MEETING OF THE PARLIAMENT

Wednesday 18 September 2002
(*Afternoon*)

Session 1

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Scottish Parliament

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[THE PRESIDING OFFICER *opened the meeting at 14:00*]

Time for Reflection

The Presiding Officer (Sir David Steel): To lead our time for reflection, we welcome the Reverend Father Paul Fletcher, minister at the Sacred Heart church in Edinburgh.

Reverend Father Paul Fletcher (Sacred Heart Church, Edinburgh): Peace! I thank Sir David and all the members of the Scottish Parliament for inviting me here. I come as a deaf Jesuit priest ministering to the Roman Catholic community of the Sacred Heart, Lauriston and the Edinburgh deaf community. I will share a few personal reflections on how we communicate peace in our lives.

As I am deaf, touch is important to me, as it is to many deaf people. Touch brings acceptance and reassurance. Deaf people are naturally tactile; their hands express and mean so much. Yet I am aware how easily touch can leave us feeling fragile. Naturally, all of us resist being vulnerable—so much so that we live in a society that is afraid to touch, afraid to reach out to help people in need and afraid that our gestures and actions may be misinterpreted or misunderstood.

Fear does not help. We need peace. In the deaf community, we express "peace" in sign language by a gesture of two hands coming together and drawing a line of harmony, of calm and of peace. In Catholic liturgies, we express peace by shaking hands or embracing each other, especially before communion in response to the prayer for peace. That is a simple gesture of touch that involves reconciliation, forgiveness and acceptance. With the right attitude, touch can heal many of life's hurts and bring inner peace. Try it and see.

Jesus's touch brought healing to many people on earth, and we all know that actions speak louder than words. On 1 January, for world day of peace, Pope John Paul II reminded us that there can be

"No peace without justice, no justice without forgiveness".

It is hard to forgive when one feels victimised, marginalised or discriminated against, because the feeling of injustice is such that one feels paralysed—numb to the point of fear. Injustice begets helplessness, inertia and negativity. However, we need to be positive. Appropriate justice, tempered with forgiveness, brings a chance for atonement and being one again. It enables wholeness and acceptance and ultimately promotes lasting peace.

Before the start of business, let us consider how we bring peace to our world, our workplace and our neighbours, homes and families. May we reflect in the stillness of this moment and thank God for the gift of peace.

Loving God, Creator of us all, look down on your people in their time of need, for you alone are the source of our peace. May we share in the peace of Christ who gave his life in the service of all. May our touch bring reassurance and new confidence as we continue to pray and work for peace in our world.

May the touch of God Almighty and the peace of Christ be with you all.

Criminal Justice (Scotland) Bill: Stage 1

The Presiding Officer (Sir David Steel): Our main item of business this afternoon is the stage 1 debate on motion S1M-2952, in the name of Jim Wallace, on the general principles of the Criminal Justice (Scotland) Bill. I call Jim Wallace to speak to and move the motion.

14:06

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I am pleased to open the debate on the Criminal Justice (Scotland) Bill following the publication of the stage 1 report.

It is obvious that the Justice 2 Committee has quite rightly probed and tested rigorously the policies that are set out in the bill. In doing so, the committee took evidence from a wide range of interests and spent a considerable amount of time discussing and reviewing our proposals. I want to record my thanks to the committee members and their staff for the hard work that was evidently put into producing the stage 1 report.

I welcome the committee's support for the general principles of the bill—subject to the clarification or further consideration of some points the committee broadly supports 67 of the 70 sections in the bill. I regret, however, that the committee has been unable to wholly support the Executive's proposals on victim statements, the proposed ban on striking very young children and youth crime pilots.

It is obvious that, with a wide-ranging bill of some 70 sections, I do not have time to deal with every topic. I am sure that that will not deter members from raising relevant points, and Richard Simpson will cover what he can in his closing remarks. In opening the debate, I intend to deal with the main issues that were raised in the committee's report. I hope to provide reassurances that will enable the Parliament to support confidently the general principles of the bill.

The purpose of our proposals in part 1 is writ large on the face of the bill—it is to protect the public. As the committee notes, our proposals are based almost entirely on the MacLean committee's excellent work. Those proposals were welcomed by those who responded to our consultation and, indeed, by the Parliament when it debated our white paper in June last year.

Public protection is at the forefront of our proposals. We want to ensure that high-risk offenders are identified at the time of sentence and that the courts can impose a sentence that will balance society's rights and those of the offender. The committee emphasised the importance of a robust risk assessment process to underpin the new arrangements. I agree entirely with that conclusion. That is why we have provided in the bill for the accreditation of both the risk assessors and the process itself. One of the risk management authority's first priorities when it is set up will be to develop rigorous procedures to support that process. We fully expect the RMA to consult on its proposals before they are finalised.

The committee also recommends that the RMA comments in its annual report on local authority co-operation in dealing with high-risk offenders. That recommendation can be provided for in the management statement in which we will set out our expectations of the RMA as a public body.

I also confirm that the defence has a right to challenge any motion made by the Crown during criminal proceedings and that that will include in the future any motion made by the Crown for a risk assessment order. There is therefore no need to make express provision for that in the bill.

The committee agrees that allowing intelligence-type information to contribute to the sum of the information to be gathered as part of the post-conviction risk assessment report will make a valuable contribution to the risk assessment process.

When I gave evidence to the committee on 18 June, I explained that that information will not be based on tittle-tattle or hearsay, but will be drawn from reputable sources such as the Crown Office, force intelligence systems and the Scottish Criminal Record Office. It will be used only after the offender is convicted and will be only one component of the risk assessment report. The offender will be able to challenge any aspect of the risk assessment report, or indeed produce his or her own.

However, the committee is right both to highlight that the practice is unusual—although not unprecedented—and to continue to ask us to explain the sources and nature of the information. As a result, I will provide the committee with practical examples before stage 2.

The committee suggests that, when requiring the court to consider the findings of the risk assessment report against the risk criteria, we consider introducing a higher test than the balance of probabilities. Alternatively, it is suggested that the mandatory requirement to impose an order of lifelong restriction be removed where the court concludes that the risk criteria are met.

The court already receives many types of post-conviction reports about offenders to which it has regard when determining what sentence to impose. It will apply the balance of probabilities test to the information that the reports contain and,

within those parameters, consider what weight to apply to that information. During the consultation process, the judiciary raised no concerns about applying the same well-tested principles to risk assessment reports.

Similarly, no concerns were raised about the MacLean committee's recommendation that the imposition of an order for lifelong restriction should be mandatory where, assisted by the findings of a rigorous evidence-based risk assessment, the court concludes that the statutory risk criteria are met and that the offender is indeed high risk. As the MacLean committee recognised, the mandatory nature of the disposal is the key to achieving more uniformity in dealing with very serious offenders, and our aim is to achieve the highest level of protection for the public.

The report records the committee's reasons as to why it cannot endorse the statutory risk criteria that are proposed in the bill. I should explain that, in determining those criteria, we have tried to strike a balance between ensuring on the one hand that they are sufficient to provide adequate public protection, are workable under law and are not so tightly drawn that high-risk offenders slip through the net; and on the other hand that they are not so wide as to catch lower-level risk offenders. We must also ensure that the offender's rights are protected. The committee does not think that we have got it quite right yet. I am grateful for its detailed comments on this point and assure Parliament that we will want to look carefully at the risk criteria in the bill and address the matter fully before stage 2.

The proposals in part 2 of the bill establish a legislative base to implement key elements of the Scottish strategy for victims. In particular, I welcome the Justice 2 Committee's support for the important proposals contained in sections 15 and 16 of the bill.

Section 14 seeks to ensure that victims' voices are heard during court proceedings by giving them the right to make written statements to the court about how a crime has affected them. The committee report well reflects the great deal of discussion about these proposals in the evidence sessions at stage 1. Concern has been expressed about the purpose of the victim statement; the inclusion of irrelevant information in the statement; the right to challenge a statement; the influence of the statement on sentencing; and how the bill will implement the scheme.

Our policy originates in the Scottish strategy for victims, which includes a commitment to pilot a scheme to examine how victims' views can be taken into account in the criminal justice system. The extensive consultation that followed the strategy's publication demonstrated widespread support for such a pilot.

We believe that the purpose of victims' statements is clear. Most important, they will empower victims by allowing them to communicate directly to the court the crime's physical, emotional and financial impact on them, instead of their having to communicate through a third party as at present. That approach is central to the concept of victim statements and will help to redress the balance between the victim and the offender, who already has the opportunity to make a plea in mitigation. Currently, where there is a guilty plea or where evidence is not led, the victim may well feel that he or she has even less opportunity to be heard.

As a result, we have made it clear that, as with any reports or other information laid before it, the court will decide what is relevant in determining sentence. Victims who choose to make a statement will do so on a pro forma containing specific questions to ensure that, as far as possible, the information provided is relevant. If the statement contains information that is not relevant to the offence for which the offender has been convicted, it will be disregarded by the court. Indeed, judges and sheriffs are experienced in assessing information provided to them, including its relevance and admissibility. They do so daily, and I am confident that they will be able to deal with the victim statement in the same way.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Does the Deputy First Minister envisage circumstances when there might be attempts at an agreed narrative where items that are likely either to be contentious or to require further investigation can be highlighted in preliminary discussions between defence counsel and the prosecutor?

Mr Wallace: It is important that the defence has notice of what is being said. The timing of that is also important. If there are items in the victim statement of which the defence ought to be aware—even before conviction—it would be proper that that information is made available. I will speak later of the issue of challenge, which was raised by the Justice 2 Committee.

The statement will be laid before the court following a finding of guilt or a guilty plea, as I indicated to Mr Fitzpatrick. It will also be made available to the accused at that time. Information on the statement can be provided to the accused at an earlier stage if it is relevant to the defence, and this will be liable to challenge in the same way as other evidence. Similarly, the offender will also have the opportunity to challenge the information post conviction, when there might need to be a "proof" of the disputed matters. That is an important safeguard. As far as we are aware, there has not yet been a challenge in England and Wales.

We want to ensure that any consequences of a challenge to the victim statement are minimised as far as possible. The provisions of the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002, which restrict an accused person's ability to cross-examine a witness personally in cases involving certain sexual offences, would apply to any challenge to the victim statement in the course of such a trial. We will introduce an appropriate amendment at stage 2 that will ensure that procedures following a finding of guilt or a guilty plea in those cases are also covered.

I have noted that the committee supports the view of the Sheriffs Association that some of the procedural complexities that might arise could be overcome if the information from the victim was mediated through the Crown. That would effectively remove the central purpose of the victim statement, which is to allow the victim a means of direct communication to the court. In their evidence to the committee, the Crown Agent designate and Victim Support Scotland supported our general view. It is clear, however, that we need to give careful thought to detailed matters of procedure—to take on board Mr Fitzpatrick's point—and we will do that through the work of the steering group, which will progress the implementation of the pilot scheme.

In response to the committee's concerns, we will accept the recommendation of the Subordinate Legislation Committee that Parliament should have a greater degree of involvement in decisions on the key aspects coming out of the evaluation of the pilots. We will, therefore, amend the bill to subject to the affirmative procedure the powers to prescribe courts or classes of courts and to alter the age at which a child can make a statement. We also propose to introduce a further power to enable the ministers to amend the list of those who are eligible to make a statement in the event of the death or incapacity of the victim.

Let me make it clear that the policy is to pilot and evaluate the victim statements scheme in two or three sites for up to two years. Our intention has been to introduce proposals that have sufficient flexibility to allow us to trial different ways of doing things. We want to get the procedures right and to develop a scheme that demonstrates Scotland's commitment to victims of crime.

We have learned much from the helpful evidence given to the committee during stage 1. I want to continue that dialogue in advancing the scheme. Victim statements, after all, are part of the criminal justice system in several western countries. Victims of crime in Scotland must be treated with equal consideration. It is right to give victims the option of making a victim statement. I hope that the Parliament will support the victim's right to choose whether to do so.

Scotland—by international standards—is a violent nation. If we want to break the cycle of violence, we must make a start with the young. We have international obligations under the United Nations Convention on the Rights of the Child to protect children from violence. When we set out our plans for changing the law on physical punishment last year, Parliament welcomed our proposals to clarify the law and to specify some kinds of punishment as unacceptable.

Phil Gallie (South of Scotland) (Con): The minister mentioned priorities. He also said that Scotland has a violent reputation. Will he state what he believes to be the most critical area of crime at present?

Mr Wallace: Tackling serious violent crime is possibly the most important area, given that the numbers of those offences have been increasing. As has been explained on numerous occasions, one of the reasons for the increase in recorded violent crime is that it includes the possession of offensive weapons. Proactive policing means that those who carry offensive weapons are apprehended and that contributes to the increase in numbers. I would much rather that those weapons were found. As I said, tackling serious violent crime is of particular importance. I already referred to the provisions in part 1 of the bill on the order for lifelong restriction, which are directed at dealing with the most serious violent and sexual offenders in our community.

Let me make progress. Although the Justice 2 Committee unanimously supports measures that aim to reduce mental and physical harm to children, we are disappointed that the committee cannot agree that there is an age below which parents should not hit their children. We have always said that we would listen to all the arguments and we note what the committee said about the evidence that it took in that area.

The new research that we published today confirms that, although parents did not think that we had got the age right, a majority of parents support a ban on smacking children under the age of two. An even greater majority thinks that there should be no question of hitting babies under the age of one. I have arranged for copies of the research to be placed in the Scottish Parliament information centre and on the Executive's website.

The committee has reported its view, which the Executive accepts with reluctance, that legislation on that point should not proceed.

Fiona McLeod (West of Scotland) (SNP): Will the minister take an intervention on that point?

Mr Wallace: Yes.

The Presiding Officer: I call Irene McGugan.

Fiona McLeod: In the minister's opening remarks, he referred to the Executive's obligations

under the UN Convention on the Rights of the Child. Where does the Executive's acceptance of the Justice 2 Committee's view leave its obligations, with reference to article 19 of the convention, which says that states should take

"all appropriate … legislative … measures to protect the child from all forms of physical … violence"?

Mr Wallace: As the member knows, other provisions in the bill respond to those obligations. For example, section 43(1) sets out the criteria to which the court must have regard when it determines whether an act done to a child is "a justifiable assault". I was about to point out that hitting a child with an implement, shaking a child and directing a blow to a child's head are dealt with by the bill.

We will pursue our aim of protecting children—especially younger children—through educating and informing parents about the possible negative effects of physical punishment and ensuring that parents have access to positive parenting approaches. I will discuss with colleagues the best ways of getting those messages across.

However, I observe that our research provides overwhelming support, not just for banning blows to the head, which has 80 per cent public support, but for banning the use of implements and shaking. I signal that the Executive does not consider that there should be a dilution of the proposition that all three of those aspects of physical punishment should be made illegal.

In the youth crime strategy, which was launched by Cathy Jamieson on 28 January this year, the Executive undertook to legislate to establish at least two pilot areas in 2003 to test whether certain 16 and 17-year-old offenders could be dealt with more effectively through an enhanced children's hearings system.

The policy intention of the bridging pilots is to promote interventions that will be more effective than the adult courts in leading to a reduction in the level of youth crime. We know that many of the young people in that group are immature and face a multitude of other problems. The bridging pilots intend to target young people who are in the early stages of minor offending, in order to include them in relevant programmes before they get drawn into a pattern of repeat offending.

As the stage 1 report points out, it is true that a court can pass a sentence that involves participation in a programme. However, the court cannot be forced to do so—it might choose to pass a punitive sentence, such as a fine or custody. Even if a court places a young person on a programme, the penalty for breach may be custody. Surely it is in no one's interests to propel vulnerable young people into the criminal justice system with that risk, because we all know that young people who are released from custody have a high reoffending rate.

The purpose of the pilots is to ascertain whether the children's hearings approach, which is based firmly on treating and having oversight of the young offender within the community, can be more effective for slightly older, but still immature offenders whose offences are neither serious nor persistent.

Robin Harper (Lothians) (Green) *rose—*

Paul Martin (Glasgow Springburn) (Lab) *rose—*

Mr Wallace: I will take an intervention from Mr Harper.

Robin Harper: I am sure that the minister agrees that his proposals are a step forward. However, does he also agree that additional funding must go into social work in order to enable social workers to cope with the extra load that the bill will impose on them?

Mr Wallace: If Mr Harper had allowed me another 10 seconds, he would have heard me stress that the proposal is not simply to refer those young people to the children's hearings system as it is currently understood. We will invest additional resources in the pilots to ensure access to programmes with a proven track record in reducing reoffending. The pilot schemes will draw on best practice from the hearings, with their more holistic approach, involving panel members from local communities.

Johann Lamont (Glasgow Pollok) (Lab) *rose—*

Mr Wallace: I think that Paul Martin wants to intervene.

The Presiding Officer: Do not encourage him. Johann Lamont is asking.

Paul Martin: Can the Deputy First Minister propose any ways in which to deal with the issue of parental accountability during the children's hearings process? There is no legislation to identify ways in which we can ensure that parents are more accountable during the process.

Mr Wallace: Parents can be required to attend the hearings. Parental responsibility is an important part of our broad approach to youth crime, and there is a need to emphasise the role of parents and their responsibility.

Johann Lamont: Does the minister agree that the children's hearings system is under-resourced to do the job that it is asked to do with children under 16? Does he agree that there is a danger that adding young people who do not regard themselves as children to the system could undermine the integrity of the children's hearings

system and the important role that it plays for younger children?

Mr Wallace: I am aware that, in some parts of Scotland, resources are an issue. That is why we are not talking about extending the scheme throughout Scotland; we are talking about two or three pilot projects. It would obviously be wrong to pilot the initiative in an area where the system is already under stress. Moreover, it would not be possible to extend the scheme to the whole of Scotland without further primary legislation. We are not seeking orders to extend the scheme; the matter would have to come back to Parliament as the subject of primary legislation. It is for the very reason that Johann Lamont raises that we want to ensure that the pilot areas are places where the children's hearings system is able to cope. I recognise the fact that the Justice 2 Committee has had difficulty in accepting the proposals for the pilot schemes in their present form. I have, therefore, agreed with Cabinet colleagues that I will review the issue further and report back before stage 2 proceedings begin.

Because of the time constraints, I have not been able to deal with issues such as the increased sentences for child pornography; the extension of the use of electronic monitoring technology to track offenders; the increased protection from harassment; new measures in drugs courts; more protection from antisocial behaviour; attempts to free up police time; and the piloting of video links between prisons and sheriff courts.

The bill covers a substantial area of the criminal justice system. As I said, it focuses on the need to make Scotland's communities safer. I believe that the proposals in the bill do that.

I move,

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

The Presiding Officer: I apologise to Fiona McLeod for calling her by the wrong name—perhaps she did not notice. I remind members that the names on my computer screen do not correspond with the advance list of speakers that I have received. It is the screen that counts. I have to know who wants to speak, as I have to work out the speaking time that is available for back-bench members, which I will announce after Roseanna Cunningham's speech.

14:28

Roseanna Cunningham (Perth) (SNP): The minister must be wishing that his summer recess had never ended, as his return to the chamber has been fraught with difficulty. Fraught is probably the right word to use in describing a Liberal Democrat minister in the Executive. We have become accustomed to the Executive ensuring that bad news stories and U-turns are dealt with by their Lib Dem so-called colleagues.

Here we are: another week and another justice U-turn from the Executive. It is less than a week since the First Minister adamantly insisted that there had been no change in Executive policy towards its proposed legislation on the physical punishment of children. Yet, the Minister for Justice—with his ears still burning, no doubt, from the embarrassment of his forced climbdown over the closure of Peterhead prison—is announcing the abandonment of yet another Executive policy. Clearly, this Liberal is for turning. It is a pity that we have to go through so much grief in the process.

Nora Radcliffe (Gordon) (LD): Does the member agree that consultative democracy, whereby we put proposals to people, engage in consultation and then demonstrate that we have listened to them, is the sort of democracy that we want?

Roseanna Cunningham: That would be an understandable intervention if the proposals were not announced as dogma and then run as dogma for the entire period of the process.

