

MEETING OF THE PARLIAMENT

Wednesday 24 April 2002
(*Afternoon*)

Session 1

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Scottish Parliament

Wednesday 24 April 2002

(Afternoon)

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

Be with your servants in this place, in all things great and small, so that small things become great and great things become possible. Father of mercies, bless their loved ones and their families, and make their homes places of peace and love, where they may find spiritual resources for the strain and pressures of their duties here.

Give us now your Spirit to guide and direct our thinking, that when the day's work is over we may merit your 'well done'. Through Jesus Christ our Lord, Amen."

Time for Reflection

The Presiding Officer (Sir David Steel): To lead our time for reflection today I welcome the Rev John Butler, who is a minister of the Congregational Federation in Scotland.

Rev John Butler (Minister of the Congregational Federation in Scotland): Since I retired I have been trying to reduce the size of my library—it is like drawing teeth. One book that I am keeping was given to me by my Grandma and Grandpa for Christmas in 1950, which seems like an awful long time ago, but there we are. It is called simply, "Prayer", and was written by a Norwegian theologian. One of the chapters has as its title "Prayer as Work".

I still recall kneeling with my Grandma at her bedside in the morning when I was nine or 10. Before she made breakfast, before she began the work of the day, she knelt in prayer for a world that was moving quickly towards war—it was 1938—for her friends, for her family and for me. For her, prayer was as much work as was boiling the kettle.

I am grateful for the opportunity this afternoon to share in the work that you do in this way; that before you begin the meeting, we do the work of prayer, asking for wisdom, guidance and clarity of thought in what we do on behalf of the nation.

In that chapter, "Prayer as Work", the author speaks of the building of a church in Oslo. Each day, as he hurried to work, a businessman would pause at the scaffolding, remove his hat, and spend a time in prayer for the architects, the builders and the workmen. I hope that that encourages you to remember that, all over Scotland, there are Christian people who today pause and stand with you in prayer. Their work with you and for you is a vital ingredient in the activity of this chamber.

I want to use a prayer of Peter Marshall's, the celebrated American preacher who was sometime chaplain to the American Senate in the 1940s. You may wish to meditate on it as I read it.

"O God of truth, who alone can lead men into the truth that is freedom and joy, be our Teacher as we seek to find the way of life in times that bewilder and challenge.

Parliamentary Bureau Motions

14:35

The Presiding Officer (Sir David Steel): The next item of business is consideration of Parliamentary Bureau motions. I ask Euan Robson to move business motion S1M-3025, which is the timetabling motion on stage 3 of the Freedom of Information (Scotland) Bill.

Motion moved,

That the Parliament agrees that at Stage 3 of the Freedom of Information (Scotland) Bill, debate on each of the proceedings shall be brought to a conclusion by the time limits indicated (each time limit being calculated from when Stage 3 begins and excluding any periods when the meeting is suspended)—

Groups 1-6 – no later than 1 hour

Groups 7-11 – no later than 1 hour 45 minutes

Groups 12-15 – no later than 2 hours 15 minutes

Groups 16-19 – no later than 2 hours 45 minutes

Groups 20-26 – no later than 3 hours 45 minutes

Motion to pass the Bill – no later than 4 hours 15 minutes.—[*Euan Robson.*]

Motion agreed to.

The Presiding Officer: The second business motion is S1M-3027, which is to extend today's business and change decision time. Before Mr Robson moves the motion, let me say that the chair will accept a motion to bring forward decision time if we finish early.

Motion moved,

That the Parliament agrees that on Wednesday 24 April 2002—

(a) the meeting of the Parliament shall continue to 7.00 pm as permitted under Rule 2.2.4; and

(b) that Decision Time shall be held at 6.50 pm.—[*Euan Robson.*]

Motion agreed to.

Freedom of Information (Scotland) Bill: Stage 3

14:36

The Deputy Presiding Officer (Mr George Reid): Members should have before them a copy of the bill—SP Bill 36A, as amended at stage 2—the marshalled list, which contains the amendments that I have selected for debate, and the groupings, which I have agreed.

I will skip the usual preamble and simply say that I will allow an extended voting period of two minutes for the first division that occurs after each debate on a group of amendments.

Mr Keith Raffan (Mid Scotland and Fife) (LD): On a point of order, Presiding Officer. We at the back of the chamber can hear hardly anything. Can somebody do something about the sound, as I could hear hardly anything that you just said?

The Deputy Presiding Officer: I will get the sound engineers to try to boost the volume if that is at all possible.

Section 1—General entitlement

The Deputy Presiding Officer: Amendment 59 is grouped with amendment 60.

Donald Gorrie (Central Scotland) (LD): I have a confession to make: I have become an establishment lackey. I had lodged an amendment but, as the Executive also wished to lodge an amendment on the same subject, I abandoned my wording and adopted that which was provided by the Executive. I did so on the basis that the ministers will not be able to say that the amendment is incompetent, which is what they normally do when they wish to defeat it.

The point at issue is non-contentious. As it stands, the bill suggests that public authorities could use a loophole between the time of an application being made by people who wish to see information, and the application going into the system. In that time, the public authority could hastily destroy the relevant information. I am sure that the bill did not mean that, but it could have been interpreted in that way. Amendments 59 and 60 make it absolutely clear that a public authority may not destroy requested information unless the circumstances are such that it is not reasonably practicable to prevent the destruction from occurring, such as if the stuff was in the mouth of the incinerator or something like that.

The amendments would prevent any possibility of sneaky public authorities getting away with destroying such information. The amendments are worthy, so I am happy to move amendment 59 and extol the virtues of amendment 60.

I move amendment 59.

Lord James Douglas-Hamilton (Lothians) (Con): We support Mr Gorrie's amendments. The BSE inquiry found that ministerial papers for the previous 18 years had been destroyed immediately after the general election. Those papers could have been material in that inquiry. The principle is that evidence that could be of use in a public inquiry should not be destroyed.

Michael Matheson (Central Scotland) (SNP): The SNP supports amendments 59 and 60. Donald Gorrie raised this concern at stage 2, but the matter was not suitably addressed in committee and concerns linger. Some members may think that public authorities would not do something such as prevent the publication of requested information by quickly going round the corner and destroying it. However, if we are to ensure that the provisions of the bill work effectively, it is important to ensure that there are no loopholes. Amendments 59 and 60 seek to close such loopholes.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I am pleased to support amendments 59 and 60, which address concerns that were raised during the stage 2 debates. The amendments add clarity to the basic policy underpinning section 1(4) and section 64; but they leave the section 61 code of practice to amplify matters and guide authorities on procedural aspects.

We want to encourage good records management. It is therefore important that planned amendment or deletion can be carried out as part of normal records management. It is also important that, whenever reasonably practicable, requested information is not destroyed before it can be given to the applicant. The test of reasonable practicability, as mentioned in Mr Gorrie's amendment 60, acknowledges that there may be circumstances in which preventing destruction is difficult, expensive or disruptive—for example, when the files are already on a lorry that is trundling towards the incinerator. In theory, such files could be retrieved, but not reasonably and practicably.

I support amendments 59 and 60. As Mr Gorrie observed, they are in a good technical form.

Amendment 59 agreed to.

Amendment 60 moved—[Donald Gorrie]—and agreed to.

The Deputy Presiding Officer: Amendment 54, in the name of Christine Grahame, is grouped with amendment 55.

Christine Grahame (South of Scotland) (SNP): Amendment 54 is a paving amendment for amendment 55. I lodged the amendments after

being made aware of concerns about the impact of the Freedom of Information (Scotland) Bill on the Parliament's powers under section 23 of the Scotland Act 1998. I am interested in those concerns as convener of the Justice 1 Committee, which scrutinised the bill at stage 2.

Amendment 55 does two things. It seeks to make it clear that the bill has no effect on the Parliament's statutory powers under section 23 of the Scotland Act 1998, which requires persons to provide information and documents to the Parliament. The amendment also seeks to make it clear that the FOI regime has no effect on requests that the Parliament makes to persons to provide information and documents voluntarily.

As members are aware, the Parliament has wide powers under section 23 of the Scotland Act 1998 to require persons to provide information and documents. It is an offence for a person to refuse to comply with such a requirement. The Parliament's power is subject only to the limitations of section 23. In practice, the Parliament and its committees have operated by inviting and requesting information rather than by resorting to section 23 powers.

The Freedom of Information (Scotland) Bill gives individuals a new and distinct right to obtain information from Scottish public authorities. However, that right is subject to the various exemptions and limitations in the bill, which are wider than the restrictions in section 23 of the Scotland Act 1998. Section 23 is fundamental to the operation and workings of the Parliament.

On the first part of amendment 55, I want it to be clear that the bill has no impact on the Parliament's section 23 powers. I assume that it does not, as that would mean that the bill were outside the legislative competence of the Parliament. I would, however, be grateful for the minister's assurances on that point.

On the second part of amendment 55, I would be grateful for the minister's assurance that requests that the Parliament makes to Scottish public authorities will not be subject to the exemptions and limitations in the Freedom of Information (Scotland) Bill. I appreciate that that means that Scottish public authorities, including the Executive, will be under no legal obligation to comply with the Parliament's requests—but that merely reflects the position at the moment. In practice, given the existence of section 23 of the Scotland Act 1998, we do not need Scottish public authorities to be subject to a separate legal obligation to respond to our requests.

I believe that it would cause confusion if our section 23 powers were exempt from the FOI regime, but the Parliament's requests were covered by it. That could suggest to Scottish

public authorities that they are not required to provide information to the Parliament if one of the exemptions in the Freedom of Information (Scotland) Bill applies. It could also lead to Scottish public authorities trying to charge the Parliament fees under section 9, as a condition of complying with the request. I would be grateful for clarification from the minister on both aspects of the amendments.

I move amendment 54.

14:45

The Deputy Presiding Officer: We are having a few problems with the computers. Do any other members wish to speak to the amendments? As no one has indicated, I call Mr Wallace.

Mr Wallace: I am grateful to Christine Grahame for her explanation of amendments 54 and 55 and for raising such an important issue. I understand why she is seeking clarification and her wish to place on the record the relationship between the proposed statutory freedom of information scheme and section 23 of the Scotland Act 1998.

As Christine Grahame said, the Scotland Act 1998 is an important cornerstone of our Parliament. I can confirm that nothing in the Freedom of Information (Scotland) Bill derogates from the powers conferred by section 23 of the Scotland Act 1998. That machinery is parallel to the proposed statutory freedom of information regime and is unaffected by it.

Christine Grahame will not be surprised that I think that the amendments are unnecessary. Proposed paragraph (b) of amendment 55 might even have an unintended, but unfortunate effect. Section 23 of the Scotland Act 1998 deals with "requirements", rather than "requests", which is what the freedom of information regime is concerned with. Amendment 55's reference to requirements is not apt and is unnecessary.

However, amendment 55 would give rise to a more important difficulty. I think that the amendment is drafted so as to prevent an authority citing the freedom of information regime to withhold information required by the Parliament, but the additional reference to requests would preclude the Parliament from making requests under the freedom of information regime. I am sure that that is not what is intended.

Requests from the Parliament to certain public authorities are considered under the Executive's non-statutory code of practice on access to Scottish Executive information. However, in due course, one would expect those requests in the public sector to be considered under the terms of the freedom of information legislation. The amendment would preclude that and would call in

the nuclear option of section 23 of the Scotland Act 1998.

On the basis of those assurances, and the explanation of the unintended consequences of the amendments, I hope that Christine Grahame will withdraw amendment 54.

Christine Grahame: Thank you. In the light of the minister's explanation, I seek leave to withdraw amendment 54.

Amendment 54, by agreement, withdrawn.

After section 1

Amendment 55 not moved.

Section 3—Scottish public authorities

The Deputy Presiding Officer: Amendment 61, in the name of Michael Matheson, is grouped with amendments 62, 65, 67, 68 and 69.

Michael Matheson: The purpose of the amendments—I will refer to them collectively as several are consequential—is to make special provision for records transferred to the keeper or to an archive service. The amendments make special provision for the National Archives of Scotland, in the name of the keeper, as it holds the records of several other public authorities. The same issue arises for other public authorities that hold archives for yet more public authorities. For example, Glasgow City Council holds records for Strathclyde Regional Council on behalf of 12 local authorities, Strathclyde fire brigade, Strathclyde police and West of Scotland Water.

The intention of the amendments is to ensure that all public authority archives are treated in the same way as those of the National Archives of Scotland, as long as the archives are publicly accessible and that copies can be provided where appropriate. As is the case with the Keeper of the Records of Scotland, it is the business of such archivists to ensure that there is public access to records held in their care, whenever a request is made. However, when a request is made in accordance with the full range of the freedom of information legislation, there is some concern that the archiving service will be required to deal with matters such as family and historical research, largely at public expense.

The professional management of records is a vital component in any freedom of information regime. The changes in the wording are intended to ensure that there is compliance with professional standards and will highlight the need to ensure that there are adequate resources to invest in archive and recording services in public authorities.

Finally, the amendments are supported by the

Society of Archivists, Scotland.

I move amendment 61.

The Deputy Minister for Justice (Dr Richard Simpson): We understand the motives behind amendment 61, but, for various reasons, they are unnecessary or inappropriate and we cannot support them.

However, I hope to reassure Michael Matheson that the concerns of those in certain sectors of the archive community are unfounded. I remind him that the archive aspects of the bill have been welcomed by the Keeper of the Records of Scotland and the Scottish Records Advisory Council.

The amendments seek to apply to the archive service of a Scottish public authority the same arrangements as are provided in the bill for the Keeper of the Records of Scotland. They therefore betray a misunderstanding of the statutory functions of the Keeper of the Records of Scotland, the reasons why specific provisions have been provided in the bill for the keeper and the way in which those provisions are intended to operate.

The amendments fail to recognise the distinction between the records transferred to the keeper for him to hold as part of his statutory duties to maintain and provide access to the National Archives of Scotland and information that any Scottish public authority might be holding on behalf of another person. In particular, the amendments do not recognise the effect of subsection 3(2) of the bill, which provides that the information being held by an authority on behalf of another person is not to be regarded as being held. Therefore, the authority holding on behalf of another authority is not caught for that information by FOI. I reassure Michael Matheson that the effect of that meets one of the primary concerns behind the amendments.

I have a second point. The archive services of Scottish public authorities do not have the same legal standing as the keeper. They vary in nature and they do not perform the same statutory record-keeping functions as the keeper. The archive services of Scottish public authorities do not receive records from United Kingdom public authorities as part of the Scottish national archive—for example, records of UK departments whose activities relate wholly or mainly to Scotland. That role is unique to the keeper.

I have dealt with the primary concern that the amendments seek to apply the special arrangements that are available to the keeper to the non-statutory archive functions of other authorities, which are not under the keeper's statutory regime. I do not therefore propose to set out the technical reasons why each amendment is

inappropriate. I am happy to write to Michael Matheson with further details if he would find that helpful.

On the basis of the explanation and the reassurances that I have provided, I ask Michael Matheson to withdraw amendment 61.

Michael Matheson: I am surprised that no other members want to contribute to the discussion. I am somewhat reassured by what the minister has said. There is concern within the profession about the management of records and the professional standards that apply to it. I understand that there is concern to the extent that archivists believe that there is a requirement for some form of legislation to try to improve those standards and they have gone to the length of drafting their own bill for that purpose. However, because of the reassurance from the Deputy Minister for Justice, I seek to withdraw amendment 61.

Amendment 61, by agreement, withdrawn.

Amendment 62 not moved.

After section 5

The Deputy Presiding Officer: Amendment 63 is in a group on its own.

Michael Matheson: The purpose of amendment 63 is that, where a function of a public authority is privatised or put into the charitable or voluntary sector, the body to which the service is to be transferred will be treated as a public authority. If it is not, the Scottish Executive will have to give reasons to the Scottish Parliament as to why it should not be classified as a public authority.

Private finance initiatives and contracting out of services mean that the bill will no longer cover many functions that public authorities used to undertake and which have been transferred or contracted out. Allowing sources of information to slip out of the freedom of information regime runs against the spirit of the bill. We should have a right to know the staffing levels in our direct labour organisations, our public hospitals, our schools and our public prisons, as we do at present, but we should also have a right to that information if those services are contracted out. The public interest remains the same, irrespective of who undertakes such roles.

Amendment 63 would address the problem of the lack of a level playing field between public authorities, such as direct labour organisations, which compete with private companies for public service contracts. Private companies, unlike public authorities, do not incur the costs of the freedom of information regime and do not have to reveal information to their rivals on request. If that loophole in the bill is not closed, the danger is that it could act as an incentive for privatisation for

authorities that do not like, or do not wish, to place information in the public domain.

Those difficulties exist primarily because the Executive has failed to include in the bill a general definition of a public authority. Instead, it has chosen to provide a list of all the public authorities to which the bill will apply. The complexity of that arrangement has been highlighted in the past few weeks, as the Executive has had to lodge eight amendments to take account of institutional changes. Furthermore, the Executive had to lodge an amendment to add licensing boards to the list, which had been missed out of schedule 1.

The best way of ensuring proper democratic accountability of services that move from the public sector to private contracts would be to include a provision that applies the freedom of information regime to services that transfer to the private sector.

I move amendment 63.

Mr Jim Wallace: As Mr Matheson said, amendment 63 would add all bodies to which a public authority's functions have been transferred to the list of bodies that the bill covers, provided that that would be within the Parliament's competence—we could not add reserved bodies. The amendment is superficially attractive and I understand the concerns that lie behind it, but members should understand the significant practical problems that a proposal with that somewhat indiscriminate approach would create.

It is true that amendment 63 would catch the situation in which a public authority transfers a major function to another body, but members should also be aware that it would catch even the most minor transfer of functions. For example, many public authorities run crèches for their staff. If an authority decided to pass the operation of a crèche to a local community group, that community group would be subject to the full rigours of the freedom of information regime. For example, it would have to draw up and maintain an approved publication scheme. That example sounds ridiculous, but it shows the problems with the amendment's indiscriminate, catch-all approach.

Scottish ministers would have a statutory obligation to make a designation order in respect of any such transfer of functions, which would mean that ministers would have to be omniscient. For example, they would have to know that local authorities had put a village hall into the hands of a community group.

I do not think that Mr Matheson intended such a consequence and I acknowledge his point about more major transfers of functions. However, it is not as if no safety net exists in such circumstances. Provisions allow providers of

services to the public to be added to the bill case by case, and I reassure the Parliament that that power will be exercised. I hope that Executive amendment 26, which we will reach later, will be agreed to, because it further reinforces the provision to give the commissioner the express power to make recommendations to ministers about the scope of the bill. I hope that that is of particular reassurance.

15:00

It is important to point out that the bill imposes a substantial range of responsibilities and statutory duties on the public authorities that are brought under the powers of the bill. That is the reason for the Executive choosing carefully the route of listing the bodies that would be covered by the bill. The inclusion of the list means that no one should be in any doubt about the fact that they are covered and that they must respond and make provision for the range of statutory duties that will fall upon them.

As I have said, we have made provision to allow ministers to designate other bodies to be added to the list, in particular in the circumstances of a major transfer of functions. I strongly urge the Parliament not to support the indiscriminate approach that is proposed in amendment 63, but to support the scheme as set out in the bill.

The Deputy Presiding Officer: Christine Grahame indicated that she wished to speak after the minister. I will give the minister another chance to reply before I call Michael Matheson.

Christine Grahame: The opportunity to speak has come quickly—I expected other members to come in.

I speak in support of amendment 63 and remind the minister of a recommendation in the Justice 1 Committee's stage 1 report. The recommendation, on which the committee was unanimous, relates to the provisions of amendment 63. I quote from paragraph 10:

"The Committee is concerned that many public services are provided through private/public partnerships and private finance initiatives, as well as by voluntary and community organisations, and that these organisations will only be covered by the provisions of the Bill if designated by Ministers. Whilst the Committee acknowledges that it would not be practical to list all such organisations in the Bill, it recommends that the Executive should look at whether an appropriate form of words could be inserted into the Bill to ensure that such bodies are automatically covered by the legislation, without the requirement for Ministers to designate these organisations as public authorities."

I accept that the minister has moved to a position in which he will consult the commissioner before he designates organisations. However, there is still the problem that the power remains with the minister to designate or remove. I remind the minister that the Justice 1 Committee was

unanimously unhappy with that power.

Mr Wallace: We have, of course, considered the matter. As I indicated to the Parliament, the consequences of Michael Matheson's amendment would go far beyond the big cases. We are not talking only of consultation with the commissioner. Amendment 63 proposes that the commissioner would be able to make a recommendation, off his or her own bat, of which ministers would be expected to take account. If ministers did not do that, I rather suspect that a number of members would ensure that they did.

In my earlier remarks, I indicated that the power to designate bodies on a case-by-case basis is one that we intend to exercise. As that power requires statutory consultation, it would be invidious to name individual companies for fear that, at a later stage, we might fall foul of people saying that ministers had not engaged properly in consultation. We all know the kind of companies and operations that are under consideration. As I said, it is our intention to proceed with consultation with a view to adding bodies to the list. The important point is that those bodies should know where they stand. They should not receive a request and be able to say that they did not realise that they were covered by the legislation.

From the point of view of the applicant, and of the public authority, there should be no doubt whether the act, with all its implications, applies to a particular body.

Michael Matheson: It is important that members are reminded of the Justice 1 Committee's recommendation at stage 1, which Christine Grahame highlighted. Members will also be aware that there is an increased incidence of the transfer of public services to the private sector. I have often heard members complain of the difficulties that are involved in obtaining accurate information from those private sector organisations.

In the course of the evidence that the committee received, and which is contained in its report, Glasgow City Council stated that it believed that:

"private organisations carrying out public functions should automatically be covered on the principle that 'openness is the price of doing business with the public sector'."

