involved in court proceedings. We believe that we have got the balance as near to right as it is possible to get. We are glad to support the bill at stage 3.

16:27

Pauline McNeill (Glasgow Kelvin) (Lab): It is a happy coincidence that today is international women's day. In the Sexual Offences (Procedure and Evidence) (Scotland) Bill, we have a chance to redress the balance, because it has the potential to give women better justice in our system. We know that the statistics on conviction for the crime of rape are bleak. The bill is one small step that has the potential to protect women from intrusive and irrelevant lines of questioning that can be a major factor in determining whether they proceed with a trial. The bill represents a bold step, for which the Executive should be commended.

The current law does not prohibit all evidence of bad character, but does so only in relation to sexual matters, so there is an omission in the law that will be remedied by the bill. Dr Michele Burman and Dr Lynn Jamieson, who gave evidence to the Justice 2 Committee, stated in their research that having a tattoo, swearing or being a single mother were used as a battery of suggestions of general bad character. Why should a woman's character necessarily test her truthfulness as a witness and her likelihood to consent to sexual intercourse?

The proposed procedure, which requires written submissions and written determinations on the use, relevance and admissibility of such evidence, will be very important in helping to establish the repudiation of an indiscriminate link between bad character and honesty and between bad character and consent.

The prohibition on personal cross-examination, as it is a form of secondary victimisation, may not necessarily free victims from such treatment as we know that defence counsels are just as likely to behave in such a manner. We know that we must take other steps to protect victims.

Women's Aid has highlighted the need for training of prosecutors, judges and others within the criminal justice system. The need to understand the nature of sexual offences is also important. I am pleased to say that at stage 2 the Executive equality proofed the bill, following evidence from the Equality Network, to ensure that it did not discriminate against gay men.

According to the Scottish Rape Crisis Network, the bill has the potential to improve women's confidence in and their experience of the justice system. The feedback that the Scottish Rape Crisis Network receives from women who do not

report rapes is that they have a fear of not being believed and of being ripped to shreds.

Some people say that the bill will make no difference, but I believe that it will make a difference. We must ensure that the bill achieves its objectives and that we do not just stop with the bill. Other aspects of the law must be changed. I await the outcome of the Lord Advocate's reference on the law on rape and most of us hope for a positive decision. I support the bill.

16:30

Mrs Margaret Ewing (Moray) (SNP): I will be brief. I rise with some trepidation to discuss a bill that is in essence legalistic. As members know, I am the only Ewing in parliamentary life—I include Westminster—who is not legally trained. Nonetheless, I should speak because I was briefly a member of the Justice 2 Committee when it dealt with the bill. I was impressed with the work that was being done and with what the committee was trying to achieve. I thank Pauline McNeill for her skilful convenership of the committee and I thank the deputy convener and the clerks and other officials.

Today's debate has shown the complexities and nuances that arise when we deal with legislation connected to sexual offences, especially when we deal at the same time with the rights of complainers and the rights of the accused. In dealing with various amendments, the Minister for Justice and his deputy have said that there are complexities in the legislation. The indications are that the bill will not be the end of the story and that we will return to deal with sexual offences in the Parliament.

The principles of the bill are sound and have broad support in the Parliament. They also have public support. Rape and sexual assault are heinous crimes and all decent people should abhor them. It is a blot on our society that such crimes occur. As Lord James Douglas-Hamilton mentioned, the conviction rate for rape is only 20 per cent, which is very sad.

The bill goes some way to ensuring that more women will come forward and will feel that they have greater protection from our legal system and the appropriate assistance in court. If that is a result of the bill, it is to be welcomed. I am sure that women in Scotland will welcome the bill as part of our tribute to international women's day.

16:33

Bill Aitken (Glasgow) (Con): I turn to the word "balance" for the last time this afternoon. The balance is that the bill should be passed. The Minister for Justice caused me great palpitations in connection with the introduction of convictions, but

now that he has reassured me on that, I believe that the bill is beneficial and should be passed. The Conservatives will support it.

It is significant that during the consultation on the bill, there was a real disparity among those consulted about whether legislation was desirable. In all the bills with which I have been involved, I have never seen such a disparate set of replies to a consultation process. Some of the replies were relaxed about the way in which the system operates, but others, particularly those from women's groups, were concerned that the system was not operating fairly.

For my part, I think that, on balance, the system operates well. Although at one time our judges were remote and aloof, they now live in the real world and operate in a professional and realistic manner. They would not allow cross-examination and the introduction of red herrings of the type that were mentioned in some of the evidence.

At the committee stages, I was convinced and persuaded that it is not desirable to allow party defenders in rape cases. I was convinced of that after hearing persuasive arguments from a succession of witnesses.

The forthcoming result of the Lord Advocate's reference on the law on rape and Lord Abernethy's recent judgment at the High Court in Aberdeen have been mentioned. The resolution of that matter will be extremely interesting, but it may pose more questions than it answers. The Parliament or one of the justice committees may have to revisit the entire question of the law on rape. However, that is for another day. For today, we are content to allow the bill to be passed.

16:35

The Deputy Minister for Justice (Dr Richard Simpson): I thank everyone who has worked with us on the bill, including the many voluntary organisations whose members gave generously of their time to make written submissions and to give evidence in committee. I thank the Justice 2 Committee, its clerks and all the parliamentary staff who have assisted in the passage of the bill. I also join Jim Wallace in thanking the bill team, who have worked hard to meet a tight deadline for the bill's introduction.

The stage 3 debate has addressed several important issues. Having the debate on the public record concerning such issues as the disclosure of previous convictions has been helpful to the legislative process. We have achieved a balance—Bill Aitken said that he would be the last to mention balance, but I have that honour—and I am glad that Conservative members feel that they can now support the bill. As Roseanna Cunningham said, we have to recognise that it is a

finite and specific bill, addressing some definite issues; nevertheless, as Lord James Douglas-Hamilton said, it sends an important message of intent that we are addressing and will continue to address the important issue of rape. As many members have said, it is appropriate that we have had this debate on international women's day.

I fully understand the desire of many people to have the bill's provisions implemented as soon as possible. That will require some technical input, such as new legal aid regulations, the designing of forms and the updating of information technology systems. There will also need to be further consultation on the procedural aspects. However, we intend to achieve full implementation of the bill before the end of the year, or sooner, if feasible. Following the implementation of the bill, we will need to monitor the effects of the new provisions. We intend to start collecting raw statistics on the operation of the bill as soon as it is fully implemented.

Nonetheless, a bedding-in period will be needed to ensure that the qualitative research on the impact of the new provisions is not distorted by teething difficulties. We believe, therefore, that 18 months is a reasonable interval and we intend to commission qualitative research to begin in 2004. We know that a major problem with the old restrictions on sexual history evidence has been an enforcement gap and we are alive to the need to watch the new situation closely.

That is the road ahead. I hope that today will mark the start of a fairer deal for victims of sexual offences in our criminal law and procedure. I ask members to join me in voting for the bill to be passed.

Meeting closed at 16:39.

Committee of the Whole Parliament

[THE CONVENER *opened the meeting at 16:39*]

Fur Farming (Prohibition) (Scotland) Bill: Stage 2

The Convener (Mr Murray Tosh): We move to stage 2 of the Fur Farming (Prohibition) (Scotland) Bill, in a Committee of the Whole Parliament, of which the occupant of the chair is the convener. This is the second time in two weeks that we have had a stage 2 debate in which there are no amendments. The only requirement is to consider and dispose of the six sections of the bill and the long title.

Sections 1 to 6 agreed to.

Long title agreed to.

Meeting closed at 16:40.

Scottish Parliament

[THE DEPUTY PRESIDING OFFICER *opened the meeting at 16:40*]

Fur Farming (Prohibition) (Scotland) Bill: Stage 3

The Deputy Presiding Officer (Mr Murray Tosh): Motion S1M-2830, in the name of Ross Finnie, seeks agreement that the Fur Farming (Prohibition) (Scotland) Bill be passed. I invite members who wish to speak in the debate to press their request-to-speak buttons. I call on Ross Finnie to speak to and move the motion. You have a theoretical three minutes, minister, but I think that I can be quite relaxed if you have more to say.