Several specific issues require to be addressed in the debate, but I shall begin by expressing general concern at the way in which the Executive has begun to deal with changes to Scotland's criminal justice system. From the start, the bill has been a mishmash of miscellaneous measures making a diverse range of legislative changes, many of which are highly controversial, lumped together without rhyme or reason. That inevitably makes it extremely difficult for the bill to find a focus. Amendments can be lodged on an incredibly wide range of subjects. Any area overlooked by this supposed catch-all bill will cause understandable concern among those interested in a specific bit of legislation.

We know that several members have plans, understandably, to lodge amendments that deal with their particular interests. We also know that the Executive might lodge amendments that widen the bill's scope. That is bound to happen with a bill that is not designed to deal with a specific area of the criminal justice system but which is the legislative equivalent of the conversational "and another thing".

It is no wonder that the Executive stated its intention to introduce a variety of amendments to the bill including, but not limited to, provisions on the outlawing of trafficking in human beings; disposals in cases of insanity; enabling a person in custody to appear in court by television link; enabling foreign convictions to be taken into account in criminal proceedings in Scotland; and amendments in relation to wildlife crime.

Those may all be worthy moves, as may be the proposals that are likely to emanate from members, but is this the best way to go about making changes to Scotland's criminal justice system? Devolution was meant to sweep away Westminster's tradition of passing bills that lacked coherence and which left the law a mess of different acts. The Criminal Justice (Scotland) Bill is a reversion to the infamous Law Reform (Miscellaneous Provisions) (Scotland) Bills that frequently made finding the law of Scotland so difficult. We should have seen the back of that lazy way of Westminster working. I am sad that we seem to be dropping back into old ways.

Brian Fitzpatrick: Is the member seriously suggesting that 12 separate bills should have been introduced, such as a risk management authority (miscellaneous provisions) bill, a victims' rights (miscellaneous provisions) bill or a sexual offences (miscellaneous provisions) bill? If that had been done, would we not have heard again the refrain from Roseanna Cunningham that it was another example of the Executive recycling the same material?

Roseanna Cunningham: I would be very happy to see an abolition of Brian Fitzpatrick (miscellaneous provisions) bill. However, I am certain that any member who has had to deal with the law of Scotland knows that the Law Reform (Miscellaneous Provisions) (Scotland) Bills were the wrong way in which to do things. We have repeated that process in the Scottish Parliament.

It is to the Justice 2 Committee's great credit that it worked through the bill in the time that it was given and did so with care and sensible deliberation, when it could easily have been swamped.

I will follow the example of the committee report and concentrate first on parts 1, 2 and 7 of the bill. I have argued for years for the introduction of lifetime supervision of sex offenders and I am pleased that that has eventually been included in a bill. I first proposed that measure several years ago in Westminster during the passage of a much earlier bill and long before the MacLean report. At the time ministers appeared to think that the idea had no merit.

It is interesting that so many Scottish National Party policies that are frequently derided by Labour spokespeople turn up after a time rebranded and adopted by Labour. Again, on the issue of lifetime supervision, where the SNP has led, the Executive eventually follows. I wonder what George Foulkes, the former deputy to the Secretary of State for Scotland, has to say about that idea now, given that when we called for the implementation of the MacLean report's recommendations he dismissed that report as uncosted nonsense. I notice that Labour members are silent.

On part 2, on victims' rights, there has been much talk in the chamber about the rights of victims, but there has been little change in the experience of victims in our criminal justice system. Victims should have better access to information about the progress of a case or the release of individuals convicted of committing offences against them. There must also be room for victims to be more involved during trials.

However, I have serious reservations about the practical implications of victim statements as provided for in the bill. The Sheriffs Association proposal that the Crown should mediate the information might be a way forward. That would go some way to removing the concern that the length of sentence or the conviction would depend on how the victim performed when giving their statement. Different people react differently, cope differently and present different public faces. It was interesting that Victim Support Scotland's initial response to the proposal was lukewarm.

The section of the bill that caused the greatest controversy was section 43, which relates to the banning of the smacking of children. In an example of the minister's confused approach to the proposals in the bill, it seemed that he was insisting that the bill was only making a statutory offence out of something that was already an offence in common law, which raises the question of why we should bother, while saying that the change would not necessarily result in prosecutions, which also raises the question of why we should bother. All that was said despite the fact that he was in no position to say that the change would not necessarily result in more prosecutions as he could not direct the procurator fiscal's office one way or another—that is, unless he had already done a deal with the Lord Advocate that, as soon as the legislation came into force, "advice" was to be circulated recommending against prosecution.

However, even if we had taken the minister's assurances at face value, the idea seemed like a recipe for confusion right from the start. However well-meaning the proposed change and however appropriate the culture change might have been, it seemed bizarre to enact a change that, from the outset, was not intended to be implemented—bizarre, though, is a word that springs to mind now and again when contemplating the Executive.

Lord James Douglas-Hamilton (Lothians) (Con): On 7 September, Michael Russell said, in *The Guardian*:

> "Both European law and United Nations conventions are rightly strong in seeking to prevent any abuse of children, and the measures announced today by Jim Wallace, if sadly necessary, will have the support of the SNP."

What convinced Roseanna Cunningham to change her mind?

Roseanna Cunningham: As he has not quoted me, I have to tell Lord James that I have not changed my mind. As Michael Russell will speak in the debate later, perhaps he will answer the member's question directly. However, I can say that every statement that Mr Russell has made on the bill has been consistently opposed to the proposals that the minister brought forward.

We were about to enact something that parents did not want and which the police did not want, fearing that it would vastly increase their work load. Criminalising parents hardly seemed to be the most effective way to persuade them that using physical punishment may no longer be appropriate. Instead, from the outset, the approach should have been to help them to be better at what is a tough job. The Executive's proposals were never going to work and I hope that the Executive listens to the committee's recommendation that it should put in place the educational programmes and parental support that will help to prevent inappropriate treatment of children. That is a far more constructive way to effect the change.

Another area that the Executive was warned from the start would be unacceptable to the public relates to the youth crime pilot study. The proposal was also unacceptable to the committee. Children's panels cannot cope at the moment so they are unlikely to be able to cope with further increases in the number of young people appearing before them. If anything, the proposal runs directly counter to the direction that I suspect the majority of the public would want to be taken and, indeed, seems to run counter to the ethos behind the youth court idea that was given a lot of publicity by the First Minister. I know that the Deputy Minister for Justice thinks that youth courts were—what was his phrase?—"an absolute disaster", so it may be that there is some tension between the justice department and the First Minister's office on this area of criminal justice. We wait with considerable interest to see who wins the argument. However, in our arguments in the chamber, we are in grave danger of leaving the public behind us. If we do that, the public will lose all confidence in the criminal justice system.

I share the committee's concerns about anti-social behaviour orders not being sought by local authorities, not being granted by some courts and not being enforced once granted. I have been approached about that problem by constituents. The introduction of interim anti-social behaviour orders is probably a necessary move in that it might help to ease the complexities of the process and could help to tackle the first two of the committee's three concerns. The third concern, however, remains an issue that needs to be addressed.

I want to deal with a matter that the Deputy First Minister did not address. Buried in part 12, which is entitled "Miscellaneous and General", is a proposal to extend police powers to non-police officers. To release police officers from other duties is all well and good. I certainly want more police officers to be on the streets and more police time to be spent tackling crime. However, I have serious reservations about the plans to give statutory powers to civilian staff who carry out roles such as prisoner escort and court custody officers.

I am not alone. I hope that the Minister for Justice read the letter from Douglas Keil, general secretary of the Scottish Police Federation, that was printed in the most recent edition of *Holyrood Magazine*. He put the situation succinctly when he said:

"If any particular duty requires police powers then we should all accept that a police officer is required to do it. It is difficult to escape the conclusion that this is an attempt to achieve policing on the cheap at the expense of the rights of the people of Scotland."

Sheriff Hugh Matthews, secretary of the Sheriffs Association, is quoted in an article in the *Sunday Mail* as saying that every sheriff in Scotland is against the use of security guards in courts and that they would refuse to sit if there were no police on duty. In fact, he sends a stark message to the Executive with the uncompromising statement that

"the general view is that there will be no sheriffs in the court if there are no police".

I hope that the Executive is not on the verge of provoking the first strike by sheriffs in the history of the Scottish judicial system.

Those are extremely serious warnings issued by people who know what they are talking about. The Executive must listen. The same *Sunday Mail* article contained a quote from a

"spokeswoman for the Executive Justice Department"

that concerned me greatly. Confirming plans to have security firms take on escort duties and the policing of courts, she apparently said:

"The tendering process has begun."

I know that we cannot necessarily believe all that we read in the papers, especially from unnamed spokespeople, but I sincerely hope that the Minister for Justice will tell us that the tendering has not begun. To start tendering before the Parliament has even discussed the bill, let alone passed it, is presumptive in the extreme and an affront to the democratic process.

The bill and the way in which the Minister for Justice has handled it merely confirm my view that his credibility is in tatters. He was forced to climb down over Peterhead and now his flagship Criminal Justice (Scotland) Bill has been savaged

by the Justice 2 Committee. In normal circumstances, a minister who was performing so poorly would face the sack, but competence does not seem to be a measure of fitness for office under Jack McConnell. If it is any help to the Minister for Justice—I wish to be of some help—I can confirm that he played no part in meetings that I have had to discuss the drafting of amendments for the bill.

The Presiding Officer: When we come to back-bench speeches, the time limit will be five minutes.

14:43

Bill Aitken (Glasgow) (Con): When I first saw the bill, I thought that it resembled a curate's egg—it was good in parts. I am now persuaded that it is not even that good. It is an uneasy mishmash of confused thinking and impractical liberalism. It also demonstrates a sad grasp of the realities of the pattern of criminal behaviour in Scotland.

The Conservatives support parts of the bill. We particularly welcome the provisions in part 3 for increased penalties for the possession and distribution of child pornography. The proposals reflect the public's growing concerns about that vile trade. It is to be hoped that the provisions will go some way to diminishing it.

We can also go along with the proposals in part 12 that would, we hope, release police officers from duties that could be carried out by civilians. However, we flag up—as the Justice 2 Committee did—that there could be problems with that.

Overall, however, the bill is bad. At a time when crime dominates the public's concerns, it is disappointing that the Executive has been unable to introduce positive proposals that would be likely to ease those concerns. Indeed, some of the proposals seem calculated to increase the concerns.

There is a lack of cohesive thinking and logic behind a number of the measures that are proposed. Part 1 seeks to deal with the order for lifelong restriction. The first question that one must ask is, if the orders are necessary, why are those who are subject to them likely to be released in the first place? Why are we setting up a risk management authority that, by 2004, will cost approximately £5 million when we could have been considering some adaptation of the Parole Board for Scotland's powers? We share the Justice 2 Committee's concerns over the ways in which individuals could be made subject to such orders. The matter has to be reconsidered.

If the thinking behind part 1 is unclear, the thinking behind the victims' rights provisions is confused in the extreme. We certainly go along with the concepts that the fullest information should be given to victims with regard to the release of offenders into the community and that victims should have the right to make representations about the potential release of such offenders on licence.

The victim statement provisions have some attractions, but they are much more problematic and they present real dangers for all concerned. I have listened carefully to what Jim Wallace has said today, but I have not had my concerns allayed. The Executive's purpose behind the provisions is vague. It has not satisfactorily explained whether its intention is to impact on sentences. If that is its intention, there is a potential for difficulty. What happens in the case of a plea that is inconsistent with the victim statement? What happens when the statement is disputed? I accept that Jim Wallace has dealt with those matters to an extent, but we do not wish victims who have suffered a serious sexual or physical assault to be subjected to even more stress.

The greatest concern must be that the principle of having victim statements would raise false hopes. There is clear evidence from down south that when such a scheme has operated, there has been a degree of disillusionment in the justice system, with hopes not being fulfilled. Furthermore, if the police were to become involved in checking victim statements, the effect on their resources and manpower would be considerable. Until the Executive clarifies its position on victim statements, we cannot go along with its proposals.

Brian Fitzpatrick: Would Mr Aitken envisage any circumstances where the police could be assisted by detail contained in a victim's personal statement? Those circumstances might include where a victim feels vulnerable or intimidated; where they have views on whether someone should be admitted to bail; where they have been subject to a racial attack; or where they require support in order to be able to give evidence in court. Would Conservative members not wish people in such circumstances to be supported so that guilty people might be convicted?

Bill Aitken: I would very much hope that the circumstances that Mr Fitzpatrick describes would become apparent from the initial police investigation and from the initial statement about the crime. I agree with Mr Fitzpatrick's point, but I do not think that it is particularly relevant in this instance, because the information concerned should already be to hand.

We fully accept that Jim Wallace and Richard Simpson have a genuine concern for victims, but I think that they would agree that the best thing that can be done for victims is to prevent people from becoming victims in the first place. Sadly, there is

nothing in the bill that will reduce crime. In many respects, the bill will make matters much worse. Throughout its proposals runs the predictable and depressing thread of the soft option, particularly in part 6, which deals with non-custodial punishments.

The Conservatives see prison as the appropriate disposal only when there is no alternative, and there is no evidence to suggest that courts in Scotland take a dissimilar view. I sometimes think that the Executive, and indeed SNP members, think that judges and sheriffs have a gung-ho approach to sentencing. That is not the case. To deprive someone of their liberty is a very serious matter and should be done only as a last resort. Many alternatives to custody are in force at the moment, and the Executive has admitted in the chamber that one of the problems has been that the courts have no confidence in such disposals. The courts are right, and until the Executive realises that and makes the alternatives to custody more attractive and more acceptable to the courts, that lack of confidence will inevitably continue.

Community service, for example, is seen as a joke in many respects. The level of compliance with community service orders is insufficient, with breaches seldom reported. It was revealed in the chamber only a few months ago that social work departments treat a 75 per cent compliance rate as acceptable. I suspect that the true compliance rate is much lower. The nature of the schemes that are run is also inadequate; they require to be made much more robust.

If one accepts that the purposes of imprisonment should be punishment, deterrence and rehabilitation, alternatives to prison should have the same functions. The holiday camp atmosphere that accompanies many social work departments' attitudes towards community service is not acceptable.

We do not want to introduce schemes that resemble the chain gangs in southern American states, but we want meaningful work to be done. Schemes should be visible, to reassure the public that something is being done to combat offending. The jury is still out on tagging orders—as are many offenders. Such orders have value, but they are not a panacea. There is evidence that the pattern and timing of offending changes to coincide with the hours of restriction. That issue needs to be investigated.

Scott Barrie (Dunfermline West) (Lab): Besides the American chain gang, which he appeared to rule out, what alternatives to imprisonment does the member suggest?

Bill Aitken: I am coming to that.

We supported the establishment of drugs courts, but it is too early to say whether they have been successful. We do not know how many cases are in the pipeline in Glasgow involving offenders who are being dealt with by drugs courts. I regard the terms that are imposed as ludicrously lenient. If someone is ordered to turn up for drug testing, they should do so on every occasion, except in cases of medical or other emergency. The casual approach that allows offenders to turn up only four times out of six is a soft option. The Deputy Minister for Justice may laugh, but the fact that offenders are not required to stay off drugs altogether typifies the Executive's approach. For many, drugs courts have been a "get out of jail free" card.

Jim Wallace's retreat from the proposals on smacking is welcome. On that issue at least, a degree of realism has permeated the Executive's thinking. However, there is still a residual reluctance to recognise that by and large Scottish parents are responsible people who choose to bring up their children in a loving and disciplined environment. The law of Scotland as it stands is robust enough to deal with abuse. The Justice 2 Committee considered a significant volume of case law. In every instance, the courts got things right. To my mind, striking a child is assault—the courts agree. Beating a child to the point of injury with a belt is assault—the courts have established that. Why on earth do we need to legislate in those areas?

Practically every issue that the Executive has raised under the heading of smacking shows its lack of realism. The proposals are unworkable and fail to recognise that courts will always take a robust line when children are at risk. If the bill is not amended, it will be subject to all sorts of legal challenges and difficulties. The net result of Jim Wallace's ill-thought-out legislation will be to make lawyers rich and judges famous, and to bring ridicule to the Scottish legal system.

By far the most damaging element of the Executive's proposals is section 44—both because of the section's content and because of what it omits. The children's hearings system has a role to play, but as presently constituted it is totally impotent in dealing with offenders. I have outlined previously the measures that might make the system more relevant and commend those to the Executive. However, to suggest that the present system be extended to 16 and 17-year-olds—and potentially to 18-year-olds, in certain circumstances—is little short of madness.

Robin Harper: Is the member aware that for many years the children's panel system has taken care of young people over the age of 16 on a voluntary basis? Is the member attacking the system of community justice that is represented by children's panels or the underfunding of social work?

Bill Aitken: I have always acknowledged the role that the children's hearings system plays in the juvenile justice system as a whole. As the member suggests, children's panels are under-resourced. However, if they are to succeed, the disposals that are available to them must be beefed up.

If the minister and his colleagues are serious about combating youth crime and supporting the people of Scotland who have to put up with it, let them lodge amendments to the bill that prove that, instead of promising legislation in the next Labour manifesto.

For Jim Wallace and Cathy Jamieson, combating youth crime is all about assisting young people to confront their offending behaviour. Perhaps they should show more concern for those who are being confronted by knife-wielding young thugs, with whom the present system simply cannot cope.

The Criminal Justice (Scotland) Bill is a bad piece of legislation. The fact that the minister has been unable to obtain the support of his Executive colleagues on the Justice 2 Committee on so many important issues is eloquent testimony to just how bad the bill is. The amendments that are necessary to make the bill acceptable are so many and complex that the minister should simply withdraw the bill and start again. There is no future for it.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): On a point of order, Presiding Officer. I ask you to take note of the continuing disrespect that the nationalists show for debates in the chamber. We saw only four of them turn up last week for the debate on the spending review and we saw their lead speaker today make a speech, which we all had to endure, and then leave the chamber almost immediately. Will you ensure that the member is aware of your disapproval?

The Deputy Presiding Officer (Mr Murray Tosh): The member is in full flow, but Ms Cunningham has given me a note to explain her absence and the circumstances that she has outlined are reasonable. That is not a point of order in any case. It is a matter of courtesy and Ms Cunningham has explained to me why she is absent.

Phil Gallie: On a point of order, Presiding Officer. Will you clarify the situation with respect to the long title of the Criminal Justice (Scotland) Bill? Will you explain what would happen if we wanted to remove from the long title the words

"a pilot study into the consequences and practicalities of referring to the Principal Reporter cases involving sixteen and seventeen year olds"?

Will you confirm whether, if that wording were accepted as part of the long title at stage 1, there would be no option for us to amend it at a later stage?

The Deputy Presiding Officer: Members should be aware that when the principles of the bill are agreed to at stage 1, that is a material consideration that the clerk and the convener of the responsible committee will require to bear in mind when considering the admissibility of amendments at stage 2. That does not become a matter for the Presiding Officer until the bill returns at stage 3. That is the clearest guidance that I can give Mr Gallie on that point.

14:57

Pauline McNeill (Glasgow Kelvin) (Lab): I do not speak this afternoon as convener of the Justice 2 Committee, but I hope that the Presiding Officer will indulge me and allow me to put on record my thanks for the very hard work that members of that committee have done. I also thank the clerks—who had to keep up with us each time we amended our report—and our adviser Professor Gane; we could not have managed without their work.

I am not offended by Roseanna Cunningham's rhetoric about the Criminal Justice (Scotland) Bill being the miscellaneous provisions bill, but I am deeply saddened by the constant reference to the bill as the smacking bill. The sensationalism that has been attached to media descriptions of the bill has been alarming. I feel strongly that those who believe in devolution and the parliamentary process should stand up for the principles of this unicameral system of governance. The system means that strong committees can put their views to ministers and Parliament. To me, that means that a committee's stage 1 report should not appear in the press before the Parliament has seen it. If we criticise the decisions of ministers and the Executive, that should be part of the normal parliamentary process and should not represent a defeat for any individual in the Executive. If we do not accept that important principle we put in jeopardy the committee system, which will affect the ability of other committees to criticise the Executive.

