MEETING OF THE PARLIAMENT

Wednesday 11 December 2002
(*Afternoon*)

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Debates

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

Time for Reflection

The Deputy Presiding Officer (Mr Murray Tosh): The first item of business is time for reflection. Our time for reflection leader today is the Rev Sandy Young, who is the lead chaplain at the Lothian University Hospitals NHS Trust, Edinburgh.

Rev Sandy Young (Lead Chaplain at the Lothian University Hospitals NHS Trust, Edinburgh): There is an old film called "The Hasty Heart", which is set in a far eastern military hospital and in which Richard Todd plays a soldier who is more seriously ill than he realises or is later willing to discuss. His friends, a nurse and another soldier—who is played by Ronald Reagan—try to reach out to him, only to be met by a frustrated rebuff, which the scriptwriter no doubt designed to typify the too-tightly-laced stoic: "I need nae help." Although that was more than enough to get the point across, the script was further punctuated by several variations on the theme of "I telt ye"—"I told you so: I need no help."

There is a heartbreakingly wonderful, lonely bravery in stoic coping strategies, into which we instinctively shrink sometimes when really up against it. The same staying-in-my-shell stoicism also has an everyday, more dour dimension and expression. It is the hermit crab—or crabby hermit—defensive spirituality that helps too many of us to get by from day to day.

For those of us who are, in different ways, in the business of making best use of our communication skills, the spirit of "I telt ye" and "I need nae help" adds an extra challenge and a subtle complexity to the business of building bridges of meaning and understanding. If we take the injudicious and audacious step of trying

"To see oursels as others see us",

we might realise, as I did, that our own inoculation with that same stoic spirit has taken rather too well. No matter how I follow the instructions on my bridge-builders' kit, I end up too often with a whacking great bollarded barrier in place of the intended carefully crafted channel of communication.

In my work as a hospital chaplain, I am relearning seeing and listening, for my work teaches me that even the most stoic soul sometimes stretches out to speak with an utter self-revelatory honesty. However, that is not often straightforwardly said—it is in the bloodshot, rheumy eye that shows more than words can tell, or in the gruff, "Here son—do you want to read my paper?" of an old man who cannot tell the young lad in the next bed how much he feels for him.

There is a glorious inarticulate articulation in the subtle signs and stumbling euphemisms in which truth is often told. It is worth learning and relearning the subtleties of sight and sound, which can help us to go beyond "I telt ye" and "I need nae help."

Mental Health (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Mr Murray Tosh): There are no Parliamentary Bureau motions at this time, so we move straight to the debate on motion S1M-3398, in the name of Malcolm Chisholm, on the general principles of the Mental Health (Scotland) Bill.

14:34

The Minister for Health and Community Care (Malcolm Chisholm): The bill represents the most fundamental review of mental health law in Scotland for 40 years. At its core is a new framework for compulsory care and treatment that sets out much more clearly than currently the circumstances in which compulsory care is justified. The bill replaces one-size-fits-all detention with a flexible regime of orders that are based on the individual patient's needs and with a mental health tribunal that will scrutinise applications for compulsory powers and ensure that proper care and support are in place.

The bill is not only about compulsory care. It strengthens the duties on local authorities to provide a range of support services for all people with mental disorder and creates a new duty on local authorities and the national health service to support advocacy services. It also updates the legislation protecting people with mental disorders from neglect and abuse, including sexual exploitation.

The Health and Community Care Committee took evidence from a wide range of interests including, crucially, mental health service users. I want to thank the committee for its work in the production of its report. I welcome the committee's support for the general principles of the bill. I want also to thank the mental health legislation reference group, which has provided challenging opinions and helpful assistance in the development of the policy and the bill since the publication of the Millan committee report. I also wish, last but by no means least, to pay tribute again to the work of Bruce Millan and his committee, whose landmark report has been our touchstone throughout the preparation of the bill.

This is the largest bill ever brought before the Parliament. It covers areas of huge importance, sensitivity and complexity. It is not surprising therefore that there will be a large number of technical amendments to tidy up the drafting in addition to other amendments that will be lodged in response to the committee's recommendations. Moreover, the policy memorandum for the bill identified certain areas where further amendments would be proposed in order to implement the policies we have set out.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): Will the minister clarify reports in *The Scotsman* earlier this week that the Executive intends to withdraw the bill?

Malcolm Chisholm: There is no truth whatsoever in that suggestion. The number of amendments was thought to be newsworthy but, as someone who spent nine years at Westminster, I should point out that it is entirely normal to have a large number of amendments after stage 1 of a bill.

It is regrettable that, once again, the number of amendments becomes an issue of controversy in the Scottish Parliament when it is normal practice for that to happen in the other place. We will do all that we can to assist the committee in understanding our proposed amendments. I will discuss with Margaret Smith how that can best be done.

In the course of my opening statement I will tackle the main issues that were raised by the committee. Given that the bill is a complex bill of some 231 sections, it is obvious that I do not have time to deal with every topic. If members raise other points, Mary Mulligan will cover what she can in her closing remarks. I hope to provide reassurances that will enable the Parliament to support confidently the general principles of the bill.

We remain fully committed to ensuring that the bill delivers on our stated aims. Those are: to help to deliver the best possible support and protection for patients and their families; to equip professionals with the legal tools to be able to do their jobs properly; and to provide clearer, fairer and safer mental health legislation that underpins modern ways of delivering mental health care.

Integral to those aims, and the basis on which the bill has been drafted, are the 10 principles that were laid out in the Millan committee's report. The Health and Community Care Committee has asked that all the Millan principles appear, in full, on the face of the bill. I am happy to confirm that we accept all the Millan principles, without reservation, as the basis upon which the bill has been drafted and should be implemented. Our only concern is to ensure that, in putting the principles in legislation, we do so in a way that actually works.

However, we fully understand why something as close as possible to the 10 Millan principles is wanted on the face of the bill. At stage 2, we will lodge amendments that we believe will get us much closer to that position than part 1 of the bill does at the moment.

The next issue to which I will turn is fundamental to how the bill will work in practice—resources. The committee's report expresses concern that

the costs of implementing the bill have been underestimated and that there may be shortfalls in key personnel, such as psychiatrists and mental health officers. I fully recognise that sufficient resources will be necessary for the successful implementation of the bill. I agree with what Margaret Smith said:

"A Bill with as many good points as this one deserves to be properly funded."

During the debate on the policy statement in the Parliament on 14 November last year, we gave a commitment that adequate resources would be made available for the implementation of the bill. I am happy to repeat that commitment today.

The costs identified in the financial memorandum are the Executive's best estimate of the costs of implementing the bill. The estimates were informed by costings provided by the Mental Welfare Commission for Scotland, the Royal College of Psychiatrists, the Association of Directors of Social Work and advocacy groups in respect of their own interests. As the committee requested, we will provide further details of the basis on which the estimates were made.

Much of the concern about resources seems to relate to the general level and quality of mental health services, rather than the new arrangements that the bill will create. The financial memorandum can deal only with new costs that are a direct consequence of the bill, although Millan was right to say that

"the aspirations which underlie our recommendations … will not be fully met unless services and facilities are adequate to meet the demands placed on them".

We are dealing with the wider picture in several ways, not least through substantial increases in local authority resources and record levels of investment in the national health service. The joint future agenda gives us the opportunity fundamentally to reconfigure mental health services on the ground. We have set up the mental health work force group to address work force issues such as recruitment, retention and the training and development of mental health service staff. Our forthcoming white paper will set out how we will drive forward the modernisation of the NHS, including mental health services.

However, in recognition of the concerns expressed about the adequacy of services, I am pleased to say that I am setting in train a comprehensive assessment of existing mental health service provision. That will enable us better to determine how the current range of facilities, augmented by the substantial additional resources that we are making available, will be able to meet the bill's objectives. I will announce shortly details of how that work will be taken forward and the time scale for completion. I hope that that will help to reassure the Parliament that we are serious in our intent to make adequate provision to ensure the bill's success.

Mr John Swinney (North Tayside) (SNP): Will the minister clarify his last remark? Will the proposed assessment examine only the new provisions in bill or the range of provisions that exists in Scotland today? From my constituency experience, I know that a thorough assessment of existing provision is needed in addition to observing the implications of the bill.

Malcolm Chisholm: With respect, I think that I made it clear that we would be talking about the assessment of existing mental health services—in other words, all the mental health service provision that is relevant to the bill. In reality, all of it is relevant. We will look across the board. I accept that there are historical issues about the funding of mental health services, which is why it has traditionally been called the cinderella service. Over the past three years, however, we have begun to make inroads, and the 8 or 9 per cent per year increases in the budgets during that time have meant significant progress. However, I accept that we still have a long way to go.

The committee raised some specific concerns in its report. It sought reassurance that the close relationship between health boards and local authorities in supporting people with mental disorders, and the joint future policy, are reflected in the bill. I can confirm that the bill is entirely consistent with the joint future agenda.

The bill reinforces existing duties on local authorities and health boards to co-operate. Local authorities and the NHS have also been given new freedoms in the Community Care and Health (Scotland) Act 2002 to delegate functions and pool budgets. Those freedoms will apply to mental health services delivered under the bill, although we will ensure that the mental health officer service remains independent.

Brian Adam (North-East Scotland) (SNP): Will the minister give way?

Malcolm Chisholm: In a moment.

One of the bill's most hotly debated aspects concerns community-based compulsory treatment orders. I welcome the fact that the committee has agreed with us and with the Millan committee that, in principle, such orders should be possible. It must be right that a person who does not need to be in hospital should be able to stay at home, even if certain aspects of their care are delivered on a compulsory basis.

Having said that, I share the committee's view that resources must be in place for compulsory treatment orders to work and that there must be adequate safeguards to ensure that the orders are

not misused. The bill contains those safeguards. No compulsory treatment order, in hospital or the community, will be made unless the mental health tribunal is satisfied that that is necessary to ensure that the patient gets the treatment they need and that a compulsory treatment order is the best available way of doing so.

Community-based orders will not be a cheap option. The tribunal will insist that a full care plan is in place to address the patient's need for health care, social care, and other support. It will want to be satisfied that the patient's views have been considered, and that the patient has had access to advocacy. It will also be able to identify particular services that it regards as essential for the patient and that cannot be withdrawn without reference to the tribunal.

That rigorous process goes well beyond what is currently required for patients, whether they are detained in hospital, are on leave of absence or are treated informally. We have also added further safeguards to those that Millan recommended. For example, the bill ensures that, even if a patient does not appeal, the tribunal must review an order at least once every two years. Where patients subject to community-based orders are admitted to hospital, we have greatly shortened the time after which a review must take place.

Concerns have been expressed that allowing for community-based orders will lead to the detention of more people. We do not believe that that will be the case. However, we have established a research programme that will monitor the operation of the new legislation, including community-based orders, to ensure that it is working as intended.

Shona Robison (North-East Scotland) (SNP): Will the minister give way?

Malcolm Chisholm: I have already taken two interventions. However, if I have time towards the end of my speech, I will take the two that have already been indicated.

On advocacy, although the Health and Community Care Committee welcomed the bill's placing of a duty on NHS boards and local authorities to provide independent advocacy, it has recommended that the bill should confer a right on all people with mental disorders to obtain independent advocacy services. We are committed to the aim that anyone with a mental disorder who wants and needs advocacy should be able to obtain it. That is what the duty requires of local authorities and the NHS.

A survey of advocacy organisations and commissioners by the Advocacy Safeguards Agency found that they felt strongly that local planning partners should be allowed to develop their own models of advocacy that meet the needs of local people without too much central direction by the Executive. We believe that a general duty is more consistent with such an approach than some form of individual legal right. However, we recognise that there are situations where advocacy will be particularly crucial, for example where a person might be subject to detention proceedings. The bill contains provisions that are intended to ensure that, in such situations, people are aware of how they can access advocacy services. We are examining how to strengthen those provisions in the bill.

The committee has supported the Millan recommendation that a patient should have an appeal against the level of security in which they are detained. Although we are sympathetic to the committee's concerns, we have always had doubts about the practicality of an appeal right. Having considered the matter carefully, we think that the best way to tackle the issue is in the context of the plan of care that every patient will have. That has the benefit that it will be an issue at every review that the tribunal considers and not just when a patient appeals.

The tribunal has to consider whether the plan as set out for the patient is appropriate, and we intend that the level of security should be one of the matters that the tribunal takes into account. If the tribunal believes that the patient can be managed safely in a less secure environment, it can require the responsible medical officer to come back with alternatives before the tribunal will approve the continuation of the order. If need be, the tribunal could require NHS managers to appear before it to explain any problems in delivering the right package for the patient.

We will need some stage 2 amendments to spell out more clearly the tribunal's powers in such a situation, for example its ability to make an interim order to allow the care services to come back with a revised care plan. However, that is what we intend to do.

Brian Adam: Some aspects of care will be delivered through the health service and some through local authorities. However, some of it will be delivered through the voluntary sector. Is the minister able to assure the voluntary sector that its staff will receive adequate funding and training not just from year to year, but on a longer-term basis?

Malcolm Chisholm: I am a strong supporter of the voluntary sector in general and the mental health voluntary sector in particular. Indeed, our joint future policy certainly includes that sector. Recently, I was pleased to increase by £1 million the mental illness specific grant, which is largely delivered through the voluntary sector.

