MEETING OF THE PARLIAMENT

Wednesday 13 March 2002
(*Afternoon*)

Session 1

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Debates

Scottish Parliament

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

Time for Reflection

The Presiding Officer (Sir David Steel): To lead our time for reflection this afternoon we welcome the Rev John Greenshields, the President of the Baptist Union of Scotland.

Rev John G Greenshields (President of the Baptist Union of Scotland): In its short history, the Parliament has known its share of tense and dramatic moments, when everyone senses what we call the "electric" atmosphere. Debates, statements, questions, and even comparatively dull proceedings can suddenly intensify and grip those who are listening.

Now go back with me to a little synagogue in 1st century Nazareth. A young Jewish carpenter takes down the scroll of the prophet Isaiah, written hundreds of years before. As he begins to read, the normally predictable atmosphere changes. There is a tingle of anticipation and excitement as the words pour out:

> The Spirit of the Lord is upon me,
> for he has appointed me to preach
> good news to the poor.
> He has sent me to proclaim
> that captives will be released,
> that the blind will see,
> that the downtrodden will be freed
> from their oppressors,
> and that the time of the Lord's favour
> has come.

Dr Luke tells us in his gospel that

"everyone stared at him intently",

and the atmosphere must have been electrifying as Jesus declared:

"This Scripture has come true today before your very eyes!"

Ever since, the "kingdom manifesto" has been preached, taught, lived, and followed by those who have become disciples of Jesus of Nazareth. And therein lies the kernel of the manifesto—a living, personal, life-transforming relationship with Jesus the King.

The Scottish Baptist churches that I represent are united in a common desire, through our distinctive witness, to play our part in introducing people to the King Jesus, and extending the reach of that timeless kingdom manifesto today. We seek to be faithful to the gospel, relevant to the times in which we live and assets within our society.

I invite you to join me as we unite together in prayer.

Living God, heavenly Father, we thank you for the life and ministry of the Lord Jesus Christ. We thank you that his mission continues today, through his Spirit and by his people.

In this place we pray for your blessing upon the Presiding Officer, the First Minister, and every member here. We ask that this Parliament will always seek to serve the Scottish people, bringing justice and mercy, making wise decisions, and caring for those in need.

As we remember the words of Jesus, the carpenter from Nazareth, We remember the situation today in his own homeland, longing that peace may come to that troubled country.

Hear all our prayers, in Jesus' name.

Amen.

Committees (Substitutions)

The Presiding Officer (Sir David Steel): The next item is a debate on motion S1M-2866, in the name of Kenneth Macintosh, on behalf of the Procedures Committee, on the committee's second report of 2002, on substitution on committees of the Scottish Parliament. I call Kenneth Macintosh to speak to and move the motion.

14:35

Mr Kenneth Macintosh (Eastwood) (Lab): As ever, the Procedures Committee's work is a huge draw to the Parliament chamber.

In December 2000, the Parliamentary Bureau proposed that the Procedures Committee be asked to bring forward standing order amendments permitting substitutions with voting rights in the committees of the Parliament. The Parliament agreed, and today I have pleasure in presenting to the Parliament the committee's proposals.

The Procedures Committee agreed that the implementation of a system of named substitutes would best ensure clarity, quality, probity and administrative convenience. In terms of clarity, the MSP would be named and would therefore be clearly identifiable. In terms of quality, a dedicated MSP would have some opportunity to learn about the work of his or her committee. In terms of probity, the selection process is done openly by the Parliament. In terms of administrative convenience, the substitute's identity being known would enable the arrangements for his or her appearance at the committee to be handled with the maximum amount of anticipation.

It is suggested that, under the named system, there should be one substitute per party per committee. It would seem excessive for two or more named members from the same party to be on call as substitutes for the same committee. The committee considered that the processes of committee substitutions would follow the established practice adopted for committee membership. The political parties, through their business managers, would be invited by the Parliamentary Bureau to nominate one named MSP to serve as a party substitute for each parliamentary committee. Those nominations would then be followed by selection by the bureau and would then proceed by means of a bureau motion for decision by the Parliament. It is proposed that the day-to-day arrangement for substitutes, if required, should be the responsibility of the party business managers in the first instance. Business managers have an interest in members' work and would be best placed to manage substitution effectively.

The committee was anxious that the reasons for individual substitutions should be transparent to everyone. At the same time, any such system would be flawed if it did not provide sufficient flexibility to MSPs to enable committees to do their work. The balance of those two factors provides the rationale for our choice of the following circumstances in which we think substitution should be permitted: short or long-term personal illness; family circumstances; adverse weather conditions; urgent constituency business; and unavoidable clashes of parliamentary business. The committee considered that those identifiable circumstances would cover the key personal and professional aspects of members' lives, while offering members a reasonable degree of flexibility. I am sure that all members will recognise one or more of those criteria as pressure points in their diaries. Although most of the criteria require no explanation from me, I should point out that, in the case of family circumstances, we had in mind such events as the serious illness of a close family member as well as more enjoyable, but equally predictable and inevitable events, such as pregnancy, which one member of the Procedures Committee is currently enjoying.

This is a completely new system. The committee believes that it would be good practice to monitor the operation of the system and to review how it has worked at the end of its first year. As the report makes clear, we should be grateful for the co-operation of committee conveners in reporting to us instances of substitutions on their committees after 12 months' experience.

The committee considers that the roles of committee convener, deputy convener, temporary convener and committee reporter should not be open to substitutes. That reflects the consideration that it is unfair to expect a substitute to find time to satisfy the demands placed upon him or her in those key posts and that continuity in those posts is vital for committees to be able to fulfil their work programmes. A similar consideration of the importance of continuity is made in respect of private bill committees, where substitutions would not be permitted. That apart, where a member is substituted, it is proposed that the substitute should be allocated the same rights and responsibilities as a permanent member and that he or she should be able to take part in the same range of business. A substitute will be accorded the same full voting rights as that of the member whom he or she has replaced; that is, one vote per member.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I understand what the member is saying—all committee papers, even private papers, could be circulated to a substitute.

However, could a substitute member go to a committee meeting that was held in private to keep aware of the committee's discussion? I would like clarification on that point.

Mr Macintosh: That is an interesting point, which the Procedures Committee did not discuss. If a substitute stands in for a member of a committee, he or she will enjoy full rights, but when a committee goes into private session—which we all wish to discourage, I believe—the substitute would not be a current member of that committee. Currently, therefore, a substitute could not sit in on a private meeting. However, the point is interesting. The thesis behind the changes is that we want members to be expert in the work of the relevant committees. Perhaps the Procedures Committee should take that point on board as part of our review at the end of the year.

Fiona Hyslop (Lothians) (SNP): There is a strong argument for substitutes on committees, particularly for smaller parties such as the Conservatives. When Bill Aitken represented the Parliament on Commonwealth parliamentary business—that is interesting as we are celebrating Commonwealth day—there was concern because the then Social Inclusion, Housing and Voluntary Sector Committee was to consider the housing stock transfer inquiry and there was only one Conservative member on the committee. It would be difficult for a member to come cold to the committee and to substitute in such circumstances, much as that was needed. Perhaps we should look into that. A continuity aspect is involved. Members should not make judgments based on the cold calculation of one event at one meeting. Members need to absorb issues, particularly when it is anticipated that there will be a need for substitution.

Will the member also confirm that substitution will be the exception, rather than the rule? We must ensure that members continue with their responsibilities and attendance at committees and that the quality of committee work that we have enjoyed continues.

Mr Macintosh: I thank the member for raising those points. It is interesting that she referred to the Conservatives as one of the smaller parties. No member batted an eye or raised an objection. I hope that she did not mind my enjoying that.

The idea behind our recommendations on substitutes is that the substitute should become an expert on the work of the committee and keep informed and up to date with its work. It is an important point that, if a smaller party has only one member, the relationship should be maintained. Perhaps committee members will place the onus on substitutes to do that.

I am happy to confirm that the Procedures Committee strongly supported the idea that committee substitution would happen only in exceptional circumstances and would not be commonplace. That is one reason why we are asking for the procedure to be reviewed after a year. We do not want substitutes to be used willy-nilly to maintain party majorities, rather than to maintain an interest in the proper functioning of the committees.

Members referred to the point that each party substitute will be required to keep abreast of the work of the committee on which they are a substitute. To facilitate that, it is proposed that a full set of public and private committee papers for each meeting should be circulated to substitutes.

The committee thought that substitutes could not reasonably make the contribution that is expected of them if they were to be present for anything less than a whole committee meeting or other committee activity. Consequently, the proposed arrangements would not allow substitutions for part of a committee meeting.

The committee was anxious to consult Dennis Canavan, Robin Harper and Tommy Sheridan on the implications of substitutions for them and it did so before drawing up its proposals. The responses received indicated that substitution was not considered useful in such cases and the committee's report consequently made no provision for single members. The committee is pleased to commend the changes to the Parliament.

I move,

That the Parliament (a) approves the recommendations of the Procedures Committee's 2nd Report 2002, *Substitution on Committees of the Scottish Parliament* (SP Paper 530) and agrees to amend the Parliament's Standing Orders in accordance with Annex A to the Report and (b) agrees that these amendments to the Standing Orders should come into force on 15 March 2002.

14:44

The Deputy Minister for Parliamentary Business (Euan Robson): I am pleased to indicate the Executive's support for the Procedures Committee's report on substitution on committees of the Scottish Parliament, which covers proposals for changes to the standing orders. On behalf of the Executive, I thank the members of the Procedures Committee, including the convener, Murray Tosh, and the deputy convener, Kenneth Macintosh, for proceeding with the work in a positive manner. I acknowledge the consultation processes and the transparent approach that has been adopted.

I do not propose to comment in great detail on all the proposed changes. It is important that committees work to maximum efficiency and the changes are designed, in the Executive's view, to

enhance the way that committees function and generally to assist the handling of business.

We welcome the Procedures Committee's recommendation to permit substitution in identifiable circumstances only. It is appropriate in the interests of transparency that the reasons for substitution should be clearly identified. Substitution will provide committees with the flexibility to carry out their business when a member is—as Kenneth Macintosh explained—unable to attend due to personal illness, family emergencies, adverse weather conditions, unavoidable clashes in parliamentary business or urgent constituency business.

We endorse the proposals that substitutes should be named, that there should be one party substitute per committee and that substitutes should be chosen by the Parliament on a motion of the Parliamentary Bureau. The naming of committee substitutes means that the process is open and transparent. The dedicated substitute will also have the opportunity to learn about the work being carried out within the committee and so contribute more effectively to the committee's work.

The Executive also supports the committee's recommendations that, with the exception of the roles of the convener, deputy convener or reporter, substitutes should be able to participate in the same full range of business as the permanent member for whom they are substituting. In that respect, we fully endorse the caution shown by the committee in relation to travel arrangements for committee substitutes, both in Scotland and abroad.

When a committee substitute attends a meeting of the committee, we support the Procedures Committee's proposals that they should have all the functions of a member of the committee, including the right to participate in the proceedings of the committee, to receive all papers and to vote, as appropriate.

We note the committee's recommendation that substitution should be permitted for whole meetings only. That will enable substitutes to make effective and meaningful contributions, but we recognise that that could prove to be a somewhat inflexible arrangement. However, any difficulty should rapidly become apparent in the course of the proposed monitoring.

Since committee substitution is a new system, we welcome the Procedures Committee's undertaking to monitor how well the arrangements work in practice and for them to be reviewed after one year in operation.

In conclusion, the changes to standing orders that the Procedures Committee has outlined today are sensible and should assist in making more effective and efficient the discharge of committee business. The Executive fully supports the report.

14:47

Mr Gil Paterson (Central Scotland) (SNP): It is worth pointing out to the chamber that I am one of the members who was totally against the reduction of the committee system in the first place. I see the substitution system as a sop to that measure's going through Parliament, to effect the changes that are required. Nothing has happened to change my mind; I believe that my first opinion was the right one. However, I do not want to rehearse the views that I expressed at that time.

On a more positive note, it is worth pointing out that a questionnaire on the suggested changes was circulated to members. It seems to me that the Procedures Committee's proposals are very much in tune with members' views.

Ken Macintosh has given a good résumé of the proposals. I will highlight a few matters. The point that substitution arrangements are not permitted for single member parties is worth noting; it is a fairly bland statement. It might look as if bigger parties in Parliament are ganging up on smaller parties, but we canvassed opinion from the smaller parties and they thought that substitution would not be helpful to them. I should point out that there was some sympathy on the Procedures Committee towards small parties and their right to be represented in the same way as larger parties. I do not consider the Tories to be in that group of parties. I was thinking about Tommy Sheridan, Dennis Canavan and Robin Harper. However, because of the submissions that we received from the smaller parties, the matter did not go to a vote.

Substitutions should be for whole committee meetings. During last year's reshuffle, I was moved to the Equal Opportunities Committee. Unfortunately, that committee and the Procedures Committee met at the same time on the same day. Although I did not miss all the meetings of either of the committees, the pressure of work on the committees meant that keeping up to date put me under pressure. Keeping up to date does not mean only reading the papers—as members realise, not everything is in the papers. Members must keep up with what is discussed and how conclusions are reached. I found myself losing the thread of what was happening. It is a good idea to ensure, not only for the committees, but for the well-being of the Parliament, that members have the opportunity to keep up with the work. The minimum requirement should be that members must participate in whole committee meetings rather than ship out in the middle of them.

I am not in favour of the system of smaller committees and very much in favour of the previous system. There are members from all the

parties who have the same reservations that I do, but the report is an extremely good attempt to square the circle and to address members' concerns. For that reason, I recommend that the Parliament accepts the report.

14:52

Mr Murray Tosh (South of Scotland) (Con): I will pick up from where Gil Paterson finished. I did not think of the substitution debate as being part of squaring the circle of the committee changes because, as Fiona Hyslop pointed out in quoting a specific example, substitution was a potential or live issue before the committee changes were made. The issue of parties that have only a single representative on some committees was always likely to emerge.

It is true that the report arises from the motion that was passed at the time that the committees were reduced. It has taken the Procedures Committee more than a year to bring the proposals to the Parliament. Some might think that to be a criticism, but the Procedures Committee felt that it would be unwise to rush to a judgment on the matter and that it would be improper to base recommendations on anything other than a careful survey among members of what they wished to be done.

The committee proceeded carefully and surveyed members. When members who were under pressure did not respond quickly to the survey, it was repeated. We deliberately waited until we had what we felt was a thorough and representative sample of parliamentary opinion before we produced the recommendations. Although business managers will implement the policy, it relates to how members handle their business and prioritise their work. We felt that it was right that members should determine the principles by which the substitutions would work.

Mike Rumbles raised the interesting issue of whether the recommendations allow members who are substitutes to attend private meetings when they are not acting as substitutes. I have sympathy for that point. Ken Macintosh's response to Mike Rumbles's intervention was correct. A paper that addresses some of the issues that arise from the report will come before the committee. Like every report from the Procedures Committee, this report recommends actions on the basis of a discussion or an issue. However, such reports never finally resolve issues because every report has further implications and raises further areas for study.

As Fiona Hyslop said, one important recommendation is that we should resort to substitution only in the rarest of circumstances. It is important that we monitor the system in the coming period to be certain that we have got it right and to consider possible modifications.

Euan Robson raised the question of whether the rule of substitution for a single whole committee meeting might be a bit inflexible, perhaps envisaging members coming and going. The committee considered that idea and rejected it, but would be entitled to consider it again. When I was on the Transport and the Environment Committee and a transport spokesman but not an environment spokesman, I recognised the argument for a jobshare arrangement, whereby the environment spokesman would attend the committee for some issues and the transport spokesman would attend for other issues. The Liberal Democrats might be in the same position vis-à-vis Nora Radcliffe and the more frequently rotating transport spokesman. That issue merits reconsideration in the context of further reviews.

Gil Paterson was right to say that this is not just about members' rights; it is also about members' responsibilities. The substitutes have a responsibility to keep up to date with the working of their committees and to develop a general understanding of the committees so that, when they are called upon to act as substitutes, they can slot in appropriately. It is important that all members realise that this is not a loosening up of our job that makes it easier to do, but that it puts on us a responsibility to act properly to fill the roles that we are seeking to fill.

During the final stages of the Protection of Wild Mammals (Scotland) Bill, the Labour party required two members to leave the Rural Development Committee because they became ministers. The party had to put a member on the committee for a single meeting, which earned a fair amount of adverse comment and publicity that was deeply unfair. All political parties are entitled to replace members who have to leave committees. That is especially important when the committees are dealing with bills. Had the substitution rule been in place, the Labour party would have been able to deploy a substitute and would have been saved that embarrassment. That is a practical example of the way in which substitution can help the general workings of committees.