I welcome Jim Wallace's approach to criminal justice and there is a lot in the bill to be commended. I have one or two areas of concern and one or two real disagreements, but I reserve my right to show that in the usual way.

I welcome the fact that the Executive has dropped provisions under section 43(3)(a) and it is helpful that that has been done speedily. I am sure that we can discuss further what measures ought to be taken in relation to the desire to change our culture and reduce the scope of physical chastisement of children. I refer to the phrase

"something done to a child was a physical punishment in exercise of a parental right".

For the record, I point out that the majority of the Justice 2 Committee's members were of the view that the removal of that defence would result in prosecutions. Our report states:

"No assurance from the Justice Minister can bind the Lord Advocate".

That is because he is duty bound to implement the will of the Parliament.

Even if we took the other view, and felt that there would be no new prosecutions as a result of that provision in the bill, what we would have would still be a symbolic law. As a committee member, I was not happy to use criminal law to enshrine any desire that we had to change the culture. I believe that we have convinced the Executive that such legislation is not the way to do that.

I hope that the minister welcomes the fact that some members of the Justice 2 Committee decided that there should be a further strengthening of the law by introducing complete bans on blows to the head, on the use of implements and on the use of shaking. Members will note what the Justice 2 Committee said in its report on the need to define what we mean by "implements" and "shaking".

I hope that in discussions of such issues in Parliament we will consider the wider issues of parental support and the challenges that all parents face with children of all ages. All members of the Justice 2 Committee—and probably of the Parliament—are united in the view that the law should seek to prevent all injury and harm to children, whether physical or mental. Public opinion aside, I believe that our stage 1 report reflects what the Parliament would support.

I want to move on to part 1 of the bill, on protecting the public at large. Much that is in part 1 needs to be examined by the Parliament, which is why the Executive has set aside some of the issues on which it knows further discussion will be required; we can make some important progress. It is important to note that part 1 will introduce a new sentence. It has taken us a bit of time to study the procedure in order to ascertain whether there are areas in which human rights questions might arise. In its report, the Justice 2 Committee expresses the view that, to take the issue of human rights into account, the defence should have the right to challenge the moving of a risk assessment for the order. We felt that, at the end of the process, the test should probably be "beyond reasonable doubt" and not "balance of probabilities". I do not think that I am revealing anything important by saying that our discussion on that issue was interesting. Had there been something between "balance of probabilities" and "beyond reasonable doubt", we might have opted for it, but because they are the only two standards of proof that are available to us, we opted for the higher test.

When Bill Aitken says that he is a bit concerned about draconian measures in the provisions, that gives me cause for concern. If Bill Aitken thinks something is draconian, we should examine it more closely.

There is a serious issue for Parliament to address, not only in relation to the bill but in a wider sense: if we are using non-conviction information for the purposes of deciding sentencing for individuals, we will need to ensure that standards exist to ensure that that information is robust, standardised and that its use can be justified in all circumstances. The Parliament will have to consider further tests. The risk management authority is crucial—only through it will we have any chance of getting robust and standardised tests.

I want to move on to victim statements. I acknowledge that the Executive has tried to put victims at the centre of our criminal justice system, and not only in the bill. If we consider the Executive's record, it is good. I was therefore reluctant to criticise the proposal on victim statements. However, evidence that the Justice 2 Committee heard was not exactly overwhelmingly in favour of the format that is suggested in the bill. Further work is required, but I am with the Executive in trying to achieve something for victims.

Section 15 is more important than victim statements. I will tell members why. Recently, a constituent asked me to write to the Parole Board for Scotland at Peterhead, asking that her father, who had been convicted of raping her, not be allowed to come anywhere near where she lived. I was too late. By the time I wrote to the Parole Board, I could do nothing.

Section 15 means that victims will get information about the person who offended against them well enough in advance that they can try to do something. I would like more focus on section 15, because I think that knowing that they can have such information will change the lives of many victims.

I want to say a wee word on the question of the pilot projects for 16 to 18-year-olds. I do not have time to go through all the points, but I appeal to the Executive, in asking the Parliament to sign up to something different—even if it is a pilot project, and given that we all face complaints from our communities about persistent and young offenders—to be clear about the kind of offenders that such a project will include. We have asked

repeatedly for clarity in that respect and we have not had it. What I consider to be a petty offence might not be so to someone else. Similarly, what one MSP understands by the phrase "a crime of dishonesty" might not be the same as what is understood by another MSP. There is a complete lack of clarity. In order not to throw out all the proposals, the Justice 2 Committee said in its report that a defined group of offenders should be first-time offenders. The Executive may want to use that as an olive branch to help convince Parliament of the merits of the scheme. I am sure that many of my colleagues will have views on that.

There is much in the bill to be commended. The power of arrest for breach of a non-harassment order is the crucial missing piece in legislation that tackles stalking, harassment and prevention of abuse. That should not be forgotten. That additional power will prevent victims from being offended against in the first place. As Bill Aitken mentioned, the increased penalties for possession and distribution of child pornography are important aspects that needed to be addressed. The bill tackles issues such as electronic tagging, introduces powers to take swabs for DNA and increases the levels of police officers who will be able to carry out such procedures, therefore enhancing the ability of our criminal justice system to respond.

I want to address the question of section 61. I wanted to tackle Roseanna Cunningham on her analysis of section 61 because I do not understand where a tendering process comes into a power that would be given to the chief constable. It is my understanding that the chief constable would decide to employ civilians who would then take on the role of police custody officers. I think that Roseanna Cunningham's information is wrong. I hope that the committee will take evidence on that at stage 2, because the Executive must give us answers on the subject. The bill would confer serious powers on civilians in relation to apprehension and custody of persons who are currently held in legal custody. If we are going to go down that line, Parliament must have some reassurance that the people who will have such powers will be properly trained.

That raises the question about what savings there would be. I assume that such people would have to be paid in accordance with their responsibilities. If there are not many savings to be made from that, why are we doing it? What guarantees are there that any police officers released for front-line duties would remain permanent additional numbers to police forces? If those police simply disappear over time, through early retirement or through moving on to other jobs, we will find ourselves back in the same position with regard to police numbers as well as having civilians doing police jobs. I do not see the point in that.

The Scottish Police Federation raised a question about the number of police officers who work in our courts because of fitness problems. The Police Federation suggested that a proportion of police officers work in the courts because of ill health. That must be brought into the equation. If those police officers are not fit to do their jobs and are moved, the numbers will not be additional. I seek answers to questions about why we are doing this and what guarantees can be given. If Parliament were reassured that the provisions would result in permanent additional police, that the people holding the new powers would be paid accordingly and that those civilians would never be transferred through a tendering process to the direction of anyone other than the chief constable, Parliament might begin to take serious consideration of the provision.

There are issues about alternatives to custody and I hope that members will take the opportunity to discuss those. There are important themes in the bill that are crucial to the Executive's general policy and intent. I stand by the beginning of my speech when I said that, for the good of the Parliament, we must be allowed to criticise the Executive without falling out with one another or being described as having been defeated.

Michael Russell (South of Scotland) (SNP): On a point of order, Presiding Officer, I do not want to devalue future points of order by saying that mine is genuine, but it is. I therefore hope that what I say is not taken as a criticism of Pauline McNeill's very good speech.

Two weeks ago I raised the issue of committee conveners speaking on behalf of their parties. Pauline McNeill spoke as the opening speaker for the Labour party and there is no harm in her doing so. I hope, however, that you will consider the possibility of giving conveners the time they need to speak in a debate so that they do not have to fulfil both roles. Both roles cannot properly be fulfilled and it is damaging to the debate, as you will see when you read the speech as published.

The Deputy Presiding Officer: First, the decision as to whether that is a real point of order rests with me and not with the member.

Secondly, I do not think that the matter is covered by standing orders. Thirdly, Pauline McNeill made it clear that she was not seeking to speak as the convener of the Justice 2 Committee, but as a spokesman for the Labour party. She made a comment at the beginning of her speech as a courtesy to the committee members who worked with her in preparing the stage 1 report. There is nothing inappropriate in that.

Clearly, there are circumstances in which a committee convener will ask to speak as a

committee convener rather than as a party spokesman. The Presiding Officers have been sympathetic to that and have allocated time for it in the past. That practice is now well understood.

Michael Russell: Further to that point of order—I realise that whether it is a point of order will be your judgment—the point that I was making is that I hope that you and your fellow Presiding Officers will consider whether standing orders need to be clarified.

I am not criticising Pauline McNeill or her speech. I am simply concerned that there is confusion. If you read her speech in the *Official Report*, I am sure that you and members will conclude that that confusion is a problem for the chamber, not just for Pauline McNeill.

The Deputy Presiding Officer: In the event that there appears to be any confusion, I am sure that we will reflect on those points. However, I was quite clear about the capacity in which Ms McNeill said that she was going to speak.

I will move on with the debate. The Presiding Officer indicated that we have time for back-bench speeches of approximately five minutes. Despite the foregoing points of order, we might still be able to manage that.

15:12

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I welcome the report recommending the approval of the general principles of the bill. I want to concentrate on what I see as the committee's rather—I use this word carefully—perverse conclusions on the Executive's proposals for a youth crime pilot scheme. Youth crime rates are falling; of that there is no doubt. I do not have any truck with those who complain that the statistics are wrong because people are not reporting crime any more. That is akin to saying that if we do not like the facts, we can change them.

Over the past 20 years, youth crime rates have fallen. Over the past three years, the number of children who are referred to children's hearings on offence grounds fell by 19 per cent. Of course there is still an issue with persistent offenders, but overall youth crime rates are falling.

The worst I have heard on the subject was when, on 13 June, David McLetchie—I am sorry that he has just left the chamber—reminded me of Senator Joe McCarthy when he said:

"I have in my hand a list of the top 40 categories of offences that are committed by under-16s, which are referred to the children's reporter … the list includes robbery, serious assault and rape."—[*Official Report*, 13 June 2002; c 12634.]

What Mr McLetchie had in his hand that day was not, as he tried to make us believe, a list of the offences for which children are most often referred. I am pleased that David McLetchie has returned to hear what I have to say. That list was simply the classifications that are used by the children's reporters information technology system. David McLetchie implied that rape was among the 40 most common offences; it most certainly is not.

Johann Lamont: Is Mike Rumbles suggesting that my constituents' persistent concerns about youth disorder and the impact on their health, well-being and the security of their communities are a figment of their imagination? Where does that come from? Why do people believe that crime is not being recorded and that their concerns about their communities are not being addressed if, as Mike Rumbles says, everything is hunky-dory?

Mr Rumbles: I never implied that at all. The problem is that people such as David McLetchie get up in the chamber and say the sorts of things that he said. The BBC announced today that

"although crime levels are at their lowest since WWII and detection rates at their highest, the survey reveals continuing public unease."

That is because of statements such as the one that David McLetchie made in the Parliament in June. He bears a large responsibility for the atmosphere that he is helping to create. Just like with Senator McCarthy, it is a con and it is the sort of nonsense that we have to deal with in the chamber.

While I am referring to nonsense, let us examine the committee's rejection of the Executive's proposal for a youth crime pilot. The report says:

"The pilot proposal starts from the assumption that it is desirable to divert young people from the adult courts but the Committee has no evidence to allow us to make this judgement. While we agree that there are concerns about the effectiveness of the adult courts in reducing re-offending by young people, we have no evidence that the children's hearing system would do any better."

Those are very strong words from the committee.

Phil Gallie: Given his comments about David McLetchie, does Mike Rumbles also think that Johann Lamont is scaremongering? Mr Rumbles quoted from a BBC article that referred to overall crime figures, but which did not refer specifically to youth crime. He stated specifically that he wanted to talk about youth crime. Will he clarify that point?

Mr Rumbles: According to the article, the BBC correspondent Reevel Alderson said that,

"although crime levels are at their lowest since WWII and detection rates at their highest,"

people continue to feel unease. That is because of comments from people such as Phil Gallie, David

McLetchie and Johann Lamont. I do not find such comments particularly helpful in this debate.

Bill Aitken: Will Mr Rumbles give way?

Mr Rumbles: No. I have already given way to other members and I must move on.

The intention to pilot was strongly supported by organisations including Barnardo's Scotland, Save the Children Scotland and the Scottish Consortium on Crime and Criminal Justice. The hearings system takes a more holistic approach to the problem of offending than does the adult justice system. On page 31, the committee report states:

"The hearings system would be the appropriate place in which to try to integrate a 16-year-old into society".

There is the evidence. Changing offending behaviour is the key to success, and the committee has failed in its duty to acknowledge the evidence that has been presented to it.

Pauline McNeill: Will Mr Rumbles accept an intervention?

Mr Rumbles: I am more than happy to give way if the Presiding Officer will allow me some leeway.

The Deputy Presiding Officer: You have already given way for two quite extensive interventions, Mr Rumbles. I have no doubt that someone else will be able to address the point later.

Mr Rumbles: That is fine, but I would have liked to give way to the convener of the Justice 2 Committee.

Changing behaviour is the key to success. The committee cannot say that it has no evidence, because the Executive said in its evidence to the committee:

"16/17 year olds are the age group most at risk of imprisonment although not the age group committing the most serious or dangerous crimes".

It also said that

"in contrast, re-offending rates for community interventions were between 10-32% less than for those not involved"

in community interventions. There is the evidence. How on earth can the committee turn round and say that there is no evidence?

The committee seems to have failed in its duty to examine the evidence that has been presented to it, especially by the Executive. It cannot be allowed to get away without challenge to the sort of statements that it makes in its report. I urge the Scottish Executive to stick to its guns on the youth crime pilot. It is a pilot, after all, and we must ensure that we get the results from it.

15:18

Stewart Stevenson (Banff and Buchan) (SNP): I share Pauline McNeill's disappointment at seeing in the press and hearing on the radio discussions of the committee report before it was published. Indeed, about half an hour before the report was published, we heard some of the protagonists in the smacking issue having a debate on a report that they clearly had not seen.

I want to develop some of the issues that have been raised in the debate so far and to shine a little light into some of the more distant corners of the bill, which have had less scrutiny. I begin by welcoming the minister's acknowledgement that the Executive will reconsider the definitions that will be applied when considering orders for lifelong restriction, with particular regard to the committee's reference to ICD-10—international classification of diseases 10—disorders.

It came as a great surprise to me that even the principle of victim statements received such a lukewarm reception from organisations that might have been expected to welcome their introduction. I say to Mike Rumbles that that was evidence. Does that say something about the consultation process? I ask that neutrally.

The minister says that the Executive is clear about the purpose of victim statements, but I direct the minister to Victim Support Scotland's lukewarm statement:

"Victims may be further distressed and in some sense revictimised by the requirement to be examined and cross examined in the formal court setting."

Scottish Women's Aid said:

"we would have concerns as to the safety of women".

The principle is great, but genuine concerns are being expressed.

Like Pauline McNeill, I think that victims could benefit from much in sections 15 and 16, which could allow them to influence the outcome of Parole Board processes. The sections relate to people who were sentenced to four years or more after 1 April 1997. Elsewhere in the bill, ministers have the opportunity to modify that date. I encourage them to do so and to consider whether, in due course, the same processes could be applied to shorter sentences. That would give victims a wider role in determining release and it would give them the opportunity to know that release is coming along. Those issues are important to victims.

I absolutely support the banning in section 43 of striking a child about the head or of using implements to strike any part of a child. The furore about smacking and the committee's attitude should have come as no surprise to ministers. I first raised the issue with Jim Wallace on 19 September 2001, when I said:

"The objective is not simply to change the legal system, but to deliver a better environment for children in which

fewer are chastised."—[*Official Report*, *Justice 1 Committee and Justice 2 Committee (Joint Meeting)*, 19 September 2001; c 116.]

That remains my objective and that of many members.

We must welcome the minister's change of heart, but the Executive is not off the hook until it makes clear and credible non-legislative proposals that will deliver change in early course. Those proposals must address the point that psychologist Helen Stirling made to the Justice 2 Committee. She said:

"Some research shows that several verbal punishments, such as really heavy shouting"—

which I am demonstrating—

"humiliation"—

which the members opposite are experiencing—

"or calling the child names … can also have a damaging long-term effect".—[*Official Report*, *Justice 2 Committee*, 22 May 2002; c 1377.]

Roseanna Cunningham pointed to the dangers of miscellaneous provisions bills such as the Criminal Justice (Scotland) Bill. For example, section 55 makes Scots residents criminally responsible for actions abroad. We have had no time to debate or consider that. Section 61 has been scrutinised, but the need remains to take more evidence at stage 2. Section 59—I do not even remember reading it—says that ministers must report to Parliament on a feasibility study by 31 December 2008. That must be some feasibility study.

Mr Gallie talked about the process for the bill henceforth. I understand that the ruling is that, as the bill is about the criminal justice system, if we agree to the general principles, it will be valid to lodge amendments that relate to any aspect of the criminal justice system. Therefore, anything could be introduced into the bill. According to the advice that I have been given, that would be procedurally correct, but would serve good legislative order ill. That is why Roseanna Cunningham was correct to draw attention to the dangers of such jumbo-sized bills.

15:24

David McLetchie (Lothians) (Con): I was delighted to learn from Michael Rumbles that I have such influence on public opinion in Scotland that in constituencies such as Johann Lamont's in Pollok and Pauline McNeill's, all the people are imagining offences of disorder, vandalism and theft just because I say that they occur. Of course, such offences are no part of the reality of everyday experience in those constituencies—they are purely figments of my imagination, which I am encouraging other people to imagine, too.

Mr Rumbles is out of touch, while Pauline McNeill, Johann Lamont, my colleagues and I are in touch with what is going on in those communities. He should not rely on the BBC for his crime statistics. If he read the Scottish Executive's publication, he would find that the total number of crimes in 2001 was slightly higher than the total number of crimes in 1997. I will happily let him see that document.

I am absolutely delighted that Mr Wallace has conceded partial defeat on the politically correct nonsense that would have banned parents from smacking their children and turned loving parents into criminals. However, the fact that the measure was proposed in the first place is symptomatic of what is wrong with an Executive that is only too keen to introduce legislation to force us all to conform to its view of how society should be. The Executive does not trust ordinary people to act responsibly without being told exactly how to do so by the state. That is a particularly illiberal attitude to take, but the Liberal Democrats ceased long ago to have anything to do with true liberalism.

The fact of the matter is that our common law is perfectly capable of distinguishing between, on the one hand, what is known as reasonable chastisement—in other words, the discipline of loving parents and guardians—and the assault and abuse of children on the other. No case has been made for change. The Scottish Parliament should learn to leave well alone and resist the temptation to interfere and legislate at every turn when it is unnecessary to do so.

Pauline McNeill: The Justice 2 Committee was quite careful in the way that it approached its report. A number of members felt that the Executive had addressed an issue, about which there was public concern, about how parents should be supported in the way that they bring up their children. Is the member saying that he would not support any measures of any kind to address the way in which children are dealt with or chastised? Does he think that that is purely a matter for families?

David McLetchie: I am saying that the common law of Scotland has served us perfectly well on the matter. If any person is assaulted, there is a presumption that the assault is a criminal offence and that it should be prosecuted as such. The Deputy Minister for Justice may shake his head, but that is the case. There is also an established defence in relation to children and young children, which is known as reasonable chastisement. That defence has worked perfectly well in the courts for decades. I see no reason for further specifics to be introduced into the bill.

The bill has other major flaws. We have referred to the proposal that children's panels will take 16 and 17-year-old offenders away from the adult

courts. No clear answers have been forthcoming from ministers on the scope of that provision, and yet we are asked today to approve it in principle. We are told constantly that serious offenders will not be referred to the children's panel. That amounts to a plea from ministers to trust the system, but, in the light of experience, I am not prepared to do that.

Following our previous debate on the subject in June, I sought clarification from the minister of the offences that would be regarded as serious or minor. I received a reply from Cathy Jamieson, who said:

"All offending behaviour is treated seriously by the Executive and by the agencies concerned in youth justice."

How can the Executive claim that the panels will deal only with minor offences if it considers all offences to be serious?

Mr Rumbles: Will the member give way?