16:41

The Minister for Environment and Rural Development (Ross Finnie): As I re-entered the chamber just a moment ago, I was overwhelmed by the palpable sense of excitement at the thought of the day's climax—the debate on the Fur Farming (Prohibition) (Scotland) Bill. I am sure that the Presiding Officer shared that excitement. I could see him tingling with excitement as he turned to the final item of business. I am grateful for the invitation to take more than three minutes, but I assure members that I do not intend to take up the Presiding Officer's generous offer.

To be serious, I want to put on record my genuine thanks to the committee members who examined the bill carefully, particularly the members of the Rural Development Committee, which was the lead committee. I also want to express my thanks to my officials on the bill team and acknowledge the work of the draftsmen. This bill is probably the first to go through Parliament without amendment. The draftsmen might want that fact to be recorded.

I am pleased to move the motion to pass the bill, because it is important in a civilised society to recognise that there should be sufficient justification for breeding animals. That is not the case, on balance, for fur farming.

The bill's policy objective is clear: to ban the keeping of animals solely or primarily for the commercial value of their fur. Scottish ministers and others in Scotland took the view that there was a moral argument against farming animals solely or primarily for their fur. By introducing this ban in Scotland, we will prevent fur farmers from relocating their businesses to Scotland following the introduction of a similar ban in England and Wales on 1 January 2003.

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

Ross Finnie: No. Let me make my second point.

The Rural Development Committee considered the issues that surround the bill. The committee's debate covered not only the moral argument, which was the Executive's justification for introducing the bill, but animal welfare considerations, the environmental impacts of escaped mink, and opportunities for rural diversification. I commend the Rural Development Committee on its thoroughness. The committee concluded that the moral argument was insufficiently cogent to justify the bill, but it nevertheless supported the bill's introduction, and the committee's overall conclusions supported the bill's general principles.

Fur farming has been a contentious form of farming in the United Kingdom. There are no known fur farms in Scotland, but the bill will ensure beyond doubt that there will be no such farms in the future. I commend the bill to Parliament.

I move,

That the Parliament agrees that the Fur Farming (Prohibition) (Scotland) Bill be passed.

16:44

Richard Lochhead (North-East Scotland) (SNP): I share the minister's delight at having so much time to speak on the bill. However, I welcome the fact that the debate is timetabled for 15 minutes, in contrast to the one and a half hours that we spent on the stage 1 debate. The people of Scotland are not shouting from the rooftops for this bill. That contrasts with the importance and urgency of the Sexual Offences (Procedure and Evidence) (Scotland) Bill, which we have just debated.

It does not usually take much to excite MSPs, but no MSP was excited enough by the bill to lodge an amendment or speak to the sections at stage 2. We cannot even congratulate the clerks, as is customary at this stage, as no demands were placed on them in connection with this bill.

I therefore take this opportunity to urge the Government to introduce more imaginative and ambitious proposals in future. We could have used this time to discuss a ban on tobacco advertising or to introduce overdue legislation on wildlife crime, which has been promised time and again.

Given that we are debating a bill that has not changed one iota since stage 1, I have little more to add. The SNP agrees with the principle that we should keep Scotland fur-farm free, given that fur farming is a tasteless and unnecessarily cruel activity. We therefore support the bill.

16:45

Alex Fergusson (South of Scotland) (Con): Presiding Officer, please accept my apologies for the discourtesy that I displayed in not being here at the start of the debate. I extend that apology to the whole chamber.

Like other members, I have little to say at this stage as nothing has changed since the stage 1 debate. This will therefore be the shortest speech I have ever made in this chamber. [MEMBERS: "Hear, hear."]

As at stage 1, the Executive has not made a good case on welfare grounds. From that point of view, I am unhappy about the bill. As I said before, if there were one fur farm in Scotland, I would vote against the bill. However, as there are no fur farms—and as the Conservatives will have a free vote on the subject—I will abstain.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): Will the member give way?

Alex Fergusson: I am in my last few seconds, but of course I will.

Alasdair Morgan: Does the member accept that there is a danger that fur farmers from south of the border might come north following the Westminster ban? If they were planning to do so, they would certainly not broadcast that intention to committees of this Parliament.

Alex Fergusson: I believe that what Mr Morgan says is true, but I am not absolutely convinced of the case for the abolition of fur farming. However, as there are no fur farms in Scotland at the moment, I am not prepared to oppose the bill. If there were any, I would oppose it.

I have nothing further to add and will abstain in the vote.

16:47

Mr Alasdair Morrison (Western Isles) (Lab): I congratulate Alex Fergusson on his best speech in the chamber to date. I will make a similarly short and relevant contribution. The minister has thanked all those who deserve applause, and there is no need to retrace his steps.

The bill is short and succinct. It fulfils a pledge that was laid out in the Labour party's 1997 manifesto. The pledge was based on the view that animals should not be destroyed or bred for destruction in the absence of sufficient justification in relation to public benefit.

As the minister said, the bill to ban fur farming in England and Wales has completed its stages in Westminster and is due to take full effect in early 2003, following a winding-down period.

Richard Lochhead bemoaned the fact that we

used one and a half hours on the stage 1 debate, but he omitted to tell the chamber that the nationalists refused to use the Sewel motion procedure to deal with this important piece of legislation more quickly.

Escaped mink can do considerable damage. As I know from my constituency, they damage indigenous wildlife and internationally renowned bird sanctuaries and reservations. If it were not for the mink eradication scheme that the Executive is paying for, those reservations would be completely destroyed.

The point of the bill is to close a loophole that would allow fur farmers to evade a ban in England and Wales by relocating in Scotland, thus resurrecting the industry north of the border. The bill is eminently sensible and is worthy of our support.

16:48

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I reject the ridiculous moral argument that has been put forward against the operation of fur farming. The Rural Development Committee as a whole felt that that was a somewhat ridiculous argument. I also reject the suggestion that, just because something provides no public benefit, it should be banned. We should only ban things that cause harm. I support the bill because there is clear evidence that fur farming causes environmental damage to various parts of rural Scotland. I want to place that point on the record.

16:49

Mr Jamie McGrigor (Highlands and Islands) (Con): I believe strongly that the bill should never have been discussed in the Parliament. It bans something that does not exist and seeks to compensate those who might lose non-existent jobs.

As far as I am concerned, the one factor that relates to previous fur farms in Scotland and the one legacy that is left over from them is the number of feral mink that are destroying Scottish fisheries and threatening rare breeds of ground-nesting birds. To help clear the mink in the Hebrides, £1.6 million has been set aside. I urge the Parliament to support the efforts that are being made to do that, but mark my words: those who are clearing mink will require dogs to help them.

The Deputy Presiding Officer: Minister, do you wish to respond to the debate?

16:50

Ross Finnie: I could not possibly resist. I will make just two quick points. It is as though the

debate is in aspic: absolutely nothing has changed since stage 1. Richard Lochhead's position has not changed: he is still complaining about his business managers not accepting a Sewel motion. I really do not understand where he is coming from. Alex Fergusson's position has not changed: he sat through all the stage 1 committee proceedings and knows that the committee's recommendation was to accept the principles of the bill. There is not a single dissenting note in the committee's long and voluminous report, so why, at such a late stage, should he wish to tender that he is a sort of lodged objector to it?

Mike Rumbles ought to read his committee's report, which does not say that the moral argument is ridiculous. He misquotes his own report. It suggests that the position is not cogent enough, but that that does not necessarily mean that it is ridiculous.

As for Jamie McGrigor—well, if those Conservative people want him, they can have him.

On the issue of there being no fur farms in Scotland, it is surely rare for a Government to anticipate a problem. The bill deals with a problem that has not yet arisen. It is a bit churlish of Opposition members not to acknowledge at least that we have anticipated a problem and taken appropriate action.

On those grounds, I commend the bill to members.

The Deputy Presiding Officer: The question will be put at decision time. There being no Parliamentary Bureau motions, I suspend the meeting until 5 o'clock.

16:52

Meeting suspended.

17:00

On resuming—

Decision Time

The Deputy Presiding Officer (Mr Murray Tosh): There are two questions to be put as a result of today's business. The first question is, that motion S1M-2829, in the name of Jim Wallace, which seeks agreement that the Sexual Offences (Procedure and Evidence) (Scotland) Bill be passed, be agreed to.