The bill defines mental disorder as including mental illness, personality disorder and learning

disability. We are pleased that the committee supported that approach. It was also suggested that there should be specific exclusions for matters such as substance abuse, anti-social behaviour, and sexual behaviour and identity. We are sympathetic to the argument that those exclusions should be included in the bill, and intend to lodge amendments to that effect at stage 2.

The committee has asked when we will review the position of learning disability in the legislation. We are discussing that with the "The same as you?" implementation group. It is important that the review should take account of the changing services being delivered as a consequence of "The same as you?" We hope to start work on the review of legislation early in the next round of partnership-in-practice agreements, which are due from April 2004.

The bill includes significant reforms to the arrangements for dealing with mentally disordered offenders. We are grateful to the Justice 1 Committee for its consideration of those parts of the bill. I would like to comment briefly on a couple of them.

Shona Robison: Returning to the subject of compulsory treatment orders, I was pleased to hear what the minister said about the research project that he is establishing. However, we need to know whether there will be a formal mechanism to review the operation of the bill if the number of compulsory treatment orders that he suggests will be made—around 200 were suggested in the financial memorandum—is breached.

Malcolm Chisholm: I mentioned the research. There is an important role to be played by the Mental Welfare Commission in the monitoring of that research and other aspects of the bill. I can only speak for myself, but I am keen to monitor the research and I am sure any subsequent Minister for Health and Community Care would be too, although I cannot speak for subsequent ministers.

The committee recommended that the so-called "public safety" test, which was introduced by the Mental Health (Public Safety and Appeals) (Scotland) Act 1999, should be repealed. Members will recall that the 1999 act was introduced following the Ruddle case, when a patient deemed untreatable was discharged from the state hospital. The effect of the public safety test is that a mentally disordered offender who is subject to special restrictions cannot be discharged if their mental disorder means that they must be detained in order to protect the public from serious harm. The Judicial Committee of the Privy Council confirmed in 2001 that the provisions of the act were compatible with the European convention on human rights.

The committee suggested that the test could be replaced by a formal risk assessment at the time of sentencing. The bill, alongside the current Criminal Justice (Scotland) Bill, will strengthen the arrangements for risk assessment at the time of sentencing. The arrangements are based on the recommendations of the Millan and MacLean committees. This should make it much less likely that the situation that arose in the Ruddle case should recur.

Nevertheless, there can be no absolute guarantee, and we have concluded that it is right to retain the effect of the 1999 act, as an additional safeguard, although it might only ever be relevant in a tiny number of cases.

The Justice 1 Committee—apart from Lord James Douglas-Hamilton—has endorsed the Millan view that Scottish ministers should no longer have responsibility for the management and discharge of restricted patients. We agree with Millan that discharge decisions are not for politicians. The bill provides that a mental health tribunal, chaired by a sheriff, should consider when it is appropriate to discharge a restricted patient.

The Justice 1 Committee proposes that we go further, and hand over from ministers to the new risk management authority—which the Criminal Justice (Scotland) Bill will create—the responsibility for management decisions, such as those on leave of absence.

We do not rule that out at some time in the future. However, the RMA is not yet in existence, and its primary focus is not mental disorder. It would be wrong for us at this stage in its development to risk diverting the RMA from its core task of developing standards and mechanisms for the management of high-risk, violent and sexual offenders. Accordingly, we take the view—as was stated last year—that Scottish ministers should retain responsibility for authorising leave of absence and transfer to the same levels of security of restricted patients.

I know that members will agree about the profound importance of the bill. Throughout the review of the legislation, service users and families have given compelling testimony of how isolated and vulnerable they can feel, particularly when detention and compulsory treatment become a possibility. The bill alone will not remove all the difficulties. However, it is a major contribution to a fundamental change in the culture of mental health services, towards greater empowerment and better protection for patients and their families.

I believe that the new mental health act, as I hope it will soon be, will be something of which the Scottish Parliament can be immensely proud. The Mental Welfare Commission said:

"If the Bill's key provisions are accepted Scotland will have a statutory context for mental health services which will be one of the best in the world."

There is much still to discuss, but that is the goal before us.

I move,

That the Parliament agrees to the general principles of the Mental Health (Scotland) Bill.

14:55

Shona Robison (North-East Scotland) (SNP): I thank all the Health and Community Care Committee clerks, who have worked hard on the bill. I pay special thanks to our committee adviser, Dr Jacqueline Atkinson, without whose help we would not have got this far. I also want to record my thanks to all those who gave evidence, particularly service users, who shared an awful lot of their personal experience with us. Their evidence was invaluable.

We all accept that there is a need to update and renew mental health law, and the bill is, without doubt, one of the most important pieces of legislation that the Parliament has dealt with. However, it is important to set the bill in some context. Although the bill's focus is on people with severe and enduring mental illness, considering the bill has given us an opportunity to explore our attitudes towards mental health more generally and to consider the lack of resources dedicated to mental health services. We should welcome the fact that an assessment is to be made of the current provision of mental health services throughout Scotland.

We need to ensure that our mental health services are appropriate, particularly for young people. Throughout Scotland, there are currently only 35 in-patient beds for adolescents, when there should be 80 to 100 such beds. It is totally unacceptable that young people should find themselves in adult psychiatric wards because no age-appropriate services exist. That can be a deeply frightening and damaging experience for young people. One of my colleagues will cover that issue in more detail later.

The bill will have a major impact on the lives of many people, which is why it is absolutely essential that we get it right. Getting it right takes time—something that the Health and Community Care Committee has been left with little of. That need not have been the case. It is important to remember that the bill was more than six months late in being introduced by the Executive. We were told at the time that the delay was due to drafting problems, but now we find ourselves being told to expect upwards of 800 amendments from the Executive alone. Those vital months, which would have helped the committee to deal with the bill, were lost needlessly. Between Executive and non-Executive amendments, we are facing around 1,400 amendments at stage 2. There is something fundamentally flawed with the drafting of any bill that requires so many amendments.

As members of the Health and Community Care Committee, we will do our best to get the bill through and to make it as good as it can be. However, let us be absolutely clear that that task will be difficult. The Executive must take responsibility for those problems and ensure that the bill is given adequate time for the important scrutiny that is required. I reiterate the fact that we are dealing with people's lives and fundamental issues of liberty, so we must get it right. As the Scottish Association for Mental Health put it,

"mental health service users must not be left with inadequate legislation."

It is crucial that we keep service users on board with the legislation. There has to be compromise, but it must work in both directions; reciprocity is crucial. In order for service users to accept any extension of compulsory treatment in the community, there must be the guarantee of resources and services. Unless we get that commitment on resources, the Executive is in danger of not fulfilling its side of the bargain.

The Executive can show that it has done that by including in the bill the guiding principles that were set out by Millan, in particular the principle of reciprocity. I heard what the Minister for Health and Community Care said, and I shall take it at face value that he is confirming that the Executive will do that, but the wording in the bill is crucial. We should have no equivocation, no funny wording and no hiding behind civil servants who are concerned about the legal interpretation of reciprocity. Rather, we should have a clear statement of accepting what was said by every witness who gave evidence to the committee: that the principles must be included in the bill. Nothing less will do. If that does not happen, we are in danger of a breach of trust, and service users are likely to walk away from the table. It is important that they do not do that.

Community-based compulsory treatment is undoubtedly one of the most controversial elements of the bill, and the committee heard a variety of views on that from service users. I have no principled opposition to community-based compulsory treatment orders, which for some would be the preferred and least restrictive alternative. However, I have concerns about how they will operate in practice.

I will be honest. I have travelled around my constituency and further afield and the majority of service users are anxious about the introduction of community-based CTOs. I understand their fears. They fear that someone's home will become their prison and that privacy will be invaded; that they might be left for long periods on CTOs without any

assistance or treatment other than medication; that CTOs are nothing more than a method of control; that a larger and currently unaffected group of people will become subject to compulsory treatment; and that the number of hospital beds will be reduced, which will reduce their availability as an option for people who need hospital care.

The Executive has a job to do in persuading people that such things will not happen, but it can do so in a number of ways. First, there can be a clear and unequivocal statement on reciprocity in the bill, which the minister has said that he will make. Secondly, a clear message can be given that resources will be forthcoming—I will return to that issue shortly. Thirdly, the Executive can accept its own argument that the number of CTOs that are issued will not increase.

The introduction of community CTOs should not increase the number of people who are subject to compulsory treatment; instead, it should simply increase the options for treatment. Apart from anything else, resources are earmarked for only 200 people, so any breach of that limit will have resource implications. No resources have been allocated for more people than that. Given that that is the case and is clearly stated in the financial memorandum, there should be no problem in including in the bill safeguards that would trigger a formal review of the operation of the legislation if that level were breached. I hope that we can agree an amendment on that at stage 2.

We keep returning to the issue of resources because the financial memorandum, as it stands, is inadequate. That is not just my view or the view of the Health and Community Care Committee, but the view of the Local Government Committee, the Justice 1 Committee and the Finance Committee. The Finance Committee is concerned that the costs of implementing the bill have been underestimated and recommends that the Executive produce revised figures. All committees have given the same message about resources: the Executive should go back and think again.

The total additional on-going costs to local authorities associated with the bill are estimated at £13 million per annum. If that amount is spread across 32 local authorities, it does not instil confidence that resources will be adequate. Of course, the context of the debate on resources is long-term underfunding of mental health services, which has led to their being known as a cinderella service. There must be a huge catch-up before we start to consider the proposed legislation. The review of service provision will confirm that that is true and I hope that it will give weight to the argument for the financial memorandum to be reviewed.

The same remarks on under-resourcing apply to the health service, for which an additional £6 million per annum has been allocated. That amount is supposed to cover, across 15 health boards, care plans, more mental health assessments, new duties to support advocacy and an additional psychiatrist work load. I cannot see how that amount can be anywhere near adequate, given the current under-resourcing of mental health services in the health service.

It is unclear how the Executive came up with the estimated—or guesstimated—costs in the financial memorandum. There does not seem to be a clear rationale for some of its figures and I am pleased that the minister will come back to the committee with more details on that.

Resources for staffing are of particular concern. The new legislation will, without doubt, increase the work load for doctors and mental health officers through the addition of extra duties and responsibilities. There must be adequate resources for mental health officers and a strategy for recruiting adequate numbers—that point was well made by the British Association of Social Workers.

Likewise, psychiatrists who gave evidence were concerned about the impact of the new tribunal system on their work load. The Health and Community Care Committee is convinced that the tribunal system is a good thing and that the end of the adversarial court system is welcome, but the system needs to be properly resourced and psychiatrists need to be reassured that they will not be buried under mountains of tribunal paperwork to the detriment of their work with patients. The Executive needs to tell us its proposals to address that problem.

Jim Kiddie, who was the user group representative on the Millan committee, said:

"Various projects that are run by voluntary organisations and others are dependent on making what I call Mickey Mouse money, such as from short-term initiatives from the National Lottery and European social funds. If we are really taking community care seriously, the Parliament needs to take the lead and ensure that the package includes properly funded community care services".—[*Official Report*, *Health and Community Care Committee*, 25 September 2002; c 3082-3.]

That sums up our feelings on the issue.

The provision of accessible quality advocacy is key to ensuring that service users' interests are protected. Many of the witnesses said how important access to an advocate was for them; others said how having an advocate could have made a difference to their experience of the mental health system. Everyone must have access to a person who is there exclusively for them. At a time of crisis and when a person is ill, it can be difficult for people to make decisions that are in their best interests. People can feel taken over by the system, pressured into decisions or

simply beyond caring what happens. Advocates ensure, as far as possible, that people understand what is happening to them and help them to give their opinion.

Given the extension of compulsory treatment so that it can happen in the community, people's right to advocacy must be enshrined in the bill. There is a difference between a duty to provide advocacy and a right to have it. A right is stronger and would ensure that, no matter where people lived and how remote they were, they would have access to assistance from an advocacy service. We will support an amendment at stage 2 to achieve that. The Executive must reassure us that, to meet the increased demand, adequate independent advocacy services will be established and supported. There are concerns among the user movement about how that will be achieved.

Advance statements provide a means for service users to express a clear view when they are well about what should happen to them when they are ill. A statement could take the form of specifying treatments and drugs that the person does not wish to receive. Such statements will empower patients and allow them to have more control over what happens to them. The Health and Community Care Committee struggled with some of the ethical issues that arise from advance statements. What will happen if a person's advance statement says that they do not wish to receive a specific treatment, but, in the doctor's opinion, the patient will die without that treatment? That is an extreme but possible scenario. The committee considered that a balance must be struck between patients' rights and ensuring that doctors are not prohibited from protecting patients' welfare.

Despite the dilemmas, I believe that the presumption should always be in favour of upholding a patient's expressed wishes, which should be overturned only when a number of safeguards to protect the patient's wishes have been met. We would welcome additional protection for patients for whom electroconvulsive therapy is proposed but who are incapable of consenting and who do not wish to have such treatment.

I am pleased that the committee recommended that patients who are subject to compulsory treatment should be given a right of appeal against excessive security. We will support an amendment to that effect at stage 2. It is totally unacceptable and a breach of human rights to hold someone in a place that they do not have to be in. Carstairs state hospital provides a high-quality service for those who need it, but it is no place for someone who does not. The Crichton family's evidence about their son's experience there was powerful. For a young man to spend three years of his life in a maximum-security setting when that was not required was a failure of the system. The system failed that young man.