David McLetchie: No. I am sorry, but I must make progress. I have dealt with the points that the member raised.

Pauline McNeill and her colleagues on the Justice 2 Committee were absolutely right about the need for clarity on the categories of offence and offenders that will be excluded from referral to the children's panel system if the proposal proceeds. Will the Executive use its powers to amend section 44 to clarify that point? If not, will the Executive use one of the regulations that it has the power to make under the bill to ensure absolutely that no serious offences will be dealt with by the children's panel system and that serious offences will continue to be dealt with in the court system? I asked the minister that question in June, but he refused to give me an answer. I ask him again for that guarantee.

The Deputy Minister for Justice (Dr Richard Simpson) *rose—*

David McLetchie: No, I am sorry. Without that guarantee, we cannot support that proposal.

We believe that if the Executive is considering a scheme to extend the scope of children's panels on a pilot basis to 16 and 17-year-olds, it could also consider a pilot youth court scheme for 13, 14, 15, 16 and 17-year-olds. All of us know that Dr Simpson will oppose such a view, even though the First Minister apparently supports it, but it is apparent that open disagreement among Executive ministers is quite acceptable in this shambles of an Administration, which has kicked the concept of collective responsibility right out of the window.

I am afraid that the idea of talking tough and doing nothing is the problem with the entire Executive approach to youth crime. It talks tough, but the talk is designed only to create an illusion of action that does not exist. As the Deputy First Minister might say, the Executive's approach is an art, not a science. It is more concerned with the art of using words to obscure the truth and give the impression of action than with the science of introducing measures that have clear objectives against which we can judge progress. For that reason, my colleagues and I will vote against stage 1 of the bill tonight.

15:30

Scott Barrie (Dunfermline West) (Lab): Bill Aitken, in his opening speech for the Tories, recited a litany the of apparent failures of alternatives to imprisonment. When I intervened with a question about what the Tory alternatives would be, he told me to wait. I did so, patiently. However, he did not answer me. I am still waiting for him to outline those alternatives.

Bill Aitken: Will the member give way?

Scott Barrie: Gladly.

Bill Aitken: I recognise that I failed to get back to Scott Barrie. However, time did not permit. Now that he has given me the opportunity to respond, I should make it clear that we feel that social work departments should be taken out of the community service system. Indeed, the system must be much more realistic. Community service must be onerous, visible and, in some respects, act as a deterrent. It must be hard work and should make it clear to those who commit crimes that undergoing a community service order might sometimes be an unpleasant experience. I hope that that answers Mr Barrie's point.

Scott Barrie: Unfortunately, it does not. It simply airs the Conservatives' usual complaint about local authority social work departments. Over the years, those departments have done a difficult job effectively in community service. Furthermore, Mr Aitken's reply goes against the claim in his speech that he is against the US chain-gang mentality. It is quite clear that that is exactly what he wants to introduce in Scotland.

The Criminal Justice (Scotland) Bill contains many measures that will command unanimous support in the chamber and will give rise to very little disagreement. However, in the short time that I have, I will refer only to sections 38, 43 and 44.

As far as section 38 is concerned, there has been much concern about the effectiveness of ASBOs since their introduction. As the report points out, it is clear that some local authorities are not seeking them, that some courts are not granting them and that the orders are not being enforced if they are granted. Although it is still early days, one of the reasons for that situation is

the complexity of the legal process and the lengthy time scales that are involved. The introduction of an interim ASBO will be welcomed if it eases that process.

Fife Council, which pioneered ASBOs, has managed to get the sheriff courts to grant them. Their apparent effectiveness might be due partly to the strength of Fife's mediation services. As such services will form an integral building block if the orders are to work, I ask the minister to examine the success of ASBOs in Fife. If my contention is correct, perhaps we should consider extending mediation services throughout Scotland.

Given my background, it should come as no surprise that I want to concentrate on sections 43 and 44. My views on parental physical chastisement are well known; I have articulated them on numerous occasions in the chamber. Indeed, I dissented from my committee colleagues' refusal to endorse the Executive's proposals for under three-year-olds in the report. It is slightly unfortunate that the Executive stipulated an age somewhat arbitrarily, because it focused the debate on the wrong area. I would have much preferred to have a debate on the principle of parental physical chastisement instead of arguing over whether the age threshold should be set at 18 months, two years or three years. We should remember that the Executive was simply trying to meet our obligations under the UN Convention on the Rights of the Child and the European Court of Human Rights' judgment on the A v the United Kingdom case. We still have to take those issues on board.

I also disagreed with my committee colleagues' view that the current law in Scotland does not require to be changed. For example, the Children and Young Persons (Scotland) Act 1937, which still provides the basis for child protection laws in Scotland, needs to be re-examined. As we have heard, section 12 of the 1937 act allows people to take the defence of reasonable parental chastisement. All that a defence solicitor has to do in a case where an adult has hit a child is to say that the adult was acting within that parental chastisement legislation. As long as that can be established, it does not matter how serious the child's injuries are. There is a chance that the court will acquit in those circumstances.

Johann Lamont: Does the member agree that much of the anxiety concerning smacking comes from a fear about the appearance of action rather than the reality? Currently, the most serious abuse against youngsters is hidden and this approach would not bring it into the public domain. More important work must be done to address the pressures that parents are under that might lead them to believe that smacking is a satisfactory way of dealing with their children.

The Deputy Presiding Officer: You are over time, Mr Barrie; please wind up quickly.

Scott Barrie: The member makes some valid points, which we have discussed in the past. We have a broad level of agreement on some of what she says.

As I took two interventions, Presiding Officer, may I turn quickly to section 44 on the subject of pilot studies?

The Deputy Presiding Officer: One of them right at the end, but yes.

Scott Barrie: I understand that we require a change in the law to have the pilot studies. As someone who was broadly supportive of the principle when I first heard about it, I believe that the Executive's presentation of the pilot studies was muddled. It was unclear which young offenders it referred to, what their previous offending history was and why the children's hearings system would be a better system to deal with them than the adult courts—given that the reporter to the children's panel and the procurator fiscal have a fair degree of discretion and can have the option of diversion from prosecution. If we opt for diversion from prosecution, which has been shown to work in many areas, as well as piloting the studies—if the Executive can give us guarantees about which offenders we are dealing with—we can make an improvement in that area.

15:37

Michael Russell (South of Scotland) (SNP): I will speak entirely about section 43, given my interest in education, my concern as a member of the Education, Culture and Sport Committee and my role as the SNP's spokesperson on education.

The Justice 2 Committee got it right and I will support its position. There is no doubt that there is a consensus in Scotland—Lord James Douglas-Hamilton referred to a quote from *The Guardian*—about ensuring that the maximum penalties exist and that maximum legislative protection is given, particularly concerning striking children on the head, shaking them and undertaking acts of violence that, even if they are already illegal, can be reinforced by legislation.

The debate centres around one issue: the somewhat arbitrary age limit that is set in section 43(3)(a). That debate has been extensive. If the minister is to be criticised—my colleague Roseanna Cunningham criticised him—it is because the way in which the matter was handled in the early stages polarised the debate in Scotland, and the debate should not be polarised. The debate was polarised again this afternoon, when Mr McLetchie made the inflammatory comment that the proposal was "politically correct

nonsense." To be fair, the debate has also been polarised in some of the propaganda from the charities involved and it was polarised in the chamber on 13 September last year by Richard Simpson, who I am sorry is not currently in the chamber. He attacked Lord James Douglas-Hamilton for, among other things, believing that the issue was

"one of ownership"

and that

"a child is in fact a possession".—[*Official Report, 13 September 2001*; c 2511]

I do not think that Lord James Douglas-Hamilton believes that in any sense, and I see that he is nodding in agreement with me. The debate is polarised. We should dig underneath that debate and ask what we wish to achieve in Scotland. That is very simple. We wish to ensure that the UN Convention on the Rights of the Child is operated within Scotland. It is not a casual document to be thrown away. The Conservative party believes that it is a valuable document, as does the entire chamber. How do we achieve what the UN Convention on the Rights of the Child sets out? My friend Fiona McLeod quoted from the document, but she quoted slightly subjectively. I will read the first line of article 19.1:

"States Parties shall take all appropriate legislative, administrative, social and educational measures".

Therefore, the argument is how we move towards a situation in which parents feel supported in such a way that the concept of striking children does not even enter their minds. I am not talking about the light tap on a hand to stop a child putting his hand in the fire; I am talking about the concept of physical punishment of children. How can we move to a situation in which the idea of punishing children physically does not enter people's heads?

The minister, along with others, initially argued, in a manner that was far too inflammatory, that unless we follow his way—a crude, legislative way—violence in Scotland would worsen. I quoted Richard Simpson's comments of 13 September 2001 to show that even he made that argument. Others make a different argument: that we should support and help parents in Scotland by investing in them and putting into their minds the idea that there are other ways of behaving. Most parents know that automatically.

Pauline McNeill: I agree with 99 per cent of Mike Russell's comments—I cannot disagree with them. However, does he agree that the Justice 2 Committee, through its report, has convinced the Executive of the second argument that he mentioned? The Executive responded speedily by dropping the provisions on the age limit, which allows us to concentrate on other aspects of the bill. Does the member welcome that response?

Michael Russell: I have welcomed the fact that the Executive will not proceed with the provisions on the age limit. Pauline McNeill would not want me to go further than that by naming individuals who might be praised. Instead, let me praise the committee for the work that it has done.

As I said, we must get into parents' minds and change their behaviour. I believe that a great deal of the violent behaviour that takes place is already covered by the law and leads to convictions. We must take a step-by-step approach, but that means that we must put in the resources. The minister is shaking his head. When he was not in the chamber, I quoted from the comments that he made on 13 September 2001. If the only remedy to the use of the implements that he listed on 13 September 2001 is a legal one—

Dr Simpson: I was going to save my comment for my summing-up speech. The research paper that we produced in 1999 showed that 800 programmes in Scotland support parenting. Since then, we have introduced the sure start and starting well initiatives, and we are supporting the home start initiative. In the spending review, we increased substantially the money that goes into sure start. We are not offering legislation as an alternative to programmes—we are offering legislation and programmes. Mike Russell is right to say that one approach cannot succeed without the other—both approaches are needed.

The Deputy Presiding Officer: You are over time, Mr Russell.

Michael Russell: I am sorry—I will finish on this point.

The minister has just proved two points. First, he has not listened to the committee or read its report properly. I thought that the Executive had said that it was not going to proceed with the provisions, but the minister seems to be going against that. Secondly, the Executive does not have the right programmes. Dr Simpson should look at what is happening in Sweden and elsewhere and introduce those programmes in Scotland.

As I am over time, I will conclude by saying that the SNP is now broadly content with the provisions in section 43 on the physical chastisement of children. I am sorry that it has taken so long to get here. I hope that the day will come when no one in Scotland smacks their child, but that will happen only because behaviour has changed, not because the Executive wanted to legislate.

15:42

Mrs Lyndsay McIntosh (Central Scotland) (Con): It seems as if no time at all has passed since the last time that I rose to my feet in the chamber to address the vexing issue of smacking.

I said then, and it remains my view, that parents are in the best position to deem what is, and what is not, suitable punishment for their children.

Each time the topic has cropped up, strong views have been expressed. I recall visiting a school in Cumbernauld with Donald Gorrie and Cathie Craigie—unfortunately, neither of them is here today—when I felt that I was alone in thinking that parents had a fundamental right to administer mild physical chastisement to an errant offspring. That is the point at issue.

Child abuse and battering are completely different matters, and I will have no truck with them. As I have said previously, a smack is one of a range of options that can be used to temper the behaviour of youngsters. I have used my fair share of those options, from chastisement and grounding to denying access to a chequebook and the car keys. The latter is hugely effective if one has a 17-year-old.

I was formerly deputy convener of the Justice 2 Committee—I wish that I was still a member of that committee—and it seems to me that its members reached the right conclusion, based on the evidence that they heard.

On section 43, the committee report states:

"This provision attracted an unusually high level of correspondence from individuals, the majority of whom opposed the proposals."

Judith Gillespie of the Scottish Parent Teacher Council said:

"Most parents want to do their best for their children. They do not want to smack their children and will do so only in extremis. There must be a point at which we trust parents' judgment."—[*Official Report, Justice 2 Committee*, 22 May 2002; c 1439.]

Brian Fitzpatrick: Will the member give way?

Mrs McIntosh: I am happy to give way to Brian Fitzpatrick.

Brian Fitzpatrick: We know that the Conservatives will not support the general principles of the bill. Can Lyndsay McIntosh provide us with information about the Conservatives' position on the detail of section 43? Is she prepared to enter into any consensual discussion of the proposition that it is not acceptable to strike a child under the age of three about the head with an implement or otherwise?

Surely there must be some prospect of securing agreement on that. I would have no difficulty with her position on a smack to the legs. However, what is her position on a parent striking a blow to a child's head with an implement?

Mrs McIntosh: Common law has already established when physical punishment ought to be used. Brian Fitzpatrick is quite right: I would never say never, and there could be an opportunity to use it at some stage. However, as I say, the legislation to deal with it already exists.

For me, the point at issue is whether a ban on smacking would stop the real abuse and assaults on children. Johann Lamont referred to that earlier. I submit that a ban would not have that effect. We already have legislation to apply when physical punishment goes beyond what is reasonable. I am satisfied that that has been well used in the past and it is my fervent hope that it will not have to be used often in the future. I wonder why the Executive did not see that its proposals were unwanted, unnecessary and unenforceable some time ago.

I shall touch briefly on section 44 and the provisions to divert 16 and 17-year-olds away from adult courts into the jurisdiction of children's panels. I think back to my experience of dispensing justice in a district court and I concede that it was not an everyday occurrence to have a 16 or 17-year-old before me awaiting trial. However, I assure members that the victims—the people who had been assaulted, whose property had been vandalised, whose neighbourhoods had been terrorised and whose peace and serenity had been shattered—were every bit as responsible and aware of the wrongdoing of those 16 and 17-year-olds. The standard fare was the usual two-cop-BOP—two-cop breach of the peace—merchants, but some 16 and 17-year-olds appeared before me.

Jack Urquhart and Graeme Pearson, two senior police officers, have got it right. They say that persistent offenders will simply laugh at the justice system if they are diverted to a children's hearing. More than that, sometimes an offender needs to be taken out of the environment in which he or she has been offending, to protect the community as well as himself or herself. The minister has heard such talk before, not just from the police and from Conservative members, but from the back-bench members of the coalition of which he is the Deputy Minister for Justice. It might be an idea for him to listen.

15:48

Christine Grahame (South of Scotland) (SNP): I will confine my remarks to section 44 and the committee's recommendation 165, which states that it does not fully support the proposal for a youth crime pilot as it stands, but is attracted by the recommendation of the Association of Chief Police Officers of Scotland.

I fully understand the perception that youth crime is not dealt with effectively. Many young offenders seem to flout the law, the police and the public. However, from my experience of visiting prisons and taking evidence, I know that—as sure

as little eggs—entering the criminal justice system leads someone into a life of crime. The earlier that intervention can be made at an appropriate level, to stop young people from entering adult courts, the better.

In the Justice 2 Committee's evidence, the usual suspects—Save the Children, Barnardo's and so on—supported the youth pilot projects. However, ACPOS submitted interesting evidence to the committee. It is worth reading what the chief constable of central Scotland said. I bear in mind what David McLetchie said about major offences—that there are difficulties of definition—but the chief constable's submission was interesting. He said:

"On many occasions, the youngsters that might come to the fore in that category are those who might be first-time offenders who have committed acts of disorder, breaches of the peace, common assault or vandalism. Our view is that a pilot study would be worth while to see whether there would be any success in providing different options for those individuals, instead of having them enter the adult criminal justice system. Day in and day out, we see youngsters graduate from involvement in those types of quality-of-life offences to more serious acts, which can lead to a proliferation in car thefts or to more serious assaults. ACPOS would support any pilot scheme to try to divert youngsters from criminality."—[*Official Report*, *Justice 2 Committee*, 15 May 2002, c 1331.]

That was an important comment by front-line officers who deal with the matter.

The Scottish Children's Reporter Administration had an interesting thing to say about Scotland. According to that organisation, we are the only country in western Europe in which 16-year-olds are routinely dealt with in the adult criminal justice system. Given the cycle that that can lead to, it is interesting to quote from the eloquent evidence from Douglas Bulloch of the Scottish Children's Reporter Administration, who said:

"Two weeks ago, I heard a children's commissioner from Norway describe, metaphorically, how his municipality was trying to pull children from the river and put them back on their feet on dry land. He said that eventually the people there thought they had better start to look upstream and find out why their children were falling in the river in the first place." —[*Official Report, Justice 2 Committee*, 5 June 2002; c 1454.]

He went on to say other things and ended by saying that the cycle must be broken.

The Scottish Parliament must not go for cheapskate headline-grabbing, youth-bashing answers to youth crime, which is a complex and serious issue. The Justice 2 Committee rightly recognised that the youth crime pilot project had huge faults, but it should not just be swept aside. It is worthy of consideration, because we must try to do something to prevent young people from simply graduating from all the things that we see daily in the street—about which I get as angry as the next man or woman—into a professional life of crime.

Scott Barrie: Will the member give way?

Christine Grahame: I have finished.

15:52

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): In supporting the general principles of the bill, I would like to take some time to look at the various measures in part 2, under the general heading "Victims' rights". That is not in any sense to underplay the important structures outlined in part 1—and, indeed, part 3—that put bones into the assertion of victims' rights and the need to consider the wider interests of society generally. I also want to comment on the victim in two senses: the individual victim who suffers from crime and the wider community that is diminished by crime. Both those legs are key drivers of the bill.

I trust that the Executive will seek to respond positively to the areas of concern that the Justice 2 Committee has outlined. It is helpful for members such as me, who are not members of the committee and so cannot keep up with the detail of the bill's consideration, to have the committee report.

I make clear my support for introducing as a permanent feature of our courts the personal reality of the effects of crime on victims. To those who observe our courts or practise in them, it sometimes seems that everyone bar the victim gets their say as we go through the game or process that is the criminal justice system. The victim's involvement with the criminal justice system is always mediated through other parties and always removed from the court experience.

That disjuncture between the personal reality of confronting the victim of crime and what happens in the criminal justice process has led to much public disappointment and disillusionment with the criminal justice system. I welcome the measures in the bill that seek to address that issue.

There must be a sense in the resolution of a criminal complaint that somehow justice has been done and has been seen to be done. Indeed, as our time for reflection preacher reminded us, if there is the prospect of forgiveness, it seems to me wholly proper that a full explanation should be available of the effects on an individual of the breach of justice that is a crime.

I stress that people should be able to make a victim statement if they want to. Choice will be important on that and I hope that ministers will recognise that for some people there are barriers to undertaking that victim choice. I do not share the Tories' confidence that the kind of support for victims of crime to which I refer is immediately available through a police precognition. I do not think that that is true and I do not think that the record presents the existing position.

There has to be a thinking through of how such statements are compiled, the emphasis placed on them and the uses to which they are put. Given that the impact statement could be available early doors—albeit with any augmenting that might be going on—I hope that there is the prospect of an agreed narrative emerging and that only in certain cases will there be disputes about what comprises the statement or whether what is said is excessive or unduly florid or exaggerated. That sort of thing happens anyway. We should not think that our judges and sheriffs are so shrinking that they are unable to spot excessiveness or assertions that are not founded in fact.

Matters will have to be canvassed relating to rules and the practice of the law of evidence. The pilot will be important in that regard. I welcome the existence of the challenge and I hope that ministers and others will consider something like the existing hearing on facts in highly contentious cases as one way in which to resolve the issue.

I share some of the committee's uncertainty about passing up the victim statement to the presiding judge. A pro forma mechanism might help, but I think that it might get in the way of the personal element that I mentioned. Guidance to people who are not familiar with court procedures or with what might be relevant would be welcome, given that, for many victims of crime, the case will be their only interaction with the justice system—unlike some of those who perpetrate the crimes, they do not often come into contact with the courts. I suspect that some scrutiny of the content of the victim statement will be available through comparison with witness statements that are made to police. I urge ministers to consider issuing explanatory guidance to victims.