I realise that I am breaching the recommended time limit and I shall close. The report is a good one from a committee that has worked very well. The committee has changed quite a bit during this Parliament, but it has worked well. One of its strengths has been that when good people have left, they have invariably been replaced by further good people who have contributed well—apart from Frank McAveety. Sorry, that was entirely undeserved.

Mr Frank McAveety (Glasgow Shettleston) (Lab): Nothing stops me.

Mr Tosh: Those members have contributed extremely well to a consensual committee that has worked for the good of the Parliament. It is on that basis that those recommendations have been laid before the Parliament today. As the convener of the Procedures Committee, I hope that the Parliament will welcome and endorse the report.

The Presiding Officer: As the member said, he has spoken over time. However, everybody has done so. I am quite relaxed about it because, as members can see, these internal reports do not draw a large number of members who are anxious to speak. We are all right for time.

14:58

Mr Frank McAveety (Glasgow Shettleston) (Lab): Murray Tosh may regret the aside that he made in his speech when I get to the point that I have for him.

Members have touched on the key deliberations of the committee. The fact that it has taken 14 or 15 months to produce the report, during which time there has been a significant turnover of members, reflects the length of time that has been required to identify the specific issues. It is right and proper that we are reviewing the way in which we operate our business, which is the core function of the Procedures Committee. The fact is that substitutions have been considered reasonable and right. It was only in the late 1950s and early 1960s that it was deemed right and proper by the association football authorities in the United Kingdom to have substitutes in formal football matches. We have therefore arrived at that position much more quickly than the football associations of England and Scotland.

The role of substitutes is about trying to get replacements in at the proper time, when there are circumstances that prevent individual members from contributing. As Murray Tosh implied, we could have a parliamentary equivalent of "Stars in Their Eyes", whereby, for the occasional week, someone could be Murray Tosh. I cannot imagine anybody rushing to the barricades to dress up for that, but I can find a silver-haired gentleman in my constituency who could do so.

We deliberated in significant detail on the issues that the committee considered. It was important that we identified that it should be primarily the parties that identified how best to engage with substitution replacements. Structures already exist to place members in committees. The Procedures Committee's suggestion will not only be an addition to that process, but a refinement of it. It is important for Parliament and the role of the committees that the balance of the committees is maintained. That matter, as Ken Macintosh and others said, was a key deliberation of the committee.

We did not think it appropriate for members to have what would almost be a transferable committee membership across parties. That might be an interesting scenario, but it is hardly something that would provide stability for the parliamentary and committee processes.

We had to address the issue of the single-member parties. However, two out of three members said that they did not think that substitutions for the single-member parties would be appropriate. It has been said often in Glasgow—I am sure that Tommy Sheridan would agree with me—that there is only one Tommy Sheridan, which is probably why there cannot be a substitute for him.

On the report's final points about the roles of reporters and conveners, the committee was right to identify that the role of the substitute is not about replacements for conveners and deputy conveners, who should operate as individual members on committees. That is right and proper. Given that it sometimes takes time to identify how issues should best be dealt with, it is obvious that the role of reporter should not be substituted, unless clear circumstances were reported that indicated that it would be appropriate to do so.

Substituting committee members is a welcome refinement of procedures and will be beneficial for all members and parties, including single-member parties, in addressing how we deal with issues that are thrown up because of circumstances such as illness or pressures of work. As a member of the Procedures Committee, I welcome the report and I hope that Parliament does so as well.

15:02

Donald Gorrie (Central Scotland) (LD): I support the Procedures Committee's report. It is a reasonably balanced report, partly because the rest of the committee defeated many of my suggestions. The report has taken the middle ground and deals well with most of the issues.

I want to concentrate on one issue rather than deal with matters that have been dealt with. Just before Christmas, when I was off ill, the committee agreed that substitutes should receive all committee papers. Murray Tosh also animadverted on that matter. I honestly think that doing that will be wasteful of paper and of people's time. The system should be that all the substitutes should be asked whether they want to receive committee papers. If they do, they should get them.

I would not look at papers that were sent to me. I find it hard enough to keep up with the paperwork of the two committees that I am on and all the

other work that I try to do. I am so much behind in other more important matters that substitute papers would go straight into the bucket. If I were called on to be a substitute, I would take a crash course on whatever items were coming up at that day's committee meeting. Other members might be better organised, more conscientious or whatever. I merely state my opinion.

I suggest that there should be an option for substitutes to tick a box if they want to get papers all the time and to put in a cross if they do not. That would save many of those famous trees. My colleagues suggested something that would use more trees, but I now suggest how to avoid that.

Mr Tosh: I invite Donald Gorrie to indicate whether he would be willing to receive electronic copies. It is not necessary to provide paper. I am sure that we could e-mail committee papers to him.

The Presiding Officer: Mr Gorrie, I do not know whether you are an electronic person.

Donald Gorrie: I am not an electronic person, but my excellent personal assistant is. The electronic stuff would merely be translated on to paper. I admire Murray Tosh's constructive suggestion, which might help some members, but not me. Making allowances for other members being more skilful than I am, I merely make my suggestion as a constructive one to save time and effort for those members for whom it would do so.

The Presiding Officer: I am not an electronic person either.

15:04

Mr Macintosh: The debate has been consensual, so I will not take long to wind up. Parliament sometimes prides itself on its consensus. It should do so, but I imagine that that does not make for fascinating listening for many in the chamber.

I will touch on a few points. It was interesting to think of there being a virtual Donald Gorrie. However, an important point was made about the difficulties that members have with the amount of paperwork that they receive. Everyone is aware of how conscientious Donald Gorrie is. As Murray Tosh pointed out, the system of substitute MSPs will place a responsibility on MSPs rather than make their lives easier. However, it is an important initiative and it will make the Scottish Parliament work better.

Frank McAveety made a football analogy—I would have been disappointed if he had not—and he also made a "Stars in Their Eyes" analogy, which I hope that Murray Tosh appreciated. His main point was that the substitution system is a refinement of procedures.

Gil Paterson made a couple of points about his reservations about the reduction in the numbers of MSPs. Murray Tosh said that the substitution system is not a response to that possibility but that his point had been noted, as was his and other people's concern for the situation in relation to smaller parties. That situation should be kept under review.

We will revisit this issue in a year's time. We expect all conveners to monitor the operation of substitutes to ensure that they are used only in exceptional circumstances.

Alex Johnstone (North-East Scotland) (Con): On the issue of smaller parties, members were entertained by the suggestion that the Conservative party is a smaller party. It is appropriate to say at this point that the Conservative party remains a great party; it is the ambition of the electorate that got smaller.

Mr Macintosh: Mr Johnstone always seems to be making remarks about size or being on the receiving end of remarks about it. I do not always know whether those are related to his party or his person.

I feel that it was unfair of me to have made fun of the Conservatives when Murray Tosh had the graciousness to talk about the unfair criticism that had befallen the Labour party. I hope that he took my remarks in the spirit in which they were intended.

This report deals with an important procedural matter and I commend it to the chamber.

Code of Conduct for Members of the Scottish Parliament

The Presiding Officer (Sir David Steel): The next item of business is a debate on motion S1M-2810, in the name of Mike Rumbles, on the revision of the "Code of Conduct for Members of the Scottish Parliament".

15:07

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I am pleased that we have this opportunity today to debate the revision of the code of conduct for members, as recommended in the Standards Committee's eighth report of 2001. Members of the Scottish Parliament are committed to ensuring that they carry out their parliamentary duties with integrity in a manner that is above reproach and worthy of the trust of the electorate. The code of conduct reflects the principles that we must observe.

Why are we seeking to amend the code today? Section 9.4 of the code sets out members' responsibilities in relation to confidential committee material. Last year, the Standards Committee had cause to investigate alleged incidents of—if I dare say it—leakage and seepage of draft committee reports and other confidential committee material. As a result of those investigations, the committee conducted a short inquiry into the provisions in the code of conduct on unauthorised disclosures and the arrangements for investigating them. The outcome of that inquiry is set out in the committee's eighth report. The report states that the facts

"give rise to concerns in relation to the enforceability of the present rules in relation to confidentiality of draft reports. In this respect, the Committee accepts that the problem is cultural as well as regulatory."

We felt that the rules could be open to various interpretations and we wanted to bring crystal clarity to the code of conduct. We also needed to be more straightforward about what was considered to be confidential and the possible consequences of leaking information. We concluded that three main amendments were required to section 9.4 of the code of conduct to provide better guidance for members. That is, after all, what the code is there for.

The first amendment is to ensure that the provisions on confidentiality apply to confidential material and information as well as to draft committee reports. The second is a provision that would prohibit members from giving off-the-record briefings on the contents—or even the line—of committee reports or other confidential material and information. The third is a prohibition on members who dissent from committee reports from disclosing the contents of those reports while they remain confidential.

The proposed amendments to the text are not extensive. They do not introduce any material changes to the code. Rather, they expand upon and reinforce the rules that are already in place and to which we have already agreed. Our code of conduct already states:

"It is the intention of the Parliament that its proceedings and printed material be open to the general public."

That is one of our core tenets, but we must also acknowledge and account for those occasions on which it is deemed necessary to treat certain information—be that discussions or documents—as confidential. Leaks can undermine members' integrity. They could lead to a loss of mutual trust between members and a breakdown of confidence in the operations of a committee.

It may be helpful if I take members through the proposed revisions to section 9.4 of the code. In section 9.4.2, we would define material that should be understood to be confidential. Such material has always been covered in the code of conduct but, during our inquiry, we came to understand that, although most members realised the seriousness of leaking a draft committee report, they or others working closely with them may not have appreciated that other forms of information can carry as much weight and importance. We therefore recommend that all committee material that is to be defined as confidential be brought together in one paragraph in the code. That should reinforce the point that unauthorised disclosure of any of the material that is mentioned in that paragraph is as serious a matter as leaking a draft committee report.

Further proposed revisions to the text of the section expand on the reasons why we consider the disclosure of confidential committee material to be undesirable. Again, the existing text highlights the reasons why we take that view, but the revised text is more explicit. It also serves to impress upon members that there is no hidden agenda or deliberate suppression of information. Rather, it impresses upon members the possible serious difficulties into which unauthorised disclosures could put the committees, their members, those members' parties and, importantly, witnesses.

We are also strengthening the language of the section in places. For example, we propose to add a sentence to section 9.4.4 to say that it is

"essential that all Members respect these rules."

Although we feel that members have always known that, to spell it out in black and white does no harm.

The proposed revision to section 9.4.5 is also

much more direct about off-the-record briefings on confidential material. The growing number of such briefings was brought to the Standards Committee's attention by the conveners liaison group, which had concerns about the matter as far back as December 2000. The group expressed its concerns about a developing culture of briefings and cited an increasing number of articles in the media that quoted from "sources on" or "sources close to" a committee. As we point out in our report, disclosures of that kind can seriously undermine and devalue the work of committees.

We also considered members who dissent from a committee report. We suggest a new paragraph, 9.4.8, which seeks to clarify the actions of members who wish to take that line. If a member who dissents from a committee report holds a briefing or issues a media release before that report has been published, the conclusion of the report is inevitably disclosed. Such action is covered by section 9.4 of the code, but we believe that the section should include specific reference to it. I stress that it is not the committee's intention to prevent members from dissenting from committee reports.

Through those revisions, the committee simply aims to make the rules plainer, more easily understood, and less open to misapplication or misunderstanding.

I move,

That the Parliament agrees to amend the *Code of Conduct for Members of the Scottish Parliament* by replacing Section 9.4 with Section 9.4 as set out in Annex D of the Standards Committee's 8th Report 2001, *Report on the Investigation of Unauthorised Disclosures*.

15:14

The Deputy Minister for Parliamentary Business (Euan Robson): The Executive welcomes the Standards Committee's report and recommendations on the investigation of unauthorised disclosures. As in the previous debate, I thank members of the committee for the efforts that they put into the report. I also thank the committee's convener, Mike Rumbles.

The committee structure is central to the Parliament's work. The committees have quickly gained considerable respect for the work that they do in discharging a variety of roles, including scrutiny of the Executive, detailed line-by-line consideration of bills, carrying out independent ad hoc inquiries and introducing bills of their own. In short, the committee system is a success story. A great deal of valuable work has been done by the committees, much of which reflects the willingness of MSPs on all sides to adopt, in the main, a non-partisan approach to committee business.

The Standards Committee's report on the unauthorised disclosure of confidential material makes it clear that the achievements of the committee system and the integrity of the Parliament as a whole is at risk of being eroded if what it described as leakage and seepage becomes the common practice. The committee has accordingly recommended that the code of conduct be amended to ensure that it is robust enough to deal with practices such as off-the-record briefings and to reflect fully the range of committee business that is conducted on a confidential basis.

On behalf of the Executive, I offer my full support for the committee's report and recommendations and for the specific changes to the code of conduct that it proposes. I hope that we all endorse the importance of putting a stop to the unauthorised disclosure of confidential committee material, as well as clarity about exactly what material is covered by the duty of confidentiality. That is what the proposed changes are designed to achieve, and they have the Executive's full support.

15:16

Lord James Douglas-Hamilton (Lothians) (Con): Free speech and the freedom of the press to report on the work of the Parliament are central principles and are vitally important, but those principles should be balanced against the fact that certain information must be regarded as confidential.

The possibility that certain information was not leaked deliberately should always be considered. Inadvertent disclosures should obviously be avoided, whether they be made through indiscretion or by carelessly leaving private or confidential papers—not to mention the secrets of the nation—lying around. We all have a responsibility to make sure of our own security in such matters. Basic safeguards in handling mail and password access to e-mail accounts should be used. It is of course difficult to discover the source or sources of a leak or leaks. Culprits have been known to refuse to own up, but that does not mean that investigations will not be made.

The consequences of disclosing confidential information can be significant. There is the issue of commercial confidentiality. A breach of such confidentiality could have serious consequences for an organisation, company or person if evidence has been given in strict confidence. We try to build up trust with people who may be able to assist us with our work in the future, but that work could come to nothing if witnesses will not come forward, having lost trust in MSPs. It must be appreciated that leaking, for whatever motives, undermines trust.

There is an exception to every rule. In the 1930s, not enough was done to maintain and rearm Britain's armed forces in view of the mounting threat from Nazi Germany, and Winston Churchill had leaked to him critical information, which he used in public. The then Prime Minister is believed to have asked him which civil servant was responsible, and Winston is alleged to have replied that it was all in the national interest. The civil servant, whoever he was, continued work as a civil servant, but that was the exception rather than the rule.

I will tell the Parliament a cautionary tale. Some years ago, a young girl civil servant called Sarah Tisdall leaked to a national newspaper the fact that cruise missiles were to be transported to Britain on a certain date. She was charged with breaching the Official Secrets Act and was sent to prison for three months. If that can happen to a civil servant, then MSPs cannot expect to get off unscathed if they impart confidential information in circumstances in which that would be quite improper. Most organisations and professional bodies have rules and guidelines governing their members' behaviour, and must use penalties if people are found to be transgressing or flouting those rules. It should be no different for MSPs.

15:19

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I am pleased to speak in support of the Standards Committee's report on the investigation of unauthorised disclosures. As ever, such procedural debates may not set the proverbial heather on fire, but they are vital to the effective operation of the Parliament. I joined the Standards Committee after it completed its deliberations on the issue, so I can claim no credit for its work. However, I believe that, in this as in other areas, the committee has taken its work seriously and has adopted a measured and pragmatic approach.

We all recognise that it will never be possible to stop leaks or to put an end to off-the-record briefings and unsourced quotes. None of us is that naive. However, it is both possible and necessary to set clear parameters for what the Parliament regards as acceptable conduct and to put in place measures to maintain those standards.

I am conscious that in certain debates, including the recent one on the appointment of a standards commissioner, we have expressed pride in the fact that we are putting in place provisions that are robust in comparison to those at Westminster. This is one area in which we do not compare so favourably with Westminster and it is right that we have been willing to consider it at an early stage. It is of concern that, according to the committee's report, the practice of so-called seepage of draft reports may have become endemic.

It is worth reminding ourselves that, across the parties, we often bemoan the fact that the press do not focus sufficiently on the good work of the Parliament—on the work of the committees, on cross-party co-operation and on the thoughtful conclusions that are reached to inquiries and investigations that have been months, sometimes years, in the preparation. However, we must be honest and say that we cannot have it both ways. We cannot on the one hand crave balanced, factual reporting of what we do, and on the other hand feed the beast with partial information, speculation, spin and, on occasion, distortion. Those are some of the things that come with the leaking of reports and the briefing of otherwise confidential information.