I believe that a general provision should be made for public services that are transferred to the private sector. The problem with the system that the bill will introduce has been illustrated by the fact that, in the couple of weeks between stage 2 and stage 3, eight organisations have been taken off the list and one has been added. On that basis, I will press amendment 63.

The Deputy Presiding Officer: The question is, that amendment 63 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Harper, Robin (Lothians) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Paterson, Mr Gil (Central Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)

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

The Deputy Presiding Officer: The result of the division is: For 44, Against 64, Abstentions 0.

Amendment 63 disagreed to.

Section 6—Publicly-owned companies

The Deputy Presiding Officer: We move to the fifth group of amendments. Amendment 1 is grouped with amendment 2.

Michael Matheson: It seems unreasonable that a company that is wholly owned by the public sector should be subject to the bill's provisions, but that a company in which private members hold a minority interest—[*Interruption.*]

The Deputy Presiding Officer: Order. There is still too much private conversation in the chamber. Members cannot hear the debate. Any private conversations should be held outside the chamber.

Michael Matheson: As I said, it seems unreasonable that a company that is wholly owned by a public authority should be subject to the bill's provisions, but that a company in which private members hold a minority interest should not be. It would be easy for any public authority in such a position to sell its shares in such a business to ensure that the bill did not apply to it.

For example, City of Edinburgh Council has a majority share in Savacentre, and the UK Government has a majority share in National Air Traffic Services. If it is fair for the public sector to take a private interest in such services, the bill should also apply in the circumstances where that happens.

Amendment 2 is consequential on amendment 1, as it provides a definition of the phrase "controlling interest". As it stands, section 6 applies only to companies that are owned wholly by one public authority, and does not apply when a company is owned jointly by several authorities.

Perhaps I am being slightly paranoid about this matter. However, local authorities are increasingly entering into partnerships with the private sector to provide services. It is important that we ensure that those services are included in the provisions of the freedom of information regime.

I move amendment 1.

Mr John McAllion (Dundee East) (Lab): When the minister replies on this group of amendments, will he address the situation that exists in Dundee? Dundee City Council has a 40 per cent share in the waste-to-energy plant that is run by Dundee Energy Recycling Ltd. If amendments 1 and 2 are not agreed to, could that plant, which deals with all the waste from Dundee as a public service, refuse to provide information to me as a local MSP, or to anyone else who sought such information, about the company under a freedom of information act?

This is an important matter. I understand that, in response to the new round of public-private partnerships in schools, which has been promoted throughout Scotland by the Scottish Executive, Dundee City Council is proposing a model whereby the council will have a share in the PPP business that runs those private schools. In those circumstances, could a company refuse to provide information to elected members on the basis that the freedom of information act did not apply to it?

Phil Gallie (South of Scotland) (Con): I was minded to support amendment 1, but Michael Matheson used National Air Traffic Services as an example, which causes me concern. National Air Traffic Services could well be in international competition in the not-too-distant future, and our air traffic control services could be looked at from across Europe and perhaps from Ireland. If commercial information that was close to the

requirements of National Air Traffic Services were to be passed abroad, that would give me concern. Perhaps Michael Matheson could address that point when he has the opportunity to do so.

Christine Grahame: I support amendment 1. As the minister knows, there was an extensive debate among members of all parties at stage 2. Gordon Jackson's contribution was, as usual, invaluable. He said:

"The minister says that he would designate bodies under section 5 and I have no doubt that he would, but there is no power to make the Executive make a designation under section 5. If an Executive wanted a loophole, it has got it. It could cut its holdings in a body down to 95 per cent and then not designate it. Such bodies would no longer automatically be subject to the provisions of the bill, because they would not be wholly owned and the Executive could decide not to designate them."—[*Official Report, Justice 1 Committee*, 5 February 2002; c 3179.]

That would be true of any Executive, because this is a bill for all time.

During the same meeting, when Michael Matheson raised the matter, Jim Wallace said:

"I will do my best to find a way to address the potential abuse that members have highlighted without that having unintentional damaging effects."

I asked, in my role as convener, whether that was an undertaking and the minister replied:

"Yes. I will address the potential for abuse that has been highlighted."—[*Official Report, Justice 1 Committee*, 5 February 2002; c 3180.]

The minister was courteous enough to send me a letter on 18 April, which addressed other matters that were raised at stage 2, but that issue was not addressed. I look forward to the minister's answer. As I understand it, if the public own only 99 per cent of a company and 1 per cent is privately owned, and if the Executive—an Executive of any colour—takes the view that it will not designate that company, it will not be designated.

Donald Gorrie: I am sympathetic to the point that Michael Matheson is making. In fact, I lodged an amendment in similar terms.

I know that Executive ministers are concerned about amendment 1 as it stands. It would help if they could at least give absolute assurances on various points connected with companies providing public services. It would help if ministers could guarantee that they will respond to requests from John McAllion and others to put a body on their list under section 7, which concerns public authorities to which the act has limited application. Part of the Executive's argument is that some companies in which public authorities have a controlling interest but not the whole interest may be involved in the private sector, and that it would be unreasonable to pursue commercial information there.

If the ministers give us a guarantee that they would respond favourably, go through the consultation process and designate the sort of companies that Michael Matheson and John McAllion have mentioned—and the ones that are dealt with in section 5—I might reluctantly go along with them.

15:15

Lord James Douglas-Hamilton: We are minded to support this group of amendments. We feel that when ministers and public authorities have a controlling interest in companies, they should be subject to the bill.

I would be grateful if Michael Matheson could answer Phil Gallie's points about air traffic control. Section 33, which is about commercial interests and the economy, mentions that information is exempt when:

"(a) it constitutes a trade secret; or

(b) its disclosure under this Act would ... prejudice substantially the commercial interests of any person (including ... a Scottish public authority)."

Perhaps Michael Matheson could clarify that point. We are minded to support this group of amendments, subject to clarification of the exemptions.

Mr Jim Wallace: Again, we have considered the amendments. Following exchanges in the Justice 1 Committee, we have looked to see whether there are ways in which a potential problem could be addressed without giving rise to unintended consequences.

It is perhaps illusory to think that we can automatically close a loophole. Wherever the threshold is set, the shareholding could be arranged or rearranged to fall below that level. If, for example, we were to say that the threshold was a 40 per cent holding by a public authority, no doubt someone would have the good idea of reducing the shareholding to 39 per cent. That is why I believe that the approach that we have suggested is one that should commend itself, because it provides the power to add companies with regard to specific functions that fall within the public sector. It is important to acknowledge that freedom of information focuses on the public sector. I recognise, as several members have said, that important public services are delivered by bodies other than public authorities. That is why the bill contains powers for such bodies to be covered.

John McAllion asked whether the Dundee waste plant, which has a 40 per cent local authority shareholding, would be covered by the legislation. The first point that I will make is that amendment 1 would not cover that situation, because 40 per

cent is not a “controlling interest”. However, the scheme of the bill is such that if a case was made and, after consultation, we thought that it was appropriate for a company to be covered, it could be covered under our bill. However, that would not be the case under amendment 1.

Donald Gorrie sought an assurance that we will guarantee to respond to requests. I have legal difficulties in saying that we would implement automatically every request that we received, because that would render nugatory any commitment to consultation. We could find that bodies that were due to be designated could say that we had fettered our discretion. That would be self-defeating. We would certainly want to consult on any cases that were put to us and I have given a clear commitment of our intention to use the powers that are in the bill.

In response to Christine Grahame’s point, we have not left the matter purely up to ministers or helpful members of the Parliament who might draw matters to our attention. We also give the commissioner—an independent commissioner—a specific power to draw to ministers’ attention bodies in which there is a public sector interest, and to whose public functions the commissioner believes ministers should consider the extension of freedom of information legislation. I say again that that will carry tremendous force when it comes from an independent commissioner, no doubt backed up by members of the Parliament who would want the Executive to respond.

Some unintended consequences would flow from Michael Matheson’s amendment 1. I can answer the point about national air traffic control; it is a reserved matter that would not be covered by Scottish freedom of information legislation.

However, some interests might be prejudiced by amendment 1. For example our universities, which as public authorities will be covered by the bill, are encouraged to forge links with Scottish industry and to look for commercial applications for their research. As a result, universities regularly establish companies with a variety of partners, including some in the private and charitable sectors. Amendment 1 would impose a severe and unnecessary burden on such companies and would undermine their ability to compete effectively in the private sector. The measure might well damage the capacity of universities to generate income from sources other than public funding. The companies involved are intrinsically private. They bear no comparison to public authorities and I believe that it would not be appropriate for freedom of information legislation to cover them. Most members want universities to develop the excellence that exists and I do not want to be in the business of putting unnecessary burdens or disincentives in universities’ way.

Amendment 1 would mean that the freedom of information regime applied to all functions of any company that will be included. Coverage would not be limited to functions that could be considered to be of a public nature. However, the coverage of companies that are added to the bill under section 5 will be limited to their public functions. As I said in the debate on the previous grouping of amendments, I have no doubt that the bill’s approach to defining coverage is appropriate. Public authorities, which are at the heart of the bill, are listed in schedule 1. Wholly owned companies that are, in fact, emanations of public authorities, are covered automatically. Other bodies can be added case by case.

Many bodies outside the public sector deliver important public services. There should be no doubt about ministers’ commitment to using the powers in the bill to catch those bodies. I repeat that we have lodged an amendment that will be considered later, which will give the commissioner an express power. I believe that that is the correct approach, which will cover the kind of circumstances that John McAllion mentioned.

Mr McAllion: Will the Scottish Executive, as a matter of policy, give a commitment that it will use the powers to which the minister referred to designate private companies that exist expressly to deliver public services?

Mr Wallace: I have given as good a steer as I can. It is our intention to use the powers. The obvious candidates are cases in which important public services have a private-company element. I cannot give an absolute guarantee because that might be said later to have fettered ministerial discretion or to have rendered any consultation process a sham. Where there is public and private involvement in important public services, we will seek to use the powers. Given that, I ask Parliament to reject amendments 1 and 2.

The Deputy Presiding Officer: Alex Fergusson has asked to intervene. Is it a new point?

Alex Fergusson (South of Scotland) (Con): It was a mistake, Presiding Officer.

The Deputy Presiding Officer: In that case, we will conclude the debate on the grouping with Michael Matheson.

Michael Matheson: The minister mentioned Phil Gallie’s point about air traffic control. Perhaps my use of air traffic control as an example was not wise because air traffic control is covered by the UK regime, which means that amendment 1 would not affect it and that the Scottish freedom of information regime will not apply to it.

Christine Grahame reflected on the serious concerns of the Justice 1 Committee at stage 2. We have not been provided with the reassurances

that the minister gave when he spoke to the committee on the issue. Donald Gorrie and John McAllion also sought reassurances. We must keep it in mind that the bill will become legislation. A different minister or Executive could have a different interpretation of the legislation and its application. It is all very well for the minister to give his personal reassurance, but that is based on his being the minister who will make decisions in future.

I turn to the minister's comments. A number of issues must be corrected. John McAllion asked whether, if a local authority has an interest in a private company, the freedom of information regime will apply to that company. The answer is that it will not. Will we have to go to the commissioner to ask that he or she recommend to ministers that such a company should be covered by the regime?

Mr Wallace: In our efforts to add another goad—as it were—to the Executive, we are not saying that someone would have to go to the commissioner to persuade the commissioner to persuade the Executive. The Executive could still consult and take initiatives off its own bat, perhaps on the basis of a representation from Mr McAllion or Mr Matheson. The purpose of amendment 26—which we have still to discuss—in relation to the commissioner, is to add another avenue whereby the Executive could have its attention drawn to such matters. I believe that there would be a lot of moral pressure on the Executive to do so.

Michael Matheson: I welcome the minister's clarification. However, it is wrong to give the impression that amendment 1 will alter those provisions. It will not. Amendment 2 makes specific reference to a controlling interest,

"if a majority of shares in the company are held".

If, for whatever purpose, a public authority takes a 5 per cent interest in a private company and members persuade the minister, or the minister chooses, to have it covered by the freedom of information regime, I would have thought that the bill should automatically apply to a public authority that took a controlling interest—a majority interest—in a private company. We should not have to consider whether the legislation should apply to such a company—that is the difference. Amendment 1 would not alter what John McAllion said or the minister's point to him. If a public authority takes a majority interest in a company, we have an obligation to ensure that the freedom of information regime applies to it.

On universities and the impact that the bill may have on them, section 33 deals with commercial confidentiality. I do not see why any public authority should take a controlling interest in an important service without some public

accountability in terms of providing information. It is important that members are clear that there are two ways in which matters can be dealt with. We can leave it to ministers and the commissioner to do all the work, or we can ensure that when a public authority or group of public authorities takes a majority interest in a private company, the bill automatically covers them, instead of waiting for the Executive or the minister to act.

Phil Gallie: The minister gave a couple of examples on the effect that the bill could have on universities, with respect to setting up private partnerships, particularly on research. Could Mr Matheson give me an assurance that those research elements would be exempted under the bill?

Michael Matheson: I refer Mr Gallie to section 33, which deals with commercial interests specifically to provide exemption for commercially confidential matters. I know that research matters will come up later. If an important public institution such as a university takes a majority controlling interest in a private company, should not the public have the right to information about that? I believe that they should. That is what amendment 1 would ensure. If a university chooses to take only a 5 per cent interest, amendment 1 would not affect it. It must have a controlling majority shareholding in the company.

Dr Simpson: There are two points to make. First, when universities are in relationships with venture capitalists, the latter will want the universities to take a majority shareholding. Secondly, because of the way in which amendment 1 is worded, agreement to it would mean that the bill would not apply only to the public functions of the joint company, but to its private functions. That is a point that Michael Matheson has not addressed.

Michael Matheson: There are provisions in the bill that will apply to universities as public authorities. Amendment 1 would mean merely that, if a university took a controlling interest, the bill would also apply to it. I see no reason why it should be otherwise. If it is, we will end up with a two-tier system in which it is okay for the private sector to take a majority interest in a private company, but a different standard will be applied to the public sector. Amendment 1 is about continuity and equality in the provisions of the bill. I therefore press amendment 1.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

AGAINST

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

Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Gorrie, Donald (Central Scotland) (LD)

The Deputy Presiding Officer: The result of the division is: For 43, Against 61, Abstentions 1.

Amendment 1 disagreed to.

Amendment 2 not moved.

15:30

Section 7—Public authorities to which Act has limited application

The Deputy Presiding Officer: We move to group 6. Amendment 64, in the name of Donald Gorrie, is grouped with amendment 76. In terms of the limits that were set by the timetabling motion, we have only four minutes left, Mr Gorrie. We are almost up against the buffers.

Donald Gorrie: The purpose of amendment 64 is to temper the bill's pressure on small organisations. For example, the bill might catch small housing associations and village hall committees. Amendment 64 endeavours to allow the commissioner to say that rules can be relaxed for small organisations.

The minister's position seemed to be that either

all organisations are included in the bill's provisions or all are excluded and that it would not be possible for the bill's provisions to be less rigorous for some organisations. If the Executive is unwilling to accept amendment 64, it must consider the effect of excessive bureaucracy on small organisations. I can be boring on that subject, but I will not have an opportunity to be so today.

I seek assurances from the ministers that the commissioner will be able to examine the position of small organisations and perhaps produce ready-made structures for them that would ensure that they do not have to work out the meanings of large forms, but could just sign a form, put it in a drawer and not involve themselves in lots of work. The bill aims at a good outcome, which is public accountability and public information. However, some small organisations do not have the resources to reply adequately to all the demands that might be made of them. I will listen with interest to the minister.

I move amendment 64.

The Deputy Presiding Officer: We have two minutes left, Mr Matheson, so I will go straight to the minister, if you do not mind.

Dr Simpson: I will be brief. I am grateful to Donald Gorrie for explaining the thinking that lies behind amendments 64 and 76. It is clear that both amendments are well intentioned. I understand exactly what Mr Gorrie is trying to do; he is trying to make less onerous the bill's burden on small groups. However, we consider amendments 64 and 76 to be impractical and therefore unnecessary in the context of how the bill is intended to operate.

The key point is that the bill's provisions will work together as an integrated package and are indivisible. It is not possible to restrict the bill's application so that only particular sections will apply. For example, it would be inappropriate to remove the right of access or the obligation to devise and make available a publication scheme. In other words, we do not consider that it will be possible to partition the bill in such a way as to establish a lesser freedom of information regime that would impose fewer obligations on some public authorities.

Moreover, amendment 64 does not specify the fact that the application of the bill might be restricted, nor does it specify the criteria on which the Scottish information commissioner would arrive at the opinion that an authority had only limited resources. Limitation of coverage—in so far as the act will apply to specified categories of information—is already provided under section 7. I will not go into the scheduling behind that.

We understand the intention behind amendment

64, but feel that it is inappropriate, and I ask Donald Gorrie to withdraw it. We will, however, pursue the matter of providing appropriate guidance and help to small organisations.

Amendment 64, by agreement, withdrawn.

Section 8—Requesting information

The Deputy Presiding Officer: We completed that group of amendments just before the bell. We now come to group 7. Amendment 12 is grouped with amendments 56, 22, 58, 28 and 36. I point out that amendment 12 does not pre-empt amendment 56 and that amendment 22 does not pre-empt amendment 58. In other words, if amendment 12 is agreed to, amendment 56 can still be agreed to and if amendment 22 is agreed to, amendment 58 can still be agreed to.

Mr Jim Wallace: The four Executive amendments in this group—amendments 12, 22, 28 and 36—address an issue to which the Parliament is right to give much attention and which my officials have discussed in detail with the Disability Rights Commission. The four amendments have the commission's support.

It has been our policy from the outset that it is to the benefit of both the applicant and the authority in question to have a clear, verifiable record of precisely what was requested and when. Not only does that support the effective administration of a request, it will be of particular importance in the event of some dispute, particularly an appeal. That was why the bill as introduced stipulated that requests should be in writing.

However, the Justice 1 Committee made it clear that disabled people must be able to use other formats that reflect their needs. In the course of our discussions with the Disability Rights Commission, it became apparent that the policy should require that any format is appropriate as long as it provides the applicant and the authority with a clear permanent record of the request. The Executive amendments assure just that. Any format may be used as long as it can provide the authority and the applicant with a clear record of the request. Amendments 56 and 58 make no reference to permanency, and would not ensure that applicants and authorities had a clear record of the request.

Concern has been expressed about how requests over the telephone, for example, would be handled. Let me explain clearly how that would work. If an authority received a phone request from an applicant who was unable to make a request in writing or some other permanent format, that authority would be under a statutory duty to provide advice and assistance. The authority would be obliged, by a legal duty, to help the person to make a formal request.

In such a case, the authority could record the request on to an audio tape, for example, which would ensure that there was a permanent record of it. Our four amendments in this group provide for a permanent record, which is essential and which works to the benefit of the authority and, moreover, the applicant. Read with the rest of the bill, they ensure that those who are unable to make a request in a permanent format are given all the assistance that they need to make a formal request.

Kate Maclean (Dundee West) (Lab): Would the onus to record such a telephone request in a permanent format be on the authority in question or on the person making the request?

Mr Wallace: I am grateful for that question. I draw the attention of Kate Maclean and the Parliament to section 15, which sets out the following statutory duty:

"A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it."

That duty, supplemented by the code of guidance, means that responsibility will fall very much on the shoulders of the public authority. It would have to put the request of a person who, for whatever reason, was not capable of making it in a formal way into a form that triggered freedom of information.

The Disability Rights Commission particularly welcomed the fact that amendments 12, 22 and 28 make no specific reference to disability. Many people do not consider themselves to be disabled as defined by the Disability Discrimination Act 1995. Others are unable to make a request in writing for reasons other than disability, such as illiteracy. Any applicant may make a request in any form, provided that it can be used for subsequent reference.

In its briefing for stage 3, the disability agenda Scotland consortium said:

"Disabled people should have the same right to information as non-disabled people. No more, no less."

We believe that these amendments, together with the commissioner's powers and the guidance, can and will deliver that.

The Executive amendments apply to all three sections that deal with the applicant's engagement with the appeals procedure. The initial request for an appeal, the requirement for an internal review and the appeal to the commissioner are all covered by the amendments. It should be noted that amendments 56 and 58 would not cover an appeal to the commissioner.

I ask Parliament to support the Executive amendments, which have been developed with the

Disability Rights Commission and which relate to an issue that we took very seriously. We worked hard to devise amendments that address the concerns that have been expressed. I also ask Parliament to reject amendments 56 and 58, as I firmly believe that they could work against the interests of both authorities and applicants. A clear record of request will be to the benefit of both parties.

I move amendment 12.

The Deputy Presiding Officer: I invite Lord James Douglas-Hamilton to speak to amendment 56 and the other amendments in the group.

Lord James Douglas-Hamilton: In our view, if Parliament proceeds with the bill, the rights of the disabled should be enshrined fully in the legislation. I am very grateful to the Royal National Institute for the Blind, supported by other charities involved with disability, for highlighting the problems that are faced by those who suffer from blindness and other disabilities. The amendments in my name were lodged with the support of RNIB Scotland, the Royal National Institute for Deaf People Scotland, ENABLE, Capability Scotland, the Scottish Association for Mental Health and Sense Scotland.

As the minister has confirmed, section 8 contains the expression

"in an alternative format".

That is of particular importance to those who are blind or partially sighted, as it is the standard phrase used to describe alternatives to print, such as Braille, audio tape, large print or disk. To add the words

"or made by alternative means",

as amendment 56 proposes, would ensure that the interests of a wider group of disabled people are protected. Such means could include the use of text phone or British Sign Language interpretation. Amendment 56 is altogether reasonable and would protect the rights of disabled persons.