Pauline McNeill made a tremendously important point about the real benefit to many victims of the information that is dealt with in section 15. Information is just as important as having one's say. I am disappointed that some Opposition members are prepared to see that measure lost. They are to be criticised for that.

I hope that the Executive will reflect on the legitimate concerns that the committee has raised. Given the florid hyperbole of Bill Aitken and Roseanna Cunningham, I take it that, despite their opposition to the general principles of the bill, the Conservatives and the SNP will deliver a raft of amendments to it. If they do not, we will hold them to account and, if they do, we will scrutinise the amendments.

The ministers will be aware of the issues that I have raised in correspondence with them about section 61, which is aimed at freeing up officers' time. I wholly welcome that if it can be done. I also hope that ministers will consider other innovative ways of freeing up officers' time, such as the measures that are being outlined in relation to text messaging and mobile phones.

I share the serious concerns that have been expressed by a number of members about security in and around the court precincts. We will need more reassurance in that regard. Roseanna Cunningham related the genuine and legitimate concern of Sheriff Matthews. That concern is shared not only by members of the judiciary but by people who are interested in victim statements. As someone who has practised in the High Court, I stress to the Executive the fact that the presence of police officers in the precincts of the court can provide tremendous reassurance to victims of crime. In the past, in older court buildings, it was not unusual for victims of crime to find themselves sharing waiting areas with people who had perpetrated crime upon them. That situation has now stopped, thanks to the redesigned buildings.

The presence of police can also be helpful to prosecutors. As part of their general duties, police undertake various tasks that assist prosecutors in the speedy dispatch of a High Court case. That assistance should not be lost.

I urge ministers to apply a measure of salt to concerns about the exertion of undue influence over our sheriffs and judges through the vehicle of victim statements. We have a robust shrieval and High Court bench in Scotland and we should not be terrified that they will be unable to do what they do best.

15:59

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I congratulate the Justice 2 Committee on its report, which is thorough and helpful. I will touch on three areas of the bill. The first is victim statements. There is no doubt that the victim is the forgotten and unrepresented person in the justice system. I know from the point of view of a solicitor and a parliamentary representative that many victims of crime feel that the justice system has no place for them and no real interest in what has happened to them.

That is not to blame any of the players in the justice system—the police, the procurator fiscal, the sheriff and others. It is just that the players do not have a sufficient remit or duty to ensure that the interests of the victim are properly taken into account. For example, the police have a duty to detect crime; they do not have a duty to go back and find out from the victim how he or she has been affected by a burglary or an assault. The procurator fiscal does not have a specific duty to keep a victim informed.

In deciding where to go on victim statements, I acknowledge the Justice 2 Committee's criticisms, but I feel that more information is required. I note

from Sheriff Scott's evidence that the Sheriffs Association's enthusiasm for victim statements

"is based on getting fuller and better information in order better to do justice and to reach better decisions."—[*Official Report*, *Justice 2 Committee*, 5 June 2002; c 1526.]

There is a need for a provision to ensure that that fuller information is required.

The dispensing of justice must be swift. Inevitably, victims will feel, if their case has been dealt with in five or 10 minutes, that full regard has not been had to the devastating effects of the individual crime. We cannot do a great deal about that, but we can do a lot more to make victims feel that they have a part to play and that they are being listened to and heard by the criminal justice system.

The measure for an interim anti-social behaviour order will be extremely useful. Perhaps the real answer to anti-social behaviour is that more training, investment and guidance should be given to those who have the duty, whether in local authorities or housing associations, to implement and use the existing powers, which currently are not used sufficiently well.

The criticisms that the Chartered Institute of Housing in Scotland made are valid. A duty on the sheriff to consider a statement from the person against whom the order is sought should not be necessary. After all, interim interdicts and interim exclusion orders are made without such a right. If that is not a breach of article 6 of the European convention on human rights, I do not understand why it is necessary for section 38 to provide for such a right in relation to interim ASBOs. If it is necessary for the person to be there to make representations, what happens if they do not turn up? They are not likely to turn up. That places an obvious spanner in the works and I hope that that issue will be addressed.

Similarly, I gather that, of the 95 ASBOs that were sought in 1999-2000, only 52 were granted and that 60 per cent of the people who breached ASBOs were not prosecuted. If 60 per cent of those who breach ASBOs are not prosecuted, surely we are sending a message that there is not much point in worrying about receiving such an order, because nothing will happen to anyone who breaches it. Unless that issue is addressed, the welcome measure of an interim ASBO will not take us much further.

Anti-social behaviour is an extremely serious problem. I speak in the debate because of many cases that constituents from throughout my constituency have brought to me. They show that some people just do not seem to be able to respect other folks' lives. I am sure that all members recognise that situation and acknowledge the need for more effective legislative and administrative measures to deal with it.

I am probably unique in the debate in that I comment on section 43—on the physical punishment of children—not only having a parent who is a member, but with that parent sitting directly in front of me.

Christine Grahame: Did she smack you?

Fergus Ewing: I thought that I might be asked questions at this point and I have not been disappointed. I must admit that I do not remember being physically chastised a great deal. My father says, "The problem with Fergus is that he wasn't thrashed enough when he was a child." [*Laughter.*] That seems to have found a consensual response.

I warmly welcome the sensible conclusion that the committee has reached on the issue. A lot of hard work went into that. I question whether any Government has a mandate to introduce such measures without having included them in its manifesto. We must all remember that our views on such matters are as valid or invalid as those of any other citizen of Scotland. My personal view is that there is no mandate for the measures and I welcome the climbdown from and abandonment of the original proposals. I fail to be convinced that the existing common law of Scotland, interpreted by independent sheriffs, cannot continue to do the job that it has done.

I welcome the Justice 2 Committee's work as a step forward and I hope that the Executive will study the findings of the committee's report very carefully.

16:05

Johann Lamont (Glasgow Pollok) (Lab): While welcoming the Justice 2 Committee's report, I have been disappointed in recent days about the speed with which the hard debate about the rights of victims, the needs of young people who are involved in disorder and the effectiveness of different means of tackling crime and disorder has been lost as the focus has fallen on other, rather less serious issues about how coalition partners work together and whether or not individual ministers are under siege.

It is ironic that those who often applaud the role of the Parliament's committees are so quick to jump to say that the minister has caved in or done a U-turn—whatever language is chosen. That is trivial language for another time and another place and we deserve something a little more mature. We are told that, if the minister listens to the committee and others, he has lost control. However, I am sure that, if the minister did not listen, the same voices would be raised to denounce his arrogance and his willingness to

deny the Parliament's voice. Would it not be better to celebrate the process through which Executive and Parliament work together to create good law to protect individuals and communities?

Another criticism that is sometimes raised to obscure and diffuse what is a difficult debate is the charge that Labour back benchers are cranking up the debate and identifying problems that do not exist in order to create division. Personally, I have learned to be philosophical about who any Executive minister is; I am far more concerned with what ministers say than with who they are. Indeed, as someone with a reputation of arguing with her granny about sucking eggs, I am sure that no one ever takes it personally if I have an argument with them.

Apart from the fact that the conspiracy apparently involves me luring more than 1,000 people to a meeting in order to discuss a problem that does not exist, the charge belittles the experience of too many of my constituents. I only wish that the problem were a figment of my imagination. Like many members, I am often deeply troubled by the experiences that people describe to me and by the impact of those experiences on their health and well-being. I find it an obligation, not an indulgence, to raise such issues.

Over the summer recess, when I met representatives of a whole range of groups, agencies and organisations in my constituency, I was struck by a variety of issues. Regardless of whether I was speaking to people in the fire brigade about safety issues, to the staff of bus companies about bus routes, to church groups about local events or to members of communities about service delivery, the discussion turned again and again to disorder and vandalism. That issue was raised as something that troubled people even when the subject was not specifically instigated. The debate about the solutions to the problem is a serious one and I accept that difficult decisions have to be made. To say that there is no problem is to deny the experience of ordinary people. It is unacceptable to say that talking about the problem creates it.

We often hear the argument that there is a youth disorder problem only with a small number of repeat offenders. I contend that that is only part of the problem. Repeat serious offending is indeed a problem, but many people feel that the legal system does not take some offences all that seriously. Even attitudes to anti-social behaviour have changed in recent years and people feel that their experiences are not taken seriously. Therefore, it is feared that referring young people who are 16 and 17 to the children's hearings system for petty offences would become the norm rather than the exception. I am also told that what many people might describe as petty offences do not even get recorded.

I believe that there is another side to the problem. It is what I call the culture of disorder, which prevails in too many of our communities. That culture may, if cases are viewed individually, concern only a number of small offences, but it creates misery for those who are caught up in it. We also have to acknowledge its impact on the youngsters who gather on the fringes of that offending and who see little or no consequence to such behaviour. We do young people no service whatever by implying that we can expect no better of them or that their community deserves no better. Young people who are victims of bullying and who are denied access by other young people to the facilities that are provided for them in their community deserve a system that acts on their behalf, no matter how troubled or difficult the community is.

I continue to have anxiety about bringing 16 and 17-year-olds into a system in which the public often express little confidence. A separate job requires to be done to rebuild that confidence. The bill would bring young adults into a system that is designed to meet the needs of children. When is a child no longer a child? I contend that young people of 16 or 17 do not regard themselves as children. Perhaps we can develop a system that acknowledges that there is a stage between childhood and adulthood. If my youngster of 16 offended for the first time, I would want to know that they would not be consigned immediately to a harsh system. However, I am not convinced that putting 16 and 17-year-olds into a system that is designed for younger children will address the problem that exists.

I want briefly to highlight the issue of anti-social behaviour orders. We need to be alive to the difficulties that have been experienced in imposing such orders. Work needs to be done to ensure that courts take them seriously. I want to highlight in particular the problem of anti-social behaviour by tenants of private landlords. I ask that work be done to encourage such landlords to take responsibility for controlling the behaviour of their tenants.

For me, the key issue is how we ensure that the public have confidence in the justice system. That does not mean devising a system that is a licence for mob rule—we want the opposite of such a system. This is a matter of social justice. Our most deprived communities suffer the most from crime and they have as much right as anyone else to have their voices heard. It is often said that the trouble with people who raise the issue of criminal justice is that they just want to punish. They do not—they want the disorder in their communities to stop and they want to feel safe. Their children

have as much right to be safe as the children of any other community in Scotland.

We must consider the consequences for our society and communities of failing to address speedily the loss of confidence in our justice system. People must begin to feel that the system responds to their needs and experiences.

16:11

Phil Gallie (South of Scotland) (Con): I am pleased to follow Johann Lamont. Her comments must be listened to, as they are based on the experiences that she has gained as an MSP. Four or five years ago, her comments might have been somewhat different from those that she makes today, although I am prepared to be corrected on that point.

I concede that the bill contains many good provisions. Unfortunately, those are far outweighed by bad ones. Overall, I cannot support the bill. I refer specifically to the point of order that I raised concerning the long title of the bill. If we agree to the bill at stage 1, we cannot amend the long title.

I commend the Justice 2 Committee on the work that it put in and suggest that its findings must give ministers cause for concern. In his speech, Jim Wallace seemed to recognise that. If the bill is approved today, as I suspect it will be, I hope that the committee and the minister will be given sufficient time to amend it at stage 2. In the past, business managers have sometimes placed unacceptable pressures and time limits on the committee. I hope that that does not happen in this case, given the importance of the bill.

It is difficult in five minutes to address all my concerns and to point out all the deficiencies and positive aspects of the bill. However, there is irrefutable evidence of rising crime, despite what Mike Rumbles said—it is interesting that he was unable to justify his comments from his notes. The bill should be aimed at addressing the issue of rising crime, but its provisions would make problems worse.

Ironically, today has been labelled cracking down on crime day. The bill that we are debating is not so much a cracker as a damp squib, with all the dangers that an unexploded device can hold. In recent times, I have listened carefully when the Scottish Executive—the First Minister, the Minister for Justice, various deputies, the Lord Advocate and the Solicitor General—has spoken forcefully of its determination to come down hard on those who disregard the law and bring misery into others' lives. Given the contradictory comments that I have heard ministers make on other issues, I have remained sceptical about the likely outcomes of their policy. Sadly, with this bill, I believe that my scepticism has been vindicated.

On lifelong restriction orders, I query the need for another quango with all the costs that go with it. Surely the Parole Board for Scotland and professionals with expertise in health or social work could take responsibility for the orders. I question the minister on compliance with the European convention on human rights. If indeterminate sentences for murderers are unacceptable, how can a lifelong sentence be imposed by a quango such as the one that he has proposed? Something is at odds here.

Scott Barrie: This is a point of information rather than a question. The sentence would be imposed not by a quango but by a court. I am not quite sure what point the member is making.

Phil Gallie: The court upholds the sentence. Courts cannot impose indeterminate sentences on murderers; a recommendation for a fixed period, such as 20 or 25 years, has to be applied. I query that aspect of the bill, although I might have it wrong—if so, the minister will, no doubt, be good enough to correct me in due course.

I agree with victim statements in principle, but I am disappointed that there seems to be an over-complication in the bill. I would have been happy for the bill to allow the victim to make a statement and the judge or sheriff to take cognisance of that in setting a sentence.

The Deputy Presiding Officer: You have one minute, Mr Gallie.

Phil Gallie: With regard to smacking, I am delighted that the minister has joined the corridors of the enlightened. I suppose that the unenlightened might label the bill the right to whack, but I do not believe that some of the provisions on smacking were a realistic option. They were unpoliceable, unnecessary and intrusive and I am delighted that the minister has changed tack.

I am concerned about the way in which the minister intends to treat 16 and 17-year-olds, who are adults. Time and again in the chamber, members have underlined the ability of 16-year-olds to determine their own lifestyles. For the minister then to turn round and say that such youngsters are not capable of going through the criminal justice system seems wrong.

Christine Grahame: Will the member give way?

Phil Gallie: I do not have time; I am over time.

The minister might consider making the judgments of children's panels mandatory and binding so that social work directors and others have to commit to them.

I acknowledge that other members want to speak. I am disappointed that I cannot carry on, but I defer to the Presiding Officer's requirement.

The Deputy Presiding Officer: The last slot is shared between Alasdair Morgan, who has three minutes, and Gil Paterson, who can make a brief comment after that.

16:18

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): As usual, I find much of the Conservatives' approach disappointing. They seem to be harking back to the failed attempts of Michael Howard and Michael Forsyth in previous decades. Cool Hand Luke Bill Aitken clearly wishes to reintroduce chain gangs. The roads in Dumfries and Galloway are in a bad enough state as they are, but I cannot imagine what they would be like if there were of hordes of youths dressed in overalls labelled "Dumfries and Galloway Department of Corrections".

I note what was said about the disadvantages of a miscellaneous provisions bill. I suspect that bills such as the one that we are considering sit rather uneasily with our procedures and with our definition of the general principles of a bill, which this debate is alleged to be about approving. Members of the justice committees and the Rural Development Committee had difficulty enough deciding what the general principles of the Protection of Wild Mammals (Scotland) Bill were. I do not know what on earth the principles of the Criminal Justice (Scotland) Bill are.

The nature of the bill presents the Justice 2 Committee with a significant disadvantage, too, because it cannot report on the amendments that can be lodged. I understand that almost any amendment to criminal justice legislation would be ruled in order. Therefore, amendments that are lodged will not be subject to the fairly exhaustive scrutiny that the bill has come under so far.

However, I welcome one of the amendments that I believe the Executive is proposing on wildlife crime. The police in Scotland have few powers in that respect. They certainly do not have the power of arrest, which is available south of the border. Courts here also have fewer powers on wildlife crime than do the courts down south. Many people who commit such crimes are treating the system with contempt. They keep returning to commit crimes such as egg theft and the poisoning of rare birds. Some birds have already been made extinct in Scotland by human beings. Efforts are being made to reintroduce such birds, so anything that we can do in legislation to help in that process will be very welcome.

I draw members' attention to the financial memorandum, which I suspect not many people read—in the Finance Committee, we have to. Members should consider the number of paragraphs that say that the costs of whatever provision is being talked about will be met out of existing budgets. It is amazing how flexible existing budgets appear to be when the Executive introduces proposals; I only wish that the Executive was as sympathetic to some SNP back benchers when they express a vague desire for some provision to be enacted. In those cases, the proposal can never be met out of existing budgets, but must be put on to some endless bill of £8 million that will stop the Scottish taxpayer in his tracks. Of course, we are never allowed to reallocate existing budgets.

Having said that, and having warned the Executive that it must begin to say where it is finding the money for some of the things that it is doing, I will allow my colleague to continue.

16:21

Mr Gil Paterson (Central Scotland) (SNP): I am grateful to Alasdair Morgan and the Presiding Officer for allowing me to say a few words. I will comment on one particular area.

It is welcome that the Executive has taken the opportunity to extend the idea of drugs courts, which have been piloted with great success in Glasgow. However, it is disappointing that the Executive has not taken the opportunity further, to extend specialisation within the criminal justice system. We should have specialists working with domestic violence offenders, for example, or with people who offend against children.

The Minister for Social Justice visited Canada in the past year and saw at first hand the effects of the domestic abuse courts. On her return, she seemed to indicate that the Executive would consider the idea of such courts. Given that the Executive is committed to combating violence against women, a commitment to the introduction of domestic abuse courts or family courts that could deal with both criminal and civil matters would have been welcome in the bill.

Has the minister let the issue slip off the agenda or does he intend to introduce domestic abuse courts or family courts? At present, things have to change as each case comes along. For instance, a judge, a sheriff or a prosecutor will be involved in a different type of case from one day to the next. If we had specialists who were trained in one particular area, we could be halfway up the street before we started walking. Has the minister given up on the idea? If he has, I will be disappointed.

16:23

George Lyon (Argyll and Bute) (LD): This has been a good debate with a wide range of speeches, the majority of which have been thoughtful and sound and have dealt with the real issues raised by the Justice 2 Committee's report

on the proposals in the Criminal Justice (Scotland) Bill. I welcome the minister's response, but I want to talk about the committee's conclusions and, most important, its criticisms.

Pauline McNeill said that we should welcome the fact that the minister has listened to a strong committee report and has accepted the views in that report. That is surely what the Scottish Constitutional Convention hoped and expected would happen when it designed the way in which the Scottish Parliament would work. Jim Wallace's dignified acceptance of the committee's conclusions on smacking stands in stark contrast to the rather hysterical speech of the SNP's spokesperson, Roseanna Cunningham. In true Westminster style, she harangued the minister for carrying out a U-turn. As Johann Lamont said, that approach belongs in another place.

There were several good speeches on the issues surrounding victim statements. I want to make it clear that I support the principle of victim statements. I welcome sections 15 and 16 in particular. The committee had no trouble in recognising the value of such measures.

My real concern related to the evidence presented to the committee on section 14, on the introduction of victim statements. The evidence included published research on how the victim statement scheme has worked in England and Wales. The research showed that victim statements have little effect on sentences or, indeed, on victim satisfaction, which are the two key objectives of introducing victim statements in Scotland.

The research showed that although a third of victims felt better for being able to contribute to the process through victim statements, 18 per cent felt worse. The authors came to the conclusion—and we must bear this in mind when carrying out pilot projects—that victim statements tend to raise expectations that cannot be fulfilled.

The report gave us cause for concern. I hope that, during the pilot studies, close monitoring and evaluation of the benefits to victims will be the number 1 priority for the Executive. If the scheme does not deliver benefits to victims, we should not roll it out to the rest of Scotland. I hope that there will be reports back to the Parliament before there is widespread introduction of victim statements.

I want to say a few words about the youth crime pilot projects. The explanatory notes state clearly:

"Section 44 provides for the setting up of a pilot scheme to study the effectiveness of diverting 16 and 17 year old minor offenders away from the adult criminal justice system and into the children's hearing system."

That statement makes it clear that only minor offences will be included.

Johann Lamont: The point that I made was that, often, what the courts regard as minor is very troubling and serious for an individual community. Will the member define what he considers to be a minor offence?