Rehabilitation should start at the earliest opportunity, not three years late. For that to happen we need appropriate local medium-secure units where rehabilitation and—dare I say it—recovery can begin. At present, such facilities are totally inadequate, which leads to dozens of people being trapped in Carstairs. We need far more facilities like the Orchard clinic in Edinburgh, which we visited.

It is imperative that community resources are developed for the next stage in people's rehabilitation back into the community, otherwise a bottleneck will develop and people will be trapped in medium-secure units. Unless a right of appeal is inserted at stage 2, there will be no change. Health boards must know that there is no choice other than to develop such services and to do so soon. If they do not, mental health services will continue to be a low priority. The minister said that the tribunals would have the power to hold managers to account, but that is not the same as a right of appeal against excessive security.

The location of medium-secure units has been a contentious issue, over which much misunderstanding has arisen. The public should be involved at an early stage and consultation must be adequate. It is not sufficient to go through the motions when deciding where to site such units. The public must be given full information, or opposition based on myths and fears will develop.

I end as I began, by talking about the context of the bill. One in four of us will suffer from a mental health problem at some point in our lives, although most of us will recover without needing compulsory treatment or being detained. However, it is in all our interests that appropriate services are available when and where people need them. Too often, that is not the case and by the time that a person enters the mental health system, their condition has got much worse. Preventive work must be the key to ensuring that we have good mental health in Scotland. The Scottish National Party is happy to support the general principles of the Mental Health (Scotland) Bill. However, I give notice to the minister that we will pursue rigorously the concerns that have arisen over the bill, which my colleagues and I will raise this afternoon.

15:10

Mary Scanlon (Highlands and Islands) (Con): I thank the clerks, the committee's adviser and all those who gave evidence. We took evidence from the Carstairs state hospital, from Dundee and from people in the Highland users group, who probably travelled the furthest. I hope that the bill addresses

the isolation and stigma of people with mental illness. If it addresses those who say—to quote the chaplain—"I telt ye, I need nae help," that will be a mark of success.

I shall state our concerns. The bill was due to be considered by the Health and Community Care Committee at the beginning of February. We received a draft bill of 89 pages in June. The amended bill, which arrived in September, had almost doubled in size to 168 pages. I understand that there are 1,400 amendments by the Executive alone and that we can expect several hundred more amendments to be lodged by various organisations. The Mental Health (Scotland) Bill is possibly the most extensive and complex bill to be faced by the Parliament. It will affect a huge number of people, and we need time to get it right, not deadlines. When the Law Society of Scotland came to the committee, it stated that it found the bill confusing and ambiguous. If the Law Society found the bill confusing and ambiguous, perhaps the minister should have more consideration for members of the committee. That justifies our concerns over the timetable. However, the Scottish Conservatives will support all provisions to end stigma and to bring respect and dignity to the care and treatment of people with mental illness.

Most of those who gave evidence said that they wanted the principles to be made explicit in the bill. I accept the minister's point—that he has accepted that wish in the committee's report, on the basis of what works—but I think that we will look at what he decides works and see how different that is from the principles that were set out in the Millan committee report. If the principles were stated in the bill, that would help us to decide what the bill is designed to resolve, what wrongs will be righted by the bill and how its success will be judged.

The main concern is about resources. I find it difficult to believe the financial estimates. The financial memorandum states that the additional costs associated with the bill will be £23 million a year, with a further £9 million in start-up costs. I wonder how those figures were reached. The minister has said that the Executive will undertake an assessment or audit of current mental health provision. How can the Executive accurately assess what is needed unless it knows what it has got already? As has been mentioned, the basic infrastructure to treat people with mental health problems is simply not there. In Carstairs state hospital, 29 patients on average are waiting to be discharged. We need more medium-secure units. We also need more understanding from MSPs, who will vote the bill through. They must look more positively to contribute to the consultation and help to get rid of the myths that surround medium-secure units, which Shona Robison mentioned.

We need more supported accommodation and day centres. We also need to reconsider the treatment of children in adult wards. Last week, Bill Butler's members' business debate dealt with the provision that is needed to help mothers to cope with post-natal depression. There is also a grave need for provision for people with eating disorders. Tremendous infrastructure needs to be put in place simply to implement the bill.

Our next concern is over staffing. Currently, there are 29 vacancies for psychiatrists in Scotland. To implement the bill fully, we will need a further 28 psychiatrists. We also need mental health officers, against a background of a serious shortage of social workers. I was pleased to hear the commitment that the Minister for Health and Community Care gave to Shona Robison about financing the bill. I can understand that money is much easier to find than staff. We cannot magic 57 psychiatrists out of thin air to fully implement the bill.

Generally speaking, I can accept compulsory treatment and community-based compulsory treatment orders, based on the principle of the least restrictive alternative. However, Maggie, from the Edinburgh users forum, told us in evidence that she did not want her home and her privacy invaded. She did not want her home to be used as a hospital or for her treatment. We also heard evidence from Marcia from Elgin, who stated:

"If people are ill enough to be sectioned, they are ill enough to be in hospital."—[*Official Report, Health and Community Care Committee*, 30 October 2002; c 3263.]

Although I agree in general with compulsory treatment orders in the community, we should not assume that they will be appropriate for everyone. It will be difficult to provide the level of support that will be needed for people in remote and rural areas. The bill is intended to reduce stigma and isolation; I hope that the minister understands that, in remote and rural areas, the bill will hardly reduce stigma and isolation if a community psychiatric nurse turns up twice a day. I hope that the minister will take that into account. I also hope that health boards and trusts will not use community-based CTOs to justify the loss of beds for mentally ill patients.

The police did not give evidence to the Health and Community Care Committee—perhaps they gave evidence to the Justice 1 Committee. I understand that, if a patient fails to turn up for treatment or is absent from home for treatment, the community psychiatric nurse will initially go to neighbours and look in likely places. If the patient is not found, the police will be alerted to look for a missing person. The role of the police needs to be addressed and resourced and the police need to be included in all discussions at the outset, particularly as the bill states in section 205(4)(a)(ii)

that patients can be taken into custody. I do not want that issue to be overlooked, because for many patients it gives rise to the fear that it will not be a nurse who comes after them, but the police. I hope that the police's role will be handled sensitively.

The bill tends to state that there will be a "care plan". That term was appropriate for elderly people in the Community Care and Health (Scotland) Act 2002, but given that more than 70 per cent of people recover from mental illness, could we not accept the suggestion that there should be a recovery plan rather than a care plan?

Having listened to all the evidence on advance statements, I find that I agree with the patient and with the psychiatrist, yet their views differ. The issue of advance statements is one of the most controversial that the bill covers. I agree that patients should be given the opportunity to state in advance what treatments they do and do not want; I found the arguments on that most compelling. That is a mark of openness, democracy and treating the patient as a partner in their own treatment. However, when Professor David Owens came to the committee and talked about his duty of care, he said that an advance statement would inhibit his ability to treat a patient. He pointed out that drugs and therapies could advance between the time of writing of the advance statement and the time of care, and that it would be difficult for the patient to change her wishes.

I found both arguments compelling. I agree with them both, but I know that that is not possible. The convener of the Health and Community Care Committee gave a good example when she talked about her wish for natural childbirth—until the labour pains started, when her advance statement changed rapidly. I do not mean to make light of the matter. That is an example of the difference between making a statement in advance and facing the reality.

I find it confusing that, as Shona Robison mentioned, there are advance statements and there are advance statements. For example, if someone says, "I would prefer not to have treatment," that is a different advance statement from, for example, "I do not want that treatment if my life depends on it." We need more clarity about advance statements. I accept the principle that patients should be advised and respected, but we must all respect the psychiatrists' duty of care.

There has been considerable concern about the fact that, although the bill would place a duty on councils to provide advocacy, an individual would have no right to receive the service. Many groups who gave evidence to the committee highlighted that anomaly. The minister said that all those who need advocacy services should be able to obtain them, but we must be a bit firmer on that issue. How can assessing a need assess a demand? For example, someone could be told that they could not see an advocate for six months. Unless we know the need for advocacy services, and people have the right to those services, we cannot assume that supply will match demand. It is not enough for the minister to say that those who need advocacy services should be able to obtain them. We would hope that everyone who has a need for advocacy would have a right to receive that service.

Much of the Health and Community Care Committee's time on the Community Care and Health (Scotland) Bill was spent in looking at the lack of partnership working and joint planning. Of course, the minister was a member of the Health and Community Care Committee when it dealt with the Community Care and Health (Scotland) Bill and I am sure that he remembers the points that were made by representatives from social work and the NHS. Members of the committee spent hours considering the lack of joined-up thinking and planning between the NHS and social work. Given that the Mental Health (Scotland) Bill gives us a wonderful opportunity to consider joint planning, resourcing, managing and budgets, it is rather strange that the bill has separate sections for social work and the NHS, with clear and distinct lines of demarcation.

The minister has many grand words on issues such as joint futures and partnership, but we still have 2,900 blocked beds. The minister was a member of the Health and Community Care Committee when it discovered that £63 million that had been earmarked for the elderly was spent on other services. The bill provides an opportunity to ensure that all the resources that are earmarked for the mentally ill will, indeed, go to help them.

I will conclude on time, Presiding Officer, by giving my party's commitment to the general principles of the bill.

15:22

Mrs Margaret Smith (Edinburgh West) (LD): I welcome this important bill, which is the most radical overhaul of the mental health legislation for 40 years. It comes at a time when most people would agree we need a new approach that recognises not only advances in treatment but the rights of those who experience mental disorder. The bill would introduce greater flexibility into the services available to such people.

Without doubt, the bill is the most complex piece of legislation that the Health and Community Care Committee has scrutinised. Mary Scanlon referred to the Law Society of Scotland's comment that it was a bit perplexed by the bill; it is fair to say that members of the Health and Community Care

Committee were also a bit perplexed by it. The Law Society highlighted the important fact that existing mental health legislation was referred to and used by practitioners on the ground as a daily part of their work. It is important that we pass a bill that is accessible to those people, not just to lawyers.

I thank my colleagues on the Health and Community Care Committee, our adviser, Dr Jacqueline Atkinson, our committee clerks and the Local Government Committee, the Finance Committee, the Justice 1 Committee and the Subordinate Legislation Committee for their work and input so far. Most important, I also thank all the people who came forward to share their views, experiences and expertise with us. It has been at times a thought-provoking and humbling experience to listen to the evidence that was presented to us, particularly the views of service users. I know that all committee members are determined to pass legislation that does the service users justice.

The Health and Community Care Committee and the secondary committees recommended that Parliament support the bill's general principles at stage 1. However, it would be fair to say that all committees qualified their support to a degree.

The bill sets out the circumstances in which a person with a mental disorder would be compulsorily detained or treated. It also provides people who have mental disorders with certain rights and safeguards, and makes special provisions within the criminal law for individuals who have or might have mental disorders. I thank the Justice 1 Committee for its work on that issue.

I argue that the bill should have other aims. I hope that it will improve the range of services available to people with mental disorders and that it will play a part in ending the stigma attached to those who experience mental health problems. If those laudable aims are to be achieved, it is critical that the bill has appropriate resources attached to its implementation. Unfortunately, as it stands, the Health and Community Care Committee, the Finance Committee and the Local Government Committee agree that there are serious concerns about whether the financial and human resources identified will be sufficient to guarantee proper implementation. We need further information from the Executive about the minister's plans to recruit, retrain and redeploy the necessary mental health officers and psychiatrists to turn the bill's very good vision into achievable reality.

The Mental Welfare Commission for Scotland, the Royal College of Psychiatrists, the Convention of Scottish Local Authorities, Unison, Jim Kiddie—the user group representative on the Millan committee—and the Royal College of Nursing all expressed concerns about available funding, the existing shortage of MHOs and psychiatrists and the adequacy of community services. Put simply, without more resources in the community, a bill that seeks to introduce greater levels of treatment within the community will fail. Without more trained MHOs and psychiatrists, a bill that seeks to impose greater burdens on those professionals through the introduction of tribunals and other provisions will fail. The Executive must address those concerns because I do not consider that failure is an option. It is important to remember that those new duties are being imposed on services that we all know have been underfunded in the past. It is time to address that funding gap and deliver the services that people with mental health problems deserve. I welcome the minister's earlier announcement of an assessment of existing services.

Another issue that commanded almost unanimous support was the need to incorporate the principles of the Millan report into the bill. The Health and Community Care Committee feels strongly that those principles must underpin the legislation and expects to see them in the bill after stage 2. I welcome the minister's earlier commitment on that issue. The committee is particularly concerned that the principle of reciprocity, which we believe goes to the heart of the bill, is absent from it. I agree with the Millan report when it stated that

"where society imposes an obligation on an individual to comply with a programme of treatment and care, it should impose a parallel obligation on the health and social care authorities to provide safe and appropriate services, including ongoing care following discharge from compulsion."

In general, we agree with the new role given to the Mental Welfare Commission for Scotland but we would like it also to be given the role of ensuring that all relevant bodes, including tribunals, adhere to the general principles of the bill. We also welcome the duties put on local authorities and health boards, but we think that the code of practice should make greater reference to joint working and joint commissioning of services.