The omission of the phrase

"or made by alternative means"

may be inadvertent, but we should be very sensitive to the needs of those citizens who, through no fault of their own, are disabled. Those persons may have sensory disabilities, including hearing or sight loss, or learning disabilities.

The difficulty with amendments 12, 22 and 28 is that they include the expression "some permanency". Unfortunately, that will have the effect of excluding those disabled persons whose disability prevents them from making a communication that has some permanency. I will

provide the Deputy First Minister with some examples. A blind person might telephone an authority to request information because they cannot write. A deaf person might use the services of TypeTalk, which involves sitting at a keyboard and typing a message to an operator, who relays it verbally. Would those methods of making a request have permanency? Neither the minister's amendments nor the bill as it stands indicates whether a request made by TypeTalk or by telephone would have some permanency. That is why I think that the minister's approach to this matter is defective and that further sympathetic consideration needs to be given to the interests of the disabled.

Amendment 36, in the name of the minister, is not strictly necessary. It would be necessary only if the bill contained no provisions to protect the interests of the disabled. It was the unanimous view of the Justice 1 Committee that the rights of the disabled should be included in the bill. If that premise is accepted, it follows that it is desirable to include a definition of discrimination. Such a definition is included in the Disability Discrimination Act 1995. It is appropriate to use that definition, as we are not seeking to invent a new definition. On behalf of the disabled, we will press amendments 56 and 58 to a vote.

The Deputy Presiding Officer: I must keep my eye on the clock, so I ask members to keep their contributions reasonably tight.

15:45

Maureen Macmillan (Highlands and Islands) (Lab): I was one of the signatories to the original amendment at stage 2 that put the requirement for applications that were not made in writing to be accepted from people with disabilities. I was especially concerned by the Executive's amendments, because the original stage 2 amendments were unanimously supported in committee. However, I have listened to the minister and I accept that our original amendments were too narrow. They excluded people who would not come under the bill because they are not disabled but who cannot read or write. The Justice 1 Committee asked specifically for people with literacy problems to be included, but the committee's amendments did not make provision for a permanent record to be kept of a request, which would obviously disadvantage the applicant. Permanent records do not need to be kept in writing—they can be kept as audio records. There are many ways of keeping a permanent record.

I welcomed the minister's explanation of how things will work in practice. He mentioned that the code of guidance to local authorities will explain what best practice is. When the bill is enacted, I ask the minister to monitor how the measures in

question work. I seek his assurance that if the proposed set-up does not work well and does not advantage disabled people and people with literacy problems, the code of guidance will be tightened up.

Donald Gorrie: I found the issue very difficult. I am sure that all members wish to ensure that disabled people have full access to the opportunities that this excellent bill will afford. How is that to be achieved? Some people who are conversant with disability support the Executive's amendments; other people who are well-versed in disability denounce the Executive's amendments.

The Executive's proposals are reasonable—the full range of people will be covered by the section that deals with the requirement on the public authority to give assistance and by the sections that say that disability rights apply across the board. I seek an assurance that there will be full consultation with the various groups—some of which are still unhappy with the Executive's proposals—in drawing up the code of practice and that the points that those groups raise will be fully met in the code of practice. If that is done and the bill is enacted in good faith, the disabled community will be fully catered for and will have a fair deal. On that basis, I am prepared to go along with the Executive.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Like Maureen Macmillan and Donald Gorrie, I had some anxiety about the Executive's position on the issue. I welcome the assurance that the Deputy First Minister gave and therefore will not support amendments 56 and 58.

We must pay careful attention to what the Deputy First Minister says about the needs for permanency. Those needs do not amount to a kind of civil service explanation of what the Executive wants; rather, they represent an attempt to assure people who make requests of central Government or of local government that they can rely on the information that is given to them and that they can act on that information. That is an important factor.

I am not convinced that the instance that Lord James Douglas-Hamilton gave would be outwith the ambit of the arrangements for permanency. I would be interested to hear the Deputy First Minister's view on that.

I welcome what the minister said about the onus lying on the authority.

Like Donald Gorrie, I urge on ministers the need to ensure continuing dialogue with people with disability and the organisations that represent them, both on implementation, which will be key, and to ensure that equality of access is a key principle of the FOI regime. No one in the chamber would demur from that principle. I suspect that—

The Deputy Presiding Officer: Briefly, please.

Brian Fitzpatrick: People with disability and their organisations should be closely involved in monitoring the efficacy of those arrangements. With those assurances in mind, I am content to accept the Executive's position.

The Deputy Presiding Officer: I call Michael Matheson—briefly, please, Mr Matheson.

Michael Matheson: I will be brief, Presiding Officer.

I note that there has been considerable concern in the disability community about this issue. RNIB Scotland, in its briefing, Capability Scotland, Enable, Sense Scotland and the Scottish Association for Mental Health all expressed that concern. My comments refer particularly to the Executive's amendment 12, which will delete a provision that was inserted at stage 2 to make specific provision for disabled people. I believe that amendment 12 is a step backwards and does not provide disabled people with the assurance that disabled organisations believe is required to ensure that the bill's provisions are implemented equally for everyone, irrespective of whether they have a disability.

Dr Simpson: This debate has been helpful. I hope that we have reassured people about our intention, which Brian Fitzpatrick put clearly, that the bill should be about equality of access for all our citizens. That is a key principle in the bill. That principle should also apply to all disabled persons—there should be no discrimination between different groups of disabled persons.

The issue of permanency is important. We do not want the person who receives a request for information to get out of that request because they have made no permanent record of it. We are determined that the authorities that fall within the scope of the act ensure that they achieve the means by which all our disabled citizens have their request for information recorded in whatever form is appropriate to their disability. That is a crucial point. To use James Douglas-Hamilton's example, if someone who is blind were to telephone with a request, they would be offered the opportunity of having that request recorded in a way that would allow them to verify it. It is not only the recording and permanency of the request that are important, as the person who makes that request will have the opportunity to verify what they are requesting. The same applies to people who are deaf.

The problem with amendment 56 is that every telephone call—that is, calls made by everyone, not just by disabled people—would constitute a request for information under the act and would therefore have to be recorded in some way. That would create a major bureaucratic problem. We believe that amendments 12, 22, 28 and 36 cover

the situation appropriately. Through the use of a statutory duty and a legal duty, we will require the authority to respond to the needs of the applicant.

Other points were made in the debate. Both Maureen Macmillan and Brian Fitzpatrick referred to the question whether we would monitor the outcome of our amendments. Not only will we monitor that outcome, but the Parliament, through its Equal Opportunities Committee, must monitor it. In addition, the commissioner will monitor it and report on it to the Parliament.

We give an undertaking to consult fully the organisations that Michael Matheson mentioned when we determine the code of practice, to ensure that any unintended consequences of our amendments for those organisations are not followed through. We will ensure that disabled people have appropriate access under the bill. I hope that members will support the Executive's amendments and reject those of Lord James Douglas-Hamilton.

The Deputy Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)

Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 67, Against 42, Abstentions 0.

Amendment 12 agreed to.

Amendment 56 moved—[Lord James Douglas-Hamilton].

The Deputy Presiding Officer: The question is, that amendment 56 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)

Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 42, Against 64, Abstentions 0.

Amendment 56 disagreed to.

Section 9—Fees

The Deputy Presiding Officer: We move to group 8. Conscious that the clock stops at 16:21, I ask members to make their contributions tight, as I

want to get in a debate on group 10.

Amendment 57 is grouped with amendments 15, 16 and 19.

Lord James Douglas-Hamilton: Amendment 57 deals with potential extra costs. It would ensure that

“any fee charged by the authority for information provided other than in writing, by reason of the applicant’s disability, does not exceed the fee which would be charged for the same information in writing.”

The amendment was lodged with the full support of RNIB Scotland and other disability charities with an interest in the subject.

The amendment would not affect any of the bill’s charging provisions. Whether and when authorities levy charges would be unaffected—the amendment seeks to prevent the extra costs that might be incurred in providing information in an alternative format or means from being passed on to the disabled applicant.

The principles of fairness and equity are at stake. Disabled persons may be charged the same price for information as non-disabled persons, but they should not be asked for more funds merely to access the same information. Amendment 57 would safeguard the interests of the disabled if the bill proceeds.

Amendment 15, which the minister lodged, seeks to remove an amendment that the Justice 1 Committee unanimously agreed to. So that the Parliament understands exactly what amendment 15 will do, I will read out the words that it seeks to delete:

“if the applicant expresses such a preference on grounds of disability and the preference is reasonable in relation to that disability, the authority must give effect to that preference.”

The minister is substituting the right of a disabled applicant to express a preference and to have it acted on with a reference to the Disability Discrimination Act 1995. In other words, instead of having a positive obligation imposed on them by the bill, local authorities will merely be reminded that they should not discriminate. My point is that, if the bill goes through, it must deal with the rights of the disabled positively.

16:00

The difficulty with amendment 19 is that, again, it reminds authorities that they must not discriminate against the disabled, which they are not allowed to do in any case. We are seeking to provide the disabled with the same right of access to information as everyone else has—no more and no less. That means not only that they should not be discriminated against, but that public authorities should act positively when a severely disabled

person expresses a preference. The Justice 1 Committee wanted to go further than the Minister for Justice did in giving the disabled equal access to information. In our view, that will require a thoroughly positive approach. In committee, the minister argued strongly against amendments to that effect, but not one member was prepared to support his view.

Within the framework of the bill as a whole, the Executive's approach is not sufficient. I will move amendment 57 and press it to a vote. We cannot surrender our responsibility as parliamentarians to ensure equal freedom of information for Scotland's disabled people by merely saying, "Look at the Disability Discrimination Act." Anti-discrimination legislation is reserved to the United Kingdom Parliament, but responsibility for implementing consultative steering group principles falls to the Scottish Parliament. The fourth CSG principle is that:

"the Scottish Parliament in its operation and its appointments should recognise the need to promote equal opportunities for all."

This afternoon, I ask the Parliament to do precisely that.

I move amendment 57.

Dr Simpson: As Lord James rightly said, amendment 15 reverses an amendment that was agreed to by the Justice 1 Committee at stage 2. We fully appreciate the priority that the committee gave to disability issues. We absolutely agree—as I indicated in an intervention during the debate on an earlier section—that it is vital that the FOI regime that the bill will establish is equally accessible to all.

The Executive's amendments 15, 16 and 19 should not be regarded as a backward step—they are certainly not intended as such. The provision of information is the principle at the heart of the bill. Amendment 15 will ensure that information is provided in the format sought by a disabled applicant, except in the most extreme and unlikely circumstances. The rights of the applicant are afforded top priority throughout the bill—that has been acknowledged and welcomed throughout the bill's development. It has been suggested that our amendments would give disabled people a lesser right to information. That is simply not the case. Disabled applicants will, in practice, receive information in the format in which they need it.

However, it is not right that the circumstances of the authority should be afforded no consideration whatever. It is entirely correct that the reasonableness test should be applied and that all circumstances should be taken into account. Otherwise, an authority would have no room even to suggest that the information be provided in another format that might be equally acceptable to

the applicant and easier for the authority to provide.

I understand that there are concerns about amendment 15, but I assure members again that the amendment should not be regarded as a backward step. It is important to acknowledge the significant difference between the legal duties imposed in legislation and what will happen when the FOI regime is up and running. What will happen in practice is what is important.

I assure members that amendment 15 will ensure that, as a matter of practice, disabled applicants are provided with information in the format that they prefer, except in exceptional and extreme circumstances. The bill begins from the principle that information should be made available; that will remain the starting point under amendment 15. As the official code of practice on the application of the Disability Discrimination Act 1995 makes clear, an authority will have to have very good reason for not making a reasonable adjustment.

The Deputy Presiding Officer: I am sorry, Dr Simpson, but there are three and half groups of amendments still to discuss and we have to get through them by 16:21. If we continue with long speeches, some groups will have to be taken without any discussion whatever. I am anxious in particular that there should be some discussion on group 10.

Dr Simpson: I ask for some latitude, because the issue is core to the bill.

The Deputy Presiding Officer: Of course. You may have a minute and a half, minister.

Dr Simpson: The issue comes down not just to the Disability Discrimination Act 1995 and its code of practice, but to the information commissioner. If an applicant is in any way dissatisfied with the response that they receive from the provider of information, they can ask the commissioner to instruct the provider to provide the information in the form that they seek. The commissioner will also be able to suggest alternatives if they are available and if they are suitable and satisfactory to the applicant in terms of their disability. Under amendment 57, that cannot be suggested—the matter is left to the disabled person and no reference is made to equally acceptable alternatives.

As I said, a distinction must be drawn between the legal duties in the bill and how the regime operates in practice. We will engage with the range of bodies that Michael Matheson and others have referred to and that have been involved in discussions on the amendments. We will ensure that the guidance delivers what we all want as parliamentarians, which is to ensure the equal right of access for all disabled people and an

equal ability to obtain the benefit of the bill.

Members should agree to amendment 19 because it clarifies the situation, and reject amendment 57. If members seek further points of reassurance, my colleague Jim Wallace will respond later. Although he is not summing up formally, we believe that it is important to put such points on the record.

The Deputy Presiding Officer: In the interests of time, I hope that other members will forgo their right to speak.

Lord James Douglas-Hamilton: I make the point that issues relating to disability are so important that the Parliament should find time to discuss them. The debate should not be curtailed and our procedures should be reconsidered if it is.

The Deputy Presiding Officer: I have no leeway to work outside the terms of the timetabling motion.

Lord James Douglas-Hamilton: It would be grossly unfair and unjust if a disabled person had to pay more for information purely because their disability meant that they could not receive information in the same way as others could. It is imperative that their rights are safeguarded and that the same information is available to them at the same cost as it would be to a non-disabled person. For that reason, I strongly urge members to agree to amendment 57 and to reject Executive amendments 15, 16 and 19.

Mr Jim Wallace: Does Lord James accept that amendment 19 provides the clarification that he seeks? The reference to the Disability Discrimination Act 1995 provides that the extra costs cannot be passed on to an applicant. That will be clear in the bill and in the guidance—in many respects, the issue will be more transparent than it would be were amendment 57 agreed to.

Lord James Douglas-Hamilton: The minister argued strongly in committee against including any such provisions in the bill, because he wanted them all to be included in the guidance. However, the committee whole-heartedly rejected what he had to say. Amendment 16 expresses the matter negatively by saying that people are not allowed to discriminate against the disabled. We all know that; it is already provided for in legislation. I ask members to consider seriously my aim, which is to express the matter positively, so that disabled persons feel that they will be taken account of properly when they submit a request. That is a small thing to ask.

The Deputy Presiding Officer: I regret the shortened time for debate, but I have to put the question. The question is, that amendment 57 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
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 Fergusson, Alex (South of Scotland) (Con)
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 Matheson, Michael (Central Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

AGAINST

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

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

The Deputy Presiding Officer: The result of the division is: For 47, Against 63, Abstentions 0.

Amendment 57 disagreed to.

Section 10—Time for compliance

Amendment 65 not moved.

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

Dr Simpson: Amendment 14 replaces an amendment that Michael Matheson lodged at stage 2. That amendment sought to ensure that any discretion that might be given to the commissioner could also be

“exercisable in response to an application made by a Scottish public authority.”

During the stage 2 debate on that amendment, we argued that, under section 10 as it was originally drafted, any discretion granted to the

commissioner could be exercised in response to such an application and on any other grounds that the commissioner deemed appropriate.

The Executive is keen to ensure clarity and to avoid any potential misconstruing of the effect of section 10(5)(b) in future. We have therefore lodged amendment 14 to replace Michael Matheson’s text with a form of words that reflects what was intended and makes it clear that any discretion given or granted to the commissioner could be exercised at the request of the authority and where no such request is made.

I move amendment 14.

Michael Matheson: The minister is correct about the amendment that I lodged at stage 2. However, the text proposed by the Executive tidies up the issue and offers the clarity required in section 10.

Amendment 14 agreed to.

Section 11—Means of providing information

Amendment 15 moved—[Mr Jim Wallace].

The Deputy Presiding Officer: The question is, that amendment 15 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

The division should take two minutes, but I will take it in 30 seconds. Is that agreed?

Members: No.

The Deputy Presiding Officer: In that case, the division will take two minutes.

I am sorry. We have to take the vote again because some buttons were pressed early. I regret that. Everyone is now here and I am going to take the vote in one minute to save time. Is that agreed?

Members: Yes.

For

Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)

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

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Hyslop, Fiona (Lothians) (SNP)

Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Maclean, Kate (Dundee West) (Lab)
 Matheson, Michael (Central Scotland) (SNP)
 McGregor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 64, Against 46, Abstentions 0.

Amendment 15 agreed to.

Amendment 16 moved—[Mr Jim Wallace].

16:15

The Deputy Presiding Officer: The question is, that amendment 16 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: I am afraid that there will be a division.

FOR

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

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

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Maclean, Kate (Dundee West) (Lab)
 Matheson, Michael (Central Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)

Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 64, Against 47, Abstentions 0.

Amendment 16 agreed to.

The Deputy Presiding Officer: I remind members that the knife falls at 16:21. There are still three and a bit groups to go.

Section 12—Excessive cost of compliance

The Deputy Presiding Officer: Amendment 66 is grouped with amendments 17 and 18. If amendment 66 is agreed to, members will not be able to vote on amendment 17.

Michael Matheson: It is difficult to hear you, Presiding Officer.

The Deputy Presiding Officer: I have asked for the volume of my microphone to be increased. We will do our best.

Michael Matheson: Amendment 66 would remove the provision by which a public authority may deem several requests to be part of a concerted campaign and refuse to answer them if the cost of answering all the requests would be more than £500. The aggregation of requests allows public bodies to ignore two or more requests if they perceive them to have come from an organised campaign and if answering the requests would cost more than the prescribed threshold figure.

Section 14 gives public authorities sufficient protection from vexatious or repeated requests. The campaigns exemption is open to abuse by public bodies, which could misinterpret several similar requests that originated from an organised campaign. Members should be minded that, in a democracy, the opinions of people who participate in a campaign do not count for less. Those people should continue to have a right to obtain information.

The Deputy Presiding Officer: Please be brief.

Michael Matheson: The Justice 1 Committee was given an example of a campaign that Friends of the Earth Scotland ran. It wrote to public

authorities throughout Scotland to request information. That campaign would fall foul of the system under the bill. I hope that members will recognise that the bill contains sufficient provisions to deal with vexatious or repeated requests.

I move amendment 66.

The Deputy Presiding Officer: We have just two minutes left.

Mr Jim Wallace: I will be as brief as I can be.

As I explained at stage 2, the Executive is firmly of the view that section 12(2) provides public authorities with necessary and practical protection against being overwhelmed by floods of requests. Amendments 17 and 18 would supplement that essential protection with provisions that require the general dissemination of information.

Members of the Justice 1 Committee will remember that I spoke about an authority in Canada that had to employ extra staff to meet requests that required the provision of 1.2 million pieces of paper. It is important to remember that the bill will apply to public authorities from the very large to the very small. Michael Matheson proposes to remove section 12(2). However, that could require an authority, even a small one, to provide information to thousands of applicants. There may be a more efficient way of providing that in keeping with the spirit of FOI.

Two concerns have been raised. The first is that section 12 is too widely drawn. Amendments 17 and 18 directly address that concern. Amendment 17 removes the words

“in pursuance of a campaign”

from the bill and replaces them with a much more specific provision. I draw members’ attention to proposed section 12(2)(c). Any authority citing section 12(2) on the ground of applicants pursuing a campaign will be required to disseminate the information that is requested. Amendment 17 proposes to move a provision from the code to the bill.

Secondly, some people have suggested that authorities will be tempted to abuse the provision. We have taken specific steps to define more tightly the grounds on which section 12(2) can be cited. That removes directly the capacity for abuse. However, the Parliament must remember the role of the commissioner. Any authority that abuses the provision will be treated accordingly, as is the case with an abuse of any other provision.

The Deputy Presiding Officer: I am afraid that the knife falls at that point. Does Mr Matheson wish to press amendment 66?

Michael Matheson: Yes.

The Deputy Presiding Officer: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGregor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)

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

The Deputy Presiding Officer: The result of the division is: For 48, Against 64, Abstentions 0.

Amendment 66 disagreed to.

Amendment 17 moved—[Mr Jim Wallace].

The Deputy Presiding Officer: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. I advise members that we are now in a run of 30-second divisions.

For

Adam, Brian (North-East Scotland) (SNP)

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Colin (West of Scotland) (SNP)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North-East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Ms Margo (Lothians) (SNP)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Matheson, Michael (Central Scotland) (SNP)
 McAllion, Mr John (Dundee East) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeish, Henry (Central Fife) (Lab)
 McLeod, Fiona (West of Scotland) (SNP)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)

Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robison, Shona (North-East Scotland) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Thomson, Elaine (Aberdeen North) (Lab)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Mr Jim (Orkney) (LD)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Mr Murray (South of Scotland) (Con)
 Wallace, Ben (North-East Scotland) (Con)
 Young, John (West of Scotland) (Con)

ABSTENTIONS

Canavan, Dennis (Falkirk West)

The Deputy Presiding Officer: The result of the division is: For 93, Against 17, Abstentions 1.

Amendment 17 agreed to.

Amendment 18 moved—[Mr Jim Wallace]—and agreed to.

Amendment 19 moved—[Mr Jim Wallace].

The Deputy Presiding Officer: The question is, that amendment 19 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)

Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 64, Against 46, Abstentions 0.

Amendment 19 agreed to.

Section 18—Further provision as respects responses to request

Amendments 20 and 21 moved—[Mr Jim Wallace]—and agreed to.

Section 20—Requirement for review of refusal etc

Amendment 22 moved—[Mr Jim Wallace].

The Deputy Presiding Officer: The question is, that amendment 22 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)

Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)

Grahame, Christine (South of Scotland) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 63, Against 45, Abstentions 0.