George Lyon: That is a cause for concern. The issue was raised at the committee and I recognise that there are widespread concerns about the scope of the trial. However, the fundamental point of introducing pilot projects is to evaluate whether they work. We cannot say that we are concerned about various issues to do with introducing such a scheme without giving it a trial. We must conduct the trials and evaluate what they demonstrate on the ground.

The pilot scheme is not being introduced throughout Scotland. Only after proper evaluation of the trials will any decision to proceed further be taken. There is further protection because primary legislation would need to be introduced in the Scottish Parliament to bring into effect any decision to roll out the youth crime pilots to the rest of Scotland. Protection is built into the proposals, to ensure that those who are genuinely concerned—and I recognise that concern—are reassured about the way in which the pilot projects will be carried out. I hope that the minister will examine whether the youth crime pilots bring any benefits in bridging the gap between the children's hearings system and the adult criminal justice system. I welcome the minister's commitment to going ahead.

I have run out of time. There are one or two other points that I would like to have made, but I have said more than enough.

16:30

Lord James Douglas-Hamilton (Lothians) (Con): The Criminal Justice (Scotland) Bill has been introduced with some exceptionally controversial provisions relating to the smacking of children, which we believe would criminalise Scotland's parents. As long as those provisions remain in the bill, along with other controversial and contentious provisions such as those on referring 16 and 17-year-olds to children's panels, we will vote against the bill on the ground of its being contrary to the public interest.

First, I turn to smacking and the proposed legislation, which was, I understand, a flagship policy of the Deputy First Minister. Last Thursday, the Deputy First Minister said that it remained a policy of the Executive. Notwithstanding that fact, the Deputy First Minister withdrew his support for the provision on the next day. Is not that an example of an Administration that is in disarray at the highest level?

George Lyon: Will the member take an intervention?

Lord James Douglas-Hamilton: Let me continue for a moment.

We have repeatedly said that a ban on smacking is unnecessary, unwarranted, unworkable and unenforceable. The proposals reeked of the nanny state and were an insult to Scotland's parents. Not only that, they would have caused a disproportionate—

George Lyon: Will the member take an intervention?

Lord James Douglas-Hamilton: I will take an intervention from the member in a moment. I have a couple of things to say about the issue first.

The proposals would have used up a disproportionate amount of police time. The Association of Chief Police Officers in Scotland warned that police officers would encounter practical difficulties. The Christian Institute wrote:

"Parents who face a criminal charge will be under considerable stress as will their families. A prosecution would put the child at the centre of a highly distressing court case."

George Lyon: Will Lord James take an intervention?

Lord James Douglas-Hamilton: I have already told the member that I will give way to him in a moment. He is too anxious to become the nation's conscience.

The Christian Institute also said:

"Changes to the law must not be made lightly, particularly where it is accepted, as the Committee itself does, that the present law is working well."

Now I will take an intervention.

George Lyon: Lord James is very gracious.

Will the member clarify the Conservatives' position? Do the Conservatives support giving blows to the heads of young children and the use of implements against young children? Is that the Conservatives' position?

Lord James Douglas-Hamilton: Certainly not; David McLetchie answered that point. We believe that the common law is sufficient and that all unreasonable conduct of any kind against children should be prosecuted—it can be, it should be and it will be. We believe that the common law is working.

Brian Fitzpatrick: Will the member give way?

Lord James Douglas-Hamilton: No, I am not giving way. I have something to say.

We are now to understand that the First Minister and the Deputy First Minister are like Napoleon and his chief marshal retreating from Moscow in the face of Scotland's irritated fathers and mothers. All that is missing is the music of Tchaikovsky.

The Deputy First Minister who has just executed a U-turn on prisons has now made a U-turn of comparable proportions, yet we are given to understand that the Deputy First Minister will continue as if nothing has happened. Is he not one of the greatest living examples of how to fall without hurting yourself?

There is also a proposal to refer 16 and 17-year-olds to children's panels. That proposal has met with stout opposition from those who wish a stronger response on law and order issues. Johann Lamont's points were well made. We are asked to believe that there is to be another U-turn and that only the most minor cases may be referred to the pilot scheme. That needs clarification, as Johann Lamont suggested. In view of the number of recent U-turns, we await the next one in eager anticipation. We wonder what it will be.

Christine Grahame: Will the member take an intervention?

Lord James Douglas-Hamilton: I have a lot to say but I will give way to the member briefly.

Christine Grahame: It is courteous of the member to give way. Lord James has referred to minor offences. We are all agreed that only very minor offences would have to be referred. I take it that the member was persuaded by the Association of Chief Police Officers in Scotland and by the comment by the chief constable for central Scotland that I quoted in my speech, as he was persuaded by them on the smacking issue.

Lord James Douglas-Hamilton: Not necessarily. As I said, the matter will require clarification in committee. We want to know a great deal more about it and we do not feel that we have had satisfactory responses to date.

There is also a proposal to set up a risk management authority to deal with serious violent or sexual offences. That has given rise to concern, and Professor Antony Duff of the Scottish Consortium on Crime and Criminal Justice said:

"In particular, our concerns are: the broad list of qualifying offences; the fact that it takes only one offence to become eligible for assessment; the evidence that the assessor can attend to, including alleged offences for which the person was never tried or for which they were acquitted; and the fact that the court needs to be satisfied on the balance of probabilities, rather than beyond reasonable doubt, that the person is dangerous. The specification is too broad.—[*Official Report, Justice 2 Committee*, 15 May 2002; c 1308.]

As Bill Aitken said, the matter must be examined in depth.

On alternatives to custody, I am led to believe that there have been numerous breaches. The question arises whether those breaches are being dealt with in a sufficiently robust way. Alternatives

to custody must not be allowed to become the softest of soft options.

There is one issue that cannot be allowed to pass unmentioned. If, notwithstanding their disarray, the united forces of the coalition manage to pass the bill today, it will be competent to raise matters that the bill has not yet covered. One such issue is the release on bail of convicted murders and rapists without proper consideration of the public interest or protection of the public. To his credit, the First Minister has indicated that, if the Justice 2 Committee proposes an appropriate amendment, he will listen sympathetically to its advice. There is major public concern that convicted murderers and rapists should not be allowed to roam the streets, especially when the police believe, with good reason, that they are a danger to the public and should not be approached.

I await responses from the Deputy First Minister to a number of parliamentary questions on the matter of bail. A considerable number of my questions have received holding replies. For example, the minister cannot answer immediately my question about how many persons convicted of murder are now on bail pending appeal against conviction. Nor can he answer my question about how many people convicted of serious assault, rape or culpable homicide are out on bail, and nor can he say how many have been bailed over the past three years.

What he can tell us in parliamentary answers gives rise to the greatest possible concern. According to his answer to question S1W-28830, the average length of time for an appeal for all crimes is 185 days; for murder, it is 256 days, which is more than two thirds of a year; and for rape, it is 421 days, on average, which is well over a year. I submit in great seriousness that for appeals to take so long is grossly unfair to both the convicted and the victims. If judges are releasing convicted murderers and rapists on bail because of the length of time that it takes for an appeal to be heard, the Justice 2 Committee should, quite legitimately, address the matter, especially as it appears that that is not happening elsewhere in Britain.

As long as the bill contains unacceptable proposals on smacking and on referring 16 and 17-year-olds to children's panels, we will oppose it. However, if the Parliament, in its wisdom, decides that the bill should proceed, we will seek to amend it and will do everything in our power to act as the guardians of the public interest.

As the First Minister has now arrived in the chamber, I shall finish by saying that I welcome the constructive way in which he answered my question last week when he said that he would consider seriously and sympathetically amendments from the Justice 2 Committee if the bill is passed today.

16:39

Michael Matheson (Central Scotland) (SNP): I begin by congratulating the Justice 2 Committee on its robust report. The committee has had to go through more than 280 items of evidence, and it has clearly had its work cut out in considering the various provisions of a large and complex piece of legislation.

It is fair to say that most members have concentrated on three key parts of the bill—parts 1, 2 and 7—much of the debate on which has been recorded in the media. The SNP strongly welcomes the provision in part 1 to create orders for lifelong restriction. We have called for such orders to be provided for several years, but the Government previously dismissed them. The orders are welcome, although they come somewhat late.

The Justice 2 Committee has highlighted several concerns, particularly about the risk management order, the role of the prosecutor and the risk assessment report. The Minister for Justice referred to that, because the Justice 2 Committee is concerned about the sources that will be used to provide information for the compilation of such a report. I hope that the minister will ensure that clear guidance is issued alongside the bill, if it is passed, to ensure that the organisations that provide information for such reports are bona fide and that the information that they provide is not frivolous. I welcome the minister's comments on the committee's concerns about the risk criteria. If the new order is to work effectively, we must ensure that all the provisions are clear and robust.

A range of members referred to the provisions on victim statements in part 2. There has not been a debate in the Parliament in the past three and a half years on crime or our criminal justice system in which members have not discussed services for victims. If one thing has improved in our criminal justice system, it is services and support to victims of crime. However, the intent of the victim statement is unclear. I am attracted to it. When I first heard of the Justice 2 Committee's recommendation, I confess that I was somewhat surprised, until I read the committee's report and saw the evidence that it had received. It is unclear whether victim statements are intended to affect sentencing in court or are merely a therapeutic outlet for victims to make their views known to the court. If the measure is to be effective, it is essential that its intent is clear.

As Brian Fitzpatrick said, it is essential that it is an individual's choice whether to give a victim statement. Individuals should not be forced to

make a statement if they do not choose to do so. It is important that people are provided with the right practical support to make victim statements. The Executive described to the Justice 2 Committee a range of agencies, including the police, the procurator fiscal and social work services, that can provide such support. We must identify a lead authority that is intended to give victims support and guidance when necessary, in case there is confusion about who should offer such support.

I agree with Pauline McNeill's comments about release on licence. The provision that entitles a victim to be informed when someone is applying for parole or is being released on licence is significant. I have corresponded with the Minister for Justice about that in relation to the Andrew Halliday case and I believe that many victims will welcome the provision. However, Dr McManus, the chairman of the Parole Board, has said that if victims are to be given the opportunity to make representations to the Parole Board, and if the system is to work effectively, they must be given the necessary guidance on the relevant information to provide. I hope that ministers will address that issue.

Part 7 deals with the physical punishment of children. I welcome the Justice 2 Committee's recommendation on the issue. Common sense has prevailed, particularly over section 43(3)(a). I welcome the minister's decision to drop that provision.

I hope that the message is clear that the issue is one of the separate roles of Government and family—a family is not mum, dad and the Minister for Justice. I hope that ministers will reflect on whether the role of Government should be to interfere in family life in such a way. If the Executive's intention is to change the culture of how parents chastise their children, it should seek to educate and not legislate. If the Executive remains committed to addressing the issue, I hope that it will introduce an education programme at an early date.

Like Stewart Stevenson and many other members, I support the banning of the striking of children around the head or with implements.

Pauline McNeill: Has the member had an opportunity to examine the evidence that was put before the committee? If he has done so, does he agree that the whole question of the role of parents and how hard it is to be a parent seems to be missing from the evidence? If the Executive moves in the direction of recognising how hard it is to be a parent, it could consider support for parents who are looking after children up to the age of 16. I make that remark in the context of the protection of all children.

Michael Matheson: I fully agree with Pauline McNeill. That is why, if the Executive is to do anything in this area, it should consider providing education and support to families. It should not criminalise individuals who may be reasonably chastising their children.

A number of members mentioned their concern about or support for the youth crime pilot studies. I am a keen supporter of our children's hearings system. It has many attributes and better resources should be provided for it. I am inclined to agree that there is a need to examine how the system operates. One of the common complaints that I hear from individuals who sit in the hearings system concerns the lack of disposals that are available. A children's panel chairman in somewhere such as Falkirk can tell me that a great range of disposals is available to him, but the chairman of a panel in Glasgow can say that he has severe problems in getting a child allocated to a social worker from the local social work department.

There is a need to ensure that a consistent approach is taken in dealing with young people. Like Christine Grahame, I believe that we have to go up river to stop young people falling into the world of crime. The best way to do that is through the children's hearings system. I hope that ministers will address that issue.

I will turn briefly to the issue of police custody and security officers.

The Deputy Presiding Officer (Mr George Reid): The member is in his last minute.

Michael Matheson: Roseanna Cunningham raised the matter of the unnamed Executive spokesperson who stated that the tendering process for the introduction of officers into our court system had begun. I hope that ministers will be able to confirm this afternoon that that is not the case. The Parliament has not passed the bill and it would be an affront to democracy if that process had begun.

Pauline McNeill raised an important point about the number of officers who will be released as a result of the measure. Officers to whom I have spoken have informed me that many colleagues who are involved in court duties are involved because they are near the age of retirement, are close to leaving the service or are unable to undertake operational duties owing to health problems. That means that the net gain in the number of officers released from court duties may not be particularly significant. I hope that ministers will address at an early stage the concerns that have been raised by the Sheriffs Association and the police.

The SNP supports the general principles of the bill and will do so this afternoon. However, our support is qualified. We agree with the committee's recommendation in paragraph 207 of

its report. There are a number of serious flaws in the bill and they need to be addressed before the bill is passed.

16:49

The Deputy Minister for Justice (Dr Richard Simpson): The Executive accepts that the bill is wide ranging, but it is quite extraordinary that the Conservatives say it lacks principles.

Lord James Douglas-Hamilton: Will the minister give way?

Dr Simpson: No. Let me get started. It is regrettable that Roseanna Cunningham suggested that the bill is a ragbag, which is effectively what she said.

Nevertheless, the debate has been very good and in some speeches members have raised extremely helpful points. The bill is based on the principles of protecting the public and children; promoting victims' rights and effective sentencing; and maintaining a modern and efficient criminal justice system. They are fairly reasonable principles on which to proceed.

I pay tribute to the Justice 2 Committee for the way in which it undertook a very challenging task. The bill has 70 sections and the committee was working within a very tight time frame. Indeed, I think the committee found the challenge quite difficult at times. However, the way in which it took evidence and constructed its report has been very helpful to the Executive and represents an example of a mature democracy.

Committees are crucial if our unicameral Parliament is to operate effectively and it is important that the Executive listens to them. As we have no House of Lords, there is no second bite of the cherry. Interacting on such a level means that we need a reasonable debate about the issues instead of childish claims about U-turns. Decisions are often finely balanced, and it is entirely appropriate for the committee to produce evidence that persuades us that we should change our mind. We do not apologise for that.

We will carefully consider a number of important points about high-risk offenders. We also feel that the defence's right to challenge is important: the defence has the right to challenge the decision to move to a risk assessment. I therefore welcome paragraph 34 of the committee's report, which states that it

"may be appropriate to have a relatively broad entry point to the risk assessment process … However, the broad criteria at this stage make it all the more important that the risk assessment process is as robust as possible".

Another important question concerns the information on which assessments are based. We will provide examples before stage 2. As Michael Matheson said in his excellent summing up, we must be sure that the sources of information are reputable. Indeed, in his opening speech, Jim Wallace made it clear that we will not pay heed to hearsay or tittle-tattle. That said, it is crucial for a small number of people that we introduce the protection given by orders of lifelong restriction. I am glad that the SNP welcomes that approach.

Brian Fitzpatrick: The committee raised the important issue of onus. Does the minister agree that when the evidence is already before the court, questions about onus fly off to some extent? We need to hang on to the importance of criteria in relation to serious risk, the definitions set out in the MacLean report and whether it is established after assessment, scrutiny and reporting to the court that it is more probable than not that the previously convicted individual will pose a risk either to himself or to others.

Dr Simpson: That summarises the point excellently. Because we have a duty to protect the public, we intend to proceed on the balance of probabilities. Why did we not decide to do so earlier? The answer is that we legislate only after we go through the committee system and a consultation process. We do not apologise for taking that time. The MacLean committee report was very important in our consideration of this issue.

As for victim statements, all members have welcomed sections 15 and 16. It is only correct that victims have a right to information about release. The Executive is trying to put victims much more at the heart of the process. Some members referred to the victim's right to refuse to make a statement. We should not underestimate the therapeutic value of that approach, because it allows the victim to control some element of the process. Rejecting that opportunity is nevertheless part of a healing process. Even if they agree to make a statement, they can still withdraw it at a number of points.

I also agree with Brian Fitzpatrick that, when victims make out their statements, the compilation of information should be carefully guided and supported to ensure that, as far as possible, there is an agreed narrative. As there have been no challenges in that respect in England, the approach seems to work.

Our intention is to pilot a number of areas covered by the bill. We want to run pilot studies, to evaluate the resulting information and to come to conclusions that will allow us to progress. Sheriffs and judges are used to judging the information. It is important that we do not say to the victims, "You are going to determine the sentence." That would be wrong. However, we say that just as the person who is being convicted can make a plea in mitigation, so the victim can make a statement to

the court that indicates how they feel about the crime that has been committed against them.

I prefer to use the word hitting, rather than smacking. The word smacking does not appear in the bill. We are talking about hitting. I regret that I was not here for all of Mike Russell's comments; I gather I missed a bit. Nevertheless, his general approach is right: we cannot legislate alone on hitting—there has also to be effective promotion of positive parenting. If we do not do the second part, the first part will be worthless.

Five European countries have a total ban on smacking or hitting and the world has not fallen in in those countries. There are a further four countries—Croatia, Cyprus, Norway and Latvia—that have also introduced a ban without a problem. We must ask ourselves how far we should go and how quickly. We have accepted that introducing an age-related ban on smacking causes difficulties that were brought out in evidence to the Justice 2 Committee.

I emphasise the fact that 80 per cent plus of the public agree that we need to clarify the law—so the Tories are wrong. There has been a request for the law to be clarified and we have responded by meeting what the public want, which is a ban on hitting to the head, a ban on the use of implements and a ban on shaking. We have got it right in that respect. As a doctor, I saw children who were hit on the head and beaten with implements and the law failed to prosecute. It is not correct to say that children are properly protected. I say to Michael Russell that that is what it is about. It is not about interfering with parental rights; it is about protecting children. We will make no apology for that and we will progress in promoting active and positive parenting.

Michael Russell: We all agree that the key issue is the protection of children. The only difference between my contribution and what the minister says is that if we change parents' behaviour first, we might benefit.

Dr Simpson: It is clear from the research that was published today, to which Jim Wallace referred, that the majority of parents in Scotland would ban smacking of one-year-olds or younger. The majority of the people who responded—positively or negatively—would also ban smacking at the age of two. We will continue to monitor public attitudes. As they change, we will promote that as best we can.

On the youth crime pilots, I emphasise the word pilots. We are not seeking to introduce the measure across the country. The legislation currently prevents us from undertaking a study whereby we can determine whether it is more effective for some people to go into the children's hearings system other than by the routes through which they can already be referred. When 16 and 17-year-olds are under supervision, they can already be retained in the system and sheriffs can refer to the hearings. We are introducing a third element: pilots in which there are adequate resources to test whether the measure is effective.

The Tories have opposed the pilots, as they have opposed so much in the bill.

"By virtue of the seriousness of their offences and their maturity, many young people should no doubt face the full vigour of prosecution and the sanctions which follow a guilty verdict. However, there are also among this group young offenders who are immature and for whom a programme of care and supervision"

—the basic tenets of the hearings system—

"under existing powers through the hearings system would be a more effective way of changing their behaviour and reducing the risk of future offending."

That quotation is not of the coalition's white paper; it is of Lord James Douglas-Hamilton in 1995. Once again, we are seeing a complete change in the Tory party. Something that was promoted by the Conservatives—indeed, by their summing-up speaker today—is suddenly no longer valid. What is that about?

At the risk of causing Christine Grahame difficulties, I praise the speech that she gave today. She was absolutely right to say that prison is a graduate school. Home Office research shows that it is in prison that young drug addicts form the networks that allow them to go on to become drug dealers. It would be better to shift people out of the custodial system.

The committee is right to say that we must be clear about whom we intend to refer to the pilots. We will come back with that clarity, which we have failed to achieve so far. I know that a false impression was created by the initial documents, which talked about referring as many 16 and 17-year-olds as possible to the pilots. That impression is reflected in paragraph 164 of the committee's report, in which it says:

"We are concerned that some of those supporting the pilot see it as a way of bringing all 16 and 17 year olds within the hearing system over time".