We support the proposal to set up mental health tribunals to decide applications for compulsion and to replace the existing system, in which those decisions are taken by a sheriff. The committee heard conflicting evidence on that provision but we agree with the evidence of the majority of service users that tribunals are potentially less intimidating and legalistic than the existing system. On balance, we see that as a positive step, particularly in relation to patient involvement, the setting up of care plans that are open to on-going review and the involvement of a wider range of professionals. As we still have some concerns about the issue, I have asked the Executive to

consider the English experience of tribunals and issues to do with relevant expertise in the care and treatment of children, premises, access, staffing and turnaround times.

Although issues that relate to compulsion are dealt with in some of the main parts of the bill, it is worth restating that those provisions will affect few people with mental disorders. The vast majority of people who are affected by mental illness—an estimated 25 per cent of the population—will never be detained in hospital or be the subject of any compulsion.

In relation to emergency and short-term detention, the committee is generally happy with the gateway criteria for compulsory detention. However, the bill should include a Millan committee recommendation that compulsion should be necessary only because

"it was impossible to secure a patient's agreement to be detained in hospital or to receive treatment."

We support the bill's introduction of a new order—the compulsory treatment order—to which other members have referred. Such an order would provide longer-term care for a non-consenting patient as long as the tribunal considers that treatment is available to prevent the mental disorder from worsening or to alleviate symptoms or effects.

We heard conflicting evidence on such issues from SAMH and Hearing Voices Scotland, which were among a number of users groups that raised concerns that legal compulsion did not represent an effective way of treating people. However, other users groups and the majority of mental health professionals acknowledged the need for statutory provisions that allow long-term compulsion.

The Health and Community Care Committee is concerned that the criteria for compulsion do not include another important Millan principle: that compulsory treatment should be authorised only if the proposed treatment is the least restrictive available treatment to address the patient's disorder. We also support the suggestion made by SAMH and others that the tribunal should have the power to vary the care plan.

One of the bill's most controversial aspects is the introduction of community-based CTOs, which will give tribunals the power to authorise long-term compulsory care in a non-hospital setting. Shona Robison set out well and clearly the concerns that many have about that measure. At present, under leave-of-absence provisions, compelled patients can be discharged from hospital and treated in the community, but the provision of community-based CTOs will allow that to happen from the outset of the treatment order. It will also allow the tribunal to require the patient to reside at a particular place and attend at certain times to receive medical treatment.

We heard conflicting evidence on that part of the bill. Jeanette Gardner of the National Schizophrenia Fellowship said:

"Nobody likes compulsion, but we think that it is better than people spending their lives in a remote ward in a psychiatric hospital."—[*Official Report*, *Health and Community Care Committee*, 9 October 2002; c 3231.]

On the other hand, Maggie Keppie of the Edinburgh users forum gave us powerful evidence on the sanctity of her home. She said:

"The fact that I would be required to let health professionals and social workers into my home"

would mean that

"it would become not my home but a house."—[*Official Report*, *Health and Community Care Committee*, 30 October 2002; c 3287.]

However, the Mental Welfare Commission told us:

"We strongly support community-based CTOs, because we see them as a less restrictive alternative to being in hospital. Admission … is a hugely disruptive event in anyone's life and can lead to stigma".—[*Official Report*, *Health and Community Care Committee*, 4 October 2002; c 3165.]

Although the committee accepts that community-based CTOs are the way forward, we believe that safeguards are needed. We took on board concerns that the Royal College of Nursing raised about monitoring. I believe that the Mental Welfare Commission should have a role in that. I welcome the earlier announcement about on-going research. We took on board the concerns that SAMH raised about the quality of community services and the Highland users group's concerns that community-based CTOs will be used as a cheaper alternative to admission in the face of ward closures. We have asked the Executive for assurances on all those issues. We have also asked it to impose a notional ceiling on the number of community-based CTOs in each health board area, working from the figures that the Executive outlines in its financial memorandum. We also suggest that, when a tribunal considers an application, it should always seek the patient's view of what constitutes the least restrictive alternative for them.

We agree with the thinking behind the bill's proposals to introduce advance statements. However, the more we looked into the matter, the more complex it became and the more ethically challenged we felt. We consider advance statements to be a way of giving patients a greater say in their treatment. Although we agree that clinicians on tribunals should take advance statements into account, the statements should not necessarily be legally binding. That would allow scope for improvements in treatment and for

particular clinical situations to be accommodated and would take on board the doctor's duty of care. However, we suggest that, if doctors act in good faith and follow the letter of an advance statement that they believe goes against their duty of care, they should have the protection of the law. We also suggest that, if a patient who remains on a CTO and still has impaired decision making indicates that they are willing to change their mind and accept treatment, that patient, their named person or a doctor should be able to apply to the tribunal to consider allowing treatment.

One of the most difficult areas for the committee was invasive medical treatments—such as electroconvulsive therapy or neurosurgery for mental disorder—which are covered in section 13. We agreed to recommend additional protection for patients for whom ECT is proposed, who are incapable of making informed consent and who resist treatment. However, I am not certain that Solomon would have come away from that discussion feeling that he had reached the right conclusion.

The committee supports the provisions on named persons and the choice that they give to patients. We consider them to be an improvement on the previous situation, in which the patient's nearest relative was automatically the person whom doctors would consult. We ask the Executive to consider extending those provisions. Children in Scotland criticised the fact that young people under 16 will not be able to nominate a named person, even though abuse and other issues with a relative may have caused part of their mental problems. The Law Society suggested a form of appeal and the Equality Network considered that the definition of cohabitant should mirror that used in the Adults with Incapacity (Scotland) Act 2000.

The committee was also convinced of the importance of independent advocates. We welcome the fact that the Advocacy Safeguards Agency and the Scottish Independent Advocacy Alliance are trying to build a network of services throughout the country and that the bill will place a duty on health boards and local authorities to provide advocacy services. However, we would welcome an amendment that gave service users a right to advocacy. That was one of the main areas in which the specific needs of children and young people were highlighted.

All of us who visited Parkhead hospital were concerned to learn from staff that disturbed teenagers periodically have to be admitted to adult psychiatric wards because there are not enough adolescent beds in Scotland. There are 34 such beds, rather than the 80 that are required. The Royal College of Psychiatrists rightly called that "a national disgrace". I hope that the minister will consider that matter carefully.

We were also concerned by the evidence that was given to us by the Crichton family, which related to the situation of people entrapped at Carstairs state hospital. I will listen with interest to what the minister has to say about that; I think that we will have to consider the matter again at stage 2.

I must register my concern at the length of time that we waited for the bill and at the fact that we are now facing several hundred Executive amendments to it at stage 2. As convener of the Health and Community Care Committee, I had to make that comment. It is important that we have the proper amount of time and resources to fulfil our duty of scrutiny as professionally as possible, although I am sure that my colleagues on the committee will do just that. It is important that we get the bill right and pass legislation that we can all be proud of.

The Deputy Presiding Officer: Time is very tight and I do not think that we will be able to call everybody, although we will do our best. I ask for four-minute speeches, please.

15:36

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): I declare an interest as a member of Unison, which represents many workers in the various branches of mental health services. I welcome the opportunity to debate the proposals in the Mental Health (Scotland) Bill, which is a bill that we have all waited a long time for. It is recognised that the existing legislation is outdated and restrictive and does not take account of current joint working practices.

The Executive must recognise that significant barriers exist in the funding of services. If the figures given in the financial memorandum are unchanged, services will be stretched beyond their limits. I therefore welcome the minister's comments that he will evaluate existing services.

I am concerned that future funding has not been earmarked for a given period so that services may be brought into being and allowed to develop. That would assist the development of staff and the training of new entrants in order to overcome the identified shortage of mental health officers and psychiatrists. Both those professions are suffering national shortages because of a previous lack of planning and because they are not attractive to younger people, particularly when they enter training.

It is time for mental health services to lose their cinderella tag, whether they are in the national health service, local government or the voluntary sector. Modernisation is overdue; services must fit the needs of those who use them. It is a disgrace that, in 2002, we do not have appropriate mental

health services for women with babies or young people. The rights of young people appear not to have been considered in the bill, yet they are contained in the Millan commission's proposals. I ask the Deputy Minister for Health and Community Care to say when she responds to the debate, whether that is a genuine omission. I urge the Executive to lodge amendments at stage 2 to define clearly the duty to provide age-appropriate services and an appropriate work force that has the necessary expertise of having worked with young people. No longer can we accept a situation in which young people are admitted to adult wards. The Royal College of Psychiatrists stated in evidence to the Health and Community Care Committee:

"We think that that is a frightening and distressing experience."—[*Official Report, Health and Community Care Committee*, 25 September 2002; c 3096.]

The number of in-patient facilities in Scotland for young people who require treatment for mental disorders is estimated at around 80 to 100, which is not a huge number.

Security needs to be appropriate to all services. The Executive requires to address the lack of medium-secure facilities immediately. The process that NHS boards adopted in the past has left us with only one medium-secure unit in Scotland. The least restrictive measures that the bill proposes will not be achieved unless a new method of consultation is adopted that is based on a greater public awareness of the changes and unless the stigma and prejudice associated with mental ill health are overcome.

On 6 November, the Health and Community Care Committee heard from the Sheriffs Association, which argued that it did not consider tribunals to be an appropriate forum and wanted to retain the existing system. My colleagues and I disagree—we believe that tribunals would recognise the multidisciplinary nature of mental ill health, would be user friendly and would seek appropriate solutions. Tribunals would also provide an independent voice for the person whose liberty or treatment was being determined, who would be able to express their views.

Those who gave evidence at stage 1 largely accepted the principles of the bill, but their overwhelming view was that resources were inadequate to finance them and to provide the staff required. I am happy that the Executive intends to reconsider the issue of resources. I look forward to amendments being made to the bill at stage 2.

15:40

Mr Adam Ingram (South of Scotland) (SNP): I congratulate the Health and Community Care Committee on the thorough report that it has produced on a long, complicated bill. Like many others with an interest in this area, I believe that, in being required to provide proper scrutiny of such an important bill within such a tight time scale, the committee has been given a particularly burdensome task. It is a great concern that the introduction of the bill has been so delayed and that the parliamentary time available for consideration of it has been so compressed that we may end up with flawed legislation. That would be a great pity and would reflect badly on the Executive, given the comprehensive preparation and detailed work that was done by the Millan committee, which spent more than two years taking evidence and consulting widely before reporting with a coherent set of reform proposals.

I want to focus on the provisions that relate to compulsory treatment—in particular, the extension of long-term compulsory powers to treat people who are living in their own homes.

When proposing the introduction of community-based CTOs, the Millan committee was specific about the criteria that should apply when determining whether compulsory treatment should be hospital or community based. A community-based order might apply to people who had relapsed while off medication in the community in the past, presenting a risk to themselves and others. The clear intention was for community-based orders to be used as preventive measures to stop people becoming so ill that they needed to be hospitalised.

The Millan committee did not envisage that such orders would be freely interchangeable with orders that involve hospitalisation. That raises the legitimate fear that community-based orders will be used as a resource management tool to relieve pressure on an NHS that is understaffed and whose bed capacity is reducing. User groups are deeply sceptical about the notion that, in those circumstances, community-based orders will always be the least restrictive alternative form of treatment that Millan envisaged.

It is likely that, in return for the restriction of normal freedoms in one's home, all that will be offered will be compulsory medication. Given that the new orders can be renewed continually, in practice some people may remain under compulsion for many years. Until we have developed a wide range of community-based services, such as day care, psychological therapy and rehabilitation schemes, which at the moment are palpably missing, community-based orders should be the exception rather than the rule.

Those provisions—indeed, any legislation in that area—should be seen as a last resort to cover situations in which all else has failed and the only option is to compel treatment. It is a disturbing fact

that the incidence of compulsion has been rising rapidly over the past decade or so—by some 300 per cent. The resource implications of the bill are much greater now than they would have been even in the recent past. I note the Finance Committee's criticism of the financial memorandum's inadequacy.

My point is that, at the same time as striving to make the bill as effective and as progressive as it can be, we must address the state of our mental well-being as a nation. Most important, we must develop mental health services beyond their current cinderella status, so that early intervention and prevention become the norm and compulsion becomes a rare event.

15:45

Lord James Douglas-Hamilton (Lothians) (Con): Adam Ingram's speech was welcome. His call for early intervention and prevention rings a chord with us all.

The Conservative party gives a cautious welcome to the general principles of the Mental Health (Scotland) Bill, although we feel strongly that bedblocking should be tackled urgently and we have a number of other concerns. I want to mention three points, all of which involve protection of the public, as well as the interests of mentally disordered persons.

First, I refer to part 9 of the bill, which sets out the effect of the imposition of a compulsion order on a mentally disordered offender. The Justice 1 Committee agreed with the Millan committee recommendation that Scottish ministers should no longer have responsibility for the management and discharge of restricted patients. I was the only member of the Justice 1 Committee who did not agree that the risk management authority should have responsibility for authorising the temporary release from detention of a restricted patient, as well as transfers of patients between hospitals with the same level of security and urgent recalls from conditional discharge.

I am concerned that there might be a lessening of accountability. Ministerial authority will be considerably reduced in the event that anything goes seriously wrong, as the bill will take away existing powers from ministers and vest them in the risk management authority. In the event of a serious mishap in the future, the only course that the Parliament could take would be to change the law after further review. In that way, ministers could be held to account.