Amendment 22 agreed to.

Amendment 58 moved—[Lord James Douglas-Hamilton].

The Deputy Presiding Officer: The question is, that amendment 58 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)

McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Tosh, Mr Murray (South of Scotland) (Con)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West)

(LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 46, Against 65, Abstentions 0.

Amendment 58 disagreed to.

Section 21—Review by Scottish public authority

Amendment 67 not moved.

Section 22—Special provisions relating to records transferred to Keeper

Amendment 68 not moved.

Section 25—Information otherwise accessible

Amendment 69 not moved.

The Deputy Presiding Officer: We have reached the end of that timetabled block of amendments. I have taken on board what Dr Simpson, Lord James Douglas-Hamilton and other members have said about the debate being truncated. However, I should point out that I have to act within the terms of the timetabling motion that the chamber agreed to.

Section 27—Information intended for future publication

16:30

The Deputy Presiding Officer: Amendment 24 stands in a group of its own.

Dr Simpson: There has been some speculation in the press about amendment 24, and I have welcomed the opportunity to debate its provisions on the radio on at least two occasions. In explaining the purpose behind the provision, I want to dispel the myths that appear to have been created.

The issue was first raised at stage 2 when Universities Scotland made us aware of its concern that the bill did not include sufficient safeguards against the premature disclosure of

incomplete research that has not yet realised any commercial value. In fact, members of the Justice 1 Committee proposed amendments to address that concern, but they were withdrawn to allow the Executive to introduce amendment 24.

I assure members that amendment 24 does not create a broad loophole that would be open to abuse. The draftsmen deliberately settled on the specific wording, “a programme of research”, to distinguish genuine academic research from other similar processes involving simple data collection or the analysis of such data. For example, a lot of advice to ministers includes facts and figures collected by civil servants. Amendment 24 would not cover that information or prevent it from being revealed.

We must not forget that the commissioner is unlikely to be sympathetic to an authority that argues that information represents research in progress when it does not in fact do so. It has been suggested that amendment 24 is unnecessary because the bill already includes safeguards against the disclosure of commercially sensitive information. However, as I have indicated, the amendment is not intended to catch commercially sensitive information. It provides the universities and other authorities that undertake research with a safeguard against disclosing speculative research for which the commercial value has not yet emerged. If Scottish universities were required to disclose such research before any commercial value was apparent, it is easy to predict that those bodies would be unable to compete effectively with institutions in other countries for research contracts. At present, Scotland does particularly well on research contracts, and I am sure that members of the Parliament would oppose anything that might damage that.

I consider amendment 24 to be both tightly defined and necessary, and I ask the Parliament to support it.

I move amendment 24.

The Deputy Presiding Officer (Mr Murray Tosh): Members will appreciate that the time lost in debating the previous groups of amendments must be regained. We have 19 minutes left for four groups of amendments and I have received five requests to speak on this group alone. I ask members to keep their remarks very tight indeed so that we can get through all those who want to contribute. I call Robin Harper.

Robin Harper (Lothians) (Green): I have just one question for the minister. Research is frequently commissioned that might take up to five years to complete, that might involve a lot of data collection, and on which the Executive and the Parliament might rely for the development of

legislation. Accessing that research before it is finished might often be extremely useful. Would amendment 24 prevent that from happening?

The Deputy Presiding Officer: The minister will pick up on that point when he winds up.

Donald Gorrie: Ministers have made a serious attempt to answer the objections made by universities, but they are now getting counter-objections from environmental and other bodies, which try to get out of public authorities information relating to their sphere of interest. We must have an assurance from the Executive that the rules will analyse tightly the question of what constitutes "a programme of research" and will not allow people to hide behind a veil.

I support amendment 24. Like amendments 20 and 21, it is a serious attempt by the Executive to address points raised by the committee at stage 2, and so it is welcome.

Michael Matheson: There are serious concerns about amendment 24. I understand that, when the Freedom of Information Bill was introduced in England, the loophole was referred to as the MAFF exemption, because it was the Ministry of Agriculture, Fisheries and Food that pressed for the inclusion of such a provision.

I understand the concerns that the minister has expressed and the way in which the Executive has tried to address the issues. However, I would like the minister to comment on whether people who are carrying out genuine research that is not yet complete and who do not want to provide information to their competitors will be covered by commercial confidentiality exemptions. Preliminary information shared among researchers is also protected by intellectual property rights. Are not the concerns that the minister has expressed sufficiently covered by existing provisions?

A number of organisations in Scotland believe that amendment 24 is a retrograde step, and that it will leave a significant loophole in the legislation. It will be interesting to hear whether the Deputy Minister for Justice thinks that the present provisions could address suitably the issues that have been raised, without having to create a potential loophole in the bill.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): A programme of research could take many years. No time scale is mentioned in amendment 24. The minister's point that one could appeal to the information commissioner is an important one, but will guidance be given to the commissioner, so that universities cannot say, "The research is taking place over many years. We are not going to release the information"? The information commissioner should receive guidance on that point.

Dr Simpson: I will try quickly to address those points. First, on the last point, a programme of research includes a one-off piece of finite research. It does not mean a programme as Mike Rumbles and I understand it; it is a programme as lawyers understand it, which is quite different. That is important.

Secondly, we must remember that the exemption will be subject to the public interest test and the prejudice test, and that its use can be scrutinised by the information commissioner, so there are safeguards to make absolutely sure that no one uses the exemption in an inappropriate way. If that starts to happen, clearly we will have to re-examine the matter, but we feel that the amendment has been drawn tightly enough to ensure that it will address the area that we wish it to address, which is the difficult area to which Michael Matheson alluded.

If the research is in the fully commercial area, then the commercial interest measures will apply, but the area that we are addressing is that in which the research is not yet registered for intellectual property rights. We are talking about research that is probably at an early stage and which is quite speculative. A lot of the research by people such as Sir David Lane in Dundee on genetics and its spin-offs falls into that category. If the information had to be revealed at an early stage, that could be damaging to the subsequent development of biotechnology companies, because it would allow competitors to get in.

We believe that we have drawn the amendment tightly enough, but we will look to the information commissioner to have regard to the Parliament's wish that the measures should not be protective in the way that Robin Harper alluded to. It must be absolutely clear that the exemption should not be used in that way.

The Deputy Presiding Officer: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Aitken, Bill (Glasgow) (Con)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)

Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
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 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
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 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)

Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Reid, Mr George (Mid Scotland and Fife) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Smith, Iain (North-East Fife) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 74, Against 34, Abstentions 0.

Amendment 24 agreed to.

Section 29—Formulation of Scottish Administration policy etc

The Deputy Presiding Officer: Amendment 70 is in a group on its own.

Robert Brown (Glasgow) (LD): Amendment 70 takes us into the realm of the formulation of Scottish Administration policy. Under the bill, ministerial communications and background information, apart from statistical information, are to be exempt. Amendment 70 seeks to widen—beyond statistics and into facts—the range of information that the Scottish Executive would have to make available on request. A wider approach is taken in the Irish and Australian freedom of information regimes and, to a large extent, in the Scottish Executive's code of practice, which preceded the bill. The obligation under that code is to publish facts and the analyses of facts that Scottish ministers consider relevant.

It would be unfortunate if we restricted the area too narrowly. The matter is not only theoretical. A number of relevant issues have arisen in other countries and in Scotland in relation to, for example, the Maritime and Coastguard Agency, the Medicines Control Agency and MOT certificates. A number of factual matters might arise. It seems to me that there is no public policy reason why factual information, rather than the legal advice on which ministers rely, should not be in the public domain.

I gather that ministers are opposed to amendment 70, which is unfortunate. I seek

assurances that the minister will take on board the strong viewpoint behind the amendment, which the Campaign for Freedom of Information and other such bodies take, that the provision should be widened. I ask the minister to give an assurance that the commissioner will have the power to consider the matter and that a generous interpretation of what constitutes a fact will be taken by the Executive—as a matter of policy—and in the publication schemes.

I move amendment 70.

Donald Gorrie: I endorse everything that Robert Brown said.

Mr Jim Wallace: I am grateful to my colleagues for their comments, particularly to Robert Brown for his explanation of the intent behind amendment 70. As he anticipated, I cannot support the amendment, because it is inappropriate. I do not want to dwell on the fact that the amendment is unfortunately framed. The adjective “purely” is unfortunate because information is either factual or not factual. I am advised that the expression might throw into confusion some of the other references in the bill to factual information. That makes amendment 70 less than satisfactory.

There are other reasons why I wish to persuade Robert Brown to withdraw his amendment. The bill adopts a clear and appropriate approach to determining whether factual information that has been—or is intended to be—used to provide an informed background to the formulation and development of Government policy should be disclosed. Such information can be withheld only if the public interest in withholding it outweighs the public interest in disclosing it. To address one of Robert Brown's points, the bill provides an effective review and appeals system whereby an independent commissioner will be able to determine whether information should be disclosed and will be able to order such disclosure. The commissioner will be very much involved.

As was noted at stage 2—I welcome the opportunity to repeat this to the Parliament—the section 2 public interest test tips the balance firmly in favour of disclosure. The calling out of factual background information in section 29 signals the importance that is attached to disclosure of that information. Considering the bill as a whole, I think that the complementary provisions in section 23, on publication schemes, require authorities to have regard to the public interest by routinely making available facts or analyses that underpin decisions and the reasons for decisions. Such provisions for publication schemes are found only in the bill and in the UK Freedom of Information Act 2000. They are strong provisions, not simply idle references. The provisions require authorities to have regard to making information available. Of

course, the publication schemes require the approval of the commissioner.

Taken together, those provisions signal a clear expectation that facts that underpin decisions will be made public. There is a clear presumption in favour of disclosing material on which the Executive has acted, yet the bill provides a framework that recognises that it may not always be in the public interest to disclose that material. With regard to Ireland—

The Deputy Presiding Officer: Please be brief, minister. We are chasing the clock again.

16:45

Mr Wallace: In Ireland, the information becomes available only on publication and not when a decision is made. The exemption would not justify withholding information about the expected effects of policy—that would not be allowed. However, there may be circumstances in which to disclose information without any consideration even of the prejudice test could be damaging. I cited a case at stage 2 that involved a cancer cluster, in which contextualised disclosure of factual information after decisions had been made was essential. Amendment 70 would require all facts relating to such cases to lose the exemption for disclosure at a stroke, which would deprive the Executive of the option of putting that information into the public domain in a sensitised way. Although I understand where Robert Brown is coming from, there are many provisions in the bill that encourage the disclosure of factual information.

The Deputy Presiding Officer: I invite Robert Brown to respond and to press or withdraw amendment 70.

Robert Brown: I do not accept the minister's bureaucratic bits, but I accept the main intention behind what he says. In the circumstances, I seek to withdraw the amendment.

Amendment 70, by agreement, withdrawn.

Section 33—Commercial interests and the economy

The Deputy Presiding Officer: Amendment 5 is in a group on its own.

Michael Matheson: The purpose of amendment 5 is to prevent public authorities from claiming commercial confidentiality when passing information between each other. It may seem odd to talk about public authorities trying to dress things up in commercial confidentiality, but increasingly frequently, a public authority will ask another to tender for a specific service.

When the Scottish Prison Service put social work and education for prisoners out to tender and

public bodies tendered for the contract, commercial confidentiality prevented the release of information. I lodged a parliamentary question asking for the number of social workers at HMP Glenochil and at HM young offenders institution in Polmont, but the information was refused because the contracts specified outputs and not inputs, which are characterised by commercial confidentiality. It is clearly a matter of public interest to know what is happening in such public institutions, given that often—if not in all cases—the social work and education facilities are being provided by other public agencies.

In another recent case, Glasgow City Council was unable to provide information relating to the national asylum support service on the basis that it was commercially confidential. I do not believe that one public authority that is working with another should be able to dress matters up in commercial confidentiality. Amendment 5 seeks to ensure that that does not happen.

I move amendment 5.

The Deputy Presiding Officer: I am sorry, but I have to ask the minister for a very brief response.

Dr Simpson: Amendment 5 seeks to disallow any claim to the commercial exemption if the information has been passed between two or more public authorities. That is simply absurd. Commercially sensitive information does not cease to be commercially sensitive because it has been passed between public authorities. For the most part, the exemption is content based, which means that the information can be withheld only if its disclosure would cause substantial prejudice and if disclosure would be contrary to the public interest. It is the information that is sensitive; it has nothing to do with the holder.

Under amendment 5, if sensitive commercial information regarding inward investment opportunities was passed from the local enterprise company to the local authority, it could not be withheld, which could jeopardise the creation of jobs. Also under amendment 5, if sensitive commercial information regarding a rescue package for a business that was under threat of closure was passed from Scottish Enterprise to the Scottish Executive, it could not be withheld and that could jeopardise the preservation of jobs and the financial position of employees.

Amendment 5 is nonsense and I urge that it be rejected.

The Deputy Presiding Officer: I ask Michael Matheson for the briefest of responses.

Michael Matheson: I press the amendment.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
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Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)

Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McLetchie, David (Lothians) (Con)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Ben (North-East Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 32, Against 78, Abstentions 0.

Amendment 5 disagreed to.

Section 36—Confidentiality

The Deputy Presiding Officer: Amendment 71 is in the name of Michael Matheson. I am afraid that the clock has beaten us, so I ask Mr Matheson only whether he is moving amendment 71.

Michael Matheson: I intend to move amendment 71. However, I want to make a point for the record. We are debating the Freedom of Information (Scotland) Bill, but time seems to be preventing us from having a proper debate. It is clear that we must urgently review the rules in standing orders for dealing with stage 3 debates.

I move amendment 71.

The Deputy Presiding Officer: That point has already been accepted and will be considered. However, this afternoon, we are bound by the timetabling motion that was agreed.

The question is, that amendment 71 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

Members: There are no lights on the consoles.

The Deputy Presiding Officer: And lo, there was light. We will have the division.

For

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Reid, Mr George (Mid Scotland and Fife) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North-East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
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 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)

Fraser, Murdo (Mid Scotland and Fife) (Con)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
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 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
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 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 31, Against 77, Abstentions 0.

Amendment 71 disagreed to.

Section 37—Court records, etc

The Deputy Presiding Officer: Amendment 25 is in a group on its own.

Dr Simpson: Amendment 25 is a technical amendment, which seeks to put beyond doubt that all documents that are created by a court or staff during a court case are covered by the exception. That would include documents created for the purposes of the proceedings, as well as documents created in the course of the proceedings but not necessarily for the purposes of those proceedings. That would include incidental notes made by judges and staff, which would be exempt from disclosure, unless to disclose them would be in the public interest. That has always been the policy intention. I recommend that this technical amendment be agreed to.

I move amendment 25.

Amendment 25 agreed to.

Section 43—General functions of Commissioner

The Deputy Presiding Officer: Amendment 26 is also grouped on its own.

Mr Jim Wallace: It is clear from many of today's debates that some members are concerned that ministers—not the current ministers, but ministers at some time in the distant future—might be reluctant to use powers under sections 4 and 5 to extend the bill's coverage. There was much discussion about that during the debates on some of the earlier amendments in particular.

In its stage 1 report, the Justice 1 Committee suggested that the Scottish information commissioner could be given some role in the exercise of such powers. Amendment 26 seeks to allow that. It will provide that the commissioner, whenever he or she considers it appropriate, may make formal recommendations to the Scottish ministers as to which additional bodies should be covered by freedom of information. The commissioner having made such a recommendation, I am sure that Parliament would not be slow to back it up.

I move amendment 26.

Amendment 26 agreed to.

Section 45—Confidentiality of information obtained by or furnished to Commissioner

The Deputy Presiding Officer: Amendment 27 is in a group on its own.

Mr Jim Wallace: There was detailed discussion on section 45, a somewhat complicated section, at stage 2. In short, and reflecting the fact that the commissioner can be expected—almost by definition—to come into contact with a great deal of very sensitive information, section 45 sets out the circumstances under which the information commissioner may decide to disclose information

in his or her possession.

I undertook at stage 2 to lodge an amendment at this stage so that authorities could not attach a condition of confidentiality to information provided to the commissioner solely to ensure that the commissioner could not disclose it. Amendment 27, which is a rather technical amendment, would frustrate any such ploy, and I therefore ask the Parliament to support it.

I move amendment 27.

Amendment 27 agreed to.

Section 46—Laying of reports

The Deputy Presiding Officer: Amendment 72 is in a group on its own.

Donald Gorrie: Amendment 72 aims to draw attention to the question of resources, which are essential to the implementation of the bill. The bill addresses to an extent the question of the front-line resources of the people who are actually answering the questions, but it was emphasised to me during discussions with archivists that many public organisations' archives are in total disarray.

I can understand why that happens. Like many colleagues, I have served on councils where there is a choice between paying a new archivist and giving him or her improved facilities or paying a new teacher and giving him or her improved facilities. In such cases, councils will vote for the teacher. In many bodies, therefore, the archives have been the poor relation in the whole enterprise.

This excellent bill will make great demands on archives, to which many public bodies will not be able to respond. I am therefore suggesting that the Scottish information commissioner could draw the Parliament's attention to the deficiencies of a particular body's archives and get something done. The Executive could enable the authorities in question to spend more money on their archives.

There is, I understand, an argument that that would bring the commissioner into territory outwith commissionerland. However, we have just passed another Executive amendment, which says:

"The Commissioner may from time to time make proposals to the Scottish Ministers".

I do not see why my amendment, which says:

"The Commissioner may from time to time lay before the Parliament a report",

is not valid.

I think that the Executive's argument about this is even weaker than some of the Executive's arguments tend to be anyway. The Executive, whether it agrees with my amendment or not, must

give real consideration to the question of resources for archives. To talk about having an archives bill in five years' time is just not good enough. There has to be a real guarantee of proper resources, and I think that my involving the commissioner in that is the way to bring that about.

I move amendment 72.

17:00

Dr Simpson: We appreciate the motive behind amendment 72 but consider it unnecessary and, to an extent, inappropriate. Section 46 already provides the commissioner with broad general powers to report annually on the exercise of the functions that are conferred on him or her, and from time to time to submit other reports with respect to those functions, as the commissioner thinks fit. The commissioner would be able to report on the matters that are referred to in the amendment if the commissioner regarded that as appropriate—that is for the commissioner to decide. From the experience with other information commissioners, we can anticipate that the Scottish information commissioner will comment on a broad range of matters. For that reason, we regard the amendment as unnecessary.

It would be inappropriate to impose on the commissioner a formal duty to review and assess whether an authority's resources are adequate for it to maintain its archives and to discharge its functions under the act. The commissioner's role is to promote and enforce the act. I would not want extraneous functions to be imposed that could detract from the commissioner's carrying out freedom of information functions. That said, we can expect the commissioner to report on a broad range of matters. At an earlier stage, we listened when Michael Matheson raised an issue similar to the point that Donald Gorrie is making about the importance of local authorities' maintaining archives. That is a separate issue, to which the Parliament may wish to return.

If the commissioner has concerns about how authorities are coping with their duties under the FOI regime, I have no doubt that he or she will make those known. The Parliament will be able to seek a view from the commissioner if it has concerns about the issue that Donald Gorrie raises or about any other issue. The key point is that amendment 72 would require the commissioner to act as an auditor, which is very different from his or her function in other respects.

On the basis of the explanation and reassurance that I have given, and given the opportunity for future debate on the issue of archives, I ask Donald Gorrie to withdraw amendment 72.

Donald Gorrie: I am not too impressed by the Executive's response to my amendment. However, because on a number of issues the Executive has conceded what the Justice 1 Committee wanted, I will concede on this one.

Amendment 72, by agreement, withdrawn.

Section 47—Application for decision by Commissioner

Amendment 28 moved—[Mr Jim Wallace].

The Deputy Presiding Officer: The question is, that amendment 28 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)

Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGregor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 McLetchie, David (Lothians) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Reid, Mr George (Mid Scotland and Fife) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Wallace, Ben (North-East Scotland) (Con)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 62, Against 47, Abstentions 0.

Amendment 28 agreed to.

Section 52—Exception from duty to comply with certain notices

The Deputy Presiding Officer: Amendment 29 is grouped with amendments 30, 7 and 8.

Mr Jim Wallace: Amendments 29 and 30 fulfil a commitment that I gave at stage 2 to import from “An Open Scotland” the policy that a ministerial certificate would be used only in relation to information of exceptional sensitivity. Making that adjustment has meant that the drafting of section 52(2) has been amended to emphasise—within the confines of the terms of the Scotland Act 1998—that any decision by the First Minister to issue a certificate to the commissioner would be taken on the basis of consultation with all the members of the Executive. Members of the Parliament will recall that the policy intention was that such a decision should be a collective decision of the Cabinet, but the terms of the Scotland Act 1998 specifically require the First Minister to make the decision after consultation.

Michael Matheson will no doubt argue for a shortening of the relevant period; indeed, he will argue for section 52 to be removed altogether. I will address those issues. Amendment 7 would change the number of working days that the First Minister has to lay a copy of a section 52 certificate before the Parliament and to advise the original applicant of the reasons for the decision not to accept the commissioner’s opinion. At stage 2, in response to members’ concerns about the time scale, we lodged an amendment that required the specified actions to be completed not later than the 10th working day, which the Justice 1 Committee accepted.

Members will understand that we are not dealing with a significant point of principle. It is simply not practical to require both actions—not just the laying of the certificate before the Parliament—to be completed within a period of five working days. Although a period of 10 working days represents a stringent requirement, it allows some flexibility to take account of any unforeseen circumstances—fog in Stockholm, for example—that might prevent the First Minister from signing off a letter to the original applicant and laying the certificate before the Parliament.