The First Minister, the Deputy First Minister and I have repeated that the pilot will deal with petty offenders. We want people who are vulnerable, such as people with learning disabilities with whom the family is still engaged, to become involved in that process. The children's hearings system provides supervision, which the courts do not, and the new youth crime court will provide an opportunity for intense supervision, which is not available in the adult system at present.

I do not have time to deal with the many issues that have been raised. Suffice to say that, on police custody and security officers, the chief

constable will retain the right to manage the situation. It is important that sheriffs feel comfortable with the arrangements, but we believe that we can introduce more cost-effective measures and that the bill gives us the opportunity to do so.

On anti-social behaviour orders, we are responding to research on the initial orders. That research asked for interim orders in order to shortcut the process. As Scott Barrie said, the most effective implementation of ASBOs has taken place in Fife, where there has been good, effective mediation at the front end, followed by ASBOs. There are now some 38 ASBOs in place in Fife and they have proved to be highly effective. We are conducting further research and will strengthen the provisions on ASBOs.

Johann Lamont referred to the need to protect people from anti-social neighbours. We will continue to consider the development of ASBOs, to determine whether further changes are required.

Tricia Marwick (Mid Scotland and Fife) (SNP): Will the minister give way?

Dr Simpson: I am sorry—I am almost out of time.

The Presiding Officer (Sir David Steel): You are well over time, minister.

Dr Simpson: I do not have time to refer to child pornography, although the provisions on that issue are an important part of the bill, nor do I have time to speak about wildlife crime, to which Alasdair Morgan referred. I assure Gil Paterson that we have not forgotten about domestic violence, which is another important issue. The Minister for Social Justice and the justice department are still considering that issue carefully. Both have discussed with Sheriff Principal Bowen the possibility of establishing domestic violence courts. We do not believe that such a move would require legislation, which is why the proposal is not in the bill.

I commend the bill to the Parliament.

Criminal Justice (Scotland) Bill: Financial Resolution

17:03

The Presiding Officer (Sir David Steel): The next item of business is consideration of a financial resolution.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Criminal Justice (Scotland) Bill, agrees to the following expenditure out of the Scottish Consolidated Fund–

(a) expenditure of the Scottish Administration in consequence of the Act, and

(b) increases attributable to the Act in the sums payable out of that fund under any other enactment.—[*Peter Peacock.*]

Presiding Officer's Ruling

17:04

The Presiding Officer (Sir David Steel): Members may recall that, at the end of our previous meeting, Mr Quinan raised a point of order, which Mr Russell followed up, on the referral of the Council of the Law Society of Scotland Bill. I issued a full response to Mr Quinan and Mr Russell yesterday and I have arranged for copies of my response to be made available to members of the Justice 1 Committee and the Justice 2 Committee.

I will be brief. For the record, my ruling is that neither article 6 nor any other article of the European convention on human rights affects the process of legislation. Therefore, there is no procedural or legal reason to prohibit the Justice 1 Committee and the Justice 2 Committee from considering the bill, as the Parliament decided they should last week.

Mr Lloyd Quinan (West of Scotland) (SNP): On a point of order, Presiding Officer. I thank you for your reply, which I found interesting.

Given that your reply, your ruling and your judgment were based on information that was provided to you by the Parliament's legal office, I ask you, on behalf of the Parliament, to seek independent legal advice on the point that I raised.

The Presiding Officer: No. Mr Quinan, you have given me an opportunity, for which I am grateful, to pay tribute to the Parliament's independent legal office—its advice is independent of the Executive and anyone else. [*Applause*.] I assure you that I regard the advice that I receive from the legal office as being always of high quality.

Decision Time

17:05

The Presiding Officer (Sir David Steel): We now come to decision time. The first question is, that motion S1M-2952, in the name of Jim Wallace, on the general principles of the Criminal Justice (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
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)
Cunningham, Roseanna (Perth) (SNP)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Dr Winnie (Highlands and Islands) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Grahame, Christine (South of Scotland) (SNP)
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)
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)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
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)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)

McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Reid, Mr George (Mid Scotland and Fife) (SNP)
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)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, 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)
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)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)

The Presiding Officer: The result of the division is: For 89, Against 19, Abstentions 3.

Motion agreed to.

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

The Presiding Officer: The second question is, that motion S1M-3203, in the name of Andy Kerr, on the financial resolution in respect of the Criminal Justice (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Criminal Justice (Scotland) Bill, agrees to the following expenditure out of the Scottish Consolidated Fund–

(a) expenditure of the Scottish Administration in consequence of the Act, and

(b) increases attributable to the Act in the sums payable out of that fund under any other enactment.

Dundee Heritage Trust

The Deputy Presiding Officer (Mr Murray Tosh): The final item of business is a members' business debate on motion S1M-3191, in the name of Irene McGugan, on Dundee Heritage Trust. I invite members who are leaving the chamber to do so as quickly and quietly as possible. 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 now.

Motion debated,

That the Parliament recognises that our industrial heritage is of interest to many people from other countries as well as Scots; notes with concern, however, that despite strenuous efforts and exploration of all possible funding opportunities, Dundee Heritage Trust, the charity which owns Dundee's leading tourist attractions, RRS Discovery and the Verdant Works, has been forced by a continuing and critical shortfall in revenue support into a series of cost-cutting exercises and staff redundancies, the latest being the loss of their very experienced and committed chief executive; recognises that the seriousness of this move cannot be underestimated and is a worrying indication that the closure of both Discovery Point and the Verdant Works may now be imminent; considers that the Scottish Executive should put in place a financial package with immediate effect and extend central revenue support as part of a longer term strategy to secure the future of these significant visitor attractions, both of which achieved five star grading by VisitScotland, with Dundee Heritage Trust being the only independent operator in Scotland to achieve this accolade, and notes that the loss of RRS Discovery, which gives the city of Dundee its "identity" and the Verdant Works, the last working jute mill in Scotland and European Industrial Museum of the Year in 1999, to the cultural heritage of the nation would be both significant and irreplaceable.

17:07

Irene McGugan (North-East Scotland) (SNP): I am here to seek a solution to the threatened closure of Verdant Works, Scotland's only jute industry museum. The situation is simple. The museum faces a financial crisis that is getting worse with every minute that passes. Without immediate core funding of £120,000 to allow Dundee Heritage Trust to implement its development and growth strategy, it might no longer be possible to save from extinction two important treasures from Scotland's history.

Dundee Heritage Trust was established in 1985 to protect and preserve Scotland's jute heritage. The centrepiece of that heritage is the Verdant Works museum. The contribution of jute to the social history of Dundee and Scotland is immense: more than 50,000 people—half of Dundee's working population—were employed in the industry during the early part of the 1900s. Verdant Works tells, in an interactive way, the story of the people who worked in the jute industry and helps to preserve for the benefit of future generations the many stories about often difficult living and working conditions.

It is difficult to overstate the uniqueness of jute to the social history of Scotland—for example the working-class deprivation that existed and the role of women as principal wage earners. If the history of jute goes, that legacy goes too. Verdant Works is the last working jute mill in Scotland and a VisitScotland five-star attraction. It was the European industrial museum of the year in 1999-2000, yet it is fighting for its survival.

In 1996, in conjunction with other bodies, Dundee Heritage Trust was instrumental in securing the return of the royal research ship Discovery from the Thames to her native Dundee. The ship's 1901-1904 expedition is universally acknowledged as one of the most significant events in maritime exploration history. The ship, which has given Dundee its identity as the city of discovery, is another VisitScotland five-star attraction, yet it, too, is fighting for its survival.

In 2001, it seemed inevitable that Verdant Works would close. Forced by a continuing and critical shortfall in revenue support, Dundee Heritage Trust actioned a series of cost-cutting moves and staff redundancies. Verdant Works was reprieved on that occasion not by Executive action, but by the generosity of the people of Dundee, who raised the magnificent sum of £98,000 to secure the short-term future of both museums.

The attractions are being considered for two tourism and three museum awards, one of them international. The recently published national audit described the museums as having internationally significant collections. Letters of support from other organisations number in their dozens.

In recent years, the tourism industry has emerged as an important element of Dundee's economy and with close to 100,000 visitors annually, Discovery Point and Verdant Works are major contributors to the local economy. However, the continued uncertainty that hangs over Verdant Works in particular is not conducive to forward planning. No organisation can operate effectively in such conditions. One-off campaigns cannot be repeated and are not the way forward for our nationally renowned heritage.

What is required is a long-term, coherent strategy, with appropriate funding, to ensure that these vital aspects of maritime and working-class heritage are not lost and their full contribution to tourism, employment and education can be realised. In the short term, I ask the minister to consider grant aid from the Executive of £120,000 to secure the future of both museums. Provision of that funding would release adequate funds from

trading to access European regional development funding that is required for promotion and marketing. That would give Dundee Heritage Trust the opportunity to plan constructively for the future. Funding of that nature would allow Verdant Works to build for the future, not simply struggle to survive for an indefinite period.

The sum of £120,000 is not a lot of money. It is less than half the money set aside for undertaking the museum's audit. Two Verdant Works could be saved for the price of an audit. Verdant Works recognises that it is not alone, but it feels let down by a system that saw three other museums helped out by significant funds in the past year or two. Indeed, just last week, the Minister for Tourism, Culture and Sport launched another consultation, which means more forms for the museum sector to fill out while the Verdant Works and others all but disappear.

The situation is as critical as it can be without being fatal—and even that possibility has not been averted. I know that, despite my best efforts to highlight the gravity of the situation and to present the case for core funding, the Deputy Minister for Tourism, Culture and Sport's response will disappoint Verdant Works. I know because, in last week's spending review announcements, no new money was allocated to Scotland's heritage. I know also because the minister confirmed it in a memorandum written last week to Labour MSPs John McAllion and Kate Maclean. She wrote that she was highly unlikely to be able to respond positively to my pleas and suggestions on behalf of Verdant Works and RRS Discovery. However, she indicated that she would endeavour to be as helpful as possible to her party colleagues in respect of the points that they raised.

Mr John McAllion (Dundee East) (Lab): Will the member give way?

Irene McGugan: I am on my last sentence. I am sure that Mr McAllion will be able to speak later in the debate.

I am immensely disappointed that legitimate concerns raised in members' business are reduced to that party level. I would like to be proved wrong. I urge the minister to put aside party considerations and consider only the uncertain future for Verdant Works and RRS Discovery.

The Deputy Presiding Officer: If we have speeches of about four minutes, I should get everybody in.

17:14

Kate Maclean (Dundee West) (Lab): I welcome the opportunity to discuss the future of Verdant Works and Discovery Point. They are in my constituency and have played a significant role in the renaissance of Dundee as a vibrant and exciting place in which to live, invest and visit.

I am disappointed that, despite representations made by John McAllion, me and others over many months to the previous minister, Allan Wilson, and to the current minister, Dr Elaine Murray, we seem to be no nearer a solution to the financial difficulties faced by Dundee Industrial Heritage.

Many industrial museums throughout Scotland are facing financial difficulties. It is ironic that many of the historic buildings, parks and collections that attract central funding were built on the backs of working-class people whose heritage is now in danger of being lost. It is inconceivable that we should allow these important records of our history to be lost forever. It seems that working-class history and heritage are undervalued by the Scottish Executive and funding bodies.

I want to concentrate on Verdant Works, as the financial crisis it faces is more pressing than others at this time. In spite of the sterling efforts of Dundee Industrial Heritage and the generosity of many organisations and individuals in and around Dundee, there is a possibility that Verdant Works will close if the Scottish Executive does not intervene.

I implore the minister not to underestimate the importance of retaining this working museum of the jute industry, which has significance not only locally but nationally and internationally. I am particularly interested in the role that the jute industry has played in the political development of Dundee women, as referred to by Irene McGugan. That area has particular significance to me as I am a Dundee woman. Like a lot of Dundonians my age and older, I have many relatives, including my mother, who worked in the mill. The activity around the mill and the smell of jute in the part of Dundee where I grew up—it was surrounded by jute mills—are an integral part of my childhood memories.

Women mill workers made up three quarters of the work force in the jute mills and were independent and actively involved in the struggle for votes. Dundee men stayed at home and, in those days, were not referred to as new men but as kettle bilers. Uniquely, women dominated the labour market in Dundee. They were seen as, perhaps, just a little bit intimidating. The Verdant Works website describes Dundee mill workers as being

"overdressed, loud, bold-eyed girls"

who could often be seen as fou o drink as any Dundee man. Some things never change.

It will be a disgrace if Dundee Industrial Heritage is not given the necessary assistance. The people

of Dundee value their proud history and will not take kindly to the Scottish Executive standing back and allowing this crucial part of it to be lost.

17:17

Alex Johnstone (North-East Scotland) (Con): I congratulate Irene McGugan on securing the debate. It is important that we take the opportunity to discuss the matter this afternoon.

Tourism is vital to Dundee and Tayside. My research tells me that about one in 10 jobs in the area depends on it. The RRS Discovery and the Verdant Works, both run by Dundee Heritage Trust, are two key components of the area's tourism infrastructure. Last summer, David Davidson and I went to the Verdant Works to see what they have to offer the public. I have with me a fine photograph of him and me playing with the guards outside the main door. I do not think that we looked entirely appropriate, but at least I can claim to have Oor Wullie's haircut. We were impressed with what we saw at the Verdant Works, and it is significant that it was named the best industrial museum in Europe in 1999-2000.

Apart from the Verdant Works's value as a tourist attraction, the museum also commemorates the heritage of Dundee. Downstairs, the museum has machinery that recreates the work that was done there. I do not remember the smell of jute because of any time spent living in Dundee but because, as a farmer, I have used the twine and bags that were manufactured by the Dundee jute industry. That smell brought back a great many memories to me.

If the Verdant Works did not exist, our knowledge of Dundee's jute industry and the associated culture would be vastly and irreplaceably reduced. That is why the upstairs part of the Verdant Works is significant. It commemorates, through photographs and people's stories, the memory of the people who were alive when the jute industry was important to Dundee. We should remember that that time is at the absolute limit of living memory. When we lose that, the museum will be all that we have left.

I am aware that the financial crisis that endangers the survival of Dundee Heritage Trust has led to the cutting back of staff numbers and the regrettable departure of chief executive Alan Rankin, with whom David Davidson and I held talks when we visited the premises last year.

That the Dundee and Tayside areas were prepared to support the "keep Verdant working" public appeal and to raise the £89,000 that was mentioned is a sign of the level of support for Verdant Works. I take the opportunity to thank *The Courier and Advertiser* for the work that it did in running that story, which it did for so long.

Although I am reassured that Dundee Heritage Trust says that the visiting numbers at RRS Discovery are holding up—it seems to be on target to reach its 68,000-visitor target—the fact that visitor numbers at Verdant Works are 35 per cent below target demonstrates the crisis that Verdant Works now faces. It is clear that the museum desperately needs more income than the £27,000 subsidy that it receives from Dundee City Council to allow it to function and, in turn, to allow Dundee Heritage Trust to survive. However, any extra support that Verdant Works needs is likely to be small compared with the £3.5 million that it cost to set the museum up.

Although I understand that the Executive cannot fund all museums in Scotland, I look forward to hearing from Elaine Murray what positive, practical support the Executive can offer Dundee Heritage Trust—not least to help it with its marketing—to ensure the short-term survival of Verdant Works and, in turn, the survival of the RRS Discovery, which is tied to that of Verdant Works. The alternative is for Verdant Works to close down and for the city of discovery to lose the RRS Discovery.

17:21

Shona Robison (North-East Scotland) (SNP): I congratulate Irene McGugan on securing the debate and I commend her for it—there would otherwise have been no opportunity to discuss the important issues that we are discussing.

Over the past few months, a flood of ministers has visited Dundee for one reason or another. That will not have escaped the attention of many members. It is lovely to see all those ministers, but we would like them to put their efforts to more practical use. Something practical that ministers who come to Dundee could do is save two of Dundee's important tourist attractions.

It is all very well to talk about wanting to turn the city around, about the future or about how Dundee has changed—that is great—but the city will not be turned around if tourist attractions such as the RRS Discovery and Verdant Works go. They are important for the tourism industry in Dundee, but they are also important for the perception of Dundee. Too many people from elsewhere—not only in Scotland, but in the United Kingdom and Europe—do not know that Dundee exists or, if they do, do not have the best image of the city. That is why Dundee's heritage is so important. It is important that we protect that heritage and turn the situation around.

Irene McGugan outlined the financial problems that face Dundee Heritage Trust. Although Dundee City Council—praise where it is due—has managed to increase its grant to Dundee Heritage Trust by £1,000, it is not able to bail the trust out.

The financial problem is far too big for the council to cope with. The question comes down to what the minister will do to save two of Dundee's important tourist attractions. What will she do to ensure that Dundee's tourism industry goes uphill instead of downhill? What will she do to ensure that Dundee's reputation as a centre for tourism is maintained?

A recent report to Dundee City Council noted that a positive effort had been made on the promotion of the RRS Discovery and Verdant Works and that that had resulted in an 8.5 per cent increase in total visitor numbers over the past year to nearly 92,000. That is a success to be celebrated, but what is the point of celebrating if the attractions are under threat? To lose the key staff who have been lost makes closure more likely because they are not there to promote the attractions.

Although cost-cutting measures had to be implemented because of the dire financial situation, they will make the situation worse. As Irene McGugan rightly says, we are at crisis point. If the minister does not intervene now, it will be her responsibility if Dundee's tourism industry takes a turn for the worse.

17:25

Mr John McAllion (Dundee East) (Lab): I, too, begin by congratulating Irene McGugan on securing the debate, which is important in allowing the Parliament to hear the points that have to be made on the subject. Given that members' business debates are controlled through the political parties, and given my and Irene McGugan's respective standings in our own parties, it was always more likely that she would secure a debate on the issue.

I regret any attempt to make party politics out of the issue. Irene referred to the e-mail that was sent to Kate Maclean and me by the minister. I can inform Irene that I sent the e-mail straight back, saying that I would be making the same demands that Irene McGugan was making in any meeting that I might have with the minister. It is essential that all those who claim to represent any section of opinion in the city of Dundee should unite around such issues and not seek to make capital out of them in any way.

Let me get on to the heart of the motion, which states that

"the Scottish Executive should put in place a financial package with immediate effect",

including revenue support for the two attractions that are under debate. We do not argue that case because Dundee Heritage Trust is in any sense spendthrift or irresponsible. In fact, the trust has repeatedly attempted to cut costs. It has cut the number of staff and it has even sacrificed its chief executive, Alan Rankin—a man who has many outstanding achievements to his name, not least having been credited with attracting the tall ships event to Dundee. The trust has been the very model of responsibility in trying to look after these two important items of our heritage.

We are not asking for national support because the people in Dundee are not prepared to support what some people might argue are local attractions. As we have already heard, nearly £100,000 was raised by the citizens of Dundee last year, which indicates how important the attractions are to them. Although Dundee City Council is itself hard-pressed for money it has, in trying to support the museums for which it has responsibility, still been able to give more support to the city's heritage.

I wish to stress to the minister the reason why we are asking for national support.

Brian Adam (North-East Scotland) (SNP): I appreciate what Mr McAllion is saying, but does he agree that both the Verdant Works and the Discovery are very much at risk, and that they are not just local attractions? They might well benefit Dundee and the immediate surrounding area significantly, but they are national, if not international, attractions. Does he agree that there is therefore a national responsibility to ensure that they continue to receive the support that they need for the future?

Mr McAllion: That is my position; it is exactly what I was going to say. I was saying that some people from outside Dundee may take the view that it is we in the city who should support local attractions, but I argue against that. If we do not secure the financial package, Verdant Works will close. The situation is as stark as that and the minister must take that on board when she decides how to reply to the debate.

The Verdant Works and the Discovery are national treasures. Verdant Works is the only jute museum in Scotland, and gives a unique insight into the role of women in the industrial history of Scotland. Among workers in the jute industry in Dundee, the ratio of women to men was about 3:1. If anyone who wants to find out what contribution women made to the industrial history of Scotland, they should go to Dundee and find out about the history of the jute industry and of the women who worked in it. At that time, and even today, that remains an issue of national importance.