Secondly, part 8 contains provisions that concern mental health disposals in the criminal justice system. The Justice 1 Committee agreed that the criminal justice system is not the appropriate forum for ensuring that those who are guilty of minor offences receive treatment for mental disorders. I will give an example. A mentally disordered person might relieve himself in public in a way that is offensive but does not constitute a serious crime, even though it is an offence. The committee seeks an assurance from the Executive that sufficient resources will be made available for dealing with such offenders.

The Justice 1 Committee noted that the mental health tribunal for Scotland will be established to hear cases under the bill and that its functions will be wide ranging. The committee supported the proposal that a court that considers whether to make a compulsion order that is based in the community should refer the case to the mental health tribunal for consideration.

Thirdly, part 10 sets out the effect of a compulsion order when a restriction order is imposed on a mentally disordered offender. The Justice 1 Committee was concerned that, without the right of appeal, patients could become entrapped at the state hospital. It recommends that patients should have the right of appeal to be transferred from the state hospital to conditions of lower security. That is only fair. I remember a patient who told me that, although the community regards it as acceptable for a man to have a sprained ankle, it is much less tolerant about him having a sprained mind. That should be acknowledged and patients should have the right of appeal.

Our other concerns related to the fact that tribunals will be a major source of the additional work load for consultant psychiatrists and mental health officers. We are far from certain that there has been adequate preparation in anticipation of those extra duties. Similarly, substantial concerns have been expressed that insufficient funding has been dedicated to day care, aftercare and other care packages. I would be grateful if the minister could look sympathetically at those issues.

The civil servants are to be warmly congratulated on the excellence of the bill's drafting. I hope that the minister will give sympathetic consideration to the issues that I have outlined, particularly to resourcing.

15:50

Scott Barrie (Dunfermline West) (Lab): I declare an interest as a member of the advisory board for the core club, which is a Scottish Association for Mental Health project in Dunfermline, and as a member of the trade union Unison.

Adam Ingram said that the number of long-term sections has trebled in the past 12 years; the number has increased by 5 per cent in the past year alone. That is the background to our

consideration of the long-overdue Mental Health (Scotland) Bill.

In his introduction, the minister said that we should consider the needs of individual patients and that one-size-fits-all provision should not be the norm. In the past, too much of our financial resources for mental health have been spent on buildings and not enough have been spent on community resources. I contend that too much power and control has been vested in consultant psychiatrists and that not enough credence has been given to other staff who work in mental health and with mental health service users.

Young people's services were touched on. Sections 21 and 25 place duties on health boards and local authorities to provide and secure services that promote users' well-being and social development, but we must be clear about the fact that a number of children fall through the mental health services gap because they are not diagnosed with a mental illness. Too many young people who could benefit from early intervention are caught in the catch-all description of social, emotional and behavioural difficulties and receive appropriate adolescent psychiatric help too late.

I am glad that we are dealing with young people's needs, but the bill contains legal inconsistencies. I suggest that the ministerial team and the Health and Community Care Committee examine some of the provisions in the Standards in Scotland's Schools etc Act 2000, which gave young people some power and control over determining some of their services. We should consider doing that in the bill, if we are thinking about young people inclusively rather than as a group to which we will do things.

I am glad about the role of advocacy. Last Friday, I was the guest speaker at Fife Advocacy's lunch to mark its first 10 years and its move to new premises in Cowdenbeath. Local authorities and health boards that are looking for a model to develop such partnership working could do no better than studying Fife Advocacy's work with many patients in our psychiatric and long-stay hospitals in Fife.

The Executive missed an opportunity in the Adults with Incapacity (Scotland) Act 2000 by leaving out the provisions that were drafted to enshrine the concept of advance statements. What the bill provides is welcome, but perhaps it does not go far enough. I fully understand why Mary Scanlon said that she was in two minds about that.

As legislators, we must be clear and we must know what we want to do. If somebody who has capacity makes clear the treatment that they wish to receive in the future and gives the statement at an appropriate interval, the statement should overrule almost anything else, particularly in relation to ECT. ECT is incredibly controversial and some people have strong views about receiving it. If somebody has said explicitly when they have capacity that they do not wish to receive such treatment, an advance statement should say that and no psychiatrist should be allowed to overrule it.

15:54

Irene McGugan (North-East Scotland) (SNP): In my brief speech, I will focus on the issues that affect children and young people. Many of the concerns that I will describe were raised by children's organisations in evidence and were further debated at a meeting of the cross-party group on children and young people.

First, I want to acknowledge the profound lack of services for children under 16 who experience mental health problems. Young people have no ready access to psychiatric and other support services. They wait 12 weeks on average to get an appointment with a child and adolescent mental health specialist when what they require is to be able to access a range of additional and relevant services at the time of need.

That dearth of provision exists at a time when it is estimated that one in 10 children and young people experience a mental illness that is serious enough to affect their daily lives. Last year, around 1,000 young people made contact with ChildLine Scotland about feeling depressed, suicidal, lonely or because they were self-harming.

The bill is an opportunity to ensure that the needs and rights of those children and young people are met. However, the bill has significant gaps, which need to be addressed. Surely one of the first priorities is for age-appropriate services. The consequences of the shocking fact that there are only 35 in-patient beds in Scotland for children and young people is that most of the children and young people who are admitted under section are admitted to an adult ward. That practice cannot be acceptable.

Specialist provision should be made for the young people who are admitted to hospital, as that would ensure that their needs are fully met. The Health and Community Care Committee recommended in its report that the Executive

"takes steps to provide age-appropriate services."

Many advocates for children, however, would prefer the Executive to place a duty on health boards to provide such services.

I welcome the Executive's stated intention to include the key principles of welfare and reciprocity in the bill. The present omission is of concern to young people. Including those

principles would help to ensure that suitable services are made available, should young people be detained. Including them would also provide another means of promoting appropriate services and prioritising a child's welfare in line with the United Nations Convention on the Rights of the Child.

Another area that requires further consideration is the expertise and knowledge of the professionals who work with children and young people who have mental health problems. We should seek to ensure that all those making crucial decisions on children's care and treatment should have suitable expertise and training. At the very least, the MHOs who make the decisions on applications for compulsory treatment orders and provide care plans for the tribunal must have specialist knowledge and experience of adolescent mental health. I suggest that that should be made clear in the bill.

The bill does not stipulate that a person appointed by the Mental Welfare Commission for Scotland to discharge certain functions should have expertise or knowledge of children's issues. The bill also remains vague about the make-up of the mental health tribunal for Scotland. I understand that, when the minister gave evidence to the Health and Community Care Committee, he recognised that it might be appropriate to reconsider the fact that the bill makes no provision for there to be a member of the tribunal with child-related experience when a child or young person appears before it. I hope that he will consider an amendment on that issue.

It has been suggested that the duties of the promotion of well-being and social development should be phased in order not to exclude children. If appropriate preventive services were readily available and accessible, the number of children and young people going on to develop serious mental health problems would be reduced. Ideally, local authorities and health boards should be placed under a duty to provide such services.

Children and young people with mental health problems are vulnerable not only because of their difficulties but because of their age. They need a bill that gives priority to their needs and rights. The bill that is before us needs considerable amendment before it can fulfil that need.

15:59

Iain Smith (North-East Fife) (LD): As many members have said, the bill is the largest and most complex that the Parliament has dealt with so far. It is no less important for its complexity. I thank the members of the Health and Community Care Committee who have spoken in the debate for assisting those of us who are not members of that committee to understand a bit more about the bill.

I will talk primarily about the issues that are to be found in the Local Government Committee's report, which is contained in the annexe to the Health and Community Care Committee's report. A broad welcome was given to the provisions of the bill that relate to local government and to the additional duties that will be placed on local authorities. A key element of that is the need to ensure that all agencies that might have a contribution to make to improving the mental health of the Scottish public work together. I am thinking of social work departments, health boards, general practitioners, community psychiatric services, voluntary organisations and the often-forgotten housing departments, which often have an important role.

Those agencies have to work together, and there are examples of good working practice. In the east neuk of Fife, a community mental health team is doing good work in providing services to an area that is isolated from traditional mental health facilities. There are problems with that approach, especially with resources and because the team is small. If one team member is absent for any reason, that causes problems in continuing to provide the level of service that the users have come to expect. We must ensure that adequate resources are available for such teams to continue to provide services even when people are absent.

Mary Scanlon was right to highlight the shortage of psychiatrists and, in particular, mental health officers, which was raised with the Local Government Committee. We were concerned to discover that as well as a general shortage of social workers, there are significant problems in recruiting mental health officers in social work. I hope that the minister will take on board the committee's suggestion to relax for some time the present requirement for people to have undertaken the post-qualifying award part 1 training before they may undertake the six months' training required to become a mental health officer. That is seen as an additional barrier to attracting mental health officers. There is also the question whether those who undertake that training and become designated mental health officers are rewarded for their additional responsibilities and duties. We hope that the minister and local government employers will take that on board.

Funding in general is clearly a problem, and important issues include how to distribute the additional resources that the financial memorandum makes available, whether they are adequate and how to ensure that they go to where they are needed. There are concerns that the traditional local government formula will mean that

the money follows the formula rather than the patients. It is important to ensure that those who need the money—the patients, not the councils—receive it.

Related to that is the issue of the mental illness specific grant. The Local Government Committee was concerned that that important grant, which funds many voluntary organisations that provide important services to people with mental illnesses, is still on a one-year funding basis. It is important that it moves on to a three-year funding programme to allow those voluntary organisations to plan their services properly.

The issue of advocacy is also important, and the Local Government Committee was concerned that the independence of advocacy is not being adequately assured. The Scottish Independent Advocacy Alliance pointed out the clear conflict of interest in funding coming from any source that might be challenged by the advocacy organisation that the funding supports. We accepted that point. It is important that advocates are able to challenge those who provide the services, and they must have clear independence. I have plenty of experience of local government interfering with the independent organisations that they fund and making them less independent than they should be. It is important that other funding streams are available to the advocacy organisations so that the service users have choice and confidence in their independence and the organisations have freedom of action to do what is in the best interest of service users.

16:03

Bill Butler (Glasgow Anniesland) (Lab): The bill whose principles are under discussion today is a necessary and overdue revamping of the current legislative framework. Indeed, there has been no essential overhaul of Scots law and the compulsory care and treatment of people with mental disorders since the middle of the last century. It is for that reason that the late Donald Dewar, when Secretary of State for Scotland, set up the Millan committee to examine the subject. The Millan report profoundly informs the key proposals in the bill.

This is one of the most important pieces of legislation that the Parliament has considered in its short life. Many members have said that, and they are right. The bill attempts to wrestle with highly complex matters in a difficult subject, and it raises dilemmas that are not easy to resolve. However, the bill is worth the struggle as it aims to devise better mental health services that are more in tune with the needs of service users. It is designed to create new flexible orders for compulsory care that are tailored to people's needs and to provide a framework of stronger patients' rights for involvement in decision making about their care. The bill seeks to establish the legislative structure that is necessary to provide a service that more effectively meets the needs of mentally disordered offenders while ensuring community safety. All those objectives are worthy and necessary.

I want to focus on a few of the many issues that have exercised the Health and Community Care Committee. It is fair to say that concerns have been expressed about the cost involved in implementing the bill properly. For example, the number of additional staff who will be required has conjured up worries about whether the resources that have been indicated so far will be sufficient to train and retain an adequate number of mental health officers. Again, the Health and Community Care Committee has noted the Finance Committee's concern that the £13 million that has been allocated to implement the bill might be insufficient given the extra duties that local authorities will have to undertake.

As a result, I was genuinely glad to hear the minister's comments about providing adequate resources for the bill and setting in train a comprehensive assessment of that provision. However, although those assurances will provide members with some comfort on a very important question, the question itself will not go away.

The majority of witnesses supported the introduction of mental health tribunals. On balance, I feel that they would be a welcome innovation. They would help to destigmatise the process, they would be less intimidating and, because of their very composition and membership, they would be capable of making informed, sensitive decisions. Nevertheless, I hope that the deputy minister will reassure the chamber that their performance will be closely monitored, especially in light of the less than impressive performance of tribunals in England.

I also want to put on record my support for the provisions in connection with patient representation, which signify a real improvement on the current situation. However, the Health and Community Care Committee's desire that service users should have a direct right to access independent advocacy services should be met. I hope that that will happen as the bill makes progress.

The chamber should whole-heartedly welcome the bill and approve its general principles. Although much work still needs to be done to refine, modify and amend the bill to make it fit for enactment, it will be worth the effort if the Parliament can produce legislation that will improve the lives of so many of our fellow citizens.

I commend the bill's principles to the chamber.

16:08

Brian Adam (North-East Scotland) (SNP): I make no apologies for returning to the issue of resources. It is all very well to produce legislation; indeed, we might even set aside specific sums of money to implement it. However, all that is in vain if there are no trained staff to deliver the services. It will take considerable effort to produce adequately trained staff to deliver the bill's ambitious aims. I am glad that those aims are ambitious and that we are going down this route, but I have considerable concerns about the ability to provide the psychiatrists, social workers and voluntary staff who will deliver aspects of the care packages.

The issue must be dealt with. I am not convinced that problems in recruitment, retention and training of staff have been adequately addressed, and I hope that the deputy minister will be able to give me more comfort on that question when she winds up.

We must also make available adequate funding of collective and individual advocacy services. If the wish of all those who have spoken today is fulfilled, those services will inevitably be delivered through the voluntary sector. However, in spite of the minister's response to my intervention, I am not convinced that the sector will receive the secure funding that is required to deliver the aspects of the bill that it will no doubt end up as a partner in delivering.