Phil Gallie (South of Scotland) (Con): I accept the arguments that the member has made. However, she is talking about members of the Parliament and the work of the committees. What about ministers and their work in the Government, where leaking seems to be a practice?

Susan Deacon: Phil Gallie is absolutely right to make the point that at every level we need to work to maintain high standards. That is as relevant to the Executive as it is to the Parliament. Today's debate focuses on the Parliament's behaviour, but I can say with some experience that, when the Parliament's standards slip, that leads to difficulties and confusion in the Executive, at the very least. I know that the Executive has made it clear that it will not comment on leaked reports, but we ought to strive to ensure that no one is put in a position in which they might have to and that leaked reports are not available to be commented on. There should be a proper publication process to which the Executive should respond properly.

The key issue is that all of us have a part to play in developing and maintaining high standards. Mike Rumbles was absolutely right to say that the debate is about rules and culture. It is important that we work to ensure that the culture is right.

Finally, I note that one newspaper described the proposed move as being designed to gag MSPs. Nothing could be further from the truth. As the committee's report makes clear, and as Mike Rumbles has reiterated today, there is nothing in the proposals that discourages dissent. At issue is how and when that dissent is expressed. Constructive, even heated, debate and the expression of different views are a healthy and necessary part of our democracy. However, it is right and proper that those views should be expressed, recorded and aired through due process, so that politicians can be held to account for their opinions. That is done not behind the bike sheds, but through proper discussion and deliberation and, ultimately, through the proper

presentation of reports.

I said "finally", but I would like to make one further point. I cannot remember how much time I have, Presiding Officer.

The Deputy Presiding Officer (Mr George Reid): You have an infinity of time.

Susan Deacon: You may regret saying that.

As a member of the Procedures Committee, I am conscious of the fact that many people who have given evidence as part of its inquiry into the implementation of the consultative steering group principles have voiced concerns about the number of committee meetings that are held in private. It is important that we do not confuse that issue with today's debate. First, there is a big difference between holding a formal committee meeting in private and the sort of clandestine meetings and seepage that we are discussing today. Secondly, wherever we draw the line between public and private committee business, it will never be absolutely right. The key point is that, wherever we agree to set the parameters, we should all maintain and respect them.

The measures that have been set out today are utterly consistent with the principles of openness, accountability and transparency, which lie at the heart of the Parliament. They sit comfortably alongside the wider range of measures that we are developing to reinforce those principles and I commend them to the chamber.

15:25

Tricia Marwick (Mid Scotland and Fife) (SNP): Like others, I welcome the opportunity to debate the proposed changes to the code of conduct. Susan Deacon is absolutely right to draw a distinction between this debate and the debate about whether committees should meet in private and the circumstances that make us do so. In my experience, committees normally meet in private to consider draft reports and documents that they want to discuss fully. We are coming forward with changes to the code of conduct in relation to draft documents and the periods in which MSPs meet in private.

I echo Mike Rumbles's opening remarks that the proposed changes to section 9.4 of the code of conduct are not extensive or severe. The Standards Committee is not suggesting draconian measures. Despite the hysterical response from sections of the media that we are seeking to gag MSPs, nothing could be further from the truth. The changes are merely a clarification of the rules. They should be seen as enhancements and welcomed as producing a clearer set of guidelines for us all. They are not intended to be a straitjacket to stifle debate among members.

Last year, the Standards Committee spent a fair amount of time dealing with unauthorised disclosures or leaks. I do not mean to suggest that we reached a situation in which the Parliament and committee structure was leaking like a sieve, but the Standards Committee considered three reports from the standards adviser on unauthorised disclosures from committees to the media.

Our subsequent inquiries into the adequacies of the provisions in the code on leaks and the arrangements for their investigation are based on experience. As a result of the inquiry, we concluded that clarification was required to ensure that the rules that the Parliament endorsed were robust enough. The Standards Committee report states:

"The Code's provisions on confidentiality largely focus on the treatment of draft committee reports. The Committee's inquiry and the Adviser's investigation, however, have suggested that the current provisions may not adequately reflect the range of Committee business that is conducted on a confidential basis."

That is one of the main reasons for the revisions of the code. The code is perhaps not clear enough about what is considered to be confidential. The Standards Committee agreed that a tidying-up exercise was required.

Although misunderstanding of the rules can account for some disclosures, others cannot be laid at that door. Leaks have occurred when someone had what they considered to be a good reason to put information into the public domain without the consent or foreknowledge of their colleagues. That is not an acceptable way for us to work. It can quickly lead to an atmosphere of suspicion and mistrust and it can hamper our proceedings.

I refer specifically to proposed section 9.4.6 of the code, which states:

"It is also unacceptable, unless the Parliament or the relevant Committee has agreed otherwise, to disclose any information to which a member has privileged access, for example derived from a confidential document or details of discussions or votes taken in private session, either orally or in writing."

That change, which was required to be made, came out of the discussion of the Protection of Wild Mammals (Scotland) Bill, which has been mentioned. Within hours of a committee having met in private and taken a vote, the result was leaked to every member of the press, who, by the following day could tell how every member of the committee had voted.

That kind of leaking is unacceptable behaviour for the Parliament. If people do not know by now that they really ought not to leak details of private discussions or votes, the changes to the code that we are proposing will allow them to be absolutely

clear about what is required of them.

The words “confidential” or “in confidence” are the key to the issue. Any definition of confidence must relate to faith, reliance or trust. We must be able to have trust in one another. We must be able to demonstrate the integrity that people want of their elected representatives. On behalf of the Standards Committee, I commend the motion to the Parliament.

Legal Aid Inquiry

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-2868, in the name of Christine Grahame, on behalf of the Justice 1 Committee, on the committee’s eighth report 2001, which is entitled “Report on Legal Aid Inquiry”. Members who wish to speak in the debate should press their request-to-speak buttons now.

15:30

Christine Grahame (South of Scotland) (SNP): Somehow, I do not think that the debate will be oversubscribed, Presiding Officer.

Before I address the detail of the Justice 1 Committee’s report, I should say that I appreciate that a paper on legal aid—whether civil or criminal—is not the sexiest or most riveting topic. Michael Matheson challenged me on that point, but I do not wish to take up his challenge. However, it is a riveting topic for people who, for whatever reason, fall on hard times. I advise members that I will come to the problem of the pensioner, the pavement and her purse later in my speech. I hope that members will stay until the end.

As for hard times, they include marriage breakdown—more than 30 per cent of Scottish marriages fall into that category—domestic violence, dismissal from work, criminal charges or a dispute with a builder over the extension to a house. One finds oneself at the citizens advice bureau or scouring the “Yellow Pages” for a solicitor. It is at that point that legal aid leaps to the top of the agenda. It will reach the top of many people’s agendas at some point in their lives, given that litigiousness is on the increase.

Once one has got over the hurdle of the “Yellow Pages” and has found a solicitor who will deliver legal aid, one is confronted with form after form. The purpose of the forms is to determine whether one has a case to argue; whether, in civil cases, one has a reasonable chance of proving that case; whether one is financially entitled to legal aid or advice and assistance; and whether it is in the public interest to use public funds for the action.

In the context of that introduction, I quote from the report’s terms of reference, which were to make

“an assessment of the impact of recent changes in the legal aid system … and the likely impact of possible and prospective changes, on the contribution made by that system to securing access to justice.”

Our report was set against the background of both those aims.

The motion makes it clear that the committee's work on legal aid does not end with the report. Before the committee can produce a final report, it must consider in much greater detail the issues that have been raised at this stage, including the responses that have already been received and those that are in the pipeline.

The responses that the committee has received but has yet to consider include the report of the working group—made up of Citizens Advice Scotland, the Scottish Consumer Council and others—on the establishment of a community legal service for Scotland. We have also yet to consider the research undertaken by the Scottish Legal Aid Board into the reduction in the number of civil legal aid applications between 1992 and 2001. The committee was concerned about that reduction because we were told that the service is, supposedly, demand led. We have also received responses to our report from the Executive and the Law Society of Scotland. The committee has not had an opportunity collectively to consider any of those responses.

We still await the Executive's response to the report on the establishment of a community legal service—I hope that members are still with me on all these reports—and the Executive's comments on the financial impact of our recommendations, to which paragraph 21 of the executive summary of our report refers. We also await the mapping of available legal services, which SLAB is considering, a report on the monitoring of the recent extension from 10 to 20 months of the repayment period for contributions—that report is due to be published in 2003—and responses from anyone else who wishes to respond. It is abundantly apparent that we are in no position to produce anything like a final report. I promise that, one day, the responses to the responses will cease and that we will produce that final report.

Legal aid and its availability are serious issues for our citizens. Legal aid needs more than first aid; it needs radical surgery. It received first aid with the introduction of an extended repayment period for contributions, to which I referred—contrary to popular myth, legal aid is free only for those who are in receipt of income support. I understand that that simple change has helped those in receipt of legal aid and those collecting contributions. The collection rate has reached 94 per cent, which must be in the interests of the public purse and of the contributor.

Some areas require urgent and near-urgent response. We have written to the minister to enumerate them. Our letter is in the post; the minister will find it in his large postbag. Those areas include examining the eligibility criteria. The lower capital limit for legal aid has not been changed since 1983 and there should not be a sudden cut-off when one has to pay a contribution, as that can be unfair. We suggest a tapering of the contribution until it reaches 100 per cent. There is the anomaly between financial eligibility for legal aid and financial eligibility for advice and assistance, which includes the sometimes mysterious interaction between the legal aid system and the benefits system.

Not many people have sympathy for the legal profession, which is seen to lick from the dripping roast of legal aid. I do not flinch from the truth, which is often different from the perception. The fixed fee criminal legal aid rate gives rise to concern for the supply, quality and distribution of legal aid services, particularly in rural courts. The fee rates for solicitors have remained pretty well frozen since 1992—I wish that my plumber's rates had done the same. The committee stressed that increases should be linked to quality assurance appraisals. Failure to pay the rate for the job might result in the job not being done well or not being done at all.

Another area that should be addressed is the extension of the availability of legal aid. I confirm that the committee's reference in paragraph 25 of the report to "excepted proceedings" does not correspond to the technical definition in the existing legal aid legislation; it amounts to a much broader definition that is not confined simply to defamation and election appeals, for example. That broader definition covers the wide spectrum of fora that the public might require to access in disputes.

I will give an example from a constituency case that involved an education appeal committee. At the appeal, the parents were confronted about placing their daughter, who has cerebral palsy, at the local school—where she had been refused a place—beside her older sister. The parents faced a panel consisting of two councillors, a layperson and the legal representative of the council. They were not entitled to legal aid. However, if that appeal had failed, they would have been eligible for legal aid at the next stage, which is the appeal to the sheriff. That seems unjust and, in the end, more expensive to the public purse.

The minister should also address the problem of people not knowing where to go for what. An example that came up in evidence is advice on the welfare system. We were told that it is difficult to know where one would get a solicitor who specialised in the welfare system. I would like to meet such a solicitor, because I have never understood the welfare system.

What about the pensioner, the pavement and the purse? A pensioner who has come from her local post office and is zipping up her purse trips in the hole that has been left by two utility firms. She breaks her leg and hangs on to her purse. Shortly

afterwards, she suffers a stroke. As well as entering the world of hospitals and out-patients, she is entering the world of insurers, possible litigation, legal advice and assistance and legal aid.

The pensioner goes into the office of the nearest local firm, which might or might not deal with reparation and legal aid—she is not to know that. Her claim displays some complexities, as the minister will appreciate. Which utility firm is liable? Were the subcontractors who did the work responsible? Are both utility firms liable? What is the proportion? Someone claims that protective barriers were removed. Were they? Who removed them? Did she suffer the stroke as a consequence of the fall? What about her contributory negligence? She was looking in her purse instead of looking out for the hole in the ground.

Phil Gallie (South of Scotland) (Con): I recognise that—

Christine Grahame: Is Mr Gallie going to tell us the end of the story?

Phil Gallie: Sorry, I did not hear that.

Christine Grahame is discussing legal aid and the problem of identifying the expertise of solicitors. Would not anyone who is not accustomed to going to law, whether they are applying for legal aid or are funding themselves, face the same problem?

Christine Grahame: The problem is the same, but I said that the woman in my example had to find a firm that had two specialities—reparation and legal aid. The category has to be narrowed down in that way.

Let me continue. Did the pensioner suffer the stroke as a consequence of her fall? Was there contributory negligence? I am trying to show that what looks like a simple fall is complex. In her purse, she carries her bank-book for her life savings of £9,000. Legal aid is therefore not available to her at the outset. To pursue a difficult and possibly protracted case, she will have to part with her savings. That example shows why the committee's report matters.

I am sorry, but that is the end of my speech. I cannot make it any more interesting.

I move,

That the Parliament notes the 8th Report 2001 of the Justice 1 Committee, *Report on Legal Aid Inquiry* (SP Paper 437) and further notes that the Committee intends to publish a final report on legal aid in due course.

The Deputy Presiding Officer: Let us try Mr Wallace.

15:40

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I thank the committee and all who contributed to its work for the efforts that were made in producing an important report. Indeed, I thank Christine Grahame for trying to make the report interesting. I think that she succeeded up to a point.

It is fair to say that the committee's report ranges widely. Christine Grahame mentioned several of the report's 30 recommendations, which range from minor technical issues to some major strategic questions about the general provision of legal services in Scotland. The report is a helpful and important contribution to an important subject. If I have one regret about it, it is that the recommendations—some of which are very broad indeed—are not ranked or prioritised. That makes it difficult to target our response to the committee's concerns. As the Parliament will recognise, it is difficult to move forward on all fronts at the same time.

Christine Grahame: Let me make it clear that the committee's letter sets out the four most important issues that should be considered straight away. We will then address the other issues. We are dealing with the matter that the minister mentioned.

Mr Wallace: I am grateful for that. I hope that, in this speech, I hit on the correct four.

I have limited time today, but I want to highlight some of the central recommendations. Richard Simpson will no doubt be happy to respond, either today or later, to other issues that members raise in the debate.

Before I talk about the report, it might be helpful to set the debate in a wider context. It is worth recalling that, despite the acknowledged difficulties, Scotland has a generous legal aid system. Indeed, it has one of the most generous systems in Europe. Last year, help was given to nearly 330,000 people through advice and assistance schemes, 14,000 people through civil legal aid and 75,000 through criminal legal aid.

Not only is the scope of our system wide but, at £25 a year for everyone in Scotland, the cost of legal aid is substantial. Our system has evolved considerably over recent years, so I accept that it is complex. I admit that it is not without its problems. The Executive is committed to improving the way in which the legal aid system operates and to improving access to justice for those who need it most. However, although we must seek to do better, we must not forget that our system already does pretty well by those who need it.

The committee's recommendations seem to fall into four main categories: those on which we have already taken action; those on which we may be able to act soon; those on which further work and reflection and, in some cases, primary legislation is required; and those on which I cannot in all honesty agree with the committee. I am pleased to say that there are relatively few recommendations in the final category.

In the first category, I draw attention to the range of issues on which we have already acted. We have already agreed to a new regime for dealing with urgent legal aid, which will mean that people no longer need to pay substantial sums up front to their solicitor. We have already found extra money to allow most people to make contributions over 20 months instead of 10 or 15 months. We have also uprated the income eligibility levels both for advice and for civil legal aid. We have made legal aid available for employment tribunals. We have agreed to make civil legal aid available for cases that are dealt with by social security commissioners and VAT tribunals. Those areas represent a significant step forward.

In the second category, I will mention four points on which we may be able to act soon. First, as Christine Grahame said, there will be a change to the capital eligibility limits. Because the limits for advice and assistance and for civil legal aid have not been changed for many years, their value has been eroded by inflation. I accept that and, today, I intend to put it right. I am pleased to be able to announce that I intend to increase the capital limit for advice and assistance, which was last uprated in 1992, from £1,000 to £1,300. I also intend to increase the lower capital limit for civil legal aid, which, as Christine Grahame pointed out, was last uprated in 1983—the year in which I went to the House of Commons—from £3,000 to £6,000, and to increase the upper limit from £8,500 to £10,000. The old lady with £9,000 would come into that range under the new proposals. I will bring forward regulations as soon as possible and I will be seeking additional resources in the forthcoming spending round to support those changes.