An amendment that was similar to amendment 8, which would delete section 52, was considered at some length at stage 2. I do not need to speak at length about why I believe—some members of the Justice 1 Committee did too—that it was appropriate to retain in the bill a limited override provision, which would be used in exceptional circumstances. The provision is limited in its scope, cannot be invoked by an individual Scottish minister and does not operate to prevent the commissioner from considering an appeal. Amendments 29 and 30 make clear on the face of

the bill our long-standing policy that a section 52 certificate would be used only if the information that was requested was of exceptional sensitivity.

The provision would not undermine or weaken the bill. I do not hear it said that the relevant Irish or New Zealand acts are fatally flawed by inclusion of certificate provisions of a similar nature. As I explained at stage 2, a section 52 certificate can be issued only when there are reasonable grounds to do so and a certificate could be subject to judicial review and could be quashed, if a court was satisfied that there were no reasonable grounds for issuing the certificate. The Parliament would also have the opportunity to scrutinise the use of section 52 powers. The provision is a necessary and appropriate provision, but it is limited. It is similar to provisions that are found in comparable regimes and is part and parcel of the checks and balances that are in the freedom of information scheme. I ask members to reject amendments 7 and 8 and to support amendments 29 and 30.

I move amendment 29.

Michael Matheson: I welcome the amendments that the Executive has lodged, because they represent a welcome step in the direction of limiting the way in which the section 52 certificate could be used. It will now be possible to use such a certificate only with issues that are considered to be of exceptional sensitivity.

On amendment 8, I do not believe that a ministerial veto is necessary. The bill contains a range of exemptions and safeguards that apply to a variety of information, whether that information is secret, commercially sensitive, in the public interest or represents a class exemption. All those safeguards will ensure that information that should not be released to the public is not released. Therefore, I can see no reason for having such a backstop measure—the belt-and-braces approach that will allow ministers to veto a decision by the information commissioner to release information. That is what the ministerial veto will allow.

The minister has said much today about the fact that the information commissioner has an important role to play in engendering an open culture and ensuring that the legislation works effectively. However, the ministerial veto will allow the First Minister to overrule the information commissioner when he has directed that information should be made available. There is no justification for such provision to be made in the legislation. If anything, the ministerial veto acts in favour of non-disclosure as opposed to acting in favour of disclosure.

If ministers are intent—as it appears that they are—on maintaining the ministerial veto, it is unacceptable for them to allow themselves 10

working days before laying the certificate before Parliament. It is clear that ministers do not work at the weekend, but 10 working days is equivalent to two weeks. If ministers have consulted their Cabinet colleagues and have considered the matter seriously, surely it would be a perfectly simple matter for them to lay the certificate before the Parliament within five working days. I do not accept the minister's arguments about why there is a need for a fortnight's wait.

The only reason that ministers might want to delay laying the certificate would be in order to take the political sting out of an issue. The sooner the certificate is before the Parliament, the earlier members will be allowed to scrutinise exactly why the First Minister has acted in such a way. That is why the time scale should be reduced from 10 working days to five working days.

The Deputy Presiding Officer: I call Duncan McNeil. [*Interruption.*] Duncan McNeil, your light is on.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): There is nobody in, Presiding Officer.

The Deputy Presiding Officer: That confirms long-held suspicions.

Donald Gorrie: I welcome as a significant step forward the Executive's amendment 30, which says that the veto can apply only to information of exceptional sensitivity. Many members would like there to be no veto at all, but I accept that such a veto is a comfort blanket for some senior politicians and senior civil servants. If there were no veto, there would be widespread heart attacks in those ranks that would cause the national health service a lot of undesirable expenditure.

The veto must be reported to Parliament, although I accept that one can argue about whether that should be done within 10 days or five days. From past experience, I am sure that members would get torn into the matter and that the First Minister would have to have a good case in order to withstand that scrutiny. As the information must be of exceptional sensitivity before the First Minister and the Cabinet can use the veto, the Executive has gone a long way towards meeting our concerns. I welcome that degree of flexibility from the Executive.

Christine Grahame: I will make a brief contribution to the debate on this group of amendments. There was a strenuous debate in the Justice 1 Committee about the ministerial veto and I note that the minister has moved on the matter, albeit not far enough for some of us. For the minister to refer to the veto as an override—as he also did in the Justice 1 Committee—was a bit of sleight of language. After all, it is a veto.

I note what the minister said about the Cabinet's

collective decision on such matters. However, the problem for the chamber is that everyone in the Cabinet owes their position to the First Minister. We wonder how strong collective decision making can be in those circumstances.

At the end of the day, if the First Minister's veto is used, it will be up to Parliament to call the Executive to account. That is a matter for the justice committees. I hope that the Parliament will refer such matters to one of the justice committees, with a view to having a full debate in the chamber thereafter. The Parliament should exercise its powers over the Executive in such matters.

Brian Fitzpatrick: Christine Grahame disclosed a rather unusual view, both of the benefits for members of collective responsibility and of the pressures that are exerted on individual ministers in relation to the exercise of such powers, given their collective obligations to their Cabinet colleagues. She betrays yet again a fundamental misunderstanding of the Executive's intentions in relation to the ministerial veto. It is welcome that ministers have to satisfy themselves about the circumstances in which those powers will be applied. It is also welcome that ministers must then report to, and be prepared to stand before, the Parliament. Over the course of the past few months and years, we have not seen an unwillingness on the part of members to interrogate those decisions. Given that history, I do not think that we need to worry too much about the future.

17:15

The Deputy Presiding Officer: I call the minister to wind up.

Mr Jim Wallace: Let me remind colleagues that the circumstances under which the ministerial override could be used—they are set out in section 52(1)(b)—are in themselves somewhat limited. For example, section 29 relates to the formulation of Scottish Administration policy and has already been debated. Section 31(1) relates to information for the purpose of safeguarding national security. The ministerial override could also be used for information relating to our international relations and communications with the sovereign. The circumstances are very limited indeed.

It is also important to remember that the ministerial override is part of a bill that contains a substantial prejudice test. In all other circumstances, the bill allows the commissioner to order disclosure with the penalties and legal requirements that follow from that.

To pick up Brian Fitzpatrick's point about collective responsibility, the idea that if the First

Minister decided to use the override, all of us ministers would just touch our forelocks and agree with him betrays little understanding of the discussions that can go on inside Government. In New Zealand, the initial experience was that, when individual ministers could exercise the override, they did so on a number of occasions—so much so that it was found necessary to go back to Parliament and amend the law to make the decision a collective one. Since that happened in, I think, 1987, the collective override has not been used in New Zealand.

Dennis Canavan (Falkirk West): The commissioner is supposed to be an independent person, but Scottish Executive ministers are not renowned for their independence. Why cannot the commissioner be given the final say on whether the information ought to be released?

Mr Wallace: The reason is that in a very limited number of cases, such as in issues of national security, ministers might take the view that the information was of such exceptional sensitivity that it ought not to be disclosed. A certificate could be issued only if such a view was taken.

As Brian Fitzpatrick rightly pointed out, the certificate would need to be laid before the Parliament and could be a subject for debate. It would be for the Parliament to decide whether it wanted to remit the issue to one of the justice committees—although, having heard what Michael Matheson said, doing that might result in a longer deliberation in the committee, which could take the heat out of the debate even more. However, that is a matter for Parliament.

On the timing, I emphasise that we want to give some real substance to the provisions that allow ministers to address the issue about whether the information is of exceptional sensitivity. Decisions on such matters should not be taken lightly. I believe that 10 working days would allow proper consideration of the issues involved. The issues would obviously be matters of the highest importance. I do not believe for one moment that the Parliament would not make ministers accountable for the decision that they took.

I urge the Parliament to support the Executive amendments and to reject the amendments in the name of Michael Matheson.

Amendment 29 agreed to.

Amendment 30 moved—[Mr Jim Wallace]—and agreed to.

Amendment 7 moved—[Michael Matheson].

The Deputy Presiding Officer: The question is, that amendment 7 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (South of Scotland) (Con)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)

Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 31, Against 78, Abstentions 0.

Amendment 7 disagreed to.

Amendment 8 moved—[Michael Matheson].

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)

Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Reid, Mr George (Mid Scotland and Fife) (SNP)
 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North-East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
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 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)

McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
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 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
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 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 32, Against 78, Abstentions 0.

Amendment 8 disagreed to.

Section 62—Power to make provision relating to environmental information

The Deputy Presiding Officer: Amendment 74, in the name of Bruce Crawford, is grouped with amendments 75, 10 and 11.

Bruce Crawford (Mid Scotland and Fife) (SNP): Members who have been following the progress of this bill will be aware that the SNP has taken a close interest in incorporating the provisions of article 5 of the United Nations Aarhus convention. I have studied what Jim Wallace said in response to Michael Matheson at stage 2. It was interesting that the minister noted that

“article 5 lists a wide range of activities for public authorities, all of which promote ... dissemination of information.”—[*Official Report, Justice 1 Committee*, 5 March 2002; c 3343.]

It is true that the provisions of article 5 are wide ranging, but they are also vital with regard to the provision of, and ready access to, up-to-date, transparent and relevant environmental information for the general public.

At stage 2, the minister argued that because of the nature of some of the activities listed in article 5, it would be better for its provisions to be addressed administratively. I would like to put that

to the test and to examine more closely the specific provision that environmental information should progressively be made available on the internet. I would like to examine the Executive's plans for that.

Will the minister please tell us exactly what administrative processes will be employed? When can we expect members of the public to be able to access via the internet the type of information that is described in article 5? The minister argued that it would be better to await the revised European Commission directive on public access to information. That directive, which will come into force in December this year, is expected to translate the Aarhus convention into European Union legislation. What I find mystifying, given the minister's view that we should await the directive to deal with the Aarhus convention, is that the Executive is cherry picking articles 3, 4 and 9 of the convention for inclusion in the bill, but is not prepared to include article 5.

In any case, what guarantees can the minister provide that the European Union will translate the important provision that is contained in article 5 into the legal framework designed for member states? If that does not happen, when can we expect the provision to be brought into Scots law? I seek such guarantees because the Executive does not have a good track record on infraction proceedings brought against it by the European Commission for failure to implement EU law.

If the directive deals successfully with translating the convention into the EU framework, what instrument would the Executive employ to incorporate it into Scots law? Whatever instrument is finally applied, the desired effect will not be achieved as speedily as it would be if the Parliament were to agree to amendments 74 and 75.

It is difficult to understand why the Executive has so far resisted including article 5, given that all that we seek to do is to provide the Executive with the power to make provision if it feels that it is appropriate to do so. Is the real reason for the Executive's concern the fact that it considers that such provisions go a step too far, because section 4 of article 5 requires every country—including the UK, which has already signed up—to publish and disseminate a national report on the state of the environment? Would that tie the Executive into commitments that it does not wish to make? I might be wrong, and if so, perhaps the minister will let me know how and when the Scottish Parliament will be provided with an opportunity to debate a desperately needed report on the state of the environment in Scotland. If the minister can tell me that the Executive will produce a report and hold a debate, and when it will do so, I will reconsider my position on amendments 74 and 75.

I move amendment 74.

Robin Harper: I thank the clerks for assisting me in drafting amendments 10 and 11, which can be considered together. I propose the amendments in order that regulations on environmental information, which will fulfil Scotland's obligations as a signatory to the Aarhus convention on access to environmental information, which is referred to in section 62 of the bill, should come into force no later than one year after the bill is passed.

Amendment 10 amends section 62 such that Scottish ministers would be obliged to introduce the regulations on environmental information no later than one year after section 62 comes into force. Amendment 11 would amend section 72 regarding commencement, such that section 62 would come into force when the bill receives royal assent. Taken together, amendments 10 and 11 would therefore ensure that regulations on environmental information would come into effect no later than one year after the bill is passed.

In summary, the amendments would ensure that access to environmental information would keep up with access to other kinds of information. Any delay in providing access to environmental information would result in a two-tier system and a great deal of public confusion.

I hope that members will agree that I am proposing a very reasonable modification to the bill. I am keen to ensure that the freedom of environmental information that was agreed to when the Aarhus convention was signed in 1998 is not left behind when access to other types of information is given. At stage 2, the minister confirmed to the committee that the amendments would require the new Aarhus-compliant environmental information regulations to come into force within a year of royal assent. However, he argued against the amendments on the grounds that they would require the Executive to introduce the environmental regulations within a year of the Freedom of Information (Scotland) Bill receiving royal assent and that the Executive might not be able to do that because something unforeseen might come up. What that something might be, I have not the faintest idea.

Amendments 10 and 11 are intended to insist that the environmental information regulations are introduced within a year and that the Executive employs sufficient resources in advancing access to environmental information. We cannot allow freedom of environmental information to be left behind. It is not acceptable for the minister to say that there might be a delay.

I urge members to support amendments 10 and 11.

17:30

Lord James Douglas-Hamilton: We are minded to support amendments 74 and 75. The Aarhus convention will require states to produce emissions inventories. To do that, the bill should incorporate article 5 of the Aarhus convention, which relates to the collection and dissemination of environmental information.

The bill mentions only articles 3, 4 and 9, and there are substantial concerns that any pollution register that is introduced in Scotland will not be comprehensive and detailed enough to comply with the requirements of the Aarhus convention. Paragraph 1(c) of article 5 states:

"In the event of any imminent threat to human health or the environment, whether caused by human activities or due to natural causes, all information which could enable the public to take measures to prevent or mitigate harm arising from the threat and is held by a public authority is disseminated immediately and without delay to members of the public who may be affected."

That is a strong and important safeguard for the community, should there be an adverse emission or should something arise with no notice.

Mr Jim Wallace: Amendments 74 and 75 address two subjects that were discussed at stage 2. I am sorry to disappoint, but the Executive's position has not changed.

On amendments 10 and 11, I signalled clearly during stage 2 the Executive's intention that EIRs will be in place by the end of this year. That is well within a year of the expected date of royal assent. However, we consider it wholly inappropriate that the legislation should require ministers to bring forward that information within that period regardless of what circumstances might intervene.

Robin Harper said that he was not sure what any unforeseen circumstances might be. Of course, if there are no unforeseen circumstances then his wish will be granted, because the regulations will be in place by the end of the year. There could be legitimate reasons why it is not possible to implement the regulations within 12 months. For example, a revised European Community directive on access to environmental information is progressing through the final legislative stages in Brussels. Issues arising from that might require us to amend the detail of the regulations. Similarly, given the complexity of the matters involved, it is not sensible to presume that no legal difficulties could arise.

I cite those examples not because we expect any problems, but because nobody can be sure that there will not be any. As I have said, ministers are committed to the early implementation of the regulations and fully expect that to happen within one year of royal assent. However, it makes no sense to tie our hands in the way that is set out in

amendments 10 and 11. I therefore ask Parliament to reject amendments 10 and 11.

Amendments 74 and 75 would extend the powers that are proposed at section 62 of the bill to cover article 5 of the Aarhus convention. Again, the issue has been given careful consideration but we remain convinced that it would not be appropriate.

Articles 3, 4 and 9 of the Aarhus convention, which are referred to in the bill, relate to access to information and therefore seem appropriate. Robin Harper says that it is important that environmental information is not left behind, and the Executive made a conscious choice to import section 62 so that we could give the issue some impetus.

Article 5 of the Aarhus convention lists a range of general duties relating to the proactive dissemination of information. Because those duties are so generally drawn, they are most effectively addressed administratively. For example, article 5 provides that authorities should make environmental information available to the public in a transparent manner. That does not translate readily into clear statutory obligations, but there is no doubt that it can be delivered effectively on an administrative basis. Formalising that type of obligation would not add value, and it could complicate matters by subjecting authorities to unclear and unenforceable legal duties.

It is important that we take account of the revised directive on freedom of access to environmental information. That will translate the Aarhus convention into a specific legal framework designed for European member states. As I have indicated, that directive is nearing the end of its development and should come into force by December 2002. The directive will adapt the Aarhus provisions to a European context and, as a result, will place much clearer and more specific legal duties on member states. Those duties will be much easier to transpose.

Bruce Crawford asked what information could be made available more progressively on the internet. Publication schemes that cover all categories of information will create a legal obligation on all authorities that are subject to the bill, including the Executive, to set out all information that is to be published. There is no doubt that the bill, which the commissioner will promote, will increase the proactive disclosure of all information.

I ask the Parliament to oppose amendments 10 and 11, as although they would commit ministers to a deadline that we aim not only to meet, but to beat, they would not allow for any problems that might arise. I also ask the Parliament to oppose amendments 74 and 75, which would require us to impose unclear and imprecise legal duties on public authorities. Such duties are best delivered

administratively—many already are. Formalising of those obligations would be best done in the forthcoming directive.

Bruce Crawford: It is difficult to wind up when the minister has provided no information that develops the argument from stage 2. I asked several questions to which the minister could have given answers that would help us to understand what the Executive is trying to achieve. At stage 2, Jim Wallace told us that, administratively, we could start to develop processes for providing information on the internet. Today, we had a bit of waffle that explained nothing about where we are going.

I also asked the minister when the Parliament could receive a report with a detailed examination of the environmental situation in Scotland. Had the minister told us the date on which we would receive such a report, the SNP might have withdrawn amendment 74, but we have had no debate, the minister has provided no answers and no progress has been made. I press amendment 74.

The Deputy Presiding Officer: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Davidson, Mr David (North-East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (South of Scotland) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Johnstone, Alex (North-East Scotland) (Con)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Reid, Mr George (Mid Scotland and Fife) (SNP)

Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)
 Young, John (West of Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)

Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 47, Against 64, Abstentions 0.

Amendment 74 disagreed to.

The Deputy Presiding Officer: Does Bruce Crawford wish to move amendment 75?

Bruce Crawford: As amendment 75 is consequential on amendment 74, I will not move it.

Amendment 75 not moved.

The Deputy Presiding Officer: Amendment 10, in the name of Robin Harper, was debated with amendment 74.

Robin Harper: I shall speak briefly to amendments 10 and 11—

The Deputy Presiding Officer: No; you have already done that. I just want to know whether you will move amendment 10.

Amendment 10 moved—[Robin Harper].

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

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
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 Lochhead, Richard (North-East Scotland) (SNP)
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 MacDonald, Ms Margo (Lothians) (SNP)
 MacKay, Angus (Edinburgh South) (Lab)
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 Paterson, Mr Gil (Central Scotland) (SNP)
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 Robison, Shona (North-East Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)

Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
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 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

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 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
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 McGrigor, Mr Jamie (Highlands and Islands) (Con)
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 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
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 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)

Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
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 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 33, Against 78, Abstentions 0.

Amendment 10 disagreed to.

After section 62

The Deputy Presiding Officer: Amendment 31, in the name of the minister, is grouped with amendments 33 and 53.

Dr Simpson: Amendment 31 provides for the exchange of information between the Scottish information commissioner, the new public services ombudsman and, in specified circumstances, the UK information commissioner.

When the draft bill was published we indicated that we would introduce such provisions. We also said that we would do that in the policy memorandum that accompanied the bill. However, before finalising the provisions, we had to await the decision on whether the Scottish Public Services Ombudsman Bill or the Freedom of Information (Scotland) Bill would complete its passage first.

Amendment 33 amends the Scottish Public Services Ombudsman Act 2002 to add the Scottish information commissioner to the list of persons who are liable to investigation under that legislation. It also introduces a schedule to the Freedom of Information (Scotland) Bill, which amends further the Scottish Public Services Ombudsman Act 2002. Amendment 53 provides the content of the new schedule. The amendments are essentially technical, yet they propose important provisions, which would allow for appropriate exchange of information between the Scottish information commissioner, the new Scottish ombudsman and the UK information commissioner. I commend the amendments to members.

I move amendment 31.

Amendment 31 agreed to.

After section 67

The Deputy Presiding Officer: Amendment 32, in the name of the minister, is in a group on its own.

Dr Simpson: Amendment 32 is, in essence, a technical amendment. On the basis of its subject matter, I suppose that it could be called a minor amendment. However, it is important.

Our intention is that the right of access in the bill should be exercisable by all. However, under Scots law, the legal capacity of a person is deemed to be 16 years of age. We do not want the situation to arise whereby a public authority could ignore or refuse to respond to an application from a young person, who might be asking for information for a school project, on the basis that the applicant had not yet reached the age of legal capacity. Amendment 32 seeks to redress that anomaly by deeming that anyone under the age of 16 can have any rights under the bill if they are 12 years old, or if they have a general understanding of what it means to exercise that right. I commend the amendment.

I move amendment 32.

Amendment 32 agreed to.

After section 68

Amendment 33 moved—[Mr Jim Wallace]—and agreed to.

Section 69—Orders and regulations

Amendment 76 not moved.

The Deputy Presiding Officer: Amendment 34, in the name of Mr Jim Wallace, is grouped with amendment 35. I call the minister to move amendment 34 and to speak to both amendments.

Dr Simpson: Amendments 34 and 35 are technical amendments. They will correct a drafting error that was found at stage 2. Section 69 of the bill currently sets out that sections 9(4) and 12 provide for Scottish ministers to make orders. However, sections 9(4) and 12 provide for Scottish ministers to make regulations. Amendments 34 and 35 will correct those references in section 69.

I move amendment 34.

Amendment 34 agreed to.

Amendment 35 moved—[Dr Richard Simpson]—and agreed to.

17:45

Section 70—Interpretation

Amendment 36 moved—[Dr Richard Simpson]—and agreed to.

Section 72—Commencement

The Deputy Presiding Officer: I call Robin Harper formally to move amendment 11, which was debated with amendment 74. *[Interruption.]*

I think that all the technicalities have surprised Mr Harper. Does any other member feel inclined to move amendment 11 for him?

Tommy Sheridan (Glasgow) (SSP): I move amendment 11.

The Deputy Presiding Officer: The question is, that amendment 11 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a two-minute division. There might be enough time for Mr Harper to return to the chamber and find out the result.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (South of Scotland) (Con)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)

Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (a)
 (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con) (b)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 29, Against 78, Abstentions 0.