People used to use the phrase "jute, jam and journalism" about Dundee. It is no accident that jute came first, because it was by far the most important. The best history book about Dundee that I have read is called "Juteopolis". Jute is at the heart of Dundee's social and political history,

and indeed is at the heart of Scotland's social and political history.

I remember reading about Winston Churchill being kicked out of Dundee back in the 1920s. Clementine Churchill had gone to some meeting with her fur coat and pearls and had been spat upon by the women there. That was no accident, because the women who worked in the factories in Dundee knew where their working-class interests lay. They made a tremendous political contribution to the history of the city and of Scotland. Are we really saying that such contributions should be shoved aside and forgotten, or consigned to the dustbin of history because Scotland does not care about what people in Dundee did in those important times?

Dundee's local economy is in a state of transition. When I went to the city in the early 1970s, the first thing that struck me was the proletarian nature of Dundee. It was a city of manufacturing, where people worked in factories. Dundee had a very small middle class and a massive working class, but global changes have transformed that situation. Manufacturing has gone into decline and we have moved into new industries. Central to those is tourism, and central to tourism is heritage. It is essential that Verdant Works be kept open, because if Verdant goes, Dundee Heritage Trust will be undermined and if the trust is undermined, Discovery will go. That would be a national tragedy.

17:30

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I do not pretend to know Dundee as well as the preceding members. I first went to Dundee when playing golf at Carnoustie. On that occasion, I sneaked away early to see a Brigitte Bardot film. I was very impressed by Brigitte Bardot, but I was not very impressed by Dundee. However, as I matured I recognised Dundee as a great city that has made a distinctive and substantial contribution to Scottish life and culture.

John McAllion referred to the jute industry. Members have spoken most eloquently—in a way that I could not match—about the importance of that industry and about how it reflects the social history of working-class women in Dundee. We know about the jute and the jam, about Dundee cakes, about Dundee marmalade, about the *Beano* and *The Dandy*, and about the songs—about the road and the miles to Dundee, and, more scurrilously, about the Dundee weaver. Famous figures in history such as Cochrane and William McGonagall are associated with Dundee.

Those are traditional images and symbols of Dundee. They are genuine and have considerable resonance in expressing the city's identity. However, on recent visits I have been greatly taken by the new and positive aspects of the city's public face and personality. I am thinking of the pioneering contemporary arts centre; the lively street sculpture across from the Caird Hall; the vibrant productions and social inclusion programmes of the Dundee Repertory Company; and the stylish new Overgate shopping centre. Dundee is a lively city that is reinvigorating itself after encountering difficult economic times, as its traditional industries declined. Members have spoken about the vital importance of tourism for the city and the part that it can play in Dundee's recovery.

The symbol of Dundee's new civic vibrancy is the historic ship Discovery and the development at Discovery Point. "Dundee—City of Discovery" is a brilliant slogan. It highlights the special status of the ship and embodies Dundee's ambition to be a city that is looking forward to a positive future. The slogan and the ship have begun to do for Dundee what the phrase "Glasgow's miles better" did for that other great city, and to enter public consciousness. As Irene McGugan said, both attractions—the Verdant Works and the Discovery—have won awards.

It is unthinkable that the flagship of the new Dundee should be threatened seriously with closure. I hope that genuinely sustainable ways can be found of preserving Discovery's unique status and place in the life of the city. Discovery has a status that is recognised far beyond these shores. Earlier this year I was contacted by the chairman of the World Ship Trust, who asked for our support in drawing ministers' attention to the threat to Discovery, which is part of the United Kingdom's core collection of historic vessels.

I recognise that ministers are in the process of consultation following the national museums audit, which was completed earlier this year. I know that they are seeking an overview of museums of all types in Scotland and of the relationships between them, so that they may establish a sustainable future for our cultural heritage at both national and local level. I hope that, while that process is under way, the Dundee Heritage Trust will be able to draw up a feasible business plan that outlines a sustainable future for the two museums. I hope that it will be supported in that task by the Executive and others, and that the precipitate closure of either facility can be avoided.

Sustainability is important. We must not pay out substantial funds for a short-term solution, only to have to deal with further crisis demands 12 months down the road. We need to answer important questions about how we deal with our museums—especially our industrial museums, such as Verdant Works. A piecemeal approach, in

which we allow sentiment to rule our heads on a case-by-case basis, could prove damaging to the future of heritage provision across the country. Both the Dundee attractions are of substantial importance and have resonance way beyond Dundee. On that basis, I argue for them to be supported.

17:35

Michael Russell (South of Scotland) (SNP): I congratulate Irene McGugan on securing the debate. I was delighted to hear from John McAllion that when he received the e-mail from the minister he sent it straight back. He is no kettle biler—he is not standing behind, but coming forward on this matter. As a former business manager, I have to say that the e-mail is disgraceful and I hope that attention will be paid to it.

The Deputy Minister for Tourism, Culture and Sport (Dr Elaine Murray): The SNP ranks seem to be making great play of the e-mail, which was not leaked to the SNP but sent to somebody with a similar surname to the member for whom it was intended.

Shona Robison: That is all right then.

Dr Murray: No, just be quiet and listen. I sent the e-mail to the two constituency members for Dundee, because Kate Maclean in particular had been very active in lobbying on the matter. The fact that they were two Labour members had nothing to do with it.

Michael Russell: Well, no doubt some people will believe that.

Verdant Works is extremely important and I was pleased to go there with Irene McGugan and Shona Robison last year. Verdant Works is not unique in Scotland by any means. Yesterday I was at the Scottish Maritime Museum in Irvine, which has laid off a substantial number of staff and faces a bleak future—yet it is one of the industrial museums that has apparently been saved.

I heard Ian Jenkins's eloquent plea for more time and more debate. The problem with that is that with every day and month that passes we lose parts of Scotland's heritage, because the process has taken so long. We are now in yet another consultation process leading to a conference in November.

In the accidentally sent e-mail, the minister says:

"It is highly unlikely that a positive response can be made to the central demand for reasons which will become clearer tomorrow."

The e-mail was sent the day before the comprehensive spending review announcement. We knew then and we know now that there is no more money for this task. The problem is that the situation cannot be resolved without more resources.

I have slight sympathy for the minister, because an accidental set of circumstances has come together. Individual enterprise put together the successful package in Dundee, just as individual enterprise put together something very important in the mining museum at Wanlockhead. Now we require a national approach to the issue of what is valuable within our heritage and how we sustain it nationally. We have to find the line that we can draw between local provision, which local authorities and others support, and national provision. That line has not been drawn and consequently museums such as Verdant Works and attractions such as Discovery are suffering, because they are getting neither one thing nor the other. They are not getting enough local authority funding, because local authorities are tight for funding, and they are not getting enough national funding, because we have not got a national structure in place.

The minister can take the position that her predecessors have taken—they are thinking about the problem and they will eventually come back with a solution. With every day that they think about it, we have more problems. They could accept that it is not a perfect solution to say, "Let's take what we have and build on it." We should take the things of national importance that exist, such as Verdant Works and Discovery and a variety of other attractions, stabilise them and make them part of a national structure. I suggest to the minister that that should be tied in closely with the Royal Museum of Scotland and National Museums of Scotland structure, which seems to be the right basis on which to build. Having done that, we should proceed.

Of course there will be losers in that. Some of the smaller museums in local authority control will be problematic. There will be issues to discuss, such as the great collections in Glasgow. The minister must commit herself to a national structure now. In the minister's response I do not want to hear the words, "feasibility studies", "consultants' reports", "more time", "more debate" and "marketing assistance". The reality is that there is a real need now. We have had three years of debate on museums. Why do we not have action?

17:39

Mr David Davidson (North-East Scotland) (Con): I congratulate Irene McGugan on the motion. I am delighted that at last we have such good cross-party support for an important set of projects. Before I organised the meeting with Mr Johnstone and our colleague Councillor Scott, I was well briefed by the people who work in

Dundee Heritage Trust, the local enterprise company and the area tourist board. I was even briefed by the council. Everybody agreed that no one agency could deliver a solution to this terrible problem.

When we went to the trust, I was able to explain that I had had two meetings with the ministers whom I considered relevant to the issue. One was Alasdair Morrison, who had responsibility for tourism at that time, and the other was that famous poet, Allan Wilson. They both decided that it was the other's responsibility. There was no such thing as collective ministerial responsibility on behalf of the nation. They were not even prepared to sit jointly with me and consult. They had made up their minds that they could do nothing until the audit was complete. However, all the work in the lead-up to the audit has been done by the trust; we do not need another raft of preparation work.

I have often said in this chamber that there is no point in throwing huge sums at projects if the future revenue flows are not considered. As Ian Jenkins said, sustainability has to be taken into account in all decisions.

Michael Russell: Mr Davidson makes a very sensible point, but does he accept that we have to act with what we are given? A number of projects need support now. Does he also accept that, because of the proliferation of projects with millennium funding, we may, unless we do something now, have problems that recur year after year after year, as has happened in Irvine with the Big Idea?

Mr Davidson: In last year's debate on the new opportunities fund, I highlighted the problem that more and more new projects are appearing—they are very glossy and have very good spin, but they have no chance of sustainability.

I will not go on about the heritage aspects of the Verdant Works. It is a vital history book; it offers a good teaching process; it has a superb system of volunteers helping to staff it; and it is in crisis. There are no ifs and buts. However, as has been said before, if the mill goes down, it will put in jeopardy the RSS Discovery project, which is Dundee's flagship. It has given the city a focus.

Tourism is not just about getting bodies into Scotland; it is about dispersing them around Scotland. If members consider the corner in the north-east, what else is there to take them there—other than golf, some fine weather, fishing villages and so on? On the doorstep, in the city, we have major attractions that people would find worth a look. We have heritage aspects, historical aspects, the genealogy point of view—I could go on and on.

Brian Adam: Will the member give way?

Mr Davidson: In just a second.

The Deputy Presiding Officer: No—the member is in his last minute.

Mr Davidson: I want to make a serious point. Apart from considering the attraction to local people, if ministers are serious about heritage, and if they are serious about linking heritage to tourism—which is an Executive claim—they have a duty to act together. Individual ministers should not say that some particular project does not fit perfectly into their brief and so do a Pontius Pilate and wash their hands and walk away.

We must consider all projects that can benefit tourism, the economy, history and the development of culture. I credit the people on the board who have worked and struggled manfully, with support from the local authority and other agencies. I hope that, when summing up, the minister will agree to work with other ministers to ensure that this great project in Dundee can be saved.

17:43

Richard Lochhead (North-East Scotland) (SNP): I, too, congratulate Irene McGugan on securing the debate. I live in Aberdeen now, but when I was elected to the Parliament I lived in Dundee. I have many fond memories of living in the city—the beer was a bit cheaper, it did not rain all that much and, of course, the city had many cultural attractions that I used to enjoy regularly. I still represent the city as part of the North-East Scotland constituency.

I used to work for the economic development department of Dundee City Council, dealing with inward investment. The issue we are discussing today is an economic issue. When we try to attract companies to locate in cities, we do not just tell them about the skills base of the city, the available factory space or the financial incentives; we try to sell the quality of life in the city. We used to make great play of that in Dundee, trying to get folk to come to the city. That is done by explaining the cultural backbone of the city, its identity, and its attractions. Our brochures and promotional material featured the Verdant Works and Discovery Point, as well as Camperdown country park and other attractions. Quality of life is essential for the economic future of the city. That is why today's debate is so important. I ask the minister to take that point on board.

We set up a film initiative to attract screen work to the city—to promote the city as a location for promotional videos for businesses, pop videos, television programmes and film work. Lo and behold, the number 1 attraction that was used to promote that initiative was Verdant Works. The other attractions in the city were also important.

We cannot afford to let such places close.

The issue is about not just the identity of the city or its culture, but economics. I think that £120,000 is a cheap price to pay for promoting those issues and values. I ask the minister to give a positive response to today's debate.

17:45

The Deputy Minister for Tourism, Culture and Sport (Dr Elaine Murray): I, too, congratulate Irene McGugan on securing today's debate.

No one is trying to deny the local importance of either RRS Discovery or Verdant Works, or the national and international significance of the Discovery. Verdant Works is widely recognised as an important tourist attraction—VisitScotland would not have given it a five-star award were it not. However, that award is not a guarantor of direct central Government financial support.

I will turn to the rather sanctimonious points made by Mr Russell. I have been lobbied by Kate Maclean for some time. She has not chosen to highlight the issue through a members' business debate, but she has worked extremely hard behind the scenes on behalf of Dundee Heritage Trust. She persuaded me to meet Dundee Heritage Trust and she has had meetings with Mike Watson, Andy Kerr and Allan Wilson. I make no apology for offering to talk to her about what she wanted out of the debate, because I know how hard she has worked on the issue in the past.

It may well be that Irene McGugan has written to me about the matter—I do not recall having received a letter from Irene McGugan but I may be wrong and she may have written. I do recollect the fairly insistent lobbying by Kate Maclean on the matter.

Irene McGugan: I will accept that lesson. I will be much more strident in future. I wrote to the minister asking for a meeting and she refused.

Dr Murray: I do not recall having seen that letter. I will chase that up.

Michael Russell: She was probably too busy reading e-mails.

Dr Murray: Mr Russell is extremely amusing—he should not give up the day job.

I do not in any way dispute the importance of the Discovery or Verdant Works. I would not be pleased to see either of the attractions close—that is not on anyone's agenda.

Brian Adam: Will the minister give way?

Dr Murray: No, I want to get on.

Scotland's industrial heritage sector is extremely important. Many independent museums—many of which are themselves significant—have items of significance in their collections. Industrial museums make up nine of the 400 independent museums in Scotland. The national audit, about which many members seem to be rather cynical, identified how many national treasures we have dispersed throughout Scotland. That is why we are continuing to consider an action plan.

Perhaps people do not want to hear about an action plan for Scotland's museums—perhaps they would prefer to have soundbites and bits and pieces of political argument. However, I want to develop a serious and sustainable museums strategy for Scotland, so that we do not lurch from funding crisis to funding crisis.

Shona Robison: Will the minister give way?

Dr Murray: No. I do not want to continue to be interrupted. I want to make some progress.

The independent sector is supported to a degree by local government. Dundee Heritage Trust receives £26,000 per annum from Dundee City Council. That contribution is important, although it is clear that it does not fill the gap that the industrial heritage museum faces. Other councils support other heritage museums: North Ayrshire Council gives £86,000 to the Scottish Maritime Museum and Dumfries and Galloway Council gives £35,000 to Wanlockhead. There is significant support from local authorities and their contribution is important. I will say more about that later. There is a balance to be struck between what central Government does and what local government does in terms of how funding should be directed.

The only statutory responsibility that the Executive has is to fund the national institutions. The National Museums of Scotland will receive approximately £17.5 million in grant aid in this financial year. On top of that, the Scottish Museums Council, which is an independent membership organisation that advises Scottish ministers on museums policy, will receive approximately £1.2 million. That organisation has a membership of approximately 200 and it also provides financial support to local museums.

In 2000, the original commitment in the national cultural strategy was an allocation of £3 million to fund strategic change. That was in recognition of the fact that the funding structures for the museums sector are not stable and there must be strategic change in the way in which we manage our museums so that they can continue without such crises.

The Scottish Museums Council received £250,000, so that it could conduct a national audit. That was not for the sake of having an audit; it was for the sake of finding out what we have in Scotland, where the important artefacts are and how we can support those.

As has been mentioned, in December 2000, £1.26 million was allocated to support three of the industrial museums. I appreciate that that decision might have caused problems for other members of the sector, because it looked like three museums received special treatment. Members will appreciate that that happened before my time as a minister. The point was to try to stabilise those museums—they appeared to be in a period of crisis—until the national audit had been completed and a better policy could be developed.

That leaves £1.5 million in the strategic change fund for the next two years. This year, £0.5 million is available. That £0.5 million was launched in May and provides grants of up to £100,000 to help to finance projects aimed at strategic change.

Brian Adam: Will the minister give way?

Dr Murray: No. I want to elaborate on that point because it is important.

Brian Adam *rose—*

The Deputy Presiding Officer: The minister has given a clear response.

Dr Murray: I have taken quite a number of interventions from the SNP. If members would stop chipping my ear, I would like to explore the possibility that the strategic change fund might be able to provide something for Verdant Works.

To be eligible for a grant, museums must hold collections of national significance, and must be able to demonstrate best practice in building audiences, in building capacity—including partnerships, enterprise, tourism and education—and in increasing access to exhibits. That might include the help with marketing that Alex Johnstone talked about.

I am not aware whether Dundee Heritage Trust has applied for funding from the strategic change fund, which is being managed by the Scottish Museums Council. Kate Maclean can take back to Dundee Heritage Trust the suggestion that it consider discussing with the Scottish Museums Council whether or not there is a possibility of grant.

Michael Russell: Verdant Works has applied.

Dr Murray: I am pleased to hear that. That was something my officials did not make me aware of. I am grateful to Mike Russell for giving me that information. I am encouraged by that because Verdant Works, having done work on restructuring and increasing access, would hopefully be in a position to be considered favourably.

I appreciate that the funding is not revenue funding that continues for a long period of time. It would only be available in two tranches over two years. However, it might give Dundee Heritage Trust a package of funding that would enable it to continue until we can find another way.

Mr Davidson: I seek clarification from the minister. Inside the Discovery, there are many artefacts of international importance. Is there any way that the minister could arrange—or could she advise how we could arrange—support because of that? That would be of assistance to Dundee Heritage Trust, even though it would help just one part of its interests.

Dr Murray: David Davidson raises an important point. We have had the national audit and the current consultation was launched by Mike Watson in July. The consultation process is intended to develop the action plan for Scotland's museums.

We have to be clear about who does what in the museums sector. I do not have a back pocket full of cheques so that every time—

Michael Russell: Will the minister take an intervention?

The Deputy Presiding Officer: The minister is quite a bit over time already.

Dr Murray: Mike Russell referred to Tain during his contribution in the debate on the spending review. In response to that, I would say that we have to set up a structure and decide who does what.

We must establish what is of national significance and what role the National Museums of Scotland should play, not only in supporting galleries and museums here in Edinburgh but also in supporting collections and items of national significance elsewhere. I would like a better plan to emerge from the audit, to determine how the statutory responsibility of the Scottish Executive can better support nationally significant collections throughout Scotland, rather than just those in museums in the capital.

I assure David Davidson that I will examine the matter that he has raised. I agree that we should look more carefully at the situation, and that there might well be other issues about support for organisations that have not been supported in that way in the past. The issue is still under consideration, the consultation is still under way and the conference will happen. The consultation will cease on 6 December and I hope that the action plan will be ready in the spring. We should not spend too much more time talking about that, but I will say that we need to get the plan right.

I cannot make promises about recurrent revenue funding. Mike Russell was right to spot the fact that there was no additional money in the spending review for the museums sector. There was a lot of money for many other things, but he was certainly correct in spotting that almost straight away. There is no additional money at the

moment, and I cannot give a guarantee at present. If Dundee Heritage Trust has gone to the strategic change fund, there may be some hope in that. I also hope that the trust will get involved in the consultation process.

I would encourage anybody who is genuinely interested in the museums sector to get involved in the consultation process and in building an action plan to make museums in Scotland sustainable so that we do not continue in crisis. Umpteen museums say that they have deficits of £10,000, £30,000 or £100,000. We must get ourselves out of that mentality and into a situation in which Scotland's heritage infrastructure is on a sound financial footing.

If a lot more money came my way for museums, I would not necessarily want the Executive to give it out directly. I would rather channel it through local authorities or other local agencies so that they could make decisions about what is valuable to local residents and what is important to the local economy. I do not want to be involved in a Big Brother style of government, in which we subsidise everything. I want to work with other people by channelling money through other partnerships and bodies.

I cannot give a commitment on recurrent revenue funding, as I do not have that money in the budget line. However, I do not want valuable and important heritage museums to be lost, and I hope that we will be able to find a way forward, through the discussions that will take place during the next two or three months.

Meeting closed at 17:58.

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