Motion agreed to.

That the Parliament agrees that the Sexual Offences (Procedure and Evidence) (Scotland) Bill be passed.

The Deputy Presiding Officer: The second question is, that motion S1M-2830, in the name of Ross Finnie, which seeks agreement that the Fur Farming (Prohibition) (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Lochhead, Richard (North-East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Quinan, Mr Lloyd (West of Scotland) (SNP)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robison, Shona (North-East Scotland) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Young, John (West of Scotland) (Con)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Brown, Robert (Glasgow) (LD)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Johnstone, Alex (North-East Scotland) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)

ABSTENTIONS

Davidson, Mr David (North-East Scotland) (Con)
 Fergusson, Alex (South of Scotland) (Con)
 Gallie, Phil (South of Scotland) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)

The Deputy Presiding Officer: The result of the division is: For 77, Against 8, Abstentions 6.

Motion agreed to.

That the Parliament agrees that the Fur Farming (Prohibition) (Scotland) Bill be passed.

International Women's Day

The Deputy Presiding Officer (Mr Murray Tosh): The final item of business is a members' business debate on motion S1M-2784, in the name of Johann Lamont, on international women's day. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes that 8 March 2002 is International Women's Day; congratulates the Women Together group in the Pollok constituency and women across Scotland and around the world who are organising events to celebrate the work of women past, present and future; recognises the central role of women in our communities in meeting needs today and creating change for tomorrow and beyond, and urges the Scottish Executive and the Parliament's committees, in partnership with women's organisations, to examine how women's needs and rights might more effectively be addressed across the range of services, departments and organisations that impact on women's lives.

17:04

Johann Lamont (Glasgow Pollok) (Lab): Members may be aware that we are now online worldwide and that this debate will be webcast across the universe. I have always been stropky at home and I am learning to be stropky for Pollok, but even I am a touch fazed at the idea of being given the opportunity to be stropky on a global basis. We should congratulate the broadcasting people on the work that they have done thus far, especially on the interactive debating forum. I hope that members will encourage local people to contribute.

It is a great privilege for me to be given the opportunity to speak in the debate, but it is a still greater privilege to be one of 48 women parliamentarians in the Scottish Parliament. We have the third highest proportion of women parliamentarians in the world. There is no doubt that that is a great achievement. It did not happen by accident; it was achieved by the determination of women.

I endorse the work of the 50/50 campaign, which seeks to achieve equal representation at all levels—including on local authorities and in public bodies. I welcome the United Kingdom Sex Discrimination (Election Candidates) Bill, which will support that work. It is important for us to hold on to what we have. We do not underestimate that challenge.

I welcome the opportunity to highlight international women's day. I quote one source that says:

"International women's day is the story of ordinary women as makers of history. It is rooted in the centuries-old struggle of women to participate in society on an equal

footing with men."

International women's day provides not only an opportunity for events to celebrate women's role in society and push for greater recognition, but

"an opportunity for reviewing, restating and acting on the political, economic and social rights of women."

I trust that the debate will play a part in that opportunity.

I acknowledge and celebrate the role of women who work locally to sustain families and fragile communities for no reason other than that it is work that must be done. I acknowledge in particular the role of women in Pollok and send best wishes to Women Together in Pollok, which will be running an event for women tomorrow.

Anyone who says that women's involvement makes life safer and sweeter has not attended any of the local meetings, which I am sure that we have all experienced, where women lead the charge and demand that things change. Such fierceness and tenacity can and does move mountains. We all know such women. They have a local commitment and focus, but are also part of a global chain of endeavour, making a real difference to people's lives.

When we reflect on the role of women, it is clear that women have driven a shift in public policy. In the main, it was women who created local child care initiatives. Those initiatives shaped and established the foundation for the Scottish Executive and UK Government approach to supporting early intervention strategies to tackle disadvantage and support women into work. Women have been in the driving seat, finding imaginative and more effective ways of identifying local need and delivering services to meet that need. The development of the voluntary sector is testimony to that work.

Women have driven the political agenda, which has finally begun to acknowledge that child sexual abuse, male violence against women, the role of carers—who are overwhelmingly women—and low pay are issues that should be at centre stage in the considerations of political parties, Governments and Parliaments.

We should review the situation with a critical eye. We believe in women's representation in itself, but we also believe that it has a purpose. Much more needs to be done to achieve the ambitions that are encapsulated in the aims of international women's day. Women are still fleeing violence and are made refugees in their own country by the men with whom they live. Young women in our communities are experiencing a worrying trend of increasing levels of violence. Male violence against women continues and the statistics remain horrific. The challenge for those who express sympathy for victims is not to say

that something should be done and that we must help, but to ask the harder question: why is this happening? We will not solve the problems unless we address the underlying relationships of power in our society.

Despite a quarter of a century of equality legislation, women are still more likely to work part time and are still more likely to be low paid. Last year, women still earned only 81p for every pound that was earned by men. In that context, it is a matter of regret that, of the top 50 Scottish companies approached by the union Amicus to consider voluntary equal pay audits, only 10 per cent gave a positive response. We must ask what those companies have to hide and what inequality they wish to perpetuate.

Although young women consistently outperform young men educationally, male hands are still, overwhelmingly, on the levers of power. Recent figures show that less than 2 per cent of executive directors are women. It is an irony that commentators have the cheek to suggest that positive action for women promotes gender before merit given that broader society reflects a situation that is exactly the opposite.

We must reaffirm our commitment to equality and redouble our efforts to exercise our authority and influence to achieve that equality. I urge the Executive to examine its policies and priorities, and to question what it is doing to make the difference. Where is the evidence of Executive departments' commitment to such work and how are they ensuring that resources are targeted equally? I urge the committees of the Parliament to take responsibility in their areas of expertise to consider the impact of their work on women.

This is not a counsel of despair. We must not only consider where women are, but ask why that is the case. In answering the harder question, we must develop action that will allow today's children—our daughters and our sons—to inherit a world in which equality and mutual respect are the watchwords. I send international women's day greetings to all those across the world who share that aim and dream.

The Deputy Presiding Officer: I think that we will have to extend business. We will work out the timings later. If we have speeches of about three or four minutes, we should manage to get most speakers in before we need to extend business.

17:10

Mr Kenneth Gibson (Glasgow) (SNP): I will certainly be brief, Presiding Officer, not only because a number of members wish to speak but because Johann Lamont made many of the points that I wanted to make. I commend Johann Lamont for securing the debate at what is an important

time, given that international women's day is tomorrow. I also commend her for highlighting the work of the Women Together group in Pollock.

It is obvious that women still get a raw deal in society. As Johann Lamont pointed out, they have less economic clout, they receive lower wages and more women work part time. One expects and hopes—certainly, one anticipates—that, at some point, the superior educational attainment of girls in our schools will feed through and that the executive directorships that Johann Lamont talked about will be shared equally by men and women.

It is extremely important to those of us who have mothers, daughters and sisters that women get a raw—that women get the best possible deal in our society. *[Laughter.]*

Trish Godman (West Renfrewshire) (Lab): That was a Freudian slip.

Mr Gibson: It was not quite Freudian.

The tremendous turnout—possibly the highest for a members' business debate since the Parliament was established—shows the importance of the issue, but much work remains to be done. I hope that the Executive will address the fundamental issue of gender proofing. I understand that some work on that has been done and undoubtedly the Deputy Minister for Social Justice will speak about that work, on which we would like more rapid progress to be made. We must, for example, acknowledge the work that women do in looking after elderly relatives, which has a clear impact on how budgets should be distributed.

We must consider the international dimension. In many societies, women get a much worse deal than they do in our society. We all saw the suffering of women in Afghanistan when, under the Taliban, women were not allowed to receive care from male doctors, but could not become doctors because they were prevented from participating in education.

Progress is being made in some third world countries. The Grameen Bank in Bangladesh tries to lend money to women's groups to allow women to develop small businesses independently of men and to get away from the patriarchal nature of society there.

The SNP has a distinguished female president in Winnie Ewing. Two of my parliamentary colleagues are in Barcelona for international women's day. Linda Fabiani, who has been at the forefront of the women's movement and shares many of Johann Lamont's ideals and views, wanted to speak in the debate but was asked to represent the SNP at the European Free Alliance women's network meeting in Barcelona. The network is an organisation in which parties share

information and experience, co-ordinate activities, provide mutual support to women and promote the aims of self-determination for our nations and regions. The events in Barcelona culminate with a women's march on Friday night.