Those increases, which are all greater than inflation, will make a real impact on the number of people who qualify for legal aid and on the number of people who are exempted from contributing towards the cost. They will make a significant contribution to improving access to justice. For the future, I want to avoid allowing the limits to fall so badly behind again, so I have asked my officials to examine streamlined mechanisms to ensure that limits are uprated on a regular basis as a matter of course.

Matrimonial cases make up the greatest part of civil legal aid actions and we want to consider the amount of winnings—if we may call them that—that are exempt from any clawback by the Scottish Legal Aid Board. That amount has remained at £2,500 since 1987. I propose to increase the amount to £4,200—once again, an increase that is greater than inflation. However, I should stress that, although I see such cases as deserving particular support, I do not intend to extend such special treatment to other types of case.

On the arrangements for the Scottish Legal Aid Board to give sanction for expert witnesses in criminal cases—a technical point, but one that the committee rightly highlighted—I intend to introduce an amendment to the regulations to give the board greater flexibility so that cases can proceed more quickly and smoothly.

I will now talk about the issues that require further thought, further work or further primary legislation—or, indeed, all three. I will highlight three issues. I have sympathy with the difficulties that individuals can encounter when they try to raise a group action. I have asked my officials to discuss with the Scottish Legal Aid Board how those difficulties might be addressed and I will come back to the committee with my conclusions in due course.

I am attracted, in principle, to the idea of introducing a new, tapering system of contributions that would allow eligibility to be extended further up the income scale when the cost of legal action is too great for those on middle incomes to undertake. A number of complex issues must be considered and I have instructed my officials to examine them with the board and to report back to me as soon as possible. As the motion indicates, the committee will return to these issues; Richard Simpson and I will certainly return to the committee to discuss our progress and conclusions.

The committee also recommended that the Executive should look at the impact of changing the rules on recovery of expenses for successful opponents in legal aid cases. I want to go further than that. I am persuaded that the current test of severe hardship is too high a hurdle. I therefore intend to find a suitable opportunity to reduce the test to one of hardship. That will ease the burden on a considerable number of successful opponents. However, I warn that the legislative programme is already full and that I do not expect there to be room for primary legislation this side of the next election.

I should also mention fees for civil legal aid work. I am conscious of the case for an increase in fees, even though I do not accept the allegation that there is a shortage of practitioners. We are still awaiting proposals from the Law Society of Scotland. I undertake to consider those proposals carefully when I receive them. However, to pick up on a fair point that Christine Grahame made, let

me emphasise that I will be prepared to countenance a substantial increase in fees only if it is accompanied by the introduction of robust quality assurance arrangements and real improvements in the efficiency of the system. Let us be clear: there are not unlimited resources. Increasing fees for solicitors limits our scope for other changes to benefit clients.

Lastly, and briefly, I will talk about issues on which I cannot agree with the committee. I do not think that there is a good case for legal aid to be extended to small claims cases and I see no reason to review the very short list of proceedings that are exempted from civil legal aid.

Christine Grahame: The minister's position is reasonable if the limit for small claims stays at £750. However, would he take a different view if the limit went up to £1,500, which could mean that there might be reparations actions on small claims? People might then need legal representation and the assistance of legal aid.

Mr Wallace: The whole point of the small claims system is that it is intended to be relatively straightforward. Once we enter the realms of legal aid, the process becomes complicated, thus undermining the point of having a small claims procedure. If there are problems, we will address them. However, it is important to emphasise that, even under the current system, claimants get initial help through advice and assistance.

I am not persuaded that there are significant anomalies in the merit tests for civil and criminal cases—they are different for good reasons.

In conclusion, I accept that it has not been possible to go into every issue that is raised in such a comprehensive report. No doubt members will raise points that have not been covered and I am sure that Richard Simpson will endeavour to respond to those. I am sure that the committee will return to the issues, as shall we. I hope that I have demonstrated that the Executive is open to change where we consider it to be justified. We have addressed or are addressing many of the committee's recommendations and I hope that the announcements that I have made today will receive a general welcome.

15:51

Roseanna Cunningham (Perth) (SNP): The report is fairly comprehensive and the minister detailed a long list of things that he is taking on as a result of it. It is almost impossible to cover everything in the short time available. I welcome the report, not least because I was the convener of the Justice and Home Affairs Committee when it decided to hold an inquiry into legal aid. It is nice to see the end product of something that was set in motion at that time. The committee undertook the inquiry when my colleague Alasdair Morgan was convener and I know that he is very sorry that he is unable to participate in the debate.

The desire to carry out an in-depth investigation of legal aid in Scotland arose out of evidence that the committee was beginning to get in what appeared to be unrelated investigations and reports. My recollection of the committee's initial interest focuses on the evidence that we took on what became the Protection from Abuse (Scotland) Act 2001. I see that Maureen Macmillan is at the back of the chamber and that my colleague Gil Paterson is also here—I am sure that he will comment on legal aid in connection with domestic violence.

Legal aid is one of the unsung areas of the justice system, which many people appear to love to hate. Legal aid receives media attention only in the context of soaring legal aid costs or the legal aid earnings of solicitors and advocates. I am looking at Gordon Jackson in particular—I have no doubt that he has an interest in that side of things. Consideration of legal aid focuses only on the sea of money being spent on it, rather than on the real issues and problems that arise when people find it impossible to get legal aid, for whatever reason. Invariably, both the legal aid costs, and the legal aid earnings of solicitors and advocates are held to be too high and therefore a total outrage. That makes it too easy to ignore the real problems within a system that puts justice beyond the reach of many people.

The report contains a great many specific recommendations. Michael Matheson will make some points about criminal legal aid, but I will concentrate on the civil side. At present, the stark truth is that if someone is involved in civil proceedings in Scotland today, they had better be very poor or very rich, because those are the only people who are guaranteed access to justice. Even then, if someone is poor, they have to rely on the Scottish Legal Aid Board granting their application in the first place. However, it is when someone on a relatively low or middle income applies for legal aid that the real problem emerges. The number of people in that group has grown steadily over the years, because the increases needed to bring thresholds in line with the various inflation indices have not taken place.

I have a constituent who earns slightly less than £18,000 a year who cannot for all practical purposes be granted legal aid, despite its being warranted on the merits of the case, because her income level has been judged to be too high. On an income of £18,000, she is expected to be able to cover legal fees in the region of £4,000 for just one week. I have another constituent, who has a total aggregate income of £10,977, with a disposable income assessed at £5,998, who has

been asked to contribute £1,124 to legal aid.

It does not take somebody of high intellect to realise that, in those circumstances, people's prospects of going to court are completely removed because of their low income. It cannot be right that that happens, as it does far too often.

Clearly, the inquiry was bedevilled by the same paucity of information as the consultation on "Access to Justice" in 1998. I refer particularly to paragraph 21 of the committee's report, which refers to Scottish Legal Aid Board research about eligibility and take-up. It is an advance that the research is now being done, but it is a pity that years of parliamentary questions, not to mention the identification of the problem in submissions in 1998, did not motivate action a bit sooner. The inquiry comments specifically on inconsistencies in the treatment of benefits. Again, that is not a new problem—it was raised in the 1998 consultation. I raised it with the then justice minister because of problems that constituents were experiencing. I hope therefore that the Executive responds to the committee's request for proposals on that matter. I also hope that real consideration will be given to the recommendation that the whole of the legal aid set-up—both civil and criminal—be simplified. That is long overdue. I see that even the Minister for Justice thinks so, at least in so far as his quoted evidence in the report suggests.

However, in one sense, none of this is new. In fact, so not new is it that, when I looked back at the SNP's submission to the 1998 "Access to Justice" consultation paper, I found the same general concern and indeed many of the same specific issues that were addressed by this inquiry. There were a great many submissions to that consultation and I suspect that the majority of them were opposed to the general thrust of the consultation and just as concerned as I was about what was happening to civil legal aid.

What was the outcome of that whole consultation procedure? After the consultation period closed, little more was heard of it. The same could be asked about the consultation prior to that, in 1993, where an entire procedure was undertaken and then nothing happened. I very much hope that the response to this inquiry, when it is finalised, is different. What the minister has said today is very much welcome, as are the increased limits and the upratings that have been announced. That is a significant shift, and it is evidence of the strength of the committee system in the Parliament that we have achieved it.

However, I have one concern about the minister's comments on the availability of solicitors who are prepared to do civil legal aid. I have had a conversation with a prominent small firm in Glasgow that does a great deal of civil legal aid work. I was told in no uncertain terms that, without an increase in the fees in the next 12 months, the firm would simply bail out of civil legal aid altogether. I suspect that that will be mirrored throughout Scotland.

On the previous consultations—here we are again—it is all very well to identify the problems every four or five years; the real achievement will be when something is done about them.

15:58

Lord James Douglas-Hamilton (Lothians) (Con): I thank the Deputy First Minister for his constructive response this afternoon, but I ask him and his colleague whether they can confirm that all those proposed changes will be dealt with at the same time. If that can be arranged, it would make for simplicity. I also ask whether annual uprating will take place wherever possible. Again, that would make for simplicity for practitioners and their clients.

The purpose of legal aid is set out in the Scottish Legal Aid Board annual report for 2000-01, which stated:

"Legal aid allows people who could not otherwise afford it to have access to the help of a solicitor for their legal problems".

The Scottish Legal Aid Board states in its mission statement that its aim is to

"deliver appropriate access to quality legal assistance for those eligible, in a cost effective manner."

That is a wholly admirable purpose and is in accordance with the Conservatives' conviction that everyone has the right to justice and should be offered help when legal action is beyond their means. Everyone is equal under the law and justice is the birthright of every Scot. However, there has to be a cut-off point, and an appropriate ceiling on legal aid has to be established. That is one of the most sensitive decisions that any Government can make, and it is important that fairness is achieved and seen to be achieved.

It is important to remember that expenditure on legal aid is demand-led. As a result, in 2000-01, the net cost to the taxpayer was £121.2 million. Although legal aid is still subject to cash limits in England and Wales, it is not in Scotland.

The Justice 1 Committee report made 28 recommendations with the aim of assessing the impact of recent and prospective changes. Following the publication of the report, the Scottish Legal Aid Board carried out research into civil legal aid applications in Scotland between 1992 and 2001, as Christine Grahame mentioned. The board concluded that changes to eligibility in 1993 led to a reduction in applications in the following two years. That drop in civil applications was primarily due to changes in the way in which

dispute resolution is conducted, which led to there being less court business. It is appropriate that paragraphs 31 and 47 of the report recommend that those changes in eligibility should be reviewed. It is important that we discover whether the extension of the repayment period has resulted in an increase in the uptake of civil legal aid.

A great deal has been said about uprating the lower capital limits in line with inflation since 1983, and uprating them annually thereafter. The present value has remained unchanged at £3,000 since 1983. If it were at all possible, it would make more sense for the Executive to have annual upratings in line with inflation, rather than coming back to Parliament at erratic intervals.

Paragraph 52 calls for urgent examination by the Executive of perceived inconsistencies in the treatment of benefits, with a view to simplifying the system and harmonising the treatment of benefits across the board. If ministers can simplify the whole process, that would constitute a considerable service and a great help to those concerned. Similarly, the committee noted that there may be a lack of coherence and some anomalies in the approach to merit testing. That, too, needs to be reviewed as part of a wider review of the legal aid regulations.

I draw members' attention to paragraph 103, which suggests that the Executive should assess the impact of applying the same rules to the successful unaided party as to the party in receipt of legal aid and should report its findings to the committee. The Deputy First Minister has announced movement on that point, which is welcome. The matter should be examined in view of the potentially adverse position in which successful unaided parties can find themselves in attempting to recover judicial expenses. It was mentioned that implementing such a change could have considerable consequences for the public purse, so the minister's proposals will be of particular interest when they are presented for debate and resolution.

Paragraph 84 recommends that the Executive should give consideration to the regulations and fee levels relating to the sanction of experts, and that SLAB should give urgent consideration to streamlining and speeding up the process.

Finally, I draw members' attention to paragraph 18, which deals with collective action. The committee stated:

"there may be a case to extend the scope of legal aid to incorporate collective action, organisations and representative bodies."

There is no doubt that that could have cost implications, but we believe that the matter should still be reviewed. The Law Society of Scotland's recommendation that a system of quality assurance in legal aid should be instituted, supported by an inspection regime, should be seriously considered.

Legal aid is a vital cornerstone of our justice system. With more and more people applying for it, it represents a great safeguard for the interests of the less well off in the community. The right to justice is a basic human right, and people should have legal aid available to them, wherever possible, to protect that right. With the complexities of a huge body of legislation, it is right that an appropriate view should be taken, which should take account of the Justice 1 Committee's best efforts to be of assistance.

16:04

Maureen Macmillan (Highlands and Islands) (Lab): When we first began considering access to justice in the old Justice and Home Affairs Committee, we looked at gaps in the law and omissions that discriminated against specific groups in society. One result of the committee's commitment to access to justice was that, with the backing of the Executive, we put the Protection from Abuse (Scotland) Act 2001 on the statute book.

As Roseanna Cunningham said, the evidence that we took for the bill made us all aware of the shortcomings of the legal aid system. Indeed, as a reporter on the bill, I remember visiting SLAB and discussing that issue. SLAB had decided to pilot a scheme to extend repayment periods for civil legal aid. In its deliberations, the committee was concerned that the very people who would benefit from the new act could not afford to access it. Pauline McNeill raised that issue when we debated the bill in the chamber.

It is no wonder that we were concerned. In 1983, the lower capital limit for eligibility was set at £3,000 and it has remained the same since. In 1993, the Conservative Government changed the eligibility rules so that the number of people who could access full legal aid was cut considerably. I remember the outcry and consternation that that caused at Women's Aid. We realised that many women seeking interdicts against violence would be disadvantaged. The need for solicitors to take on the financial risk of emergency applications meant that some agents stopped taking cases. We phoned around law firms to see who was still prepared to do so.

Since 1993, the situation has remained the same for that group of women, which will be expanded as the Protection from Abuse (Scotland) Act 2001 comes to be used. That is why one of the Justice 1 Committee's priorities is to encourage the Executive to deal quickly with the question of

financial eligibility for civil legal aid.

I realise that the Executive has made significant progress in that area and I particularly welcome SLAB's introduction of an extended instalment scheme for repayment of contributions. That scheme has been of considerable benefit to people who could not afford to pay several hundred pounds up front or repay £50 or £60 a month and who would otherwise abandon their case and put the needs of their children before their own safety. I also understand that payment levels can be renegotiated if there is a change in circumstances. The Executive should ensure that that is generally known. SLAB claims that those deferred payments will encourage people to seek legal aid under the urgency provisions, which has been a problem until now, as such applications previously meant asking the solicitor to bear the risk of default. It seems that SLAB will now bear that risk. I ask SLAB to monitor that to see whether there is an increase in the use of urgency provisions. I was pleased to hear the minister say that he will consider the possibility of tapering contributions—that will make a great difference, too.

However, huge anomalies remain in the way that the benefits system dovetails with civil legal aid. That affects not only people who are seeking interdicts, but those who are pursuing personal injury claims, for example. Benefits such as the working families tax credit, which are accessed because of poverty, prevent a person from receiving full legal aid. I realise that the Executive is examining those issues, but I ask the Deputy First Minister when we might expect to hear concrete proposals.

The committee also raised access issues relating to availability of service and quality. I note that SLAB is preparing a report on the distribution of solicitors who offer legal aid and that the Law Society is actively considering how expertise and experience in certain areas of the law can be quality marked. It is important that shortcomings in the provision of legal advice and information are addressed, from deprived urban estates to remote rural communities.

We received mixed evidence on whether fewer firms were offering civil and criminal legal aid services. There seems to be a sense in the legal profession that, because legal aid fees have been static for so long, young solicitors are not attracted to court work or do not stay in it as the financial rewards are elsewhere. The statistics do not show a significant reduction in numbers, but there may be hidden problems relating to distribution or experience. We would welcome more research.

The committee has asked for an evaluation of fixed fees for criminal cases. We had conflicting evidence on how that impacted on solicitors' earnings and the courts, but my feeling is that agents will naturally seek to maximise their earnings where they can in simple cases, given that the fixed fee can curtail their earnings in more complicated cases. That can cause severe congestion in the sheriff court where cases resurface time and again.

Although all those concerns are important, they involve piecemeal changes or the monitoring of projects. I think that the committee and the Executive are looking for a step change in how legal services are delivered in the future. They should be delivered more strategically, more flexibly and with a higher regard to quality and accessibility.

I think that we all await with great anticipation detailed proposals for the development of a community legal service, to see how far it will address problems that the committee has identified. In the meantime, we are aware that the Executive has the same goals as the committee and await with interest the results of the research and negotiations on legal aid that are in train.