Amendment 11 disagreed to.

The Deputy Presiding Officer: I call the minister to move and speak to amendment 37,

which is grouped with amendments 9, 77, 38, 39, 40 and 41. I must point out that if amendment 37 is agreed to, I cannot call amendments 9 and 77, which will be pre-empted. However, if amendment 9 is agreed to, it does not pre-empt amendment 77. I have already failed this test, but we will see how we get on.

Mr Jim Wallace: I have made it clear on earlier occasions—I repeat it today—that the Executive is committed to the timely and effective implementation of the Freedom of Information (Scotland) Bill. To that end, more than a year ago the Executive established a cross-sector FOI implementation group to begin early thinking about matters such as training and structures and to listen to the experience of those who implement FOI legislation in Ireland and the UK. I recently received the group's first annual report, copies of which are in the Scottish Parliament information centre. The report is also available on the Executive's website. The setting up of that group hardly betrays the actions of an Executive that is not serious about effective implementation. We must also bear it in mind that implementation means not only implementing the terms of a statute, but promoting a culture of openness.

As a result, I ask members to note that the provision in section 72 simply provides a backstop to the period within which full implementation of the act throughout the whole Scottish public sector is to be achieved. Implementation will begin earlier than that backstop; however, we are not discussing the shape of the implementation programme, which will need to be discussed with the Scottish information commissioner once he or she is appointed and gets his or her office operational.

I draw to Parliament's attention the provision, in section 72(3), that

"During—

that period of twelve months which begins with the date of Royal Assent; and

each subsequent period of twelve months until all the provisions of this Act are fully in force,

the Scottish Ministers are to prepare, and lay before the Parliament, a report of their proposals for bringing fully into force the provisions of this Act."

We want to retain a degree of flexibility for all concerned, and particularly for the commissioner, who will play a key role in facilitating implementation, producing guidance on the act and publication schemes, and approving the schemes that are prepared by authorities. Publication schemes are a novel concept to us in the United Kingdom and Scottish FOI regimes, and making comparisons with implementation tables elsewhere is unfair.

In a number of other countries, existing

officers—in many cases, ombudsmen—would have been given the role of information commissioner. It was the wish of this Parliament—a wish that I was quite willing to propose—that we should have a fully independent commissioner. That commissioner will be appointed on the nomination of the Parliament, which naturally means that his or her office will not be established as swiftly as it might have been had ministers selected the commissioner and told him or her where to site the office. That is a small price to pay for ensuring independence, but it means that the commissioner cannot get off to a flying start, because only when the bill is passed will the Parliament be able to get on with the job of nomination.

It would therefore be foolhardy to constrain artificially the period within which the commissioner will set up his or her office and recruit and train staff. It would also be foolhardy to constrain artificially the options for devising and executing an effective implementation strategy. It would be wrong to deny ourselves and the commissioner the opportunity to learn lessons from other countries, such as Ireland, which had a commissioner in place and began a phased roll-out of its act 12 months after enactment. Indeed, Ireland is continuing to this day to bring the act into force by order for groups of authorities.

The suggestion has been put about in some quarters that Ireland implemented fully its Freedom of Information Act 1997 within one year, but that is simply not the case. By 21 April 1998, Irish Government departments and their bodies had implemented the act. By 21 October 1998, Irish local authorities and health boards had implemented it. By 21 October 1999, voluntary hospitals and health bodies complied with the act's provisions and, by 21 January 2001, state industrial bodies also complied. By 1 October 2001, educational establishments had implemented the act and, by 1 June and 1 November 2002, 38 more bodies are due to have implemented it, including the Irish Legal Aid Board, the Irish Film Board and the fisheries boards.

The three-year backstop that is proposed by amendment 9 would place an unacceptable constraint on our options to devise with the commissioner effective implementation of the act throughout the Scottish public sector. Agreement to amendment 9 would preclude the flexibility that would take account of the views of the commissioner on whether implementation might be achieved in that time frame. The one-year backstop that is proposed by amendment 77 would plainly be nonsense. It would be unreasonable and irresponsible to bring the act into force irrespective of whether the commissioner was in office with trained staff, with

guidance prepared and with all publication schemes approved.

Amendment 37 is the Executive's substantive amendment and the other amendments in the group are consequential. Taken together, the Executive's amendments provide a reasonable period for implementation. Assuming that the act got royal assent in May, implementation would take about three years and seven months, as a backstop, but that would provide a reasonable period in which we could complete timely and effective implementation without it being overly long.

Dennis Canavan: I am a bit concerned about amendment 39, which will allow phased commencement for different persons or groups of persons so that, temporarily at least, people will not be equal under the law because the act will apply to some people or groups but not to others. That could lead to accusations that there is one law for them and another law for the rest of us, which would be unfair. What exactly does the Executive have in mind with regard to different people coming under the law at different times?

Mr Wallace: As I have indicated in describing the implementation of the Irish act, people in Ireland have found that it was a positive experience to roll out implementation rather than to have what might be described as a big bang, not least because of the importance of training. Those who have skills in training public bodies can move from one set of public bodies to the next to ensure that, when a public body is brought under the ambit of the freedom of information regime, that body is properly geared up for that.

We have not taken any view as to whether we should go for phased implementation or the so-called big bang approach, but the provisions in amendment 37 permit that choice to be made. The view of the commissioner will be important but, as we currently do not have a commissioner, we are not in a position to hear his or her view.

Amendment 37 takes account of concerns that have been expressed and recognises the unique position of a fully independent commissioner. The amendment strikes the correct balance and recognises the independence of the commissioner, but puts in place a reasonable backstop to stop backsliding on full implementation.

I move amendment 37.

Michael Matheson: When the Justice 1 Committee considered the issue, it was not persuaded of the Executive's need for a five-year period of commencement. Although I welcome the Executive's amendment 37, I am not persuaded that there is even a need for a commencement period of three years and seven months.

At stage 2, I lodged an amendment whereby the commencement date would have been in two years, in line with the recommendation of the Justice 1 Committee's stage 1 report. At that stage, ministers were not persuaded by the argument. I recall from the discussion in the committee that members felt that the Executive had not put forward a strong argument against a two-year commencement period and that it was probably more in favour of three years. I therefore lodged an amendment that would have allowed a three-year commencement period, which would have been more than enough.

The minister referred to the Irish experience of the introduction of a freedom of information act. I notice that the freedom of information act in New Zealand came into force within seven months, in Australia it came into force within nine months and in Canada it came into force within 12 months. I cannot see why we have to opt for three and a half years for implementation in Scotland. That makes it seem as though we find it difficult, for some reason, to implement the legislation.

I see that the Deputy Minister for Justice is shaking his head in disagreement.

Dr Simpson: Will Michael Matheson take an intervention?

Michael Matheson: I will make my point first.

The minister should have listened to the evidence that was provided by the Convention of Scottish Local Authorities, which represents the public authorities that are probably going to be most affected by the legislation. COSLA stated that a year would be sufficient for local authorities to prepare for implementation. I see no reason why we need more than three years.

Dr Simpson: I was shaking my head for two reasons. First, the freedom of information bills in the countries that Michael Matheson mentioned had much narrower remits, so those countries were able to introduce their legislation more quickly. Secondly, the major point is that if COSLA said in front of the Justice 1 Committee that it could implement the provisions of the legislation in a year, it should implement the provisions within a year. Amendment 37 provides a backstop. If COSLA can achieve implementation in a year, it should do so, but not all authorities will be able to do so. The commissioner must have time to draw up the publication schemes.

Michael Matheson: Given that COSLA representatives stated before the committee that a year would be sufficient, can I take that as an assurance from the minister that, from the day of royal assent, local authorities will implement the provisions of the legislation within a year?

Mr Wallace: Michael Matheson has missed the

point. If, as I believe is essential—I think that the Parliament agrees—we are to have an independent commissioner, it would be perverse, wrong and subject to considerable criticism if ministers were to pre-empt the work of the commissioner by arranging a place of work, employing staff or arranging for staff training.

Many of the countries to which Michael Matheson referred already had a person in place. Given that we have to appoint a commissioner and that or she has to set up an office and train staff, it would be unreasonable and would impose inflexibility if we did not allow more time. That is why I cannot say that implementation will be done within one year. That is very much a matter for the commissioner, who must act independently of ministers.

Michael Matheson: I have not missed the point; rather, I do not accept the minister's point. If he considers the discussions that took place within the Justice 1 committee, he will see that we were not persuaded by his arguments. That is why the committee recommended that the legislation should commence two years after royal assent. That was the recommendation in the Justice 1 Committee's report. During the committee's stage 2 deliberations, when the minister was not willing to accept two years, it appeared that three years would be the compromise. We see that the minister is not even able to accept that today. I hope that members recognise that three years is more than long enough to implement this legislation.

18:00

Robin Harper: Michael Matheson made most of the relevant points. The difference between us is that I want one year, rather than a two-year implementation period. A one-year period would be in line with practice around the world and with the principle of openness that was set up by the Scottish Parliament consultative steering group. If, as proposed, the enactment of the bill is delayed, the people of Scotland will have been without access to information for seven years, from the date that the Parliament first met. I urge members to ensure that Scotland's freedom of information regime is not delayed unduly. Three years and eight months is an undue delay. I urge members to vote against amendment 37 and for either amendment 9, which is in the name of Michael Matheson, or amendment 77.

Donald Gorrie: Although I accept the minister's argument about the time that is required for the appointment of the commissioner, and to allow him or her to get organised and staffed up, I would like an assurance from the minister that pressure will be put on all Government departments to come on-stream as soon as possible and that

departments will not hang back for the three and a bit years. Similarly, I hope that pressure will be put on—or encouragement given to—local authorities and other bodies to come on-stream as soon as possible. Government departments are in ministers' hands. Will the minister give an assurance that those departments will come on-stream as soon as is practical?

Christine Grahame: I remind the Minister for Justice that the Justice 1 Committee's stage 1 report recommended that the public authorities—which have listened to the debate for long enough—should

“already be getting themselves into a state of readiness for the freedom of information regime and that implementation should be possible within a maximum of two years of royal assent.”

The problem with backstops is that people use them. We are all guilty of that. Speaking personally, if I have until a certain date to complete a tax return, I usually do it on that day or the day before. The problem with amendment 37 is that it will create a longer implementation period. It is important that the regime is introduced as soon as possible because the Parliament promised a new culture of openness and accountability—which I wait to see. We should move the agenda along. For that reason, I will not support amendment 37, but I will support amendments 9 and 77.

Mr Wallace: There is not much to add to what I said earlier. I remind Christine Grahame that, whatever the Justice 1 Committee said at stage 1, she used her casting vote at stage 2 to retain the five-year period in section 72, although I think that that was by the default of the status quo.

The Executive has taken action. I do not want to over-elaborate the point. The implementation period is a cost of having an independent commissioner and it is well worth paying that cost to have independence. Public bodies will not decide for themselves when they come on-stream; ministers will decide the order of commencements. It is not even a matter of cajoling or—to use Donald Gorrie's word—encouraging public authorities. Ministers will lay the orders. They will do so after proper consultation with the commissioner.

On the public bodies for which ministers are responsible, I will not only give an assurance, but point to the fact that a working group that is developing training strategies has been in place for more than a year. The work of the group is available on the Executive's website. Using the powers and opportunities available to us, we are encouraging a culture of freedom of information. We are trying to ensure that the measures are in place to allow us to respond quickly.

I do not accept Robin Harper's point that people will have had to wait seven years to get any kind of information. He confuses the date of commencement with the backstop. We intend amendment 37 to be a backstop provision. Although it is important that we take into account the views of the independent commissioner, we are doing what we can to encourage early implementation.

The Deputy Presiding Officer: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

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

McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 79, Against 29, Abstentions 0.

Amendment 37 agreed to.

Amendments 38 to 41 moved—[Mr Jim Wallace]—and agreed to.

Schedule 1

SCOTTISH PUBLIC AUTHORITIES

The Deputy Presiding Officer: Amendment 78 is grouped with amendments 42 to 47, 79, 48 to 51, 80 and 52.

Michael Matheson: I hope that you have another 10 bob for the meter.

The Deputy Presiding Officer: As long as we have sound, we will continue.

Michael Matheson: Amendment 78 is essentially a probing amendment to seek clarification, as it is unclear whether a fire authority that is within a single local authority area is covered by the bill, as the bill refers to joint boards. I would welcome clarification from the minister on that.

The purpose of amendment 79 is to ensure that private prisons are included as public authorities under the bill. Private prisons work for the Scottish Prison Service and it is essential that we have an opportunity to scrutinise what they do. The SPS often responds to questions from MSPs concerning Her Majesty's Prison Kilmarnock by saying that the information is commercially confidential or is the responsibility of Premier Prison Services. Even when we request information on matters such as the conditions in Kilmarnock medical centre, minimum and maximum nursing staff levels, agreements on procedures at the medical centre, the number of prison officers who are employed at Kilmarnock or issues relating to staff bullying, we are told that they are matters for Premier Prison Services, which naturally chooses not to provide us with that information. It is clear that those matters are of public interest. Neither the operating company nor the Prison Service has an interest in remedying situations that it thinks might be in its commercial interest, but which we think might not be in the public's interest.

Amendment 79 will ensure that private prisons are treated on a level playing field with public sector prisons. In light of the fact that the outcome of the prison estates review might be that we will have more private prisons in Scotland, I see no reason why a private prison should be treated differently from a public prison. The same terms should apply to both private prisons and public prisons. I hope that members will support amendment 79 to ensure that private prisons are covered by the bill.

I move amendment 78.

Mr Jim Wallace: As we are getting close to the end of the debate, I will try to be brief. I will perhaps deal with other amendments when referring to amendments in my name.

Amendment 42 addresses an oversight in the development of schedule 1 by seeking to add licensing boards to that schedule.

Amendments 43, 44, 49 and 50 reflect the passing of the Scottish Public Services Ombudsman Bill, which establishes a one-stop-shop ombudsman service that replaces, among others, the Health Service Commissioner for Scotland, the Commissioner for Local Administration in Scotland, and the Scottish Parliamentary Commissioner for Administration, all of which must be removed from schedule 1.

Amendments 46, 47, 51 and 52 reflect the abolition of the three regional water authorities and the establishment of Scottish Water by the Water Industry (Scotland) Act 2002.

Amendment 45 deletes Community Learning Scotland, which has been abolished, from schedule 1.

In an earlier series of debates, Michael Matheson made play of the fact that several bodies had been added to or removed from schedule 1 in a short period of time. That happened because bills have been progressing in tandem. In future, when a new body is established by parliamentary statute, it will be added to schedule 1 by the particular bill that introduces it. For example, if the Water Industry (Scotland) Bill had come after the Freedom of Information (Scotland) Bill was on the statute book, the three water authorities would have been removed and Scottish Water added by a provision in the Water Industry (Scotland) Bill. It will not always be necessary for the powers under sections 4 and 5 of the Freedom of Information (Scotland) Bill to be used. We have had so many amendments because of transitions that have been caused by other bills.

I want to discuss the amendments to which Mr Michael Matheson spoke and to anticipate other amendments. Amendment 78 would add fire authorities to schedule 1. I reassure Mr Matheson that fire authorities are already covered by two references in paragraphs 21 and 22 of schedule 1. Paragraph 21 refers to

“A council constituted by section 2 of that Act.”

In Dumfries and Galloway and in Fife, the fire authority is coterminous with and constituted by the council.

Paragraph 22 of schedule 1 refers to

“A joint board, within the meaning of section 235(1) of the Local Government (Scotland) Act 1973 (c.65).”

I reassure Michael Matheson that paragraph 21 covers fire authorities. Amendment 80 adds social inclusion partnerships to schedule 1. We are prepared to accept amendment 80.

Amendment 48 removes registered social landlords from schedule 1. We indicated at stage 2 that our view was that it was not appropriate for all RSLs to be covered automatically by the bill. We do not lightly seek to overturn an amendment and I will briefly give the reasons behind this. RSLs are voluntary sector bodies and are not Scottish public authorities. The bill, as we have said many times during its passage, will impose significant legal obligations on the authorities that it covers. However, many RSLs are small, informally run organisations that are not geared up for such stringent regulations. For example, some RSLs, such as the Abbeyfield Society for Scotland, are small charitable bodies that provide sheltered housing for the elderly. Subjecting such bodies to burdensome legal obligations is not sensible and might deter those who are involved in small RSLs from volunteering their time and effort. It is also important to note that RSLs are already subject to a regulatory regime that is appropriate to their size and structures, and that Communities Scotland supervises RSLs.

However, the Executive recognises that larger and more formal RSLs might be appropriate for coverage by the Freedom of Information (Scotland) Bill, and they can be added to the bill. There is a statutory obligation to consult before that is done and we will consult the sector. When RSLs were added to the list of authorities at stage 2, I do not think that there had been any consultation with that sector—I think that I am right in saying that no evidence had been taken from the sector prior to the addition of RSLs. There will be consultation before any organisation is added. I assure members that we expect the majority of organisations to be covered.

18:15

As Michael Matheson has said, amendment 79 would add private prisons—as referred to under section 106 of the Criminal Justice and Public Order Act 1994—to schedule 1 to the bill. I repeat that schedule 1 sets out the public authorities at the heart of the freedom of information regime and is not the appropriate place for the addition of private companies, although those may be added using the powers that are available under section 5. We have not yet given that matter detailed consideration and the statutory obligation to consult means that it would be inappropriate to make any firm commitments at this stage.

As I indicated earlier, it is clear that companies involved in major PPP/PFI contracts, for example Kilmarnock Prison Services, are delivering important public services. I assure members that we would expect such companies to be added to schedule 1 using the powers that are already available in the bill.

I will conclude with our more straightforward amendments and will give a brief synopsis of them. We will urge members to reject amendment 79, which would add private prisons to schedule 1; to support the removal of RSLs from that schedule; to agree to the addition of SIPs; and to support the various technical amendments, which I will move at the appropriate time.

The Deputy Presiding Officer: Time is tightening up again.

Donald Gorrie: Amendment 80 will include social inclusion partnerships. A number of us felt that they are very important bodies in the community, which spend a lot of public money. They should be responsive and responsible to their communities and it is right that they should be open to the freedom of information regime that the bill introduces. I am pleased that the Executive supports that.

The housing associations represent the big picture and many of us are keen that they should come under the proposed freedom of information arrangements. The Executive had a better argument than usual about the fact that we have not consulted housing associations. That is a fair argument and, as I think that we should consult them, I reluctantly go along with the Executive's proposals, on the understanding that it will consult housing associations. As the minister said, the majority of them should, following consultation, be eligible for inclusion under the bill. On that condition, I am reluctantly prepared to support the Executive's stance.

The Deputy Presiding Officer: There really is very little time left now. I ask members to restrict themselves to a maximum of two minutes and I would appreciate it if they could speak for even less time.

Christine Grahame: I speak in favour of amendment 79 and I will refer to Kilmarnock Prison Services. I am one of the many members who has fallen victim to the Executive's non-answers or evasive and incomplete answers, as I have tried to find out such a simple thing as who insures Kilmarnock prison and what it is insured for. I have lodged a series of questions on the matter but have not received straightforward answers. I ended up writing to the director of Kilmarnock Prison Services.

I stated in a written question:

"the Auditor General for Scotland's report in the Scottish Prison Service *Annual Report and Accounts for 2000-01* states that the prison does not appear in the Scottish Prison Service's accounts as a 'property asset'";

nor does it appear in the accounts of Premier Prison Services. The Auditor General stated:

"neither party is recognising HMP Kilmarnock as a

property asset with both parties claiming to have transferred substantially all risk and rewards associated with ownership of the property asset to each other".— [*Official Report, Written Answers*, 3 April 2002; p 354.]

In other words, the SPS thinks that Premier Prison Services carries the risk of insuring Kilmarnock prison, while Premier Prison Services thinks that the SPS does.

That is not an illustration of the spirit of openness. It is vital that such a prison company or any other private sector organisation that is wholly funded by public money is accountable to the Parliament, and that MSPs get answers to questions instead of having to go round and round in circles and getting into a paper chase. That is why amendment 79 is important.

Robert Brown: I ask for assurance on the time scale of designation. Like Donald Gorrie, I am prepared to accept the Executive's argument about consultation with housing associations. It would be intolerable if Glasgow Housing Association in particular were not eventually designated under the act. The same observation applies generally to private sector bodies providing public services, and I am glad that social inclusion partnerships have been included.

Mr Jim Wallace rose—

The Deputy Presiding Officer: I would rather the minister replied to that point in his summing up.

Stewart Stevenson (Banff and Buchan) (SNP): I would like to make a brief point about the estates review, which is relevant to amendment 79. Ministers will be aware that in the current information vacuum some 200 parliamentary questions have been lodged on the estates review and only a few have been answered. I recognise that there are difficulties in providing a large amount of information, but I ask the minister to recognise that the absence of information—information that was withheld previously—is creating practical difficulties now. I would like the minister to assure me on the record that, if we are unable to get answers within a reasonable time scale to all or the majority of the questions that have been lodged, we will not be held to a consultation period of 12 weeks.

The Deputy Presiding Officer: Before I call Michael Matheson to wind up the debate on this group, I am happy to let the minister respond to the points that have been made.

Mr Jim Wallace: Section 5(5), which requires ministers to consult, does not require us to wait for the appointment of the commissioner before doing so. Once the bill has received royal assent, we can begin the consultation process.

I repeat what I said earlier about prisons. We will

try to provide answers to the parliamentary questions to which Stewart Stevenson referred as quickly as possible. Matters relating to public sector prisons would in any event fall under the freedom of information regime. We recognise that companies involved in major PPP/PFI contracts are delivering important public services. I assure members that companies that are involved in contracts of that nature—whether those relate to prisons or to matters such as road maintenance—are the sort of bodies that we want to add to schedule 1 after proper consultation.