The minister said that the mental illness specific grant has been raised by £1 million a year. That increase is welcome, but it has come after a standstill of some years. There is no guarantee that projects will continue. Many projects in Grampian have been under threat or have lost out. The mental health voluntary sector is rightly concerned about how that situation will be dealt with. I would like more assurances about the length of the funding period and about how the funding arrangements will be dealt with in detail.

One of the interesting concepts in the bill—one that was new to many of us—was the principle of reciprocity. It is difficult enough to say, let alone to grasp the concept. An interesting aspect of the bill is that compulsory treatment will be funded. In other words, for the first time in some time, more prescriptions will be free.

There is scope for further examination of certain mental health conditions in which there is severe and enduring illness that is potentially life threatening. I refer in particular to manic depression where the potential for self-harm and suicide is considerably higher when medication is not taken. I appeal to the minister to revisit the subject of charges for prescriptions, either in the bill or at some later point. That principle has already been dealt with in terms of reciprocity and I would like it to be dealt with elsewhere.

16:12

Dr Richard Simpson (Ochil) (Lab): I begin by declaring my membership of the British Medical Association, the Scottish Association for Mental Health and the Royal College of General Practitioners. I am a fellow of the Royal College of Psychiatrists and an honorary professor of psychology at the University of Stirling.

I congratulate ministers on their interpretation of the Millan report. That report, which ran to more than 500 pages, was the most profound analysis of mental disorder and examination of the treatment and management of people who suffer from such disorders. As other members have said, one in four of us will suffer from a mental health disorder at some time.

The report builds on the historic trend away from institutional care. It seeks to balance respect and support for the afflicted citizen with public safety and the public interest. In its vision and balance, and most of all in its principles, the report represents the best attempt yet in any part of the United Kingdom to take a humane approach to a difficult area.

We have come a long way, from the days of Bedlam and the corrupt mental hospitals of the 19th century, through the damaging institutionalisation that marked most of the 20th century, to the sophisticated and complex approach that the bill envisions, which is based primarily on care in the community.

I will deal with three areas. The first is a specific stigmatising regulation that should be removed from the bill immediately. The second area concerns two of the 10 principles in Millan—reciprocity and the concept of the least restrictive approach. Thirdly, I will mention the implementation though structures and resources.

The national anti-stigma campaign was launched in October. I want to draw Parliament's attention to an arcane and outmoded regulation that provides that any mentally ill patient shall be removed from their general practitioner's list after two years in a hospital. The same does not apply to people with a physical illness, in relation to whom a discretionary approach is taken. The only other group to which the regulation applies is prisoners who are sentenced to more than two years. I hope that the minister will announce in her summing up her intent to remove that stigmatising regulation forthwith.

The principle of reciprocity is at the core of the bill. In evidence, Professor Millan indicated his wish that it should be in the bill. I take it from the

minister's initial comments that that will be the case.

Reciprocity represents a covenant between the Parliament and citizens with severe mental disorder whose freedoms we seek to limit, either in their interests or in the interest of public safety. Where we have to curtail those freedoms, which the Parliament has so recently incorporated into Scots law, we will undertake to ensure that the best treatment is made available.

The Adults with Incapacity (Scotland) Act 2000, together with the Mental Health (Scotland) Bill, will mark out this Parliament as a reforming one, giving the lie to those who denigrate the Parliament's worth day in, day out. I predict that the two acts will become an anchor in protecting our most vulnerable citizens from an overbearing state. The principle enshrined in both pieces of legislation is that the least restrictive approach to treatment should be taken.

The two principles of reciprocity and least restriction will make the bill a great act. To implement the legislation, we need an equally powerful vision of the structure and the means. We need a vision of an integrated mental health team, in which the old boundaries are dissolved between hospital and community, between secondary and primary care and between statutory and voluntary. A truly integrated support system is needed and should be facilitated through the conjunction—unique in regions of the United Kingdom today—of mental health provision and primary care. That was envisioned in 1997 and created in 1999, but the adequacy of resources has been doubtful until now.

In the debate on mental health on 14 November 2001, I said that 80 per cent of funding was applied to institutions and not to the community. That has moved. Forth Valley NHS Board and Greater Glasgow NHS Board now have 40 per cent of funds in the community. I hope that, in summing up, Mary Mulligan will assure us, before Malcolm Chisholm even announces the new performance assessment, that it will ensure that NHS boards in other areas—such as Lanarkshire, where 77 per cent of funds are still in institutions—shift their funds rapidly.

If Mary Mulligan is prepared to give us that assurance, the vision in the bill, which is a shining beacon of enlightened care for those with mental disorder, can, indeed, be made a reality. Without that assurance, we will continue to have problems.

I support the principles of the bill.

16:17

Mr David Davidson (North-East Scotland) (Con): I draw members' attention to my interest as a pharmacist and as the parent of a service user.

At last, the Scottish Executive and the Scottish Parliament are beginning to take mental illness seriously. For far too long, it has been ignored and swept under the table. Throughout Scotland, we have had ad hoc approaches, badly delivered in some areas because of resources or a lack of staff. I hope and trust that the bill, after all the changes that are made to it at stage 2, will provide us with a national service that is meaningful to users and to carers. If service provision is not focused around the needs of the users and their carers, we are missing the point.

Many members have spoken wisely in the chamber today. I am not a member of the Health and Community Care Committee, but I know the work that the committee has put in and I appreciate very much where its members are coming from. My own committee, the Finance Committee, has deep concerns about the funding and resource base to deliver the principles of the bill. The bill raises expectations right across Scotland for those who are professionally involved, for those who suffer and for those who care. If we are going to deliver, we must ensure that we balance the resources. As others have said, if that means that we need to employ, train and retain more people, we must ensure that at every level we get the training right. That is what implementing the bill should be about.

I am not happy about gradual development of some of the services. I know that they cannot be developed overnight, but I am always unhappy when we resort to regulations to change a bill. We want the bill to be good and robust and I am deeply concerned that it has been left too late in the parliamentary session to give it the time that it needs. We have hundreds and hundreds of amendments. Every amendment, and the way in which it might affect other amendments, must be considered. It is a long process, but it must be a careful and thorough process. I am worried that we will simply go through stage 2 ticking a lot of boxes, saying that we have covered this or that.

I know well from family experience the difficulty of accessing early assessment. It is a hobby-horse of mine, but it applies across mental health in its widest form. One in four in our society will have a form of mental health problem at some time. We cannot escape that fact, and neither can we afford to continue to have a lack of capacity to deal with the emergency situations that are life threatening to the individual and which can cause long-term damage because of the lack of early assessment and access to dedicated staff, whether in a dedicated unit or in the community. I am worried that CTOs will be used as a substitute for capacity development.

I want to mention a technical issue and draw the Parliament's attention to one aspect of the

treatment of patients with a mental disorder. I would like legislative clarity on what is meant in the policy memorandum by medication for mental disorder

"which exceeds normally recommended dosages or is for a purpose other than the medication's recommended purpose."

The Executive specifically mentioned that in "Renewing Mental Health Law", but it does not appear in the bill. The matter was to have been covered in part 13, on medical treatment, and may be dealt with at a later stage by regulations, but the issues of clinical responsibility, liability and patients' rights that surround medical treatment with pharmaceutical products need to be clarified.

When a medicine is used outwith its normal dosage or licensed indications, the supplying pharmacist may assume some liability, with the doctor who prescribed it, if the patient suffers an adverse drug reaction, for example. Pharmacists have a duty to take all reasonable steps to balance the interests of the patient against the risks of not making the supply. The fact that the matter is not dealt with in the bill is worrying for those in community pharmacy, who require support from their colleagues in the academic and research spheres. They must make decisions in the community.

We must ensure that all aspects of community treatment are properly dealt with and that confidence results from the legislation. There are issues of liability. If a medicine is used for purposes other than its original purpose, it may be an effective treatment, but there is a huge issue of responsibility. I would like the minister in winding up to give an assurance that the pharmacists of Scotland will be involved in discussions about how to deal with that matter.

16:22

Dorothy-Grace Elder (Glasgow) (Ind): I have had a console problem. It was not working—although it did not look as if it was not working—so I am further down the list of speakers.

I thank the convener and the deputy convener of the Health and Community Care Committee, who have borne a great deal of the long and patient work of the committee. I also thank the clerks, who are always superb, and our adviser, Dr Atkinson.

The minister has said some positive things, but the bill has 231 sections and we are worried about time. The Health and Community Care Committee is discussing the need for longer or extra meetings to cope. I would like the minister to reassure us that, if necessary, the Executive will be prepared to back longer or extra meetings of the Parliament to get the bill through.

I think that everyone agrees that the bill should not be harmed or wrecked by the Parliament's running out of time. We should not be trapped between Scylla and Charybdis and run out of time, or rush forward with not enough time for scrutiny. We know that there have been Executive delays, but we must show respect for the many members who have worked hard on amendments, simply because they want to make something that is good better. If necessary, Parliament should cut into the recesses to get this vital bill through. The bill will affect people for decades to come and I would like a reassurance about time.

Underfunding is critical and, rightly, has been mentioned many times. The Health and Community Care Committee heard some of the most valuable evidence when members visited hospitals such as Carstairs hospital. The convener, Bill Butler and I visited Parkhead hospital. There, we were assured that there will always be a need for hospital beds. We heard from the bed manager that it was extremely rare for a bed to be empty for more than two hours. Sometimes, patients have to be shifted by ambulance all the way from Glasgow to Aberdeen, with three nurses and, occasionally, with up to six nurses. That long journey must be frightening for a person who is unhappy and unwell. The east end of Glasgow, which Parkhead hospital serves, has the highest incidence of mental ill health in Scotland. If shortages are so severe there, heaven help the rest of the country.

We have heard about the need for funding to provide extra senior psychiatrists. I would like to draw attention to the work of MHOs in relation to the tribunals. We heard that around 200 qualified MHOs work in social work departments but do not practise as MHOs. That is a wasted resource. We must think about transferring people or encouraging them to think of the immediate future. Professor Juliet Cheetham of the Mental Welfare Commission for Scotland said that the range of MHOs' duties under the bill makes her doubt whether the resources are adequate. Forty-five extra MHOs are required and we are short of more than 25 senior psychiatrists. To make good better, we must be assured that we will have enough funds and that enough people will be ready in time. It takes at least four years for a junior psychiatrist to train to become a senior one. Along with all the other members, I wish the bill fair speed.

16:26

Tricia Marwick (Mid Scotland and Fife) (SNP): I will be brief, Presiding Officer. I have serious concerns about the independence of the advocacy service as detailed in the bill. The bill places a duty on local authorities and health boards to provide

and fund an independent advocacy service. Advocacy must be independent of local authorities and health boards. Its primary, indeed only, role must be to represent the interests of the person. Representatives of Fife Advocacy said to the Local Government Committee:

"The bottom line is that the user of Fife Advocacy services should feel that he or she is getting an independent service … In an ideal situation, it would be brilliant if the funding was totally separate from Fife Council and/or Fife NHS Board."—[*Official Report*, *Local Government Committee*, 29 October 2002; c 3376.]

It is estimated that one in four persons will suffer from mental health problems at some time in their life and so will need to use the advocacy service. There is a conflict at the heart of the bill with regard to the advocacy service. As the bill puts in place compulsory treatment measures, it is absolutely imperative that advocacy services are independent and are seen to be independent. The bill has some way to go before that is achieved.

16:27

Mr John McAllion (Dundee East) (Lab): The minister promised that Mary Mulligan would sweep up at the end of the debate and deal with any points that he did not have time to cover in his 20 minutes. I ask for clarification of his promise to lodge amendments at stage 2 in relation to the 10 Millan principles. The minister promised that he would move closer to having all 10 principles in the bill, but he did not promise to go all the way, which indicates that some principles will remain absent from the bill.

Almost all the witnesses who spoke to the Health and Community Care Committee at stage 1 mentioned the importance that they attach to the principle of reciprocity. If that principle is not in the bill, there is a risk that patients might be subjected to compulsion while not receiving in return what Millan described as

"safe and appropriate services, including ongoing care following discharge from compulsion."

I ask Mary Mulligan to make it clear whether the principle of reciprocity will be in the bill and, if not, what the thinking is behind not having it in the bill.

I would also like to mention the appalling lack of age-appropriate psychiatry services for children and adolescents. Some of the evidence that we heard on that matter was horrific. We heard about young adolescents being introduced into adult wards, which is an environment that the Royal College of Psychiatrists described as "frightening and distressing" for anyone, but particularly so for young people who are going through the initial trauma of being diagnosed with a mental illness.

During the Health and Community Care Committee's meeting in Dundee, I think that Dr Coia made the fair point that the increasing move from treatment in institutions to care in the community and the closure of masses of psychiatric in-patient beds mean that only the most disturbed people are held in locked wards and hospitals. Many of those people are aggressive and violent. I know from constituency cases that patients of all ages are attacked by other patients. That problem is increasing.