Linda Fabiani has also attended the Women's Federation of Latin American Politicians, which was inaugurated in Peru and which tries to ensure that women in nations that have lower levels of economic and social development are able to be represented at all levels of government.

On behalf of Linda Fabiani, I highlight the work of Fokupers, which is a women's human rights organisation in East Timor that works to ensure civic education for the women of East Timor so that they can take their place in running one of the world's newest democracies.

It is important that women fight for their rights in this country and that they encourage men to help in that struggle. It is also important that women maintain international links with their counterparts throughout the world for mutual support and the sharing of experience and ideas. I am pleased to be able to speak in the debate and I am pleased with the patience that the Presiding Officer has shown me.

17:15

Pauline McNeill (Glasgow Kelvin) (Lab): I welcome the debate on international women's day and I thank Johann Lamont for securing it. I will say a few words about women and justice. I have dealt with that issue in the past two years and a number of very important aspects of the justice system still need to be addressed.

Too many women are in prison. This year we have record-breaking figures—we have reached the upper limits in Cornton Vale prison. That must be addressed. Although many women who are in Cornton Vale need to be there, many do not. Many women would benefit from other types of disposal that are more appropriate to their particular circumstances and to the crimes that they commit. Seventy per cent of the women in Cornton Vale are primary carers or mothers. The lack of community service orders means that some women are not able to organise their lives around their responsibilities.

In the experience of the ex-governor of Cornton Vale, time and again the lives of many of the women who returned to the prison were disorganised and chaotic and their health was worse than ever. She was particularly keen on the development of halfway houses as a way of getting the more organised women former prisoners into the community. I am pleased that there has been debate about such disposals in the Parliament. I am also pleased that the ministerial

group on women's offending has moved forward on time-out centres, which will mean that more appropriate disposals are available to women.

From the evidence that we have heard, we know about the ways in which women's lives are disrupted by prison. Often, they lose the most basic things, such as their identification and their family allowance books—the things that are most vital to their identity. The vicious cycle of disorganisation sometimes leads them to reoffending. I am pleased that the Parliament has addressed some of those issues and I look forward to the development of a time-out centre pilot in Glasgow.

Gender discrimination still exists in law. I sit on the Routes out of Prostitution board in Glasgow and I believe that women who are involved in prostitution must be offered real choices in their lives. The Scottish Executive has provided significant amounts of money to ensure that women have those choices, should they want them. It is wrong that the law says that a woman who is soliciting is a common prostitute, whereas a man is not convicted for kerb-crawling. That represents direct discrimination in law.

We are all aware that women are significantly under-represented at all levels. It is still very much the case that women take up stereotypical roles in the criminal justice system, such as sitting on children's panels and working as social workers. We need to encourage women into all levels of the criminal justice system. There are only two women judges and too few women sheriffs. We must examine how we can ensure that women are represented more widely in the upper parts of the legal profession. Although women make up 50 per cent of all solicitors in Scotland, only one in five are partners in firms.

Fair representation of women in the Parliament has a point and women of all parties have demonstrated that. We are much more likely to drive forward the interests of women and international women's day is a good day to do that. I support Johann Lamont's motion.

17:19

Shona Robison (North-East Scotland) (SNP): I congratulate Johann Lamont on securing this important debate. I am reliably informed that international women's day originated with textile workers in America. Perhaps that is why the jute workers of Dundee—who were nearly all women—have left that city a reputation for having strong women, where men are known as kettle-boilers and appear to know their place. That has been my experience. Dundee women have been very effective in the development of local services for women. I had the opportunity to visit one such

project—the Young Women's Project—on Monday, which provides an important service to young women who have been sexually abused. As well as paying tribute to that project, I will take the opportunity to plug it. The project's funding runs out in September, so the minister will receive a request for more funding. I hope that she will lend them a sympathetic ear.

Today presents an opportunity to pause for reflection on what women in the Parliament have achieved and what the Parliament has achieved for women. I do not doubt that some decisions, some legislation and many initiatives would never have come to light if the Parliament did not have the level it has of women's representation. There are too many measures to list, but I draw attention to the resourcing of initiatives against domestic violence and legislation to ensure that cohabiting women have the same rights as married women. Many policies that have come to fruition through the Parliament have had a women's dimension. That is to be commended.

No party in the Parliament has a monopoly in equality issues. That is a strength. A consensus for equality has been achieved in the Parliament and there is common understanding. Women constitute more than 50 per cent of Scotland's population and the Parliament has done much to reflect the priorities of women. I look forward to seeing more of that and to working with women of all parties to ensure that we achieve even more.

17:21

Elaine Smith (Coatbridge and Chryston) (Lab): I congratulate Johann Lamont on securing the debate. I will take the opportunity to do some advertising. As the gender reporter to the Equal Opportunities Committee, I draw attention to the gender reporter bound volume, which was produced at the tail end of last year and which contains the work that the gender reporter has done since the Parliament began. Johann Lamont was the first gender reporter and I became the reporter after she left the committee. The report is online, which might be useful, given the online coverage of the debate. I would be grateful for feedback on the report from interested parties.

I will concentrate on violence against women and children in its widest sense. The Executive has taken domestic abuse seriously and has made increased resources available to tackle the issues that surround it, particularly on refuge provision. The Executive is attempting to raise awareness on the unacceptability of domestic abuse in modern Scotland and to change attitudes to ensure that blame lies with perpetrators and not in any way with victims.

I commend the publicity campaigns that have

been undertaken, such as the "Behind Closed Doors" television advert, and the national helpline. I commend the Executive's work overall, but a more comprehensive view of the continuation of male violence against women and children, rather than a piecemeal approach that focuses on domestic violence in isolation is long overdue. We could also consider that in terms of structural inequality in society.

According to the Executive's study "Men and Women in Scotland: A Statistical Profile" from last year, women are still disadvantaged in many areas of their lives. Johann Lamont and Pauline McNeill touched on that. Men earn more, have better jobs with more chance of promotion and do less housework. That is despite the facts that girls are doing better than boys at school and that more girls are going to university. Perhaps the minister will comment on this year's publication "Social Focus on Women and Men in Scotland", which is to be published on 15 March.

The Executive's evidence is backed by research that has been conducted by the Equal Opportunities Commission that shows that most women in full-time jobs earn only about 82 per cent of the salary that is paid to a man doing the same or similar work. Women's income from pensions, benefits and investments is just half that of men.

As members have said, women are still greatly under-represented in politics and business and in the higher echelons of law, education, trade unions and public bodies. I commend the Scottish Women's Co-ordination Group on relaunching the 50/50 campaign for gender equality in decision-making bodies. That group's leaflet "Equal Voices Equal Scotland" says:

"The Scottish Parliament is a world leader in respect of the proportion of women members, but there is a need to maintain and improve upon its record.

The passage of the Sex Discrimination (Election of Candidates) Act gives the opportunity for positive measures to be taken to maintain and improve Scotland's record. International evidence suggests significant progress is unlikely to be achieved without positive action measures."

The message is that complacency is dangerous.

I believe that social, cultural and political structural inequality serves to offer privilege to men over women. That, in turn, creates conditions for violence. The continuation of male violence against women and children includes domestic abuse, rape, sexual assault, child sexual abuse, sexual harassment, prostitution and pornography. It is premised on women's inequality and subordination in society.

The harm that is caused by some forms of male violence has been recognised and attempts have been made to tackle it. Other forms, such as

prostitution and pornography, have not been addressed and they seem to be somehow more publicly accepted. Next Tuesday, the Public Petitions Committee will consider a petition from Scottish Women Against Pornography.

I had a lot more to say, but I see that the Presiding Officer is having a wee squint at me. I will finish by saying that male violence against women is a widespread manifestation of gender discrimination, which I argue is the most prevalent and the most insidious form of discrimination in our society. I have no doubt about the Executive's commitment to tackling the issue and I am sure that Margaret Curran will reply to the points that have been raised in the debate.