The Deputy Presiding Officer: We are now taking time from the stage 3 debate on the bill, so I ask Michael Matheson to sum up as briefly as he can.

Michael Matheson: I welcome the minister's comments on my probing amendment 78 and take note of his willingness to consult on whether social landlords should be included under schedule 1.

I turn briefly to amendment 79 and the issue of whether private prisons should be subject to the freedom of information regime. I take note of what the minister said about private contracts and PPP projects. However, it is quite clear what Kilmarnock prison delivers. The contract that the public sector has with the prison makes clear what it does. I see no reason to delay making Kilmarnock prison subject to the provisions of the bill.

Amendment 78, by agreement, withdrawn.

Amendments 42 to 47 moved—[Mr Jim Wallace]—and agreed to.

Amendment 79 moved—[Michael Matheson].

The Deputy Presiding Officer: The question is, that amendment 79 be agreed to. Is that agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Elder, Dorothy-Grace (Glasgow) (SNP)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)

Harding, Mr Keith (Mid Scotland and Fife) (Con)
Harper, Robin (Lothians) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Ms Margo (Lothians) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Paterson, Mr Gil (Central Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)

McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 46, Against 65, Abstentions 0.

Amendment 79 disagreed to.

Amendments 48 to 51 moved—[Mr Jim Wallace].

The Deputy Presiding Officer: Does any member object to the putting of a single question on amendments 48 to 51?

Michael Matheson: Yes.

The Deputy Presiding Officer: In that case, we will deal with each amendment separately.

The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North-East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (South of Scotland) (Con)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Godman, Trish (West Renfrewshire) (Lab)

Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Harding, Mr Keith (Mid Scotland and Fife) (Con)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Johnstone, Alex (North-East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 McAllion, Mr John (Dundee East) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McIntosh, Mrs Lyndsay (Central Scotland) (Con)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Smith, Mrs Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Young, John (West of Scotland) (Con)

AGAINST

Canavan, Dennis (Falkirk West)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 Sheridan, Tommy (Glasgow) (SSP)

ABSTENTIONS

Adam, Brian (North-East Scotland) (SNP)
 Campbell, Colin (West of Scotland) (SNP)

Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Elder, Dorothy-Grace (Glasgow) (SNP)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North-East Scotland) (SNP)
 MacDonald, Ms Margo (Lothians) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeod, Fiona (West of Scotland) (SNP)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Russell, Michael (South of Scotland) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinney, Mr John (North Tayside) (SNP)
 Ullrich, Kay (West of Scotland) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 79, Against 3, Abstentions 28.

Amendment 48 agreed to.

Amendments 49 to 51 agreed to.

Amendment 80 moved—[Donald Gorrie]—and agreed to.

Amendment 52 moved—[Mr Jim Wallace]—and agreed to.

After schedule 3

Amendment 53 moved—[Mr Jim Wallace]—and agreed to.

Freedom of Information (Scotland) Bill

The Deputy Presiding Officer (Mr Murray Tosh): The next item of business is a debate on motion S1M-2855, in the name of Mr Jim Wallace, which seeks agreement that the Freedom of Information (Scotland) Bill be passed.

18:28

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): Motion S1M-2855 gives me particular pleasure. First, I will deal with a formal matter. For the purposes of rule 9.11 of standing orders, I advise the Parliament that Her Majesty has signified her consent to the bill in so far as it affects her interests.

I express my gratitude to the many people who have been involved with the bill in the work leading up to its introduction and during its passage through the Parliament. I thank Christine Grahame and the Justice 1 Committee, as well as the Equal Opportunities Committee and the Subordinate Legislation Committee, for all their work on the bill since last September. I also thank the many members who made helpful and challenging suggestions during the bill's passage and the committee clerks and parliamentary staff who ensured the smooth running of the process. Particular recognition should go to the hundreds of individuals and organisations that took time to contribute their views in written responses to both the Executive's consultations and to that of the Justice 1 Committee. Recognition should also go to those who gave oral evidence to the committee.

The Executive has had a useful and constructive dialogue with organisations such as the Campaign for Freedom of Information, Friends of the Earth Scotland, the Scottish Consumer Council and the statutory equality bodies. That effort—the result of the work of many people—has helped to make a good bill better. As a result, the bill is not discriminatory—it never was—but discussions with bodies such as the Disability Rights Commission have ensured that the access provisions for those with a disability are much clearer. I believe that the Justice 1 Committee's prompting has borne fruit in that regard. Finally, I pay tribute to the dedication and exceptional hard work of my officials, solicitors and parliamentary counsel.

I firmly believe that today's debates on the bill represent a significant milestone in the delivery of an effective freedom of information regime for Scotland. This is an Executive that is delivering on its commitments; this is a partnership that is delivering results. Indeed, this is devolution delivering. We are delivering our objectives of

promoting accountability, public participation and good and open government.

We can reflect on the general welcome that the Executive's freedom of information proposals have received from the time of the pre-legislative consultation paper, "An Open Scotland", onwards. Quite properly, there has been vigorous debate about aspects of the bill. Some of the issues that we have considered have been complex. However, at the core of the bill remain the fundamental principles of an effective freedom of information regime that, I believe, can stand comparison with any other. The Scottish freedom of information regime will provide for a right of access to information that is held by Scottish public authorities; a limited range of exemptions to protect sensitive information that rightly should be protected; a stiff harm test of substantial prejudice; and a public interest test that is tipped decisively in favour of disclosure. Not least, the Scottish regime will provide for a fully independent Scottish information commissioner, who will be appointed on the nomination of the Parliament and who will have strong powers to promote and enforce the statutory regime.

The bill has a unique, distinctive approach that was made in Scotland and specifically tailored to meet the needs of Scotland and the Scottish people. I believe that better openness leads to better scrutiny and better accountability, which, in turn, lead to better government. This is a good bill that has been made better through the scrutiny of the Parliament. I hope that the Parliament takes some pride in the bill's passage.

This is not the end of the process. The Executive is committed not only to the timely and effective implementation of the bill—we will work closely with the commissioner to achieve that—but to promoting a general culture of openness throughout public services in Scotland. Against that background, I have great pleasure in commending the bill to the Parliament.

I move,

That the Parliament agrees that the Freedom of Information (Scotland) Bill be passed.

18:33

Michael Matheson (Central Scotland) (SNP): I am sure that the majority of members will welcome the passage today of this important bill. Let me briefly add my thanks to the committee's staff—the amount of work that is placed on them often goes unnoticed—and members. I also thank those organisations that gave us evidence, which we found extremely useful in our consideration of the bill's provisions. The committee's scrutiny of the bill led to significant changes being made to it. I believe that those changes are for the better and

will only improve the freedom of information regime that the bill introduces.

I continue to have concerns about the issues that I raised today—the question of campaigning and the use of the ministerial veto. However, the passage of the bill is only the beginning of the process. We have only to look at the experiences of other countries that have introduced freedom of information legislation. The effectiveness of the bill will not merely be down to its provisions; a change to the culture of secrecy that exists in many of our public services is required. I believe that that is the greatest challenge that the bill faces. The Information Commissioner of Canada said only last year that it has taken some 10 to 15 years to start to break down the culture of secrecy that exists in many of Canada's public services. I believe that such a culture is probably even more deep-rooted in Scotland. I hope that the public authorities are gearing themselves up so that they will be ready for the legislation. I wish the bill well in its passage.

18:35

Lord James Douglas-Hamilton (Lothians) (Con): The Conservatives have consistently and at all stages been in favour of open government. However, in our view, open government need not necessarily mean a bureaucratic system that will cost the taxpayer £4.8 million a year.

The bill could equally well be known as the restriction of information bill, as it contains countless exemptions. In 1994, the Conservatives introduced the "Code of Practice on Access to Government Information". By July 1997, more than 77,500 records had been released. The benefit of that system was that it combined openness with flexibility. By specifying so many exemptions, the bill does not provide that flexibility. That means that further amending legislation will be required as and when the exemptions need to be amended.

On 19 December, in response to a written parliamentary question, the Deputy First Minister stated:

"It is not possible to predict what new information ... will be made available as a result of the Freedom of Information (Scotland) Bill."—[*Official Report, Written Answers*, 19 December 2001; p 433.]

He is, of course, right. As I have pointed out, the bill is a costly experiment in tinkering with what the minister calls the culture of secrecy.

Our commitment to open government, accessibility and accountability is absolute, but a further bureaucratic burden on the electorate is not strictly necessary to pursue those aims.

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

Lord James Douglas-Hamilton: No. I must be brief, as I have only three minutes.

Our fear is that the bill will make more information secret than was the case under the previous code of practice. I realise that both Mr Wallace and Dr Simpson regard the legislation as something of a personal crusade, but the electorate will have to foot the bill. It will be our purpose to continue to act as the guardians of the public interest. We will vote against the bill.

18:37

Maureen Macmillan (Highlands and Islands) (Lab): What Lord James said was disgraceful.

I welcome the opportunity to speak for the Labour party and I welcome the imminent completion of the bill. Like others, I place on record my thanks to the Justice 1 Committee, the Equal Opportunities Committee and the clerks, who have, as usual, excelled themselves in providing members with everything that we needed to examine the bill properly. I also pay tribute to the Minister for Justice and the Deputy Minister for Justice, as well as to Iain Gray, who, as the former Deputy Minister for Justice, contributed to the bill's progress.

The bill implements the Labour party's long-term commitment to introduce freedom of information legislation. It complements the Freedom of Information Act 2000, which was passed at Westminster. I whole-heartedly welcome the bill, as it will help to change the culture of government in Scotland and ordinary people's perception of government. The bill is not for campaign groups and lobbyists but for ordinary people who need information from the council, the health board or the Government.

In my speech during the stage 1 debate, I made it clear that we must end the mutual suspicion that exists between those who provide information—who are concerned about the implications of, and the time and money that are involved in, supplying information—and those who, weary of hitting a wall of officialdom, seek or request such information. I believe that the bill will end that mutual suspicion. Ordinary people want recognition that they have a right to request information and that they are not imposing on the public body by asking for information. I hope that the time between the passing of the bill and its implementation—which is somewhat longer than I anticipated—will be used to the full to bring about that change of culture.

The Executive has listened carefully to the major concerns that were raised by the Justice 1 Committee and by individual members and organisations. Some of those concerns meant that we had to negotiate with ministers right to the wire

over issues such as the provisions for disabled people. However, I am now content that we have done all that is possible to ensure that disabled people and others who have communication difficulties are not disadvantaged. The Executive has shown a willingness to change provisions to address the concerns of the committee, which rigorously examined the bill, and of outside organisations.

I believe that all the major concerns have been addressed. As a result, we now have a better bill, which will mark a fundamental change in the relationship between Government and people. The bill would not have happened without the Labour Government at Westminster and the Labour-led Scottish Executive. I thank the Liberal Democrats for their support for what is a properly balanced bill—although in the committee and in the chamber one was not always sure how Donald Gorrie would vote. I am sure that he and all other members—including the Conservatives, I hope—will support the bill.

18:40

Donald Gorrie (Central Scotland) (LD): Without being smug, we can take pride in what we have done. We have demonstrated yet again to the doubters that it is worth while having the Parliament. We have a much better bill than the one that was passed at Westminster. We had a minister who—because of his political convictions as a Liberal Democrat—had strong beliefs and therefore pushed the bill vigorously. He has produced a very good bill. We then had the Parliament scrutinising the bill rigorously. The minister took quite a lot of flak in the Justice 1 Committee but, as a result, significant improvements were made to the bill. Ministers conceded on quite a number of issues. They did not concede on every issue—life is not like that—but the result was at the very least an honourable high-scoring draw between the ministers and the Parliament. The system has worked. We have made a good bill even better.

The bill is important, but the real struggle now begins. In life, it is people who are the problem, not rules. Many people in national Government, local government and quangos are brought up in a climate of secrecy—especially in national Government. Civil servants are taught not to tell MPs or MSPs anything at all if they can avoid it. They need education. We need a revolution to make our civil servants into open people.

A Swedish king was converted to Christianity during the dark days. He marched his army through a river and said, "Right men—you are all now Christians." We need that sort of conversion among civil servants. I look to the ministers to lead that conversion, but we must all help.

This is a good bill. I offer congratulations and thanks to all those who deserve thanks.

18:42

Christine Grahame (South of Scotland) (SNP): I am not sure—I may have been sitting here too long—but I think that I followed what Donald Gorrie said.

I thank the minister for congratulating the Justice 1 Committee. I also thank my colleagues on the committee, as we often had to forgo shortbread and tea just to be sure that we got through all the amendments—on far too tight a timetable as usual.

The Parliament must keep its eye on the consequences of the legislation. The codes of practice will be important. We have seen drafts, but we have not yet seen the final codes.

Financing will also be important. The committee was concerned that there should be sufficient resources not only for the commissioner but for the public authorities so that the proper goals of the bill can be pursued.

The calibre of the commissioner herself or himself will be important, because that person will set the tone for implementing the bill, for the positive pursuit of freedom of information in Scotland and for the promotion of a culture of openness—something that has been lacking.

I cannot resist saying this: I am opting for the big bang that the minister has offered, rather than that we do things in stages. I prefer the former simply because the public will know where they are. The public do not follow the minutiae of legislation but, if things are done quickly, people will be able to say that the doors to information in Scotland are open.

18:44

Robert Brown (Glasgow) (LD): I echo Donald Gorrie and say that this is a good day for the Parliament. I hope that it is not too humbling for Jim Wallace if I say that this is also a good day for him, as his stamp is all over the bill. We would not have had the same bill had it not been for his personal commitment.

The bill is strong. It will stand the test of time. However, I urge the minister to be diligent in the designations. It would be quite intolerable if, in time, the Glasgow Housing Association, the prisons bodies that have been mentioned and a number of other bodies of that kind are not designated when the bill comes into force, as it will shortly.

The bill will be a major blast through the corridors of power. I echo the comments of others

that the bill will lead to an extremely important change of culture. People who are inside a room discussing things that are vital to the public have an almost automatic urge to think that they are important, as they are the ones making the decisions. That leads to an unwillingness to tell the people out there what has been discussed. The bill is about rights and citizenship and it will change that inward-looking culture.

At earlier stages of the bill and during today's debate, I have been astonished by the attitude of the Conservatives. They got the tone and reality of the debate utterly wrong. It is important that people have rights and that citizenship is developed in our new Scotland. Today is a good day for the Parliament. Let us move forward and complete the passage of the bill.

18:45

The Deputy Minister for Justice (Dr Richard Simpson): Today marks a significant day in the development of a freedom of information regime in Scotland. It has been nearly two and a half years since the first consultation document, "An Open Scotland", was published. A lot of hard work has been done to get to where we are now. Throughout the process, I have been encouraged by the broad and positive response that we have received. I am pleased that the need for this important piece of legislation has been largely recognised. However, I cannot let the speech of the Tory spokesman go by without whispering, "Arms to Iraq, the Scott inquiry and BSE." The Tories presided over them all. *[Interruption.]*

The Deputy Presiding Officer: Order.

Dr Simpson: If the people of Scotland needed a greater reminder of the paternalistic and authoritarian approach of the Conservative party, they had it today. People do not have rights under Conservative regimes—people have to beg for information.

A participative approach to the development, consideration and scrutiny of policy and legislation was one of the key principles of the consultative steering group on the Scottish Parliament. We are appreciative of the large number of members of the public, voluntary groups and other organisations who made an important and valued input to the process by contributing to the Executive's consultations on "An Open Scotland" and the draft bill. Their views have helped to shape the bill and make it a balanced and representative piece of legislation.

I, too, would like to take the opportunity to thank all those who have been involved in the development and passage of the bill. I did not enter the Scottish Parliament, after spending a lifetime in a professional career as a doctor, to

undermine the rights of those with disability. I would like to add yet another commitment to the pledges that Jim Wallace and I have made today in respect of disability rights: we will work with the relevant organisations to ensure that the codes of practice—Christine Grahame referred to them as being the next crucial step in the process—are drawn up and implemented in a way that ensures that the rights of all citizens are protected.

The bill fulfils the Executive and coalition commitment to introduce an effective freedom of information regime. For the first time, the public will have a statutory right of access to information held by a wide range of Scottish public authorities. It goes a long way towards supporting greater openness right across the Scottish public sector. It encourages the proactive disclosure of information and it underlines the importance of open and responsive administration. Donald Gorrie's analogy of the Swedish king and the conversion might be a little extreme but, as he and others have suggested, it is important that we have a culture in which there is greater openness.

I look forward to the appointment of the Scottish information commissioner, who will promote and enforce the legislation. We have ensured that the Scottish information commissioner is independent, with strong powers to order the disclosure of information. We believe that a culture of openness will develop across the Scottish public sector and we will do all in our power to support that. The commissioner will play an important role in delivering freedom of information in Scotland.

The bill delivers a strong and robust legislative framework that will result in an effective freedom of information regime that is right for Scotland.

I commend the Freedom of Information (Scotland) Bill to the Parliament.

Decision Time

18:50

The Deputy Presiding Officer (Mr Murray Tosh): There is one question to be put as a result of today's business. The question is, that motion S1M-2855, in the name of Jim Wallace, asking that the Freedom of Information (Scotland) Bill be passed, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Baillie, Jackie (Dumbarton) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Campbell, Colin (West of Scotland) (SNP)
 Canavan, Dennis (Falkirk West)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Cunningham, Roseanna (Perth) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Dr Winnie (Highlands and Islands) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
 Gibson, Mr Kenneth (Glasgow) (SNP)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Grant, Rhoda (Highlands and Islands) (Lab)
 Gray, Iain (Edinburgh Pentlands) (Lab)
 Hamilton, Mr Duncan (Highlands and Islands) (SNP)
 Harper, Robin (Lothians) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, Mr John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North-East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 MacDonald, Ms Margo (Lothians) (SNP)
 MacKay, Angus (Edinburgh South) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Matheson, Michael (Central Scotland) (SNP)
 McAllion, Mr John (Dundee East) (Lab)

McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McGugan, Irene (North-East Scotland) (SNP)
 McLeish, Henry (Central Fife) (Lab)
 McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Paterson, Mr Gil (Central Scotland) (SNP)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Radcliffe, Nora (Gordon) (LD)
 Raffan, Mr Keith (Mid Scotland and Fife) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
 Russell, Michael (South of Scotland) (SNP)
 Sheridan, Tommy (Glasgow) (SSP)
 Simpson, Dr Richard (Ochil) (Lab)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North-East Fife) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Swinney, Mr John (North Tayside) (SNP)
 Thomson, Elaine (Aberdeen North) (Lab)
 Wallace, Mr Jim (Orkney) (LD)
 Welsh, Mr Andrew (Angus) (SNP)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)
 Wilson, Andrew (Central Scotland) (SNP)

AGAINST

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

The Deputy Presiding Officer: The result of the division is: For 88, Against 16, Abstentions 0.

Motion agreed to.

That the Parliament agrees that the Freedom of Information (Scotland) Bill be passed.

UN Children's Summit

The Deputy Presiding Officer (Mr George Reid): The final item of business today is a members' business debate on motion S1M-2950, in the name of Fiona McLeod, on the United Nations children's summit on 8 to 10 May 2002. The debate will be concluded without any question being put. I invite members who wish to speak in the debate to press their request-to-speak buttons.

Motion debated,

That the Parliament welcomes the United Nations Special Session on Children 2002 which will take place in New York on 8 - 10 May 2002; commends the recognition accorded by the summit to the need for adults to listen to the views of young people; considers that the Scottish Executive should regularly monitor and report on the implementation of commitments by Her Majesty's Government that arise from the Special Session and relate to Scotland's children; congratulates Save the Children for organising its "world fit for children" event in Edinburgh to coincide with this summit, and believes that a "Children and Young People's Summit" should be held annually by the Parliament.

18:52

Fiona McLeod (West of Scotland) (SNP): In opening, I say that we should remember that the debate was originally scheduled for 19 September last year, to coincide with the original date of the UN special session on children. Unfortunately, it had to be cancelled after the tragic events of 11 September last year. Those tragic events led to a new political climate and to new political tensions throughout the world. In that new political climate, it is even more important that young people's voices are heard.

Conflict affects young people in many ways. Conflict affects young people directly—it kills them. Conflict bereaves young people when their parents and relatives are killed. In too many instances around the world, it directly affects young people and children who are enlisted as soldiers. If listening to young people is accepted and becomes the norm, we will not forget in times of stress and chaos that we should listen to young people and that they should be heard.

The UN special session in two weeks' time, from 8 to 10 May, should be considered the norm. At that special session, young people will sit alongside heads of state, heads of Government and Nelson Mandela. We hope that, at the end of the special session, the heads of state will ratify the statement, "A world fit for children." The statement has been prepared with input from young people all round the world.

It is appropriate for the Parliament to thank Save the Children for its preparatory work in Scotland

through its video and information pack, which allowed organisations to help young people to express their opinions. Save the Children will pass those opinions on to the UN special session. Save the Children will further reinforce that when it holds its special link-up in Edinburgh on 9 May, when young people from throughout Scotland will talk to our young representative at the special session, Ellen. That will ensure that the discussion is informed from Scotland and that the discussion informs our thoughts in Scotland.

In 1990, a world summit was held on children's issues. Scotland can do better. We should not have to wait 12 years while the world thinks about holding another summit or special session. I hope that the minister will agree with me and many of the members who will speak that the Parliament should have an annual report—a state of the nation statement—of what the Parliament has done for young people and what it proposes to do. In addition to an annual report and an annual debate on that report, I hope that we will hold an annual meeting with the young people of Scotland, at which they can say, “You’ve got the statistics and the facts, now hear what we’ve got to say and our report card on what the Scottish Parliament is doing each year for the people of Scotland.”