We must bring an end to the situation. A number of members have said that there are 34 or 35 beds when there is a need for 80 to 120 beds. On a visit to Dundee's child psychiatric services, I was told that there is a need for 125 beds throughout Scotland—perhaps in four big supraregional locations to cover the whole country. The Executive must do something about that. I understand that a Scottish needs assessment programme report is expected to be published in January. I am concerned about child and adolescent psychiatric services. I fear that the comprehensive assessment of mental health services that the minister announced this afternoon may lead to a delay in the publication of the SNAP report and that, as a result, there may be a delay in action being taken on the chronic lack of in-patient beds for youngsters. I would like an assurance from the minister that the comprehensive assessment to which he referred will not hold back the publication of the SNAP report and that action will be forthcoming.

One of the units in Fife has had to close down, not because it does not have money but because it does not have the trained staff to fill the vacant posts. Urgent action must be taken immediately to try to get people into posts in this service, because otherwise the debate this afternoon will be so much hot air and young people will continue to suffer in the way that was described to the Health and Community Care Committee.

16:31

Donald Gorrie (Central Scotland) (LD): Some points of great importance have been covered very well by other members. For example, James Douglas-Hamilton set out some of the concerns of the Justice 1 Committee, which dealt with the bill as a subsidiary committee. My colleague, Iain Smith, dealt with the necessity of having genuinely independent advocacy services. Irene McGugan set out some of the concerns that children's organisations articulated in evidence to the Health and Community Care Committee and at a meeting of the cross-party group on children and young people. I will leave those issues on the table.

Many members have spoken about resources. Everyone has to speak about that, as it is the key point. There seems to be a lot of evidence that people feel that there will not be adequate

provision of money or people. In many ways, the people are more important and more difficult to get—a lot of time is needed to train people, whereas someone can just sign a cheque to provide money. If we are going to do this properly, we must make the right use of the right talents. It may be that we demand too much by way of qualifications for some people, who could do a perfectly good job with fewer qualifications. Whatever we do, we must have an adequate number of well-trained professionals.

We must also have adequate funding of the voluntary organisations, which provide important services. There was a good quote from Jim Kiddie, who was on the Millan committee. He stated:

"Various projects that are run by voluntary organisations and others are dependent on making what I call Mickey Mouse money, such as from short-term initiatives from the National Lottery and European social funds."—[*Official Report, Health and Community Care Committee*, 25 September 2002; c 3082-83.]

We cannot rely on Mickey Mouse money to support people who have mental difficulties of various sorts. There must be secure and adequate funding for voluntary organisations and for carers. Carers are often neglected amid the concern about the patient's difficulties and concern that the patient is provided for properly by the hospitals, the law and so on. Carers are key, and unless they continue to be properly funded, the whole thing will collapse.

I have one or two concerns about personality disorders—perhaps I take it personally; a lot of politicians might have problems proving that they do not have a personality disorder. I recently read a play by Somerset Maugham, set a few years ago, in which a man suddenly decides in middle age that he will put into effect the teachings of the New Testament. His family and associates all try to get a medical expert to have him locked up. I fear that there are probably not people around who have such high principles that they would go for putting into effect everything that is in the New Testament, but there are people who have eccentric views. There is always a danger of that being interpreted as a personality disorder.

On the same sort of issue, it is good that the bill requires a decision-making test. Someone's ability to make decisions has to be significantly impaired for them to be brought into the system. All members will have experience of people coming to them to seek their help. They may ramble, be incoherent or have a huge bee in their bonnet, but when it comes to the critical points, they are quite capable of making decisions about things that really affect them. The fact that somebody is a bit odd does not matter; the issue is whether they can make real decisions.

As has been said, we need new legislation on the care and treatment of people with learning difficulties. I look forward to that being dealt with by whoever is fortunate enough to be elected to the next Parliament.

The bill has been well covered by the committees and the system has worked quite well. The Health and Community Care Committee has led, but four other committees have joined in to deal with various aspects of the bill. I hope that the Executive will take on board all their suggestions to improve the bill.

16:36

Ben Wallace (North-East Scotland) (Con): The Scottish Conservatives are delighted to welcome the debate, which I hope marks the end of stage 1 and the beginning of stage 2. We all agree that the Mental Health (Scotland) Bill is long overdue, and the Executive and the Health and Community Care Committee are to be congratulated on the thorough way in which they have consulted on the proposals, as well as on the fact that we have reached the current stage by building, brick by brick, on the Millan report.

Nevertheless, my colleague Mary Scanlon and other members of the Health and Community Care Committee are concerned about the bill's progress and current form, and they have a justified fear that such good will could be squandered if the bill becomes a rushed job. The vast number of Government amendments that are waiting in the wings cannot fill anyone with joy, and we should be wary that the bill's overall principles are not subsequently altered. Conservative members will support the bill's principles today, but I take this opportunity to highlight some of the unresolved concerns that have been expressed by the Conservative party and in the Health and Community Care Committee's report.

Several members raised the issue of joint working. The bill will mean that local authorities and health boards will become major stakeholders in the treatment of people who have mental disorders. However, given the failings in other sectors, such as care of the elderly, should not we use this opportunity to enshrine and strengthen joint working? I support the line that is taken by the Royal College of Psychiatrists, which sees a joint commissioner as a way in which holistically to bind together treatment.

As members are aware—I am sure that the minister is—I often make comparisons between policy north and south of the border. Over the past two years, I have attended a number of health summits at Westminster, which have brought together a wide range of service users, policy makers and service providers. When I talked with those people recently, they made it clear—as did Professor Owens, from the Royal Edinburgh

hospital, when he gave evidence to the committee—that the tribunal system in England and Wales does not work. They are surprised by our willingness to adopt that system. Page 12 of the committee's report sets out the pros and cons of tribunals. In my reading of the position, the cons currently seem to outweigh the pros. Let us be clear: although tribunals are about planning care, they are also about depriving individuals of their liberty. Although paragraph 68 of the report explains that those who are in favour of tribunals argue that they are just one element, they are the single most important element of the system. The way in which we deprive people of their freedom—perhaps against their will—is fundamental to our society. Therefore, to cut corners for less legalistic reasons or to make the proceedings more cosy is perhaps unwise.

Of course, the sheriff courts can be daunting, but the club-like atmosphere that sometimes exists in a tribunal can only lead people—like constituents who sometimes come to members with problems—to suspect a conspiracy against them. I ask the Scottish Executive to think again and to find a middle way in which it can maintain the seriousness of the subject under consideration while destigmatising the process and distancing it from criminal-type proceedings. Conservative members might well make alternative proposals at stage 2.

Our colleagues down south envied the inclusion in our draft bill of the principle that compulsory treatment should be the least restrictive treatment available. However, that principle seems to have been dropped from the bill. It is no surprise that the Health and Community Care Committee and several commentators remarked that the principle should be put back into the bill. I will look closely again at the minister's opening speech to see whether that important principle is to be included in the bill. The inclusion of the principle of least restrictive treatment in the Mental Health (Scotland) Bill is one reason why the bill has avoided the controversy that the equivalent bill in England attracted.

I turn to the issue of putting the bill's theory into practice. Members of the Finance Committee and the Local Government Committee unanimously highlighted concerns about the Executive's resource assessment of the bill's implementation. We would hate a situation to develop in which services were skewed and people incarcerated because of badly assessed costings. Again, I welcome cautiously the minister's comments on that matter in his opening speech.

The whole bill, as has been pointed out, relies on staffing levels. As John Swinney noted in his intervention, before we aspire to the next staffing level we must ensure that current staffing levels are fully adequate. So much could be said of the bill and no doubt over the next weeks and months we will all have our say on it. We should include in that John McAllion's important point about the need for appropriate psychiatry services for children and adolescents. The Executive has not proposed anything that would alleviate my concern about that matter.

We support the bill. We will do our best to help it through stage 2 and we look forward to raising our concerns at that stage.

16:41

Nicola Sturgeon (Glasgow) (SNP): There is widespread agreement about the importance of the bill and the need, after 40 years, to modernise and update mental health law. It is in the nature of debates such as this that they tend to focus on areas of controversy and disagreement. That is understandable, but it should not cloud the fact that there is consensus about many of the bill's provisions. As Margaret Jamieson said, everyone—with one or two exceptions—welcomed the proposed establishment of mental health tribunals and the fact that care plans would be, for the first time, tailored to individual needs. As Scott Barrie rightly said, one size does not fit all and the bill acknowledges that. Mary Scanlon suggested in her opening speech that care plans should perhaps be renamed recovery plans. That suggestion is worth considering because it makes the point that, where possible, the aim should be to aid recovery rather than simply to manage illness.

There is consensus on much of the bill, but in the time that is available to me I want to concentrate on issues that have been discussed widely during the debate. First, I must echo the concerns of Shona Robison, Mary Scanlon, Margaret Smith and others about the enormous challenge that Parliament will face in trying to complete stages 2 and 3 of the bill in three months if, as expected, more than 1,000 amendments are lodged during stage 2. I say to Malcolm Chisholm that dealing with large numbers of amendments in a short time might be the norm at Westminster, but our legislative process is, for good reasons, not modelled on Westminster's.

Everybody wants the bill to be passed and, on behalf of all members of the Health and Community Care Committee, I think that I can safely say that we will do our level best to ensure that the bill is passed. We should not forget that we have an obligation to make good law, but the bill was introduced so late in the parliamentary session that I fear genuinely that our ability to fulfil our obligation will be seriously compromised; it would have been remiss of committee members not to place on record during the debate their serious concerns about that.

I welcome the concession that the minister announced in his opening speech, which is that the Executive intends to amend the bill to include the 10 Millan principles. However, I press the Deputy Minister for Health and Community Care to make two further commitments when she sums up the debate. First, I think, as does John McAllion, that it is important to hear from the ministerial team today that its intention is clearly to include all 10 Millan principles in the bill. Secondly, it is important that what appears in the bill follows as closely as possible the exact wording that was suggested by the Millan committee, because that wording was precise and deliberate. We should do everything possible to ensure that the Millan principles are transported into the bill without amendments that might leave the principles open to dubious interpretation.

Of the many Millan principles, reciprocity is undoubtedly the most important; that has come out of many of this afternoon's speeches. Richard Simpson described it most eloquently when he said that it was a covenant between the Parliament and those who have mental health problems and who might have their liberty taken away. Many service users have no confidence in reciprocity in practice, and that lack of confidence underlies many of their concerns about issues such as community-based compulsory treatment orders.

It is fair to say that most people who gave evidence to the committee did not in principle oppose community-based CTOs. However, as Shona Robison said, it is important to listen to the service users who said that they do not want their homes to be turned into prisons. Even witnesses who did not in principle oppose CTOs expressed concerns about their implementation. Witnesses were concerned that the lack of acute beds might result in people who really need hospital treatment being subject to community-based CTOs. At the opposite end of the spectrum, concerns were expressed that the lack of resources in the community might lead to people who would need no compulsion if they had the right support ending up being subject to CTOs.

The point might be argued—perhaps not without controversy—that community-based compulsion is less restrictive than hospital-based compulsion. However, there is no doubt that the least restrictive approach—another principle that should be enshrined in the bill—is no compulsion at all. We must make sure that the resources are available to ensure that as often as possible that is the case. As Shona Robison rightly said, if the proposed legislation operates as it should, there should be no overall increase in the number of CTOs. The outcome of the provisions must be closely monitored and the bill should contain safeguards that would be triggered if the number of CTOs increased unduly.

Many points about resources were well made. I welcome the comprehensive assessment to which the minister referred. However, witnesses and—as David Davidson said—other committees took the view that the financial memorandum is inadequate in terms of the financial resources that it makes available and of the numbers of mental health officers and psychiatrists that will be available to implement the proposed new legislation. I say to Malcolm Chisholm that we do not need more detail about the Executive's current costings; rather, we need new costings.

Advocacy is another important issue. Tricia Marwick was right about the importance of independent advocacy. I believe, as she does, that in the bill the right to advocacy is much stronger than the duty to provide it. There should be an amendment lodged to deal with that.

The issue of advance statements was one of the most difficult that the committee had to deal with. Scott Barrie said that no psychiatrist should be able to overrule a patient's wishes and I have some sympathy with that view. Shona Robison also talked about the many ethical difficulties that we face. The presumption should be that advance statements will be honoured and that rigorous safeguards should be in place to ensure that patients' views are not overruled lightly.

There are many other issues that I have not had a chance to touch on in my summing up, but I know that they will be dealt with extensively during stage 2 of the bill. I close by thanking, as others have done, the committee clerks, the committee adviser and all those who gave written or oral evidence.

16:48

The Deputy Minister for Health and Community Care (Mrs Mary Mulligan): This afternoon's debate has been good and many extremely important issues have been raised.

We have said that the Mental Health (Scotland) Bill is about protecting people when they are at their most vulnerable. The bill balances people's rights to make their own choices with society's responsibility to help them when they cannot make decisions for themselves. The task is complex and sensitive, but it is a challenge that we must meet if our goals for social justice, fairness and a caring Scotland are to be fully realised.

Members have raised many issues and I will do my best to answer most of them. First, I will address advocacy, which was mentioned by several members. We believe that the duty in the bill is consistent with allowing local advocacy

providers and commissioners to provide services that are based on the needs of their local populations. We intend to lodge at stage 2 amendments that will properly reflect what advocacy does. We will ensure that a person who is involved in compulsory proceedings has access to advocacy.

The Executive has supported the establishment of the Advocacy Safeguards Agency, which is vital to safeguarding the independence of advocacy services. I think that Iain Smith mentioned that. The Advocacy Safeguards Agency will promote and develop independent advocacy and it will support statutory agencies in developing those services. The Executive has also supported the establishment of the Scottish Independent Advocacy Alliance to provide advocacy projects with a network support structure.