We must recognise and tackle women's under-representation in public life. Women's rights are human rights and it is that context that they must be demanded. Women will not achieve equality and we cannot effectively tackle gender discrimination while we continue to accept a society within which women are systematically undermined by the pervasiveness of all forms of male violence.

I am happy to associate myself with Johann Lamont's motion.

The Deputy Presiding Officer: I will now squint at Lyndsay McIntosh, who is to be followed by Trish Godman.

17:26

Mrs Lyndsay McIntosh (Central Scotland) (Con): I had no idea that the Presiding Officer's eyesight might be so bad.

I rise to add my voice to the voices of those who have spoken. I congratulate Johann Lamont on her motion to note the fact that we celebrate international women's day this week. I join her also in congratulating those who are organising events around the world to celebrate the work of

"women past, present and future".

International women's day will be commemorated at the United Nations and it is designated in many countries as a national holiday. Throughout Scotland, the day will be marked by events and festivals such as the health and awareness promotion day in Prestwick and the education, networking, action, culture and training—ENACT—festival for women in Edinburgh.

The idea for an international women's day first arose at the turn of the 20th century. As we are now at the beginning of a new century, international women's day has assumed a new global dimension for women in developed and developing countries. A growing international

women's movement has been strengthened by the United Nations' four women's conferences, and the commemoration of international women's day has served as a rallying point for co-ordinated efforts to demand women's rights and participation in politics and the economic process. Women have risen to the challenge more than adequately.

As a member of the Equal Opportunities Committee, I am well aware of the role that women parliamentarians play in the relatively new institution that is the Scottish Parliament. As others have mentioned, the Scottish Parliament has the fourth highest proportion of women members in Parliaments worldwide—behind Sweden, Denmark and Wales. The Scottish Parliament has nearly three times the global average of women members, whereas our colleagues in Westminster come a disappointing thirty-third in the rankings. That is despite the redoubtable efforts of Maria Fyfe, who is present in the gallery this evening.

I was fortunate to be part of the special conference of women parliamentarians that was held in Edinburgh last September. The conference brought together participants from the Scottish Parliament, the National Assembly for Wales, the Dàil, the Northern Ireland Assembly and the House of Commons and it was extremely productive. During the conference, discussion groups were held under titles such as "women legislators leading the way to increase women's political participation" and "creating compromise within Parliament". I am sure that members who were present at the conference will acknowledge and remember it as a useful and stimulating event. I enjoyed particularly the social aspect and the companionship and camaraderie with colleagues across the political divide. I cherish that memory—the members to whom I refer know who they are.

I remain a firm believer in meritocracy when it comes to getting women involved in the political process. Women in Britain want the freedom to live their lives according to what suits them and their families. I believe in choice and individual freedom, which is something that is not enjoyed around the world. The best people to do the job should be those who have been elected to do so.

I thank Johann Lamont for securing the debate and look forward to the time—perhaps in 2004—when the Scottish Parliament will have an even higher proportion of women representing the needs of the people of Scotland. Perhaps then there might also be more Conservative women MSPs than the current trio.

17:30

Trish Godman (West Renfrewshire) (Lab): I also thank Johann Lamont for once again lodging

a very interesting motion for debate.

In a similar debate two years ago, I spoke about the bravery and subsequent arrest of Aung San Suu Kyi. I also mentioned Las Madres des Jueves, the women who parade in the main square in Buenos Aires, holding aloft photographs of their missing sons, husbands and brothers and pleading with their Government for information. Aung San Suu Kyi is still under house arrest, Las Madres des Jueves are still there and little has changed in many women's lives in the past two years.

We who live in mature parliamentary democracies must continue to campaign for women who are subjected to cruelty as part of their everyday lives. Women who speak out must have our support.

John Young (West of Scotland) (Con): I am most grateful to Trish Godman for giving way. Some years back, we both sat on the women's committee in Glasgow City Council and I asked the committee a question to which I never received an answer. I have listened to a number of women speakers this afternoon, but I want to ask them about the position of certain women in the Muslim community who do not enjoy any form of equal rights with their male counterparts. Will those women be mentioned in any speeches this evening?

Trish Godman: Of course they will be mentioned. However, I have only four minutes and cannot mention everyone. I honestly do not remember sitting on the committee with John Young, so he must have made a really good contribution to the committee's work.

This is Fairtrade fortnight. By way of the Fairtrade Foundation, Oxfam and other non-governmental organisations have been able to encourage the creation of numerous women's co-operatives that provide a wide variety of food and goods.

John Young: Will the member give way?

Trish Godman: No.

Every time we buy Fairtrade products—*[Interruption.]* No—I am not taking an intervention. *[Interruption.]*

The Deputy Presiding Officer: Mr Young, the member is not giving way. *[MEMBERS: "Switch him off."]* He cannot be switched off; his microphone is not on. *[Interruption.]* Mr Young, I call you to order. The member has not given way. I will allow Trish Godman additional time to compensate for the disturbance.

Trish Godman: I will start again. This is Fairtrade fortnight. By way of the Fairtrade Foundation, Oxfam and other NGOs have been

able to encourage the creation of numerous women's co-operatives that provide a wide variety of food and goods. As a result, every time we buy Fairtrade products, we help not only struggling communities but women who have set up co-operatives and village businesses.

However, there is clear evidence that, in a world that has food surpluses, two thirds of the world's absolute poor—mainly women and children—remain what is called food-insecure. It is common to find that, in poor countries, men and boys are given priority over women and girls in the distribution of food. As a result, NGOs such as the Fairtrade Foundation play an important role.

This week, the Parliament is being visited by a delegation from the Canadian branch of the Commonwealth Parliamentary Association. I am pleased to say that some women members of that delegation are in the gallery. Some might think that the Commonwealth has little international value. However, whatever its weaknesses, it plays an important role in the defence of democracy and the protection of women activists and representatives. After speaking to the women who have visited this week, I assure members that that remains the case.

Back at home, I am disappointed by a Home Office minister's decision not to allow asylum seeker mothers who are HIV-positive to receive tokens for milk formula. As breastfeeding can contribute substantially to the risk of HIV transmission from mother to child, I sincerely hope that that minister will reconsider the decision. In the meantime, we in Scotland should take the initiative and provide tokens for that purpose. It cannot involve much money—there cannot be many asylum seeker mothers who have the illness—but that also represents discrimination against women.

In the Scottish Parliament, we have equal representation in the Labour group, an Equal Opportunities Committee, a Scottish Executive equality unit and a commitment to the Scottish partnership on domestic abuse with an £8 million package of funding. We are going some way to being more inclusive. We have more women representation. Other members mentioned the 50/50 campaign, which I am sure we all support, but I do not believe that that is enough. Women here and in other countries continue to be treated as second-class citizens or worse. We must change that kind of social, economic and political conditioning. Sadly, we have a long way to go.

17:35

Donald Gorrie (Central Scotland) (LD): I congratulate Johann Lamont on an exceptionally well written motion—many of us could learn from

that—and focus on her phrase

“the work of women past, present and future”.

The first person of whom I am aware who fought for the women's cause was the Greek writer of comedies, Aristophanes. One of his comedies, the *Lysistrata*, centres around a sex strike by the Greek women, who are fed up with their men continuing a ludicrous war between various cities. We have advanced a bit since then, but we still have a long way to go.

Consider the suffragettes. Three aunties of mine were suffragists—they were the legal branch, not the more violent branch. They displayed amazing resolution, courage and organisational ability in promoting their cause and handing out their newspapers and so on in a very male-dominated society. However, in the 1950s, when I got married, it was assumed, without discussion, that women would either have a career or be married; they did not do both. A teacher at one school in which I taught had a second-class degree while his wife, who had a first-class degree, kept house. We have come on a long way since then, but we still have problems. About 10 years ago, I left a church in Edinburgh because it declined to allow Scottish Women's Aid to have its headquarters in a building owned by the church.

Many members have mentioned people who live in what we might call the poorer areas, but the pressures of the market represent a huge problem that is faced by well-to-do people in business and the professions. There is such pressure on people to work harder that it combats their desire to work with their families. We have a ludicrous position that some people work far too hard and others have no job at all. We must sort that out.

It may be that some of the things that could help are more in the control of Westminster, such as higher pensions for the very oldest people, most of whom are women. More help at the bottom end of the income tax scale would help women, particularly single women. The experience of countries in continental Europe shows that proportional representation voting systems tend to produce more women MPs.