It is sad that Scotland still has to do better. In 1995, a report was published on the UK's—I admit that it was not entirely Scotland's—contribution to and compliance with the UN Convention on the Rights of the Child. I will highlight from that report three issues on which the UK and Scotland fall down in their compliance with the convention—physical punishment, immigration and asylum policies and the age of criminal responsibility. We must do more. The best thing that we can do to ensure that those three issues and others are dealt with is fully to sign up to and implement article 12 of the convention.

Article 12 says that we must listen to young people, but we must go further than that. We must act on what young people tell us are their concerns. Young people have made their views on some matters clear. The 1995 report to which I referred pointed out our lack of provision for ending the physical punishment of children. The Parliament is engaging in a debate on the Executive's proposals to end smacking, with some provisos. In Save the Children's consultation on the Executive's proposals, more than three quarters of young people said that smacking is unacceptable.

The cross-party group on children and young people has held consultation events with young people. A theme that has run through those events is that young people say, “We need somewhere to go. We need somewhere that is our space.” I would like the minister to say that he has not only

listened to those young people, but acted on what they have said and will produce a strategy on the provision of what we might call youth cafes for the young people of Scotland.

I commend to the minister the 76 Church of Scotland children's forums, which were established recently. Those forums are for eight to 14-year-old members of the Church of Scotland. The forums allow their members to get together to discuss what they want their church to do. More than that, the adult representative at the children's forums must report their findings to the relevant board of the Church of Scotland.

I will turn briefly to the international situation, because we have to consider that.

The Deputy Presiding Officer: The member has one and a half minutes.

Fiona McLeod: Thank you.

The United States of America is one of the few countries that has not signed up fully to the United Nations Convention on the Rights of the Child. That is because it does not agree with the article that sets out that the death penalty must not apply to young people under the age of 18. We must put pressure on the United States to ensure that it signs up to that article.

I would also like to draw the Parliament's attention to President Bush's withdrawal of funds for contraceptive projects in the third world. The withdrawal of those funds has led to an increase in the number of women who die from pregnancy and childbirth-related conditions. It is pertinent and the chamber should know that, when a mother dies in pregnancy or in childbirth, there is a 50 per cent increase in the risk that her surviving children under the age of five will die before they reach the age of five. There is a crying need to provide proper contraceptive information across the world.

Let us listen to the young people when they meet in New York in a fortnight. Let us commit ourselves to an annual strategy, an annual report, an annual debate and an annual consultation with the young people of Scotland. Let us, in the words of Ravi Gurumurthy, the chair of the Carnegie young people initiative,

“work towards the day when it is not your age that counts, but the contribution that you are making.”

The Deputy Presiding Officer: There will be six speeches. I ask members to keep their contributions to not much more than three minutes.

19:01

Elaine Smith (Coatbridge and Chryston) (Lab): I congratulate Fiona McLeod on securing the debate. I understand why it had to be put off the last time.

Like most other MSPs in the chamber, I meet children from schools in my constituency when they come to the Scottish Parliament. Last week, I was particularly pleased about a visit that was made to the Parliament by children from St Kevin's Primary School in Bargeddie. They were the first children from a primary school who have visited me at the Parliament. Tomorrow, I will meet a group from St Ambrose High School in Coatbridge. The problem with the visits of those two groups is that I have had to arrange them. That is because, until the end of the year, the Parliament's education service is oversubscribed. I will return later to that problem.

The children and the young people who visit the Parliament seem to enjoy their visits. They have loads of questions about how the Parliament works, what I do as an MSP and how much everything costs. When they are asked for suggestions, they always have ideas about the issues that they would like to see the Parliament address and prioritise. The children from St Kevin's wanted play parks to be made a priority issue. That is interesting, because play parks was one of the issues that I raised a couple of years ago when I secured a debate on the United Nations Convention on the Rights of the Child. The children from St Kevin's thought that universal free school meals was an incredibly good idea. It is worth listening to what children have to say.

It is excellent that so many children and young people visit the Parliament. It is important that all children, from babies right through to teenagers, should be made welcome when they do so. I want to make that point strongly. Their visits should be a positive experience. It was excellent to see well-behaved babies in the Parliament during the debate on breast-feeding last year.

A welcoming atmosphere may help to influence positively young peoples' views of politics and politicians. I suspect that, when those young people are adults, it will make them keener to participate in the political process.

Benjamin Disraeli said:

"The Youth of a Nation are the Trustees of Posterity".

It is important for children and young people to feel that they belong. They should feel that they are part of a family, a community and of society. They should feel that their individual participation in the democratic process is not simply their right, but their responsibility.

We live in a democracy, but one in which unfortunately a large number of people, who feel alienated from society for whatever reason, do not participate. That issue is of particular importance when it comes to national and local elections. This week, we have seen the dangers of alienation in what happened in France.

Parents, relatives, friends and teachers are all an influence in the development of a child's sense of morality and responsibility. That is of particular importance in the interaction between older people and young people. The gradual demise of the extended family has affected that interaction. It has resulted in little opportunity for children and young people to meet and have positive relationships with adults other than their parents and teachers, which can result in alienation between the generations. Worryingly, it can also mean that older people fear and distrust young people to the extent that they sometimes do not want to leave their homes. There is an excellent project in Coatbridge in which young and older people meet to address that problem and build mutual respect. I do not have time to go into that project in detail.

It is important that young people feel part of society and have a sense of ownership and responsibility, not only for themselves but for the whole of society. Children and young people must feel included in democratic structures and be confident that their individual contribution matters.

I mentioned the education service. Perhaps we should ask the service to do some outreach work to our schools. We should also consider funding schools and children to come to the Parliament. One of the most important points that Fiona McLeod made was that we have to listen to young people, and I very much support her proposal to hold a children and young people's summit.

19:06

Mr Jamie McGrigor (Highlands and Islands) (Con): I congratulate both Fiona McLeod on securing the debate, and Save the Children on organising the forthcoming event in Edinburgh.

I agree that children and young people should be listened to and involved, especially now that, thanks to ever-increasing information from television and the internet, many of them are far more aware of world events than perhaps was the case in the past. Their formative years will shape the society of the future.

Children are not a class of their own. They are part of families and therefore part of society and, as such, it is up to parents and adults—who have more rights than they have—to accept the duties that are involved in piloting young people until they reach an age when they themselves can take the rudder. However, it is also vital that we in the Scottish Parliament accept that it is our duty to reduce the disparities and pervasive poverty that are outlined in Save the Children's policy briefing. They are also highlighted in Kofi Annan's report, which exposes the fact that there is still a mountain to climb. One hundred and thirty million

children are still not in school, and 20 million have been forced out of their homes by war.

Although we in this country have come a long way from sending children up chimneys, child slavery still exists worldwide. Furthermore, the modern internet has exposed children to a new abuse that is increasing at an alarming speed. Can members imagine how a child who has been abused must feel when he or she realises that images of that abuse are available worldwide on the internet? Recently, police throughout the UK carried out a six-month operation called Magenta against internet paedophiles, concentrating on people who used internet chat rooms to advertise and trade images of child abuse. Those arrested included people in care work, teaching and medicine.

The operation highlights the dangers of a new jungle that our children could experience and which is very far from a world fit for them. However, as they have to deal with those dangers, it is all the more necessary to involve children and young people in formulating modern policy against this evil.

A report in today's *Edinburgh Evening News* says that officers in Lothian and Borders probed 163 cases of child cruelty last year, which is a 33 per cent increase on the number of cases that were investigated the previous year. Save the Children's figures on child poverty in Scotland are also alarming. Thirty per cent of children in Scotland are affected by poverty, and the Scottish Executive must address the fact that 60 per cent of Glasgow's population is still living in areas of multiple deprivation. Our children need hope, and tackling those problems would be a good start. The UN special session will call for a UK national plan of action, and any Scottish input to that plan should include consultation with youngsters over how the lives of families in deprived areas can be improved. That would be a key element in arriving at equitable solutions.

My party believes that we should have a children's commissioner, and we also believe in the UN Convention on the Rights of the Child. We are glad that the UK delegation in New York will include two young people, one of whom is Ellen Leaver from Scotland. I send all my good wishes to her. In this way, children will learn that with an individual's rights come duties to society. I hope that that lesson will mean less crime, abuse and war and more responsibility and love among the adults that young people will become.

19:09

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I congratulate Fiona McLeod on securing this debate. I have worked on the

Education, Culture and Sport Committee with Fiona, and I am well aware of her determination that children's issues and listening to children should be at the heart of the Scottish Parliament's agenda. She is the right person to propose the motion.

I welcome the special UN session. It will be a session of huge importance, with all the heads of government attending and all the status that that implies for the occasion. There will be a genuine focus on the massive problems that face the children of our world. Jamie McGrigor quoted some of the statistics so I will not take up members' time repeating them. We have all seen the Save the Children briefing that outlines the horrific statistics.

We all know that there is a danger that, at such special high-profile events as the UN session, we talk a good talk and national leaders get good photo opportunities but that, once the flags have been flown, the tents are folded and the people all go home. We must ensure, however we can, that that does not happen in this case and that the 1990 UN children's programme is not once again left to lie unachieved. One of the special things about the UN session is that the children themselves will be heard, and we know that when children are listened to they can be powerful advocates. I do not think that any of us will ever forget Nkosi Johnson, the young South African boy who spoke unforgettably at the world AIDS conference in Durban last July.

The motion mentions the involvement of children at the Scottish level. In a more local context, I recall the evidence that was taken by the Education, Culture and Sport Committee on special educational needs and as part of the Scottish Qualifications Authority inquiry. Young people gave evidence that changed the way that people thought about the topics before them. I genuinely believe that this Parliament has a promising record on listening to children. We take evidence in committees and go out to meet children. There is consultation on establishing a children's commissioner, as well as the youth parliament and youth forums that we have established. Fiona McLeod mentioned other ways in which we are learning to listen to children. The proposal to establish a children's commissioner is central to the kind of involvement that we are discussing tonight.

I welcome Save the Children's special session, which is to be held in Edinburgh in May. I congratulate Save the Children on the consultation document that gave rise to the proposal for the world fit for children event. In thanking Save the Children, the Parliament should also take the opportunity to praise the work of the many other organisations that work on behalf of the children of

Scotland, including Children in Scotland, Children 1st, Child Poverty Action Group and Barnardo's.

On this occasion, however, we are pointing out the importance of listening to children themselves and allowing them to have their own voice. At the end of the motion, Fiona McLeod calls for

"a 'Children and Young People's Summit' ... held annually by the Parliament."

That proposal is well worth considering, although I recognise that there are other forums in which children have an opportunity to give their views. Fiona McLeod described such a summit as a kind of report card on how we were working, how things were progressing and how children saw matters. That seems a tremendous idea.

I look forward to the special sessions in May, both in New York and in Edinburgh, and I hope that they will help to promote and prompt real action to shape a better future for the children of the world.

19:13

Irene McGugan (North-East Scotland) (SNP):

It is appropriate at this moment to welcome Ellen Leaver, who is in the gallery tonight, and to wish her very good wishes from all of us in the Scottish Parliament on her mission to New York.

The UN special summit will address a global agenda and action plan, but that plan will require local delivery. I would like to mention briefly one or two Scottish initiatives that I hope will deliver a better world for children. The child strategy statement was originally issued by the then Scottish Office in 1998, but was updated and reissued in 2000 by the Scottish Executive. The need for that strategy remains, because children still have decisions made about them and taken for them, often without their wishes or needs ever having been considered. Despite the fact that they make up a fifth of Scotland's population, they have a very limited opportunity to comment on policies that impact upon them.

All departments in the Scottish Executive are supposed to evaluate the impact on children of new initiatives—in effect to child-proof legislation. They do that by asking a number of questions as legislation progresses, such as: can the policy positively enhance opportunities for children in Scotland? That process has received a great deal of support. The principles behind the process and its intention are absolutely correct. It is a means by which we could measure all policies against, for example, the requirements of the UN Convention on the Rights of the Child.

The minister will sense a "but" coming up here and there is one, because that child-proofing has a number of weaknesses in its content and

implementation. There is no mechanism for independent monitoring, so it is very difficult to assess the usefulness and effectiveness of the child-proofing, and whether the impact of policies on children is being taken into account. There is also no requirement to report to Parliament or to the public in general. There is no provision for follow-up if a department decides that a policy would not have an impact on children. Most important, there is no established or sustainable means of consulting children and young people. That leads me to suggest that either the child strategy statement is not the most effective means of child-proofing legislation in the Parliament, or that we need to strengthen it, perhaps by making it more proactive and introducing monitoring and public reporting.

That leads to another issue, which is about statistics. Countries need to be able to collect, analyse and disaggregate data by a number of factors—such as age, sex and so on—that lead to disparities. That could promote a wide range of child-focused research. I suggest to the minister that perhaps the Executive needs to review and enhance its collection and analysis of data on children in Scotland, because we know that there are major gaps in the availability of such statistical information. That leads to difficulties in making comparisons, for example across the four countries of the UK. Therefore, we do not know how children in Scotland are doing compared with children elsewhere in the United Kingdom.

The children's commissioner has been mentioned. A commissioner could deal with many of the issues that we are discussing today, including monitoring and reporting. As Fiona McLeod rightly highlighted, a commissioner could help to involve children meaningfully. If we learned anything from the evidence that the Education, Culture and Sport Committee took in making our first report on a children's commissioner it was—as young people said—that such a commissioner must address the needs of all young people who live in Scotland. I very much hope that through global and local initiatives we are working towards achievement of that goal.

19:18

Robin Harper (Lothians) (Green):

I congratulate Fiona McLeod on securing the debate and I commend her and other members on the issues that they have raised.

I will raise a few other points. First, following on from the rights of the child to a clean and healthy environment and love, care and affection, I flag up that the cross-party group in the Scottish Parliament on children and young people will be considering the built environment. That is very important. If we do not ensure that the built

environment is child friendly, we are committing a crime against children that goes down through decades. It is time that we address the issue and it is time that the big house builders also address it.

My second point is the idea that we should always think local as well as global. When we think local about what happens in our schools and our communities, do we listen enough to children? Most schools now have school councils of one kind or another, but too often they are pretendy wee councils. They are not real councils. A school council must have a budget and the children must have something to spend. Even £30 or £40 would give children the opportunity to take real decisions—the benefits of which they would be able to see for themselves—instead of passing little notes around with complaints about the length of their lunch time or the condition of the food. It might be that the Executive has the opportunity to encourage all schools to have a standard of school council that would give children the opportunity to take real decisions.

My third point is about listening to young people. We should encourage more young people to attend community councils and to take part in the decisions. Of course, that begs the questions whether we give enough support to community councils and whether there are enough of them. If we had real community councils with real budgets—rather than pretendy community councils—it would be worth encouraging young people to attend them and to stand for election.

19:21

Linda Fabiani (Central Scotland) (SNP): I, too, would like to congratulate Ellen Leaver and Fiona McLeod, but I do not have time.

I want to speak about the part of the motion that states:

“the Scottish Executive should regularly monitor and report”.

I believe that Her Majesty's Government has commitments to children that the Scottish Executive should monitor and on which it should report the results to the Parliament. Those commitments were made when the UK Government ratified the UN Convention on the Rights of the Child in December 1991, which means that the Government should obey the law as written in that convention. Article 1 of the convention says that everyone under 18 years has the rights under the convention. Sadly, I think that the UK Government falls down on article 4, which says that Governments should make the rights available to children.

The UK Government also falls down on its refusal to ratify article 22, which states that children who come into a country as refugees

should have the same rights as children who are born in that country. We can see in Scotland why the UK Government refused to ratify article 22. I refer to the fact that in a Home Office immigration removal centre in the area that I represent, which was recently reclassified without our knowledge, children are held under lock and key and behind barbed wire. That is a direct result of UK Government policy.

When some of my colleagues visited that centre—Dungavel—last week, 16 children were living in the family unit. They do not go to school and are educated in-house. They must pass through locked doors to get outside to play. The Executive allows that to happen and—as far as I know—puts no pressure on its UK partners to stop the practice.

We should insist to the Executive that the so-called risk of absconding does not outweigh the damage to children who are denied their freedom, and that in Scotland we should explore community reporting procedures as an alternative to locking up children. We should ensure that the Home Office does not force Scottish local authorities into a breach of their duties under the Children (Scotland) Act 1995. I am sure that Scottish local authorities and sheriffs would be most concerned about cases of children being wakened early in the morning, being removed from their place of residence and losing their access to school education and to friends that they have made. There is nothing in the Immigration Act 1971, as amended, to overrule the provisions of the Children (Scotland) Act 1995.

Before the minister says that the matter is reserved, I will say that that is not good enough. Westminster MPs have tried to cloud the issue by accusing members of the cross-party parliamentary group on refugees and asylum seekers of criticising the workers at the Dungavel centre. That is not the case. The group criticised the Government's policy of locking up people who have not committed a crime and who have children. One Westminster MP, Mr Harris, said on “Newsnight” that the cross-party group on refugees and asylum seekers is no different from Westminster's all-party group on “Coronation Street”. I do not believe that members of the all-party group on “Coronation Street” have ever visited children behind barbed wire. I ask that members, while feeling good about the motion—which is very worthy—remember that there are children in Scotland whom the Parliament is letting down very badly.

19:25

The Deputy Minister for Education and Young People (Nicol Stephen): I welcome the opportunity to respond to the motion. I also

welcome representatives of Save the Children and others who are in the public gallery this evening. Many of them have done a great deal of work on this issue and to promote the various other issues to which members have referred.

I congratulate Fiona McLeod on lodging the motion for the Parliament to discuss. It serves to remind us all of the global commitment that is required on children's issues and the commitment that the Parliament and the Executive have made to young people in Scotland.

The UN special session on children is an unprecedented meeting of the UN General Assembly dedicated to children and young people around the world. It will bring together Government leaders and heads of state from, to date, 72 nations around the globe. It will also bring together non-governmental organisations, children's advocates and young people themselves at the United Nations in New York. Several leaders of civic society and the private sector, including Nelson Mandela and Bill Gates, have confirmed that they will participate.

As has been mentioned, the United Kingdom Government is leading a small delegation to the event. I am pleased that one of the two young people from the UK who will attend is here this evening. I add my congratulations and good wishes to Ellen Leaver.

In 1990, at the world summit for children, 71 heads of state and Government and other leaders signed the "World Declaration of the Survival, Protection and Development of Children" and adopted a plan of action to achieve a set of goals. Those goals are every bit as relevant today as they were then. Indeed, some would say that the need is even greater. The goals included:

improving living conditions for children and their chances of survival by increasing access to health services for women and children;

reducing the spread of preventable diseases;

creating more opportunities for education;

providing better sanitation and greater food supply; and

protecting children in danger."

The commitment to realising the world summit goals has helped to move child rights to a high place on the world's agenda, but it reflects on all nations at the beginning of the 21st century that some of the goals are so basic. It is important that the special session is taking place as a follow-up to the 1990 world summit, because we desperately need to maintain and increase momentum.

The Scottish Executive fully acknowledges the importance of the views of young people and we welcome the profile that the UN special session and the event organised by Save the Children give

to the subject. Indeed, our debate is an important part of that. Cathy Jamieson will be speaking at Save the Children's "World Fit for Children" event and will meet some of the young people who have been involved in preparations leading up to the UN special session.

The special session will involve over 300 young people and is expected to produce a global agenda with a set of goals and plan for action devoted to ensuring three essential outcomes: the best possible start in life for all children, a good quality basic education for all children and opportunities for all children to have meaningful participation in their communities. The Executive and the many others who are involved in delivering services for children and young people are already working towards those outcomes in Scotland.

The Executive is committed to ensuring that improved outcomes for children and young people are at the heart of the services that are delivered in Scotland. That is why we have supported the Scottish youth summit, which engaged young people from throughout Scotland in direct debate and discussion, and why we are actively considering the best way to build on the success of the youth summit in future events by listening to the views of young people. It is also why we have given substantial financial and other support to the Scottish youth parliament and why we strongly support its development.

In June last year, with the Scottish youth parliament and Save the Children, we launched a practical toolkit on consultation with young people. We have advocated the toolkit's use across central Government and local government as well as in other organisations that work with young people in Scotland. We will actively monitor the toolkit's use across those bodies.

I emphasise my view that consulting young people, obtaining their views and then failing to act on that information is worse than ignoring their views. If expectations are raised by consultation, it is vital that action is taken. Engaging with young people but failing to respond to their views and their objectives for their local communities pays only lip service to the goals to which I have referred. There will be a full debate in Parliament next week on youth participation in communities.

The UN's special session will raise the profile of children's issues and provide the opportunity to review progress on those issues and plan for the future from a long-term, global perspective. However, children's issues must always be high on our agenda in Scotland and at the centre of everything we do. We must recognise the specific needs and views of children and young people in Scotland.

Last year, the action team on better integrated services for children published “For Scotland’s children-Better integrated children’s services.” In that report, the action team reviewed current service provision and provided an action plan and recommendations for the future. In my view, some of what the report found is totally unacceptable in 21st century Scotland. We still have much to do.

The Cabinet sub-committee on children’s services was formed following the publication of the action team’s report. I have no doubt that some of the insights and damning indictments in the report were the reason for giving the issue such a high priority. The sub-committee is chaired by the First Minister and is taking forward better-integrated services for children.

I must thank Fiona McLeod for initiating a debate on such an important subject. We all want every young child and person in Scotland—and around the globe—to live a happy, healthy and contented life and to have the opportunity to reach their full potential. We still have a long way to go, but we must all work together to achieve that goal. I believe that Scotland has an important place in the global community in delivering on that.

Meeting closed at 19:33.

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