The Deputy Presiding Officer: We move to open debate. The debate is currently running about 10 minutes light, so speakers can have up to six or even seven minutes if they so wish. I ask Pauline McNeill to speak.

16:10

Pauline McNeill (Glasgow Kelvin) (Lab): You gave me a fright there, Presiding Officer, but I am sure that I will think of something to say.

I believe that we have an important piece of work in front of us, which should not be underestimated. The Justice 1 Committee is to be congratulated on persevering with the inquiry. What we have heard from the Minister for Justice today proves that the inquiry was worth while, as he made some positive announcements.

We all agree that access to justice is fundamental in a parliamentary democracy. That means that there must be some state funding for those who are genuinely unable to assist themselves, not only in civil cases but in criminal cases.

Although, as Lord James Douglas-Hamilton said, legal aid can only be demand-led and a strict upper limit cannot be set, criteria and standards must be set so that we have a scientific way of calculating the cost to the public purse. We must have standards and ensure that there is fairness. The system must be easy to access and it must be easy for somebody to establish what their contribution might be. One of the issues that the report has uncovered is that when somebody is embarking on an interdict or using the law to their advantage it is not always easy to establish what it

will cost them. Our legal aid system does not currently meet all those criteria. The report hits some of the right notes on that and the minister has made some very positive announcements today.

I will make several specific points. The first is on tribunals. We are familiar with a range of tribunals, which were primarily set up to be informal settings in which to decide on legal matters such as employment issues. The Executive has already taken a welcome step by recognising that there must be some advice by way of assistance for employment tribunals on more complex issues. That needs to be developed. In my former life as a trade union official, I represented individual trade unionists at employment tribunals. I can vouch for the fact that they are no longer informal forums but cover complex aspects of the law. When someone does not have access to a legal representative or a trade union, we must ensure that their best interests are protected.

My second point is on the idea of a public defenders office. I am not proposing to have a debate on that this afternoon; I know that a full paper has been produced that examines whether that would provide value for money for the public purse. My reservation about a public defenders system is that it would not allow people the choice of solicitor. That is why I have reservations about proceeding much further with that, although it is important to examine the issue.

Many members have talked about the importance of civil legal aid. I think that the report's biggest success is in uncovering some of the things that have been going on in relation to that. Sometimes we take the view that criminal law is more important than civil law, but that is not always the case. Civil cases, such as divorce cases and defamation cases, can be just as important as criminal cases and affect people in similar ways. If we are taking the view that there should be a systematic review of criminal legal aid, in which we increase the thresholds in line with inflation, I do not see why civil legal aid should be left out.

I will develop the points that Maureen Macmillan made. We should consider the very successful bill that she initiated on domestic abuse—now the Protection from Abuse (Scotland) Act 2001. Women who are victims of domestic abuse will have to apply for an interdict under civil procedures. We must ensure that they are not disadvantaged because they cannot afford to do so. I cannot see the logic in the way in which different benefits are treated. Constituents have come to me who were unaware, when they applied for a harassment order, that they would have to make a higher contribution of about £500 because their incapacity benefit is treated as income. I do not understand why we cannot make uniform our approach to benefits. That approach has a disadvantageous effect on people who want to use the useful laws that the Parliament has been involved in providing.

We have established this afternoon that it is important that the system should be transparent. Roseanna Cunningham made a point about middle-income earners. People who have a legitimate case of defamation or another important legal case should not be disadvantaged because they are middle-income earners. We must ensure that when people walk through the door of a solicitor's office, it is easy to understand what the legal fees will be and what the process will cost. I know that that is sometimes impossible, but the ordinary citizen would argue that it is not always easy to establish what the process will cost. We must give that matter some attention.

In his evidence to the committee, Professor Paterson talked about the lack of co-ordination between advice that is given by salaried lawyers in community settings and that which is given under the legal aid system by lawyers in private practice. That point should be developed. Because all that advice is provided for out of the public purse, we must ensure that the system is joined up.

The report is good and the Executive's response has been positive. There is further work to do. I welcome the work on which the Justice 1 Committee has embarked.

16:16

Mr Gil Paterson (Central Scotland) (SNP): I thank the Justice 1 Committee for its important work on changes to civil legal aid. It goes without saying that the work is particularly important for women who suffer from domestic violence. At present, it is easier for a perpetrator of an act of domestic abuse to obtain criminal legal aid than it is for a woman who suffers from abuse to secure legal protection. That must be wrong.

I welcome the recommendations to change elibiligity criteria—

Christine Grahame: Eligibility.

Mr Paterson: Thanks very much, teacher.

Christine Grahame: It is late in the day.

Mr Paterson: I welcome the recommendation to change eligibility criteria by removing inconsistencies in benefit treatment. I am particularly pleased that the minister is considering tapering, which will be beneficial. We must increase the qualifying income levels, which determine whether an applicant can be considered for legal aid and the scale of the contribution. At present, the levels prevent women from gaining

the protection they require. We must make changes in that quickly.

I am disappointed that the Executive will not take on board the recommendations on the merit test. Scottish Women's Aid took evidence from lawyers. I have a few illustrations of that evidence, which spell out to me—and should spell out to other members—why it is imperative that we do something about the matter. One lawyer stated:

"the legal aid board, for whatever reason, are often reluctant to grant legal aid to protect a person against domestic abuse where there has been no police involvement."

Will the minister ask why that is the case? The lawyer went on to say that they were

"concerned that where an interim interdict has been granted, but when it is breached, there is a reluctance on behalf of the legal aid board to grant legal aid to enable breach of interdict proceedings to be raised."

The lawyer continued:

"The above are simply attempts by the legal aid board to save money, with disregard for the domestic situations of persons who require legal advice and protection from the law … I still have problems with the legal aid board refusing to grant legal aid. Even though a sheriff has granted the interdict at the initial hearing, the board still feel able to second guess by refusing to grant a full certificate. The reasons given by the board vary from 'it has not been shown that the police would not be able to deal with the situation' to 'it has not been shown that the behaviour was going to persist'".

As a layman, I reckon that the reason why someone has taken the trouble to challenge that assertion is that that behaviour was going to persist. The system should be proactive, rather than wait for something to happen that we will all regret. The final quote is that the Legal Aid Board refused legal aid for an interdict because

"it was not demonstrated that the orders sought were reasonable and necessary".

If the recommendations that the Justice 1 Committee has made on legal aid are accepted, it should be easier for women to gain the protection that they need. To even the situation up, further consideration must be given to qualifying incomes and merit tests, so that we protect all the people, not just some of them.

16:20

Phil Gallie (South of Scotland) (Con): I congratulate the committee on the fact that the minister seems to have acted on some of its recommendations already. All members of the committee must feel pleased about that. However, the committee's final statement is that it considers this to be unfinished work—I agree, given the amount of information that has still to come forward.

As a member of the then Justice and Home Affairs Committee, I welcomed the inquiry into legal aid. It was something that I, and other members, pushed for. We were delighted when Roseanna Cunningham and then Alasdair Morgan proceeded with the inquiry. I am sorry that I was not a member of the committee when the report was written. I sat through all bar one of the nine meetings on the issue, yet I was not able to participate at the report stage because I had been replaced as a member of the committee by Lord James Douglas-Hamilton. During the Standards Committee debate on committee substitutes, reference was made to the fact that members should not disclose what is contained in draft reports. My honourable friend Lord James would not let me see the draft report—he has always met the Standards Committee's expectations of members. However, the Procedures Committee debate indicated that I would have been able to sit in on the report stage had substitutes been allowed. I would have liked to do that.

I have several positive points to make on the report's findings, as well as one or two criticisms. I am convinced, as was the committee, of the need for a strategic review. I compliment the committee on the fact that it did not press ahead with the suggestion that we set up a legal services commission. There is a feeling in the Parliament that we have too many quangos. The Parliament and the Executive have the ability to deal with the issues without establishing another body. The Scottish Legal Aid Board has responsibilities that would have to be passed over if a legal services commission were to be set up. I applaud the committee's recommendations, in paragraphs 119 to 122, on setting actions for the Executive. I recognise that those recommendations are fairly onerous and that it will not be easy for the Executive to respond quickly to every one. However, it seems to have begun to take a stab at it.

When such a report is compiled, there is a time limit for those who want to contribute to the debate, which does not allow full analysis. Nonetheless, I record my satisfaction with paragraph 103 and the committee's suggestion that the awarding of expenses to successful unaided parties in any court case should be considered. The committee found that, if someone who received legal aid lost a case, the expenses that were incurred by the defendant were not met by legal aid. I think that that issue is worth pursuing, and that seems to have been the committee's conclusion.

I would have liked the report to refer to evidence from Ian Smart of the Law Society of Scotland, which relates to comments that were made by Maureen Macmillan and Gil Paterson. Mr Smart said:

"Anecdotally, the most common situation that solicitors come across is of the feckless father, who is unemployed and who qualifies for legal aid, bringing proceedings to secure contact with a child, and of the mother, who is working part-time and who is on working families tax credit, being faced, under the current legal aid system, with having to find £1,000 or £1,500 to defend those proceedings."—[*Official Report*, *Justice 1 Committee*, 25 April 2001; c 2331.]

We, too, considered that issue. Ian Smart commented further that that situation is also common in cases in which working mums are looking after their families while facing domestic abuse problems. I would have liked reference to those situations to be included in the report, as that would have strengthened it.

An area of disappointment for me—I have made this point time and again—is that many small businesses are taken to court for minor cases, but those small businesses are not entitled to any form of legal aid. Those businesses often operate on a shoestring. They almost certainly, in many ways, meet the capital and revenue requirements of legal aid, but they are excluded from receiving it.

Gordon Jackson (Glasgow Govan) (Lab): Will the member give way?

Phil Gallie: Yes, but I am on a tight time scale.

Gordon Jackson: Mr Gallie has always believed in giving legal aid to small businesses, but has he worked out how much that would cost? Have we an indication of what it would cost to provide legal aid in the business community in that way? Mr Gallie would be the first to tell us that resources are finite.

Phil Gallie: I accept that, but my point concerns very small businesses. I commend the Justice 1 Committee for asking the Executive to perform a cost analysis along the lines that Gordon Jackson suggested. I accept his argument about costs, but I am not asking the Executive to implement such a move immediately. I would like a cost analysis to be done, because it would be fair to provide legal aid to small businesses.

I acknowledge the time, Presiding Officer. [*Interruption.*] The Presiding Officer is indicating that there is no limit on time. I love that.

An interesting issue has come to my attention since the committee completed its deliberations. The matter concerns the Hague convention, which, it seems, depends on systems in one country providing legal aid for citizens in another country. I know of an instance in which an individual had to go to America to fight a case for custody of her son. The child had been partially under the care of the court, but the court had yet to determine parental responsibility for the care of the child. However, the father took the child to the United States of America against the wishes of the court, the social work department and the mother.

Once the father and the child were in the USA, legal charges were incurred, which were dealt with on a pro bono basis. The child was returned to the United Kingdom. Unfortunately, the father appealed, but legal aid could not be provided from this country to address the matter and an application for legal aid was turned down in the USA. That case raises an important issue. I am pleased that the Minister for Justice has agreed to a meeting tomorrow with me and the American solicitor, Stephen Cullen, to address that issue. There might be other answers, but perhaps the Justice 1 Committee could take that issue on board when it considers its unfinished business on legal aid.

At that point, Presiding Officer, I will come to a close. However, I have one last point to make on costing. Fees for solicitors have been frozen since 1992. Never before have I been an advocate for solicitors, but I think that ministers should also consider that issue from the report.

The Deputy Presiding Officer (Mr Murray Tosh): I thank Mr Gallie for his single-handed effort to get us back to the timetable. We are still about five minutes light, so I will be reasonably flexible as we move to the closing speeches. I call Donald Gorrie first, for the Liberal Democrats. You have five or six minutes.

16:29

Donald Gorrie (Central Scotland) (LD): The work for this report was done before I became a member of the Justice 1 Committee, so I can praise the report dispassionately. It raises a lot of important issues, some of which have been covered by the minister, which I welcome.

I want to pursue two main areas, the first of which is eligibility for legal aid. The other is the quality of the product, which relates to matters such as fees and quality assurance.

The committee heard a lot of evidence about widening access to legal aid. Collective action by communities does not seem to be possible at the moment. Communities must nominate one person to pursue the case. Communities should be encouraged to work together and could perhaps get help when they promote causes in which they are interested.

The tribunal plays an important part in our lives, whether it is to do with employment, discrimination, housing or whatever. However, people do not get legal aid when they contest a case in a tribunal. That is a serious lack in the system. I recognise that the budget is limited, but access to justice is a basic point in a civilised

society and we must work hard to ensure that people have that access.

The minister, if I understood him correctly, rejected the idea of extending the provision of legal aid to cases in the small claims court. I do not know enough about such matters to know why the idea was rejected; it seems to me that it might be sensible to consider giving people legal aid for small claims cases.

The report contains some interesting examples from the Law Society of Scotland and the Glasgow Bar Association that illustrate how people whom everyone would consider to be pretty poor still have to contribute considerably to their legal aid case. The matter is complicated by the issue of benefits and that needs to be simplified. I welcome what the minister said about getting the capital figures changed, but I think that we also have to consider the income figures to help people who are in poorer circumstances.

Quality assurance is necessary and we must think seriously about how that is to be delivered. Some people—from one of the CABx, I think—raised the issue of how the client can get an idea of whether a lawyer is any good or not. Some information in that regard would be useful, as a bad lawyer can lose a case with no trouble at all. It is important that people have confidence in the lawyer who is working for them.

A related issue is that there is a great deal of evidence that the fees are simply inadequate. Some firms manage to provide a service within the fees, but they do so only by using inexperienced and low-paid staff. They complain that the fees are such that a lot of their support staff and other important people leave the firm—I think that the Glasgow Bar Association in particular said that. In rural areas, someone might have to travel a long way to obtain a precognition. That would cost a lot of money and the fees do not cover that. There is a theoretical risk—I think that it might also be a practical risk—that some people's cases are not as well prepared as they should be because the lawyers could not afford to go and interview some of the more remote witnesses.

Social welfare law is a jungle and most lawyers know nothing about it. We have to encourage lawyers to understand social welfare law and ensure that there is a network of people throughout the country who can deal with it. In rural areas, there will inevitably be fewer specialist lawyers than there will be in the big cities.

When I was at Westminster, the issue of fees was raised with me and I was given all sorts of examples of the ways in which solicitors lose out. For example, the fees do not properly cover situations in which sheriff court cases are continued. I ask the minister to consider improving the fees, allied to quality assurance. Lawyers must be paid properly for doing a good job.

The report makes it clear, as did much of the evidence, that there is a need for a full review of the regulations, which are a jungle. They have obviously grown incrementally. The report also makes it clear that there is a need for further review of the whole civil justice system.

There is enough work to keep the ministers and the committee going for many years to come. The issue is important and the report raises many important issues. I hope that the Executive will respond to those issues as well as it can and keep on putting money into the system to try to improve it further. I congratulate the committee on its report.

16:36

Bill Aitken (Glasgow) (Con): As I have never served on the Justice 1 Committee or been involved in the issue before, I can, with some detachment, congratulate the committee on a job well done. The committee seems to have been effective at getting some movement out of the Scottish Executive—if only more of us were so fortunate.

Legal aid is important. Its availability and, more important, its quality are important. The criterion that we should apply to the granting and availability of legal aid must always be fairness. At the same time, we must be mindful of the cost implications.

As I listened to Christine Grahame's interesting story about the pensioner falling into a hole in the ground—

Christine Grahame: I am glad that somebody found that interesting.

Gordon Jackson: Christine Grahame should remember that Bill Aitken worked in insurance.

Bill Aitken: I thought that the story was a textbook example of the way in which liability claims could be dealt with. I would have suggested that the old lady wander into the sheriff court and merely quote the findings of Sutherland v Glasgow Corporation 1938, which would have given her an absolute right of recovery. Failure to do so on her part would not necessarily have avoided the action, because she could have looked at her insurance policies, many of which now have the appropriate extension that enables legal representation in such matters.

As I said, fairness must be the watchword, but we must also acknowledge the dangers of the vexatious litigant, and prioritise. It is therefore a little disappointing that, on 6 February 2001, the Justice 1 Committee supported Executive

legislation that gave terror suspects and their sympathisers in Scotland the right to legal aid to appeal against a banning order that is made against their group. The Conservatives opposed that move. It is not the sort of thing to which we should be giving priority when, as a number of members have explained well, legal assistance in other respects remains unsatisfactory.