The future lies in mobilising the energies and skills of the women in the community. Any church is largely inhabited by middle-aged women who have a lot of energy, knowledge and skill. They put some of that into related charities and so on, but they have a lot more energy that we could use in the community. We must harness the energy of women in all communities; they often have more talent than the men and are more anti-establishment. If we wish to crack open the establishment, the women would be a much better task force. They have more skill, more energy and are not as conservative as many men.

I have practised what I have preached to some extent, in that I encouraged a certain lady to become involved in politics and to stand for the council. She was then selected for my constituency in preference to me. I sought my fortune elsewhere—fortunately with success.

The Deputy Presiding Officer: I should call the minister at this stage, but six members still want to speak. I am therefore minded, with the agreement of members, to extend the debate.

Johann Lamont: May I move a motion to extend the business?

The Deputy Presiding Officer: Yes.

Motion moved,

That, under Rule 2.2.6(d), the meeting be extended until 6.15 pm.—[*Johann Lamont.*]

Motion agreed to.

17:40

Cathy Peattie (Falkirk East) (Lab): I am proud to be a member of the Labour party who fought hard on the 50/50 campaign to ensure that there was women's representation in this Parliament. I believe that we need to see that kind of representation across the board. Not until we see quangos, businesses and local authorities with fair women's representation should that campaign stop.

I would like to talk about women in our communities. As we have heard, women are the backbone of our communities. Women activists, whether in Grangemouth or at the other end of the world, hold our communities together. We have heard about international women's week; events will be taking place throughout Scotland during the coming week. The ENACT project and women's festival is happening in Edinburgh at this very moment; in fact, it will be launched this evening.

The ENACT project has developed its own Oscars ceremony—the Elsie awards—to identify hidden heroines. There are hidden heroines in every community. The heroines that the Elsie awards recognise are local, national and international. Nominations have been received from across the world to honour women such as Shamsu Makda, who worked under the apartheid regime in South Africa at grass-roots level, fighting poverty and campaigning for better health and education services. Shamsu worked with and encouraged other women in spite of the injustices that she herself faced, and she is still working in that community, believing that women are a force for change.

Another heroine is Jackie Johnston, from Bo'ness. Her daughter is a heroin addict. She looked for services and support that did not exist.

She tried to get help from the police, who were unable to listen. By bringing people together and by shouting at people responsible for various services, she has managed to create the kind of partnership that is an example to any other area of Scotland. Anyone who speaks to the people Jackie shouted at in the health service and police force will hear them say that she made them work together. Jackie Johnston is an excellent example of an ordinary woman who felt that things should be better, and who acted in her community to make things better for everyone.

It is right that we celebrate international women's day, here in Scotland and elsewhere in the world, whether it is about celebrating women of the past or women of the future. I am a mother of daughters. I want a better life for my daughters and everyone else's daughters, and their sons. We have a responsibility constantly to raise women's issues and to celebrate international women's day. It is only right that this Parliament should do that. I congratulate Johann Lamont on bringing the motion to Parliament.

17:43

Dorothy-Grace Elder (Glasgow) (SNP): I congratulate Johann Lamont, who has been faithful to women's issues from the very start of this Parliament and who has put an enormous amount of work into women's issues here in the Parliament and in her own area.

Gil Paterson has asked me to make his apologies tonight. He is convener of the cross-party group on men's violence against women and children, which is meeting tonight. Gil wants to make it clear that that is why he is not here, but he says that his heart is with us tonight.

A few questionable things have been said recently about women MSPs. For instance, it has been stated that women MSPs ask the First Minister fewer questions than male MSPs do. That is perhaps an illusion. We know, although the general public might not, that questions are selected every week by the parliamentary system. Whether one gets a question is the luck of the draw. I am one of many women who regularly lodge questions to the First Minister, but I do not happen to get chosen. That is tough, but it does not mean that few women MSPs lodge questions to the First Minister.

Elaine Smith: On a point of order, Presiding Officer. Do not the standing orders provide that the Presiding Officer selects the questions to the First Minister whereas questions to other ministers go into the system and there is a lucky draw?

The Deputy Presiding Officer: That is how the system works. I did not think it necessary to interrupt Ms Elder and I certainly did not want to

turn her fire on the Presiding Officer.

Dorothy-Grace Elder: I thank Elaine Smith. We have named the guilty man. In general, there is fairness—it is the luck of the draw.

Oscar Wilde said that football is a game fit only for rough girls. It might sometimes be thought that question time on Thursdays is a game fit only for rough girls. Many of us absolutely love question time.

I want to discuss two issues in particular. The first is civil service pay. Today, I was brought research showing that women civil servants in Scotland earn 28 per cent less than their male colleagues on average—that pay gap is wider than the British average pay gap. The research came from the Public and Commercial Service Union, which represents 30,000 civil servants in Scotland. Grading is part of the reason. Women seem to be put on lower grades time and again. Is that happening in the Parliament? If it is, we must be told. The union is calling for a pay audit of the civil service in Scotland, which is a good campaign to adopt.

I want to tell members about an absolutely harrowing case that many Glasgow MSPs have encountered. A form of discrimination that shortens life must be the very worst form of discrimination. A small queue of women at the Beatson oncology centre have been clinically approved for the drug herceptin, but they are not getting it to extend their lives as the local health board does not fund it. The patient appeared at surgery after surgery held by Glasgow MSPs and one or two MPs. She is a middle-aged mother who says, “I just want to extend my life a wee bit longer, as I have a 12-year-old girl. Here is her picture. She is doing well at school. She has won prizes. I would like to be around a wee bit longer. Could you please help me? Could you please contact the Beatson for me?”

I and other MSPs did so and were told that the woman is clinically suitable. She has passed all 15 tests, but the health board does not fund herceptin. The clock is ticking for her. She has a cheerful smile and begs elected members for her life. That is disgraceful. I felt appalling when I left a couple of surgeries at which she had turned up. She waited three quarters of an hour to see me on one visit, as a couple of other people were ahead of her.

I say to all members in the chamber that we can do something quickly in the name of international women's day: we can contact the Beatson and help that woman and the others in the queue. Would not that be a good, quick way of commemorating this marvellous day?

17:48

Maureen Macmillan (Highlands and Islands (Lab): I congratulate Johann Lamont on securing the debate. She has always been a good and strong sister in the women's movement. What she said was eminently sensible and what I expected to hear. She made a good, strong feminist speech.

As I represent a large rural region, I want to speak about and celebrate the contribution of women to rural communities. Johann Lamont and other members have pointed out that women see gaps in services and work hard to improve their communities. Throughout the world, women in rural areas face a lack of services and support that is unknown in urban areas. That is the result of scattered populations and constrictions that distance places on the ability to provide services far from the centre.

Recently, I received a letter from a woman who has moved from central Scotland to the south of Skye. She is appalled at the lack of services for women there, compared with what was available back home. There are no child minders, full-time nurseries or information points to give her advice on welfare rights, disability rights or domestic violence. She might have added that wages are low and that there is a lack of employment opportunities and public transport.

Those are the problems in rural areas, but I want to celebrate the women who have worked hard in the area that I represent to overcome the problems and to make a difference to other people's lives. They are often inspired by a real sense of purpose. I cannot mention them all, but I want to give the chamber a representative sample of what they do. First, the women who work for Women's Aid, from Argyll to Shetland, have to reach out into the remotest corners of Scotland and have been able to do so partly because of the Executive's commitment to supporting their work and partly because of their own dedication. They have had to confront traditional cultural values in rural areas about a woman's place and have had to provide support in difficult and demanding conditions.

I also want to celebrate women such as the members of Alness Mothers Against Drugs. They are very ordinary yet extraordinary women who have no experience of public life but are successfully combating the drug pushers in their community and hope to help develop detoxification and rehabilitation facilities. That has not been easy for them because the attitude of professionals was that they are a bunch of women—my God; they were mothers—so what business is it of theirs to get involved in anything. That attitude had to be confronted and overcome. The women have done that.