A number of aspects of the committee's report are non-controversial but should perhaps be queried to some extent. However, the committee's point on the extension of legal aid to bodies such as community groups and organisations is well made. I recall a case in the west end of Glasgow in which a local community council found its members in a state of serious concern with regard to a potential liability that they had incurred. The provision of legal aid would have dealt with that. Although those people were perhaps unwise to take the action that they did, they did so in the best interests of their community. It would have been wrong had those individuals been prejudiced because of that.

The committee suggested that the Executive should consider a number of extensions in the availability of legal aid. The Conservatives do not go along with the line that small claims should be among those extensions, given the comparatively cheap and informal approach that is necessary for the success of the system of dealing with small debt actions.

We do not object to the idea, per se, of an extension to include industrial tribunals, but we state firmly that that should have been a matter for wider consideration. A review of the tribunal system should have been conducted to determine whether extending legal aid to tribunals would be viable. We would have to consider that carefully.

If eligibility for legal aid was to be extended—Gil Paterson's point on this matter is perhaps worthy of examination—it would be worth pursuing the committee's recommendation that the question of community groups that find themselves in difficulty with their eligibility for legal aid should be re-examined at the end of the SLAB inquiry. We would be content with that.

The question of fees in the context of legal aid is controversial. The other evening, I found myself in the company of a number of advocates, who berated me for the fact that they now receive the same amount for conducting an appeal against sentence for a summary matter as a plumber or electrician would charge for a call-out fee. That question might well have to be examined. There can be no doubt whatever that fees have fallen behind over the years. The Executive has, to an extent, committed itself to re-examining the situation in the time ahead.

The committee's report is a fairly good one, with which we cannot take any serious issue. The Justice 1 Committee is to be congratulated on getting some movement—albeit fairly limited—from the Executive.

The Deputy Presiding Officer: We are now back on track, and I call Michael Matheson, to whom I allocate five minutes.

16:41

Michael Matheson (Central Scotland) (SNP): I will not take all my allotted time, as I am sure that Gordon Jackson will have a number of points that he wishes to cover on behalf of the committee.

A number of members have concentrated on civil legal aid, and I wish to pick up on a few matters relating to criminal legal aid. Since the introduction of fixed fees in April 1998, the fixed fee system has been something of a running sore among those who work in the legal profession. It is clear that things are getting rather bad when friends who are solicitors take every opportunity to nip yer heid, even in the pub, about the impact of the fixed fee system.

We should reflect on the reasons why we have arrived at the present situation. It was interesting to hear the evidence of the then Deputy Minister for Justice, Iain Gray, who stated:

"The legal aid fund is demand led."—[*Official Report*, *Justice 1 Committee*, 19 June 2001; c 2580.]

Christine Grahame picked up on that point, and ministers are often keen to highlight it. Given the evidence that was presented to us, particularly in consideration of the impact that the fixed fee system has had on the legal aid budget, I cannot help but feel that what we have is, in all but name, a capping system.

When the fixed fee system was introduced, the Westminster Government perceived legal aid as an open-ended commitment to an ever-escalating budget, which had to be brought under control—hence the fixed fee system. In written evidence to the committee, the Glasgow Bar Association described the fixed fee system as

"a very blunt axe to deal with a fine problem."

The introduction of the fixed fee system for criminal legal aid brought with it the concept of swings and roundabouts: if a solicitor makes something in one case, that may be offset against a case in which they may have been over the fixed fee limit. That concept does not, however, recognise the fact that, ethically, solicitors are required to ensure that they prepare all cases properly—they cannot decide, for example, that when they have reached their fixed fee of £500 the clock should stop and they have finished.

The evidence that was received by the committee showed that solicitors often encounter a whole series of swings but very little in the way of roundabouts. Some people might think that I am talking about "The Magic Roundabout", but this is a serious issue for many solicitors, particularly those who practise in criminal legal aid.

I might be a little old-fashioned, but I believe that the going rate should be paid for a piece of work. If it costs £150 for a solicitor to do a piece of work, he should be paid £150; a solicitor should not be paid £500 for doing £150-worth of work. Conversely, why should a solicitor do £700-worth of work when he will receive a fixed fee of only £500?

I was surprised to note from the evidence that we received that no value-for-money test has been applied to the fixed fee system since its introduction. I welcome the fact that the Executive has agreed to undertake later this year some form of research into the impact that the system has had since it was introduced.

One concern that I have—and which was highlighted to the committee—relates to the impact that the fixed fee system is having on our ability to attract young solicitors into criminal legal aid work. Some of the evidence that we received, particularly from the Glasgow Bar Association, made it clear that young potential members of the profession are being put off by the financial limitations of working within the criminal legal aid system. It is a matter of concern that those limitations are discouraging good people from entering this area of work.

At the same time, the fixed fee system appears to be forcing out people who have experience of criminal legal aid work. Peter Gray of the Faculty of Advocates stated that

"in the region of 40 per cent of the more experienced junior counsel and senior counsel"—[*Official Report*, *Justice 1 Committee*, 13 March 2001; c 2257]

have left the bar in the past five years. People may have a variety of reasons for choosing to leave the criminal bar, but it is clear that one contributory factor is the fixed fee system.

The fixed fee system has wider implications both for solicitors and for other parts of the legal profession. The system is in the interests neither of the client nor of the solicitor and will serve only to undermine the administration of justice. I hope that the discussions that arise from today's debate and the further evidence that the Justice 1 Committee receives will allow the committee in its subsequent report to tackle a number of the chronic problems, which, if they are not addressed, will continue to be a running sore within the legal system.

16:47

The Deputy Minister for Justice (Dr Richard Simpson): It falls to me to close the debate on behalf of the Executive. I, too, welcome the committee's report and have found today's debate interesting. Despite Christine Grahame's worries, the debate has at times been quite stimulating. Certainly, it has provided food for thought.

I do not have time to deal with all the points that have been made, and I am sure that members will acknowledge that. If I miss points, or if questions require more detailed answers, I ask members to write to me or to my colleague, who will give further attention to those points.

Phil Gallie made an interesting point in relation to overseas matters, which I will deal with quickly. The member will be excited to learn that a European directive concerning cross-border support for legal aid is about to appear. One difficulty is that our system is more generous than that of other European countries. I am sure that when the directive hits Phil Gallie's desk he will stand up and cheer for something European.

My colleague outlined a number of our initial responses to the report. I stress that those are initial responses, but I am pleased that members have welcomed them. We have identified the issues to which we are giving further thought, such as the regular uprating of capital limits, to which Lord James Douglas-Hamilton referred. That is interesting, because he was the minister responsible during a lengthy period when there was no uprating. However, I agree that in many areas we should have a system of regular uprating, provided that the Parliament is comfortable with that.

We are concerned that there should be a more user-friendly, joined-up network of quality-assured legal information, advice and help throughout the country. We set up a broadly based working group to consider a range of issues, and last November the group issued its report. The report does not constitute a fully fledged or detailed blueprint for the development of community legal services in Scotland, but it identifies problems with the current arrangements and some of the key principles and features of a comprehensive network. Along with the Scottish Legal Aid Board, we are considering that report, with the aim of producing concrete proposals. I hope that that deals with some of the points that Roseanna Cunninghame made about the issue of access, which many members raised. We all desire good, reasonable access that is not burdened by costs, but which we can afford. That is very important.

We have been asked whether we will introduce all the new eligibility criteria in one move. Some of them require primary legislation, so we will not be

able to introduce them all at one time, but we will try to do so wherever possible.

A number of members referred to the changes that we are introducing regarding the repayment periods. It is too early for us to know how effective those changes will be, but—as Christine Grahame said—the change to 20 months is welcome and it allows the middle-income group, to which Pauline McNeill and Maureen Macmillan referred, a longer period in which to repay, which is appropriate.

The benefits review, to which Maureen Macmillan referred, is also important, particularly in the context of domestic violence, to which Gil Paterson referred. I will return to that later if I have time. I hope that we will be able to take a view on that and introduce proposals in the summer. That is partly dependent on the UK Government's current review of all benefits, so there are issues to consider. We accept that there is a need to consider the rationale between legal aid and the benefits system.

I have referred to the middle-income trap. We have said that we will consider tapering, which is important.

Gil Paterson and others talked about merit testing and Gil Paterson gave cogent examples of the interpretation by SLAB. We cannot instruct SLAB on individual cases—Gil Paterson is aware of that—but we will follow up the matter, see whether there is persuasive evidence of anomalies and consider whether we can tackle them.

We have announced that we will make it easier for successful unaided opponents to get expenses from legal aid. I hope that that answers Phil Gallie's point and that it will make things easier.

Small businesses were referred to and Bill Aitken referred to community groups. As sole traders, small businesses can already apply for legal aid, but given that businesses can get legal insurance quite easily, we feel that that is a more appropriate route. We have sympathy in relation to community groups and we will consider that matter further.

I turn to the difficulties in civil legal aid. In 1990-91, 1,029 firms were involved in civil legal aid, whereas in 2000-01 the figure was 1,049. There has been an increase in the number of firms available. The number of firms is only one measure, but the Law Society of Scotland is introducing proposals and we will consider the question of civil fees in due course. That will need to be quality assured—Lord James Douglas-Hamilton and others referred to that—and we will ensure that any fee increases in that context will have to be accompanied by proper quality assurance.

Michael Matheson's point on fixed fees is important. There are slight concerns about the recruitment of young lawyers into criminal legal aid. We have not received great evidence that the fees need to be increased, but colleagues have made me aware of the fact that there are difficulties in that area and we will return to it.

In conclusion, we welcome the report. I hope that members believe that we have acted on some issues and will act on others. We will keep the Justice 1 Committee informed of the outcome of our further considerations.

I am sorry that I ran slightly over time.

The Presiding Officer (Sir David Steel): I call Gordon Jackson to close for the committee. We must finish at 5 pm.

16:54

Gordon Jackson (Glasgow Govan) (Lab): I shall try to finish by then.

I begin by declaring an interest: this will surprise many members, but I have a direct financial interest in the provision of legal aid. Despite that, I think that a system that provides legal aid and which allows access to justice is almost by definition a good thing. However, like all such provision, it needs to be revisited from time to time to ensure that we are providing what is intended in the best possible way.

The report is part of that. It is not in any sense final or definitive, but it is part of the continuing process towards trying to improve what we have. I suggest that, in that process, we must bear in mind the requirements of any system of legal provision. I shall mention three of those.

Such a system must be affordable, as far as the public purse is concerned; it must give access to justice to those who need it; and it must provide high-quality legal services. Those requirements seem obvious, but in practice, they often produce a tension. Our purpose is to try to achieve a balance.

Michael Matheson was right: it is all very well to say that a lot of legal provision is demand led, but, as in every field, there will always be a financial constraint. We must recognise that no budget is ever infinite. I remember attending a conference almost 20 years ago—in India, of all places—at which legal aid was discussed. One of the Indian states was trying to set up a legal aid scheme, which was not an easy task. Through research, the Indians discovered that a problem always arises with demand-led legal aid, in that demand is never exhausted. The more provision there is, the more demand increases, and cost eventually becomes a problem. We must always bear that in mind when we ask for an extension to legal aid provision.

On the other hand, there is a legitimate requirement to give proper access to justice wherever that is required, although, as Roseanna Cunningham was right to say, we do not always achieve that. The perception is that the only people who can afford to be involved in the courts or in any legal action are the very poor and the very rich. The Justice 1 Committee has been able to highlight a number of areas in which there seems to be a gap in our provision, and those areas must be tackled. I was delighted that the Deputy Minister for Justice said that the Executive would consider the business of collective action by representative bodies such as community councils. There are many occasions on which an injustice arises because legal aid is not available to such organisations.

When one considers the requirements to extend legal aid and to limit costs, the third requirement—a good-quality service—becomes a problem. There is the danger that, if one tries to balance affordability and increased access, one might end up with a second-class service. Many countries have experienced that problem. I have discussed the issue with lawyers from Australia and America. Unlike us, they perceive the situation to be the norm. They would expect the so-called best lawyers to work for those who could pay for them privately—I think that was what Donald Gorrie was hinting at—and that lawyers who are publicly funded would not be nearly as good. In many countries, that position is perfectly normal and reasonable, but I hope that I am not being arrogant when I say that that has never been the case in Scotland. The quality of legal advice and service that is given to someone who has been charged with a serious crime in Scotland is the same, whether or not they are in receipt of legal aid, but I am afraid that that will not continue to be the case indefinitely.

I do not want to talk about money for lawyers—I have already declared my interest—but an important statistic demonstrates the reality of the situation. A lawyer or advocate who is acting for someone on legal aid is now paid about 25 per cent of what he would charge for acting on a non-legal aid basis. Some might say that that is a good thing and that the less lawyers are paid, the better, but that statistic will affect the level of service that we provide.

I hope that it is obvious that balancing the requirements of affordability, access and quality is not easy. That is why we need to have a radical look at the entire system. We need joined-up legal services and a proper, strategic approach. I do not have time to read to members the evidence of Professor Alan Paterson, but I commend it to those who are interested in the subject because it was excellent. He points out that, in this country, we have never had that kind of proper, strategic approach to legal services. Community legal services may be the way forward, although both Phil Gallie and the committee had doubts about that. We could also consider the remuneration of lawyers or the extension of legal aid and eligibility. The process of trying to get a proper, strategic overview is continuing, and both this debate and the committee's report are part of that process.

I commend the report to the chamber. I hope that it is a useful contribution—it is only a contribution; no more, no less—to the debate.

Parliamentary Bureau Motions

16:59

The Presiding Officer (Sir David Steel): The next item is consideration of three Parliamentary Bureau motions, which are set out in the business bulletin. Motion S1M-2862 is on the deputy convenership of committees, motion S1M-2891 is on the designation of lead committees and motion S1M-2892 is on the approval of Scottish statutory instruments. To save time, I will ask Euan Robson to move all three motions en bloc.

Motions moved,

That the Parliament agrees that the deputy Convener of the Scottish Parliamentary Standards Commissioner Bill Committee be appointed from the Labour Party.

That the Parliament agrees the following designations of Lead Committees—

the Justice 1 Committee to consider the Civil Legal Aid (Scotland) Amendment Regulations 2002 (SSI 2002/88);

the Transport and the Environment Committee to consider the Financial Assistance for Environmental Purposes (Scotland) Order 2002 (SSI 2002/83);

the Justice 1 Committee to consider the Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities) (Scotland) Regulations 2002 (SSI 2002/95);

the Justice 1 Committee to consider the Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002 (SSI 2002/96);

the Justice 1 Committee to consider the Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002 (SSI 2002/97); and

the Justice 1 Committee to consider the Adults with Incapacity (Non-compliance with Decisions of Welfare Guardians) (Scotland) Regulations 2002 (SSI 2002/98).

That the Parliament agrees that the following instrument be approved—

the draft Renewables Obligation (Scotland) Order 2002.—[*Euan Robson.*]

Decision Time

17:01

The Presiding Officer (Sir David Steel): There are six questions to put to the chamber.

The first question is, that motion S1M-2866, in the name of Kenneth Macintosh, on behalf of the Procedures Committee, on the Procedures Committee's second report of 2002, on substitution on committees of the Scottish Parliament, be agreed to.

Motion agreed to.

That the Parliament (a) approves the recommendations of the Procedures Committee's 2nd Report 2002, *Substitution on Committees of the Scottish Parliament* (SP Paper 530) and agrees to amend the Parliament's Standing Orders in accordance with Annex A to the Report and (b) agrees that these amendments to the Standing Orders should come into force on 15 March 2002.

The Presiding Officer: The second question is, that motion S1M-2810, in the name of Mike Rumbles, on confidentiality in the Code of Conduct for Members of the Scottish Parliament, be agreed to.

Motion agreed to.

That the Parliament agrees to amend the *Code of Conduct for Members of the Scottish Parliament* by replacing Section 9.4 with Section 9.4 as set out in Annex D of the Standards Committee's 8th Report 2001, *Report on the Investigation of Unauthorised Disclosures*.

The Presiding Officer: The third question is, that motion S1M-2868, in the name of Christine Grahame, on behalf of the Justice 1 Committee, on the Justice 1 Committee's eighth report of 2001, on the legal aid inquiry, be agreed to.

Motion agreed to.

That the Parliament notes the 8th Report 2001 of the Justice 1 Committee, *Report on Legal Aid Inquiry* (SP Paper 437) and further notes that the Committee intends to publish a final report on legal aid in due course.

The Presiding Officer: The fourth question is, that motion S1M-2862, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, on the deputy convenership of committees, be agreed to.

Motion agreed to.