When I was in Rothesay at the weekend I met a woman called Dorothy McDonald, of Achievement Bute, whose dynamism is behind a tremendous project to integrate able-bodied and disabled children in out-of-school activities. Her concerns about her own child's future and the lack of services led her to enrich the lives of a significant number of other children and their families in an area where few or no facilities existed. I realise that Dorothy does not do that single-handedly, but she has been the moving force behind it.

I particularly want to congratulate the women into work programme run by the Workers Educational Association in Inverness. Through seminars, mentoring and providing role models, the project encourages women into public life, encourages women to seek promotion and gives them confidence to try to break through the glass ceiling—sometimes it is more like the lead ceiling. It is most certainly still there. We delude ourselves if we think that the gender balance in the Parliament is reflected in life outside—we have only to look at what happens in boardrooms, hospitals, education and academia to realise that.

Johann Lamont, Pauline McNeill and others have made the point that by perpetuating sexist structures we are excluding the talents of half our population. Women have achieved a lot in the past 30 years, but we are aware that at the present rate of progress it will be about 200 years before we achieve equality. That is not acceptable; we want equality now.

I believe that we must use positive discrimination to change society and to get rid of the stereotypes of the past, which have disadvantaged women for so long. That is a challenge, but it is a challenge we can rise to, sisters. I know that we can do it.

17:53

John Young (West of Scotland) (Con): I congratulate Johann Lamont. There is no question but that women have earned their place in society: they earned it during two world wars, in which they showed tremendous gallantry and bravery. I support the concept of more women MSPs, MPs and councillors, but I have to say—and I have chaired and been a member of selection committees over the years—that I have found again and again that women are often the opponents of women applicants.

There is no question but that women play a very important part in our society. I mentioned earlier certain women in the Muslim community. I first noticed the issue when Bashir Maan and I formed the Scottish Pakistani Association in Glasgow. I later had the privilege of becoming vice-chairman of the organisation, under Bashir. At various social

events, one would find that almost no Pakistani women were invited. Occasionally some were, but they were often in the higher social rankings, if one can use that expression.

One thing that concerns me very much is the smaller group of women in the Muslim community who are brought over through arranged marriages, which I think is totally wrong, or who are not allowed to learn English—that happened in areas such as Govanhill at one time—and who seem to be almost divorced from the society that they land in. It must have been a tremendous journey for them and, with all the white faces around them, almost like landing on another planet. Those women are an important group in society. We must try to help that limited group of women through persuasion. I would be sorry, in some ways, if people were offended in the process, but people must accept that we live in the 21st century and that old concepts cannot remain as they were.

Women are now recognised. I was interested in Donald Gorrie's remarks. I, too, was married in the 1950s and I agree with what Donald said about the situation of women as recently as that. Their position has advanced. Anyone who tries to stand in women's way will deservedly be tumbled over.

I did not mean to offend Trish Godman with my remarks about the women's committee; I was simply describing my experience. Every female councillor was on that committee or had the right to be on it and so were a number of women officials and trade union representatives. A tiny group of men were on the committee; I was on it ex officio, as leader of the opposition, and Bashir Maan was also on it. I could never get a clear answer about the group of women that I mentioned; the question was always avoided. We should not avoid it any more. Although only a minimal number of women are involved, we should not disregard them.

17:56

Rhona Brankin (Midlothian) (Lab): Like other members who have spoken, I welcome the debate and congratulate Johann Lamont on bringing the debate to the Parliament. As we have heard, the Scottish Parliament has the third-highest level of women representatives in the world. Although that is a great achievement, it was achieved only because of the hard work of many women over many years. The fact that 40 per cent of members are female is not an end in itself; it is a means to an end. We must be able to demonstrate that a woman's place is everywhere and in every Parliament in the world.

Women representatives act as important role models for other women and for young girls. I want to share with members a story. Shortly after the

Scottish Parliament was formed, I was coming through the door of the Parliament with two other female members when an older woman rushed up to the three of us and said, "Are you three members of the Scottish Parliament?" Very proudly, we told her that we were, hoping that she would say, "Good on you; it is great to see so many women in there," but she said to me, "See the state of your hair; it's terrible." We have some way to go.

Women representatives are important role models not because of their hair but because of what they do in the Parliament. The figure of 40 per cent is not an end in itself; it is a means to an end. Women bring a woman's perspective to the Parliament. As we have heard, women make up the vast majority of carers and, because of their particular health needs, they are the principal users of the health service. Women also make up the vast majority of the older population. It is vital that women's voices are heard in policy development and in the passage of legislation. I agree with the women who have stated this afternoon that we have seen the impact of women politicians in the legislation that the Parliament has passed.

We accept that women—who make up 52 per cent of the population—must be heard, but how can we ensure that that happens? I welcome the Sex Discrimination (Election Candidates) Act 2002 which will allow political parties to take action to ensure that institutional barriers to women being involved in politics can be breached.

I challenge the politicians, not only in Scotland, who claim that women can succeed if they have ability. I ask the Conservative and Liberal Democrat parties, which sadly have low numbers of women representatives, to consider taking positive action to increase those numbers.

Mrs McIntosh: Rhona Brankin will appreciate the fact that, when a party leader changes, they are always in a difficult situation, trying to change the goalposts midway through the game. I assure her that I have already spoken to Iain Duncan Smith—as I spoke with William Hague, when he became the party leader—and he has given an undertaking that he would like to change the situation and that he is working towards that.

Rhona Brankin: I welcome that, but some people still claim that women with ability can get on in their parties. I ask those people: if it is true that there are no barriers facing women of ability, why are there so few women representatives in some political parties? It is nonsense to say that there are not women of ability in every political party—there are women of ability everywhere. I know women of ability in the Conservative and Liberal Democrat parties who are, on occasion, angry about the barriers that still exist. I welcome

that commitment from Lyndsay McIntosh; however, barriers to women still exist in all political parties and we cannot leave women's representation to chance.

I shall finish on a personal note. Two years ago, I developed breast cancer. I took the view then that I had a responsibility as a politician to talk openly about my illness, but I could not have predicted what happened. When I was in hospital after my mastectomy, I received hundreds of letters and messages of support from women all over Scotland. The feeling of support and solidarity that I got helped me through a very difficult time. I also pay tribute to the women's cancer support groups in Midlothian for their continuing support for me and many other women in my constituency.

As women politicians, we have a duty to send messages of support and solidarity to women in Scotland and all over the world, whether they are fighting breast cancer, struggling to have their political voices heard or struggling against domestic violence. Sisters and brothers, I am privileged to play a small part in international women's day.

18:02

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I, too, congratulate Johann Lamont on securing the debate. I am grateful to have the opportunity to speak briefly in it.

We have heard a great deal about the various skills and attributes of women—and rightly so. One of the things that women are known for is their adaptability, and many of us go through radical life changes from time to time. Those of us here go through perhaps more radical changes than others. One of the things that passes through people's mind as they go through the revolving door of Bute House is that there is not time to reflect on the experience that they had in a former life. Therefore, I take this opportunity to look back on some of the experiences that I had in my two and a half years as the Minister for Health and Community Care.

I put on record my appreciation of what I saw during that time. I do not pretend to have a monopoly of knowledge or particular insight, but I was in a privileged position, with a vantage point across the country, and I visited more communities, hospitals, health centres and projects than I care to remember. Throughout that time, I never ceased to be struck by the extent to which it was and is women who make a difference at every level. We have heard a great deal about the difference that women are making and have made traditionally in our communities, and I echo those comments. As a minister, I was more aware

than I had ever been before of the contribution of women, running right through every level of activity—in the boardroom, in patients groups, in trade unions and in professional groups, including general practitioners, consultants, radiographers, school nurses, health visitors, professional bodies and numerous others.

However, all too often, that is not what we hear or see. Theirs are not the names on the press releases or the faces on the television screen, and they are not the people who get the plaudits. That is because women are getting on with doing their jobs and doing them well. They do so not because they want praise, but because they want results.

We have a responsibility to redress the balance and give more praise to those women who really are making a difference. We could argue that women's contribution to society is nothing new, but I think that there has been a change in the past couple of years. The change is that what women who work in areas such as the health service and health improvement are doing is now recognised to be the way forward for so much that will affect positively the future of our communities and nations—for example, practices such as joint working between different organisations and agencies; partnership working in the workplace and in industrial relations; and team working in management. It is right that such practices are more recognised as being effective. We have reached the stage of women's ways of working being validated, but I am not sure whether we have reached the stage of fully recognising that contribution.

We need to challenge the way in which too many aspects of public life—be that in the Parliament chamber or in our public services—are still measured against traditional norms. Too much of the commentary about what is done in public life simply fails to register on the radar as the important work that I have described and that so many of us have seen. If I were to make one appeal, it would be that we work harder and get better at telling that story. Perhaps we women members should say that to ourselves as well as saying it more widely.

I wanted to put on record what I saw during my period as a minister and what I continue to see in my local community. I also want to thank the many women with whom I have worked who often unknowingly recharge our batteries and restore our faith in human nature when it is fast waning. I plead with them not to underestimate their contribution to keeping us politicians going.

I hope that we, as politicians in our national Parliament, can do more to support and recognise what women do. I have no doubt that women are rewriting history, but I do not want to wait 50 years to read about it. I want us to tell that story now.

18:07

The Deputy Minister for Social Justice (Ms Margaret Curran): I am privileged to be responding for the Executive on this significant day in the calendar for women activists throughout Scotland. I acknowledge, as have all members who spoke, Johann Lamont's contribution to initiating the debate and thank her for that. I also acknowledge all the different versions of her name that we have heard.

As we know, international women's day symbolises how far women have come in their struggle throughout the world for equality, peace and development. Donald Gorrie referred to the suffragettes and the suffragists. It is pertinent for those of us who are interested in the issue of political representation to look at the analyses of that period. It is good that historians do not talk only about the leadership of those campaigns, but about the contribution to them of ordinary working women from Dundee and many other places. They contributed to the achievement of fair and universal suffrage.

Appreciating that fact helps one to understand how long it took to deliver a fair and effective electoral system. We would have disappointed our mothers who took part in those battles if they had known how long it would take us—and continues to take us—to achieve political representation for women. Women quickly understood that they needed not only the vote to deliver fair and effective systems of justice, but political representation.

It is important to record the achievements of the Scottish Parliament. As many members have indicated, we are well up the league in terms of women's representation. We must acknowledge the work that our Westminster partners, who are so far behind us on that issue, will be doing. The Sex Discrimination (Election Candidates) Act 2002 will help them in that work.

It would be remiss of me to let the only Tory member who spoke in the debate alone pay tribute to Maria Fyfe and her efforts in getting women into the Westminster Parliament and assisting many of us to get into the Scottish Parliament. We must acknowledge the contribution that women such as Maria Fyfe have made to that process. It is important that we pay her respect for that. *[Applause.]*

All the achievements that I have referred to are the direct results of the efforts of women in previous generations. International women's day encapsulates the solidarity of women and the respect that we pay to the women who did that work. We acknowledge the genesis of international women's day. One hundred and forty-five years ago, women textile workers marched

through the streets of New York demanding better wages and improved conditions, only to be met by violence and arrests. That was one of the milestones in the struggle for women's equality. Since then, much has been achieved but, obviously, the struggle continues.

In adopting its resolution in 1977 on the observance of international women's day, the General Assembly of the United Nations cited two reasons: to recognise the fact that securing peace and social progress and the full enjoyment of human rights and fundamental freedoms requires the active participation, equality and development of women; and to acknowledge the contribution of women to the strengthening of international peace and security. For the women of the world, the day's symbolism has a wider meaning. It is an occasion to review how far they have come in their struggle for equality, peace and development. It is also, as many have said today, an opportunity to unite, network and mobilise for meaningful change. This debate will help to move that forward.

As Cathy Peattie and others observed, we must take the opportunity to recognise and celebrate the role of women in our communities in creating change for tomorrow and beyond. International women's day is about respecting past achievements but it should also focus our minds on what lies ahead.

All over Scotland, communities are organising festivals and events to celebrate international women's day. I am pleased that the Scottish Executive is playing its part in trying to facilitate that. This year, the Scottish Executive has developed perhaps its most comprehensive programme so far. Earlier today, the First Minister hosted a reception that recognised the excellent contribution made by women active in their communities. That was reflected in his announcement at the reception of £150,000 funding for the women's fund for Scotland. That new and innovative idea from the Scottish Community Foundation and Engender will help develop that fund to provide access for women's organisations to funding to promote social welfare and well-being throughout many communities in Scotland.

A host of other events are taking place this week. The Secretary of State for Scotland, Helen Liddell, will be at Edinburgh castle to host a celebration of the hidden heroines. Iain Gray will meet asylum seekers. Many of us will, of course, be working hard in our constituencies with women's organisations.

Johann Lamont asked that we continue our partnership working with women's organisations. We will do that this Saturday through the women in Scotland consultative forum, which will meet to

determine women's priorities for the coming period.

The key part of international women's day is that it provides a focus on the need for the women's agenda and the key issues that we need to address. Women still have inequality in pay, are not represented in participating in public life and continue to suffer from domestic abuse and exclusion. We are determined to do all we can to address those issues.

As Elaine Smith said, the prevention of domestic abuse has been a key priority for the Scottish Executive. I can give Elaine Smith the reassurance that she was asking for: we understand that we have to embed the spectrum of male violence into our thinking about how we approach this matter. One of the first priorities of our national working group is to examine that factor. Such structural analysis will guide our work and help us to deliver on many of the aspects that we need to improve.

It is not possible in the time allocated here today to discuss all the work that is being done, but I take the opportunity to highlight some Scottish Executive initiatives that seek to address the difficulties facing women in our society. I was delighted to announce yesterday successful applications for the second round of funding under the domestic abuse service development fund. The Executive's advertising campaign is entering a new phase, reaching out to new audiences with the message that there is never an excuse for domestic abuse. I am pleased with the success of the helpline, which is averaging 500 calls per week, and of the website, which received 2,000 visits during the first month of the campaign. We are making progress on the prevention of domestic abuse but we accept that there is much to be done.

We are working in partnership with enterprise companies, employers and employees to close the pay gap between men and women, which stands at 17 per cent for hourly earnings but widens to as much as 45 per cent in some occupations. The gap is wider for older women and, for part-time workers, it is almost 40 per cent. If the pay gap continues to close at the current rate, women will not earn the same as men until 2036.

I inform Dorothy-Grace Elder that we are undertaking the audit that she referred to. Reducing the pay gap is an important priority for us. The situation has been allowed to remain stagnant for too long. Closing that gap is one of the major social changes that we need to bring about. It is about an end to low pay, alleviation of poverty for families and an end to the benefit trap and discrimination and segregation between women and men in the workplace. I am pleased that a close-the-gap co-ordinator has recently

been appointed.

I have a variety of adverts for the work that the Scottish Executive continues to undertake. Many members have heard me go on about it endlessly before, so I will not focus on that. It is proper that we celebrate our many achievements. I will endlessly tell members about how successful the Scottish Executive is, but we should not be complacent.

We must understand the issues of discrimination more in a context of solidarity, as Rhona Brankin said, rather than in the somewhat ethnocentric approach of John Young. We must understand that there are many big agendas throughout the world. Nowhere in the world can women claim to have the same rights and opportunities as men. They continue to be among the poorest. The majority of the world's 1.3 billion absolute poor are women. Three quarters of the women over the age of 25 in much of Asia and Africa are illiterate. On average, women receive 30 per cent to 40 per cent less pay than men earn for the same work.

Everywhere, women continue to be the victims of violence. Rape and domestic violence are listed as significant causes of disability and death for women of reproductive age worldwide. In industrialised countries as well as in developing countries, women's political representation has lagged behind gains in other areas. Globally, women hold 14 per cent of seats in national legislative bodies, which is only slightly higher than a decade earlier.

We have much work to do. The UN had a 10-year commitment to try to tackle the inequality of women. Some have commented that the challenge is still with us. There was some comment at the end of those 10 years that, despite those years that had been devoted to bettering the lot of half of the world's population, the remarkable success stories coexist with blatant discrimination and huge advances are balanced by humiliating retreats. We can never be too complacent, nor can we be too self-congratulatory. We still have a big task in this and other countries to raise women's issues. The agenda is far from closed and equality is far from being achieved, but through solidarity and sisterhood, we can achieve a great deal more.

Meeting closed at 18:17.

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