That the Parliament agrees that the deputy Convener of the Scottish Parliamentary Standards Commissioner Bill Committee be appointed from the Labour Party.

The Presiding Officer: The fifth question is, that motion S1M-2891, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, on the designation of lead committees, be agreed to.

Motion agreed to.

That the Parliament agrees the following designations of Lead Committees—

the Justice 1 Committee to consider the Civil Legal Aid (Scotland) Amendment Regulations 2002 (SSI 2002/88);

the Transport and the Environment Committee to consider the Financial Assistance for Environmental Purposes (Scotland) Order 2002 (SSI 2002/83);

the Justice 1 Committee to consider the Adults with Incapacity (Supervision of Welfare Guardians etc by Local Authorities) (Scotland) Regulations 2002 (SSI 2002/95);

the Justice 1 Committee to consider the Adults with Incapacity (Reports in Relation to Guardianship and Intervention Orders) (Scotland) Regulations 2002 (SSI 2002/96);

the Justice 1 Committee to consider the Adults with Incapacity (Recall of Guardians' Powers) (Scotland) Regulations 2002 (SSI 2002/97); and

the Justice 1 Committee to consider the Adults with Incapacity (Non-compliance with Decisions of Welfare Guardians) (Scotland) Regulations 2002 (SSI 2002/98).

The Presiding Officer: The final question is, that motion S1M-2892, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, on the approval of Scottish statutory instruments, be agreed to.

Motion agreed to.

That the Parliament agrees that the following instrument be approved—

the draft Renewables Obligation (Scotland) Order 2002.

Commonwealth Day 2002

The Presiding Officer (Sir David Steel): The final item of business is a members' business debate on motion S1M-2729, in the name of Lord James Douglas-Hamilton, on Commonwealth day 2002. The debate is being webcast. I ask members who are not staying for the debate to leave as quickly and quietly as possible. I welcome several Commonwealth guests to the gallery. Members who wish to take part in the debate should indicate that now so that I can allocate the time. The debate will be short.

Motion debated,

That the Parliament recognises the valuable role of the Commonwealth in building relationships between nations across the world; welcomes the continued contribution of Scotland and its people to those relationships, and reaffirms its support for the work of the Commonwealth Parliamentary Association.

17:02

Lord James Douglas-Hamilton (Lothians) (Con): I am very glad to speak to motion S1M-2729. [*Interruption.*]

The Presiding Officer: Just a minute. I must ask members who are not staying to leave immediately without making a noise. The debate is being interrupted.

Lord James Douglas-Hamilton: The motion welcomes the continued contribution of Scotland and its people to relationships between nations across the world and reaffirms the Parliament's support for the work of the Commonwealth Parliamentary Association. A considerable number of Commonwealth students are studying at Scottish universities. In the past, a considerable number of such students have become leaders of their countries.

Representatives from Commonwealth high commissions are in the gallery this evening. On behalf of parliamentarians, I second the Presiding Officer's warm welcome to them. [*Applause.*]

It is perhaps appropriate that our first CPA delegation abroad was to Canada—to Quebec and Ottawa—because there may be more people of Scottish descent in Canada than there are in Scotland. Both our countries are multicultural, multilingual and multi-ethnic in composition, as is the Commonwealth as a whole.

When President Mbeki of South Africa came to the Scottish Parliament, he confirmed:

"Scattered throughout South Africa are Scottish names that attest to the relationship between our people. For example, many of the roads that pass through some of our most famous mountain passes were designed and constructed by a Scot, Andrew Geddes Baines."

He also said:

"John Philip, a Scottish missionary, came to South Africa in 1819, and made a profound contribution with regard to exposing thousands of Black people to education, to various skills and to the promotion of a society of equal rights for all, irrespective of colour."

Scotland's contribution to the Commonwealth, to driving back the frontiers of poverty, ignorance and disease, to good relations and to the policy of being a good world neighbour have been of the utmost significance.

Commonwealth day is a day of celebration for all the 54 member countries. This year we celebrate diversity. The Commonwealth contains 1.7 billion people, which is a quarter of the world's population. It encompasses many different religions and races. We are united by a desire to advance democracy, human rights and sustainable economic development.

We are aware that more than 50 per cent of the Commonwealth's population are aged 25 or under. Through many official and non-governmental organisations, the Commonwealth family of nations works to improve the fortunes and quality of life of Commonwealth people in areas such as education, employment, health, housing, clean water and the environment. Improving the quality of education and training and providing support for immunisation programmes are only two of the countless activities that assist young people to make their way in the world. Many of those young people will be the leaders of tomorrow.

From time to time, there will be serious differences of opinion on how best to resolve long-running disputes. The conduct of the general election in Zimbabwe is a case in point. Such contention is a matter of regret. By way of contrast, it was stressed at the Commonwealth senior officials meeting in Samoa that development and the elimination of poverty work to underpin democratic freedoms. It is to be hoped that a satisfactory way forward will be found not only for the peoples of Zimbabwe but for all the Commonwealth countries.

Overall, the Commonwealth supports democratic principles, respect for human rights, the rule of law, standards of excellence in education and health, and the promotion of equality of opportunity for women and men. The Commonwealth is also committed to empowering young people. In 2001, Don McKinnon, who is the secretary-general of the Commonwealth, said:

"young people want to be taken seriously, they want to make a difference, and they want a better life for themselves, their families and their countries … with our support and willingness to empower them, they can be a powerful partner in tackling many of the problems we face today."

Ever since the days of David Livingstone, Scotland's doctors, teachers and volunteers have played a key role in making the Commonwealth—to use Don McKinnon's words—

"an international 'family' worthy of tomorrow's citizens".

I am glad to speak to the motion, because the Commonwealth brings a touch of healing to a troubled world. Scots have shown a commitment to improving the lot of mankind throughout the Commonwealth—through medicine, education, engineering, construction, science and administration. That is a record of which we in the Parliament can be justly proud.

The Presiding Officer: Many members would like to speak, so I suggest a target time of three minutes apiece.

17:07

Trish Godman (West Renfrewshire) (Lab): At one of my recent school surgeries, I was asked by a young constituent, "What is the point of the Commonwealth?" She said that the Commonwealth had no political power and that it had no influence on the world economy. Although that is a fair criticism, I believe that the Commonwealth is important for political democracy and for values. Those fellow Commonwealth citizens, democratic political parties and trade unions that seek to bring parliamentary democracy to their countries need the support of democratically elected representatives throughout the Commonwealth.

As we know, a number of African leaders who attended the recent Commonwealth leaders meeting in Australia voiced their intense irritation at the criticisms that leaders of post-colonialist countries have levelled against the behaviour of President Mugabe and his security forces during the election in Zimbabwe. My view is that the Commonwealth nations cannot remain silent when democracy is under violent threat in a member state. I agree with what Ian Buruma wrote about Tony Blair in *The Guardian* yesterday:

"to call him an arrogant racist for asking the Commonwealth to stop Mugabe's attempts to steal an election is no way to help the Zimbabweans."

However, I believe that it might have been more prudent to wait until that farrago of an election had taken place before commenting. Also, was not it deeply moving to see the many thousands of ordinary Zimbabweans queuing all day to vote for democracy? If only voters in this country were as committed.

The question must be asked whether the Commonwealth nations can ignore the Zimbabweans' admirable commitment to parliamentary democracy. Should we ignore the

pleas of the opposition parties and trade unions, now that Zimbabwe's seriously flawed election is over? In their hour of need, the opposition parties have turned to the Commonwealth, not to the European Union or the USA or the United Nations. If we in the Commonwealth do not support people who are committed to democratic change, what indeed is the point of the Commonwealth?

The importance of the Commonwealth is not in relation to the global economy; it does not figure at all in international politics, but it has immense value in spreading and sustaining belief in democracy and human rights in countries where post-colonial leaders are every bit as oppressive as the old colonial powers of earlier centuries. If we are weak-kneed about those who ignore the democratic aspirations of their people, there would no longer be any point in the Commonwealth. We would let it slip away into history.

The Commonwealth is eminently worth campaigning for. All its citizens deserve to live in democratic societies in which their civil and human rights are protected by Parliaments and the courts.

17:10

Michael Russell (South of Scotland) (SNP): I pay tribute to James Douglas-Hamilton for having secured the debate on behalf of the executive committee of the Commonwealth Parliamentary Association. The first four speakers are—by accident of course—members of that executive committee; indeed, its president is the Presiding Officer and its vice-presidents are Jack McConnell and John Swinney. Before I start my speech, I pay tribute to the officers of the group in the Parliament—Roy Devon, Grahame Wear and Margaret Neal, two of whom are in the public gallery. They are looking rather lonely, actually.

I would like to give two snapshots of the work of the CPA and to explain why I think that its work is valuable. I know that some people in the Parliament consider the CPA to be a charter for junketing and that being a member of the CPA will get you anywhere in the world. In reality, that is not true—although I am going to talk about New Delhi and Canada, both of which I have visited in the past two years.

I came to the CPA and to the idea of the Commonwealth from a fairly hostile standpoint, as many nationalists do, but I look forward to the day when Scotland is an independent member of the Commonwealth. While it is not, there is a great deal to be gained by the Parliament and all the parties from participating fully in the CPA. We have a great deal to learn from one another.

Let me give two examples. The first is a conference on Parliaments and the media that was held in New Delhi in February 2000. I represented the Parliament at that conference. Sixty delegates—half from Parliaments and half from the media—debated common problems in the perception of Parliaments within the media. If members of the Parliament cast their minds back to February 2000, they will agree that, my goodness, we needed help with those problems.

The conference showed that there were common problems in putting across ideas of parliamentary democracy and of how Parliaments work to a media that works in soundbites and tabloid headlines. There were also problems in taking ideas of privacy and the protection of members into places where the rule of law was not well established and where such laws, if implemented, might actually have damaged press freedom. A wide-ranging debate was held on those issues. I wrote a report on the conference when I came back; it is still available through the Scottish Parliament information centre.

The debate introduced me to the idea that members of Parliaments in the Commonwealth had much to learn from one another. Just last week, we saw an example of that here. Members of the Canadian federal Parliament, from many parties, visited for a week to discuss a range of issues, such as drugs and equal opportunities. Those are vital matters for both countries and for many other nations in the Commonwealth. However, they also discussed matters of practice and procedure, and the fact that the committee system that this Parliament has developed is more active and vibrant than that which exists in many older Parliaments in the Commonwealth, which is a plus. They also discussed the fact that the question times that one witnesses in the Canadian Parliament and the Quebec Parliament are a great deal more exciting and probing than anything that the Deputy First Minister has to put up with here. Mr Wallace looks doubtful, but—

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): Perhaps that is to do with the quality of the Opposition.

Michael Russell: No. The quality of the Opposition is high, as Mr Wallace knows, and I am happy to take him outside at any time.

In the Parliaments that I mentioned, members can ask any question, on any day and on any topic, in that 45-minute period. Questions are not given in advance. Mr Wallace's book of answers would be of no use to him in those circumstances. I am sorry that some Labour members—

The Presiding Officer: Mr Russell, you are straying a little from the Commonwealth.

Michael Russell: No, Presiding Officer, I am not—I am illustrating the fact that we can learn from one another. We can learn how to have a vibrant democracy in each Commonwealth

country. That links to what Trish Godman said about protecting democracy. Parliamentary democracy—with all its flaws, difficulties and problems, even in this country—is so precious that we need to learn from one another and to strengthen one another. That is the purpose of the CPA.

17:15

Mr Keith Raffan (Mid Scotland and Fife) (LD): Lord James Douglas-Hamilton said that Scotland is at the heart of the Commonwealth and indeed it is. I come from a not untypical Scottish family from the border between Banffshire and Aberdeenshire. My father was the youngest of seven children. One of his brothers emigrated to Johannesburg in South Africa, another emigrated to Vancouver in Canada, one sister married a farmer from outside Harare in Zimbabwe and another sister lived for some time in Assam in India, where her husband was a Church of Scotland minister. I have cousins in Canada, South Africa and Australia. To me, as to many Scots, the Commonwealth represents not just a family of nations, but something even stronger—a family of blood to which we are literally related.

Although I have not been as successful in foreign trips as Mr Russell—he has had more trips than the rest of us put together—as an MP at Westminster and as an MSP at Holyrood, I have learned at first hand the value of the Commonwealth Parliamentary Association. I have met and become friends with parliamentarians from many Commonwealth countries and at conferences and seminars I have discussed with them issues of mutual interest and concern. As Mike Russell said, it is impossible to underestimate the value of such links. I discussed drugs issues with the Canadian delegation last week, and when I visited the New South Wales Parliament in October.

I am glad that Trish Godman made her comments about Zimbabwe. The Commonwealth is facing one of its greatest tests in the form of the presidential election in Zimbabwe. If the Commonwealth does not effectively support the Harare principles for the promotion of democracy, human rights, the rule of law, the independence of the judiciary and such fundamental political principles as freedom of association and freedom of speech, what on earth is the point of having the Commonwealth?

To the dismay of many, the Commonwealth heads of Government failed at the meeting in Queensland to take action against Zimbabwe. The three-member committee that was appointed—made up of John Howard, the Prime Minister of Australia, President Mbeke of South Africa and President Obasanjo of Nigeria—must act in the face of the unambiguous evidence from the international and local election observers in Zimbabwe. As one senior observer rightly said, the election has been "poisoned" by the mass disenfranchisement of hundreds of thousands of voters, intimidation and violence towards the opposition Movement for Democratic Change—Amnesty International estimates that at least 1,400 people have been detained arbitrarily in the last two days—the shortage of polling booths, the inexplicable delays in voting and the disappearance and mysterious reappearance of ballot boxes. Instead of the rule of law, there has been the rule of the mob.

Anyone who saw this week's "Panorama" with Feargal Keane, will know that Mugabe is guilty of far more than merely stealing a presidential election—he is responsible for the massacres of thousands in Matabeleland in the 1980s. What he did to his own people then ranks with what Saddam Hussein did to the Kurds and with what Milosevic did to the Kosovars. The countries of the Commonwealth were then, in Feargal Keane's words,

"bystanders to crimes against humanity",

but they cannot and must not be such bystanders now, or the Commonwealth will lose all credibility and all reason for its existence.

17:18

Roseanna Cunningham (Perth) (SNP): I, too, congratulate Lord James on securing today's debate. When the e-mail request came round to ascertain whether members wanted to speak in the debate, I pressed the positive reply button almost without thinking. Why was that? I was raised in one of the furthest flung parts of the Commonwealth—Australia.

When asked, I describe myself as 100 per cent Scots and 50 per cent Australian—I feel that that is an accurate assessment in relation to my upbringing. It is something of a standing joke in the Scottish National Party that on any set-piece occasion I am permitted only one mention of Australia. Mike Russell could regale members with tales of the attempts that have been made to get me to shut up about Australia.

The Presiding Officer: I am more generous.

Roseanna Cunningham: In such a debate I should be allowed more than one mention of Australia.

Being raised in another Commonwealth country lends me some perspective. I do not imagine that Australia differs greatly from other parts of the Commonwealth in that membership of the Commonwealth has always been important to it. Australia is part of a network of historical

relationships—that is what the Commonwealth is about—that people have valued over the years and that they wish to maintain. I suspect that it is the relationship that they wish to maintain, rather than the title. We cannot say for certain whether that will always be the case. Whatever the original basis of the relationship there is no doubt that it is changing. Indeed, it has changed already, with the old imperial mindset gone and the emergence of a new relationship of equality.

That nations stay in the Commonwealth tells us that it has value. However, that value is challenged by occasional periods of stress, one of which we are undergoing and which other members have mentioned.

Although today's debate is and should be congratulatory, we should not pretend that the situation in Zimbabwe is in any way in keeping with Commonwealth ideals. Election counts in Scotland, which are attended by one or two policemen, remind us of how hard-won our democracy is. It is hard for any of us, involved in our process here, to imagine being involved in an election in the circumstances that we have seen in Zimbabwe, a country that is led by someone who I believe is certainly a fascist and probably a racist.

The Commonwealth can play a vital role in bringing about change—I very much hope that it will do so. Keith Raffan is right to say that thus far it has not lived up to expectations. Change will happen only if we continue talking to one another, which is why the CPA is so important. I welcome the debate and the work of the CPA and look forward to a great deal more debate and work. I look forward especially to a day when Scotland can be involved in the Commonwealth as an independent country.

17:21

Bill Aitken (Glasgow) (Con): It is unfortunate in the extreme that this debate, on a motion that is extremely optimistic and constructive, should take place against the background of the recent events in Zimbabwe. Everyone in the chamber will deeply regret that. Trish Godman and Keith Raffan were correct to state that this could be a defining moment for the Commonwealth.

The Commonwealth was based upon a very sound principle of democracy. It grew out of colonialism, which is not an acceptable method of government. It was very much hoped that every member of the Commonwealth had chosen the option of democracy; to return to the motion, we had grounds for thinking so. We must not allow the events in Zimbabwe to overshadow the real issue, which is that the Commonwealth has been a success.

Members of the Commonwealth have much in common. Scotland has close relationships with not only the old Commonwealth countries, but the new ones. It is quite commonplace to walk the streets of African townships and to see Scots place names. We in Scotland can take real and genuine pride in the contribution that our country and our countrymen have made to the establishment of a constructive and ever more prosperous third world.

At the same time, we cannot be complacent. We must acknowledge that the situation in some of those countries is not acceptable. That is why it is vital that the heads of Commonwealth states now recognise the dangers that face us. It would be a tragedy for most of us, in human and emotional terms, if the events of Zimbabwe were to overshadow the good that the Commonwealth does, particularly in this important jubilee year.

I am confident and optimistic. The events of the past few days will not overshadow the potential for a constructive year, when we will engage with our Commonwealth partners on a range of issues and when we will look with pride—as they can look with pride—at the way in which education has prospered and health care has improved, and at the way in which the democratic principle in the vast majority of Commonwealth countries is now as we would all wish it. That is why we should be forward-looking and constructive. Let us not forget the events of the past few days, and let us ensure that the Commonwealth heads of state react appropriately to it. However, at the same time let us consider the success that has been the Commonwealth and the future success that it has the possibility to be.

17:24

Dorothy-Grace Elder (Glasgow) (SNP): I am one of a tiresomely large number of Scots whose family for the past century or so has been everywhere but in Scotland. We have inflicted ourselves on very large parts of the globe—mainly the Commonwealth—with the common bond of English. I hope that my relations have always been creative, working in agriculture and in medicine. When eventually they left those Commonwealth countries, it broke their hearts. They never quite recovered from being back home and leaving their many friends.

In my youth, in the full flowering of the youthful assumptions that we all have, I thought that the Commonwealth was merely an excuse for a large collection of elderly gents to get together, take tiffin and reminisce about the days when the sun never set over the British Empire—for the very good reason that God would not trust a British national in the dark. It is not like that at all. I believe that the links between Scotland and the Commonwealth are quite unbreakable and that

they stand most of all for unity against racism, which, apart from being horrific, is about the most boring thing possible. Would it not be simply dreadful just to know one or two bigots and not to share in the riches of the world and the riches of the types who inhabit this planet?

Like all great institutions, the Commonwealth has had many failures. I very much regret that nowadays one does not see nearly so many black faces coming out of Glasgow University or Edinburgh University medical schools as used to be seen. That failure has come about because fees are far too high, although there are Commonwealth charitable institutions that help such students.

Mr Mugabe and his gang should have been kicked out and treated with extreme severity because of their umpteen crimes, but we must look today at the wider picture and at the future. I regret the fact that, since we joined the European Union, we have seemed to slip away more from the Commonwealth. We must right that balance and exclude neither the EU nor the Commonwealth.

I remind members of the debt that we owe the Commonwealth. I have been privileged enough to work in a number of Commonwealth countries, mainly in the far east. Standing on hillsides in those countries, one can see hundreds and hundreds of acres of great citadels of the dead, where white Commonwealth war graves sparkle in the sun and lads from Scotland lie under the frangipani trees next to lads from Africa, India, Pakistan, Australia and Canada. Those lads, who came from all over just to help one little island, gave their lives at the age of 17, 18 or 19; the oldest of them were about 27. It is a blood debt that we can never forget.

Lord James Douglas-Hamilton: Will Dorothy-Grace Elder also bear in mind the fact that many from the black Commonwealth and from India and Asia, and not just from the white Commonwealth, gave their lives? That should be very firmly on the record.

Dorothy-Grace Elder: That is exactly the point that I am trying to make. One has only to see one of those war graves abroad to feel utterly humbled by the massive sacrifice of the black Commonwealth and of those great people who came to the aid of these islands at the very worst of times.

Whatever the faults of the Commonwealth, we are far better with it than without it.

17:28

Phil Gallie (South of Scotland) (Con): I identify totally with the wording of the motion and I congratulate my friend Lord James Douglas-Hamilton on securing this evening's debate.

I remind you, Presiding Officer, that the history of my involvement with the CPA goes back to either the first or the second meeting of this Parliament, when I managed to make the first bogus point of order and was reprimanded by you for suggesting that we should join the CPA. I make no apology whatever for that. I believe that it was the right thing to do and that the Parliament has benefited since then from that action.

My involvement with and understanding of the Commonwealth goes back to the early 1960s, when I went to sea, and many of the countries that we visited were Commonwealth countries. In those countries I could always recognise an element of structure. We can thank Britain—a sometimes berated colonial power—for the way that those countries were treated in the past and how they were set up as they moved towards democracy. The structures were an important element of democracy.

I say to Keith Raffan that I was sad rather than glad to hear Trish Godman's comments on Zimbabwe. I was sad that they were necessary and correct, just as Keith Raffan's comments were. The Commonwealth is built on respect and democracy. We share and have learned from each other. What has happened in Zimbabwe today is perhaps another lesson for us all. However, we should not be despondent as such occurrences have happened in the past. Nigeria comes to mind. Things have improved and democracy has been returned to many countries.

There will always be questions and difficulties, but we stand together as a family in the Commonwealth of Nations. Britain and every nation that forms that Commonwealth should take great pride in wanting to stand together. Perhaps that is unique in the modern world.

17:31

Richard Lochhead (North-East Scotland) (SNP): I, too, welcome the visitors in the gallery. I had the pleasure of showing visitors from Barbados and Grenada around our new Parliament before the debate. They are studying at the Robert Gordon University in my constituency.

It is important for MSPs to take part in every available international forum and to speak with members of other countries' Parliaments to learn from them what they are doing and teach those countries what we know. After all, our Parliament is new and has recently been set up. We are in a good position to share our experience with countries around the world.

Last September, I was lucky enough to go to Australia as one of the Scottish delegates to the CPA's annual conference. There were 500 delegates at the conference—500 members of Parliaments from around the world, from countries that are a fraction of the size of Scotland to countries that are the size of India.

We discussed a whole range of topics. Mike Russell touched on a couple of topics that are regularly discussed by Commonwealth nations. We discussed how to be better parliamentarians and how to improve our parliamentary democracies. One topic was obscurely called "Towards being a Professional Knowledge-based Parliamentarian". Under that, we heard from MPs from countries such as Malaysia about technology that they are using to improve their parliamentary democracies. One Malaysian MP raved about his digital cards, which he uses instead of business cards. He gives them out to people such as his constituents. By contrast, people in some developing countries are struggling even to set up telephone networks in their Parliaments or acquire e-mail addresses. That highlights the fact that the parliamentary democracies in the Commonwealth are at different stages.

I met a number of Nigerian MPs who were literally battle-scarred from attempting to secure parliamentary democracy. They had come through military dictatorships, civil war and revolutions and shared their experience with me. Of course, Scotland and Nigeria acquired their parliamentary democracies in the same year—1999. In Nigeria's case, that was after 20 years of military dictatorship.

We also discussed poverty alleviation and the international trafficking of people. The Ugandan delegates told us about how they had only just introduced free education for primary school kids and the Botswana delegates told us about how they have had to introduce micro-credit schemes as commercial banks refuse to operate for the ordinary people in their country. We discussed huge up-and-coming issues such as globalisation and its threat to developing countries. I made a speech at the conference on how we must regulate the multinationals, many of which are seen as a threat to developing countries as they are in them to exploit. All the Commonwealth countries should work together to come up with ideas on what we can do about such threats. After I made the speech, a queue of MPs from the developing world waited to speak to me. They wanted to say how much they agreed with what I said.

Such conferences—the dialogue between Commonwealth nations—should not just be talk. There should be action. There is no point in talking about what multinationals are doing that threatens emerging democracies. We should act to stop such threats. That means that all the parliamentary democracies throughout the Commonwealth must have more power to do that. I hope that Scotland can be part of that dialogue.

The Presiding Officer: So that we leave no one out, I give Margaret Ewing and Brian Fitzpatrick two minutes each.

17:35

Mrs Margaret Ewing (Moray) (SNP): I will try to keep to that.

Like other members, I congratulate Lord James Douglas-Hamilton on securing the debate. It is sad that the shadow of Zimbabwe is hanging over us. I say that with some personal feeling, as I spent time in Harare with Baroness Chalker. We talked to young women who were desperately trying to break into the professions. I was impressed by their efforts and I feel the sadness that they must feel at this time in their country. I think of them particularly today.

In my 19 years at Westminster, I was a member of the CPA and now I am a member of the CPA here. I am delighted that we have established a CPA branch in the Scottish Parliament, because Scotland is an outward-looking nation. Like Roseanna Cunningham, I look forward to the day when Scotland is an independent member of the Commonwealth, but that is for another day.

I look back over the contribution that Scotland has made to the Commonwealth over generations and the benefits that the Commonwealth has brought to Scotland. I think of all the students who have studied here. I know that, as Dorothy-Grace Elder said, finances are difficult in our universities and overseas students have not had the support that we would like to give them. However, the benefits have worked in both directions; we have benefited and other countries have benefited.

My experience as an election monitor was in Lesotho, where I experienced long queues similar to the ones that we have seen on television. I spent my time at Qacha's Nek in the highlands of Lesotho—to give members an idea of what it is like to be in the highlands of Lesotho, I should mention that the lowest point in Lesotho is higher than Ben Nevis. Wherever we went, from the smallest hamlet to the little towns in the area, those of us who, as election monitors, were wearing Commonwealth hats and tee-shirts were welcomed as friends. There was genuine trust. That friendship and trust is what the Commonwealth is based on. Long may that continue and more strength to it.

17:37

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Many of us in the chamber, from various backgrounds, are aware of the diaspora of Scots and others throughout the Commonwealth. We are also aware, as some members have touched on, that a frank recognition of the burdens as well as the benefits that our involvement across the globe has brought is a key component of new relations that are based on equality, democracy and mutual respect in the Commonwealth. To that extent, we must resist the temptation to be self-congratulatory. A lot of work must be done on that front.

I am saddened by what is taking place before our eyes in Zimbabwe. However, what is happening reminds us of the struggle for solidarity and the campaign for democracy that lies at the heart of people working together in order to secure their rights. Rights were never given to working people; they were always won by democratic action and by people working together to benefit themselves and their families. That is as true in remote parts of the Commonwealth as it is in our country. We must maintain the case for supporting democracy in Zimbabwe; that is particularly important in the context of this debate.

Like many in the chamber, not least the Presiding Officer, I transferred my support from the anti-apartheid movement to Action for Southern Africa—ACTSA—with great joy. People literally danced in the streets of Glasgow as we welcomed Nelson Mandela and rejected once and for all the legacy of apartheid. There were those from my alma mater, Glasgow University—including our late first First Minister—who argued the case against state fascism in southern Africa and supported Albert Luthuli at a time when that was rather unfashionable and unwelcome. We know that, in the 21st century, the Commonwealth is at its best when it reflects the aims and aspirations of the ordinary people of the Commonwealth. That is how we should judge and measure it. Against that background, I am content to support the motion.

17:40

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): As previous speakers have done, I warmly welcome the debate. I thank Lord James Douglas-Hamilton for providing us with the opportunity to mark Commonwealth day, to celebrate the importance of the Commonwealth in the modern world and—through the second part of the motion—to recognise the valuable work of the Commonwealth Parliamentary Association. I am surrounded by dignitaries of that association, who do valuable work for the Parliament. If it is not too sycophantic, I recognise Sir David Steel's contribution as the president of our branch of the association. We all know about his hard-working and distinguished contribution to the Commonwealth, not least in Africa.

As many members have said, although the debate celebrates the importance of the Commonwealth, it nevertheless takes place under the shadow of events in Zimbabwe. A number of speakers, including Keith Raffan, Bill Aitken, Trish Godman, Margaret Ewing, Mike Russell and Roseanna Cunningham mentioned Zimbabwe. The United Kingdom Government made it clear at the recent Commonwealth heads of Government meeting that Zimbabwe should be suspended because it had flouted the Commonwealth's basic values. We all know that the Commonwealth's decisions are taken by consensus. During the debate on the matter, President Mbeki, President Obasanjo and Prime Minister John Howard were tasked with reviewing the situation after the election and making recommendations for action that are based on the Commonwealth observers' report. I am advised that the observers are expected to report by the weekend.

Of all the comments that have been made, perhaps the most telling one was Trish Godman's. She said that at a time when many people in Zimbabwe were experiencing harassment and real difficulty, they did not turn to the European Union, the United States or the United Nations, but to the Commonwealth. We should value that fact; it is precious. Margaret Ewing said that when she was an election observer in Lesotho, the Commonwealth observers were warmly welcomed. That gives us hope—and perhaps the confidence and optimism that Bill Aitken mentioned—that in a world in which there are a lot of anxious and problematic times, forces for good can operate.

The debate helps to draw attention to the Commonwealth and to its positive contribution to the lives of millions of people. At its best, the Commonwealth is a symbol of positive, constructive and peaceful international interaction. It is founded on the principles of liberty, democracy, international peace, the rule of law and equal rights for all.

If we are to achieve a stable world order, the peoples, cultures and religions of the world must learn to accept and understand one another. That is why it is appropriate that, as Lord James Douglas-Hamilton said, the theme that the Commonwealth has adopted this year is that of embracing diversity. As a grouping of 54 countries, which encompasses virtually all the major religions, economic zones and regional blocs of the world, the 1.7 billion people of the Commonwealth are accustomed to embracing diversity. It is clear from the speeches that we, in

Scotland, want to play our part in that.

The Commonwealth is not perfect, but there are problems in every family. In 1997, former Commonwealth Minister Lord Thomson of Monifieth said:

"Political rationality demands that we should not withdraw in exasperation from international co-operation but, instead, use all our experience to make a priority of recommitting ourselves where it matters."—[*Official Report, House of Lords,* 29 January 1997; Vol 577, c 1201.]

That is as true now as it was then.

Many members reflected on the strong connections that Scotland has had with the countries of the Commonwealth. Scottish explorers, engineers, doctors and missionaries went to work in the countries of the Commonwealth and helped to shape those countries that are now our international family. That point was made by Keith Raffan, who gave a list of his relations who have gone to Commonwealth countries, and by Dorothy-Grace Elder. My father was born in what is now Malaysia. Probably all of us can claim a connection with a Commonwealth country.

In an important way, Scotland has been shaped by that experience. Thanks to our history of engagement with the world, the Scotland of today is an outward-looking country and enjoys strong links with many of our Commonwealth partners. It is our responsibility to maintain and develop those links, to help to ensure stability and prosperity for the people of Scotland and of the Commonwealth.

The Commonwealth is part not just of Scotland's past and present, but of its future as well. On Monday, the First Minister announced that the 15th conference of Commonwealth education ministers will be held in Edinburgh in the late autumn of 2003. We expect to have education ministers and others from the 54 states of the Commonwealth in Scotland for that event. Working with the other parts of the United Kingdom, we will use the opportunity to showcase Scotland's world-class education system and to share experience and interests with our friends in the Commonwealth. The one thing that we all share is the will to give every child and young person in our countries the best start in life. I welcome the fact that, as members have remarked, there are still a large number of Commonwealth students at Scottish universities. Those are the kinds of links that help to foster good Commonwealth relations.

The Commonwealth is not always about equality, democracy, peace and prosperity; it is also sometimes about competition. This year, in Manchester, that will mean competition for the gold, silver and bronze medals. I very much hope that this year's Commonwealth games see our Scottish athletes achieve the level of success that they achieved in 1998, when they secured 12 medals for Scotland including three golds.

As members have said, the Commonwealth is a great example of community and co-operation in a complex modern world. As Brian Fitzpatrick rightly said, we must now form new relationships based on mutual respect. The Commonwealth is an example of the way in which very different communities can come together. The Parliament and the Executive are proud to contribute to its continuing success. We support the motion.

The Presiding Officer: It has been a particular pleasure for me, as the president of the Scottish branch of the CPA, to chair this debate. I remind colleagues that they are invited to join me in welcoming our Commonwealth guests at a reception at the Holyrood visitor centre at 6 o'clock. I am told that a bus will leave from outside the parliamentary office in about 10 minutes' time. With that happy news, I close this meeting.

Meeting closed at 17:47.

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