Members also raised the question of the number of amendments that will be lodged—several pressed for an estimate. As one might expect of a bill of such size and complexity, the wide-ranging and inclusive consultative process that we are following means that the number of amendments might be considerable. However, I cannot be precise at this time, and I am a little unsure of where the figure of 1,400 has come from.

I appreciate the task that lies before us, to which Nicola Sturgeon has just referred. However, I ask for understanding and co-operation in responding to that challenge. Every one of us wants a successful Mental Health (Scotland) Bill to go through the Parliament. I will do everything that I can—and the Executive will do everything that it can—and I will talk with Margaret Smith, the convener of the Health and Community Care Committee, to ensure that we have the best possible process in taking the bill forward.

Another matter that was raised by several members is age-appropriate services. We acknowledge that concerns exist about child and adolescent mental health services and we look forward to the completion of the current Scottish needs assessment programme—SNAP—review on children's mental health services. That will help us to map out for NHS and local authority services the way forward in respect of children. Members argued that a duty to provide age-appropriate services for children who have mental health problems should be placed on health boards. I understand the reasons for that, but we do not believe that it is the most practical way forward. Health legislation correctly requires Scottish ministers to provide a comprehensive health service for all the people of Scotland. It does not and should not list particular groups or particular forms of care as being in some way different in relation to that general duty. It is for ministers to set out the priorities for the NHS.

SNAP's interim report, which was published last May, set out some stark findings about the extent of emotional distress and mental health problems among our young people. It also included some early thinking about the way ahead. The task is twofold: to strengthen the specialist support that is available for young people; and to intervene earlier to prevent the development of problems.

In the context of professional shortages, we face real challenges to ensure that we have the right levels of provision in relation to prevention and in the primary care and acute sectors. We have already begun to talk with the new special health board NHS Education for Scotland about what training might be needed to grow our specialist child and adolescent mental health work force.

Members have also argued that the bill could do more to strengthen local authority duties to provide preventive services for children who are at risk of mental disorder. We agree that such services are important, but the Children (Scotland) Act 1995 already requires local authorities to safeguard and promote the welfare of children who are at risk—the legal duties already exist. However, we will bear in mind Scott Barrie's point that it is important to ensure consistency with other legislation. We will examine that.

Members expressed concerns, which Children in Scotland also expressed, about whether the bill does enough to protect the interests of children who are affected by mental disorder. The bill already contains significant new protections for children who are detained, including new duties to provide education and to protect family relationships. However, we will lodge amendments at stage 2 that will add more protection, for example, for children who are given treatment for mental disorder when they are unable to consent. I cannot guarantee that we will agree to everything that has been suggested, but we will look seriously at those points.

Another major area of discussion this afternoon was community-based compulsory treatment orders. The Health and Community Care Committee stated in its stage 1 report:

> "The Committee looks to the Executive for reassurances that bed losses or shortages will not lead to the inappropriate use of community-based CTOs."

Margaret Smith raised that issue in this afternoon's debate. I can give members such an assurance. The policy on compulsory treatment in the community allows for flexibility in the provision of care and, if treatment can be delivered in the community, if it is in the best interests of the patient and if it is consistent with the principles of the bill, compulsory treatment in the community can be used.

Many safeguards are built into the bill. In particular, the new mental health tribunal will not

be able to issue a compulsory treatment order if it is not satisfied that to do so will be both safe and appropriate. Studies to evaluate the operation and impact of the bill will be commissioned under the research programme that Malcolm Chisholm mentioned, and will take into account the expectations and experiences of all stakeholders, including service users and their carers.

We wish at all times to reassure service users. The measures in the bill are intended to increase options for treatment; they are not intended to increase the number of people who are being treated. Assuming that the bill is enacted, we will monitor the use of compulsory treatment orders to ensure that the new laws are used appropriately. Work will be commissioned under the research programme, and the situation will be monitored further.

Shona Robison mentioned ECT, and I can give reassurances on that. Except in emergencies, an incapable patient can be given ECT only after an independent second opinion has authorised such treatment. We will consider the Health and Community Care Committee's point about additional protections for patients who are incapable of consenting, or who resist treatment.

The issue of the Millan principles was also raised. As Malcolm Chisholm said, we want the Millan principles to be reflected in the bill, but we must ensure that the drafting works. We will consider carefully everything that has been said today on principles before we lodge amendments in that respect. We have heard members' views on reciprocity. We are working hard to bring that into the bill and we are looking to include the other nine principles that have been outlined. However, it should be noted that reciprocity is implicit in the bill's references to the work of the mental health tribunals.

I reiterate what Malcolm Chisholm said: we acknowledge fully that sufficient resources are necessary for successful implementation of the bill. We have already made commitments in the Parliament that adequate resources will be made available. We are setting in train a comprehensive assessment of existing mental health service provision, and the work will be completed in sufficient time for implementation of the bill. We will soon announce details of how that work will be progressed.

Resources as detailed in the financial memorandum were discussed previously with the Mental Welfare Commission, the Royal College of Psychiatrists, the Association of Directors of Social Work and advocacy groups, but we will—of course—continue to monitor the situation.

I turn to work force implications. Members have said that having professionals in place is vital to successful implementation of the bill. We have established the mental health work force group to address work force issues, and we will continue in our dialogues with professional bodies and others as we move towards implementation of the bill.

I have tried to deal with as many points as possible, although I am aware that many other points were made in the debate. I will respond in writing to Richard Simpson on the issue of deregistration of those who have mental disorders, and there will be further opportunities at stage 2 and stage 3 to discuss the points that have been raised today.

Mental Health (Scotland) Bill: Financial Resolution

16:59

The Presiding Officer (Sir David Steel): The next item of business is consideration of motion S1M-3446, on the financial resolution in respect of the Mental Health (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Mental Health (Scotland) Bill, agrees to any expenditure payable out of the Scottish Consolidated Fund in consequence of the Act.—[*Peter Peacock*.]

Parliamentary Bureau Motions

16:59

The Presiding Officer (Sir David Steel): The next item of business is consideration of Parliamentary Bureau motions. I ask Euan Robson to move motions S1M-3695 and S1M-3696, on the approval of statutory instruments, together.

Motions moved,

That the Parliament agrees that the draft Scottish Local Government Elections Regulations 2002 be approved.

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.15) (Scotland) Order 2002 (SSI 2002/511) be approved.—[*Euan Robson*.]

The Presiding Officer: I remind members that our neighbours at New College have invited us all to the Advent carol service, which can be reached directly from the end of the black-and-white corridor. Archbishop Keith O'Brien will give an address at the service.

Decision Time

17:00

The Presiding Officer (Sir David Steel): The first question is, that motion S1M-3398, in the name of Malcolm Chisholm, on the general principles of the Mental Health (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Mental Health (Scotland) Bill.

The Presiding Officer: The second question is, that motion S1M-3446, in the name of Andy Kerr, which is a financial resolution to the Mental Health (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Mental Health (Scotland) Bill, agrees to any expenditure payable out of the Scottish Consolidated Fund in consequence of the Act.

The Presiding Officer: The third question is, that motion S1M-3695, in the name of Patricia Ferguson, which seeks the Parliament's approval for a statutory instrument, be agreed to.

Motion agreed to.

That the Parliament agrees that the draft Scottish Local Government Elections Regulations 2002 be approved.

The Presiding Officer: The last question is, that motion S1M-3696, in the name of Patricia Ferguson, which also seeks the Parliament's approval for a statutory instrument, be agreed to.

Motion agreed to.

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.15) (Scotland) Order 2002 (SSI 2002/511) be approved.

Scottish Media Group (Sale of Titles)

The Deputy Presiding Officer (Mr Murray Tosh): The final item of business today is a members' business debate on motion S1M-3589 in the name of Karen Gillon, on the sale of *The Herald*, the *Sunday Herald* and the *Evening Times*. The debate will be concluded without any question being put.

Motion debated,

That the Parliament notes the proposed sale by Scottish Media Group of the titles *The Herald*, *Sunday Herald* and *Evening Times*; recognises the contribution these titles make in providing Scotland with diverse media, and therefore considers that the Scottish Executive should make representations to Her Majesty's Government to ensure that any sale does not lead to a monopoly situation.

17:02

Karen Gillon (Clydesdale) (Lab): I thank the members from all parties who have put their names to the motion over the past few weeks. From the large number of members who signed the motion—84 in total, including one Tory—it is clear that there is considerable strength of feeling in the Parliament about the issue. Members were particularly concerned about the potential purchase of *The Herald* by the owners of *The Scotsman*. Yesterday, we heard that the owners of Scottish Media Group have decided to reject that bid and to accept a bid from Gannett Company, which is a worldwide organisation. I welcome that news.

We should not underestimate the impact that the strength of feeling of members of both this Parliament and the UK Parliament has had on the owners of SMG. It was gratifying to note that members of this Parliament and our counterparts in the UK Parliament spoke with one voice. We said that, whatever happened with the sale of the SMG titles, any takeover bid should be subject to the closest scrutiny and should be referred to the Competition Commission. That is exactly what has happened.

The referral of Gannett's bid to the Competition Commission is an important development, because central to the motion that we are debating is the question of competition and plurality in the Scottish newspaper industry. A vibrant and diversified press is essential for healthy, democratic debate, especially in a nation such as Scotland, which has its own concerns, rich traditions and cultures, even though it shares many interests with the rest of the United Kingdom. For me, the issue is not constitutional; it is about what is best for the Scottish press.

As I indicated, Gannett's preferred bid has been referred to the Competition Commission. I hope that the minister will consider and make representations to the UK Government on a number of issues. The first is employment. *The Herald*, the *Sunday Herald* and *the Evening Times* employ a significant number of staff on a number of sites. The staff are renowned for their journalistic ability and I hope that, whatever happens, their jobs can be safeguarded.

The key to the debate is the fact that Gannett is recognised as a regional and local newspaper publisher. I will provide circulation figures for some of Gannett's other publications: for the *Daily Echo*, which circulates in Bournemouth, the figure is more than 38,000; for the *Dorset Echo*, the figure is 20,000; and for Worcester's *Evening News*, the figure is 21,000. The circulation figure for *The Herald* is more than 91,000. Clearly, *The Herald* is not in the same league as those papers. It has worked hard to ensure that it is perceived as a national newspaper in Scotland.

Mr Brian Monteith (Mid Scotland and Fife) (Con): The member says that *The Herald* has achieved its aim of becoming a national newspaper. Does she believe that it outsells *The Press and Journal* in Aberdeen and *The Courier and Advertiser* in Dundee? If not, does she agree that *The Herald* still has difficulty in demonstrating that it is a national newspaper, just as *The Scotsman* has difficulty in showing that it is a national newspaper?

Karen Gillon: *The Herald* definitely has circulation issues in the north-east of Scotland. No one can deny the significant input that *The Press and Journal* and *The Courier and Advertiser* make to their respective markets. However, the member is mistaken if he is seriously trying to tell me that *The Herald* and *The Scotsman* are not thought to reflect the national news in Scotland. Those publications have moved away from interpreting only the news in the west of Scotland or the east of Scotland. They have tried hard to develop a national profile and to report all facets of what happens in the Parliament in a national way. Although progress still has to be made and people will continue to make choices on the basis of what they want from a newspaper, it would be wrong to say that *The Herald* and *The Scotsman* have not tried hard to become national, as opposed to regional, newspapers.

If Gannett becomes the owner of the SMG titles, the minister, along with Gannett, should consider trade union recognition. All Labour members would welcome trade union recognition, which has a positive impact—membership of a trade union is a positive part of being a journalist in Scotland. I hope that the minister will ensure that Gannett acknowledges the valuable role that trade unions play. They have been part of the SMG titles for some considerable time.

The debate has moved on since we expressed our initial concerns. I should have said at the beginning of my speech that the issue is not about one title taking over another, although that was an obvious concern. The most important point to stress is that *The Herald*, the *Sunday Herald* and the *Evening Times* should be able to maintain individual editorial control. Editorial control of newspapers in Scotland is vital. I hope that the minister will continue to make representations to the UK Government to ensure that all the issues relating to the diversity and plurality of the Scottish media, which are so dear to us, are identified and borne in mind in the Competition Commission's inquiry. Jobs are another important issue and the employment pattern across Scotland must also be taken into account.

17:08

Michael Russell (South of Scotland) (SNP): I pay tribute to Karen Gillon for securing the debate and for being an important voice in the discussions about the issue since the initial threat was revealed some months ago. At the outset, I should declare an interest as a columnist for *The Herald*.

When media ownership in Scotland is considered, it is important to look not just at the specifics of one case but at the more general question of how ownership of the media should be approached in any country. Three criteria had to apply to the SMG situation; those three criteria should apply to all such situations.

First, there should be more rather than fewer media owners in Scotland. Secondly, all newspapers are entitled to their editorial independence. That independence should be sacred—it should not be possible for passing owners to interfere with it. Thirdly, there is a great need for investment in newspapers in Scotland, rather than for a reduction in the number of jobs and in the scope of newspapers. There has been an increasing tendency to take money out of newspapers in Scotland to increase profitability, rather than to invest in them to increase their long-term profitability.

It is some relief that the first criterion has been met—the number of owners after 10 March next year is likely to be no fewer than the number before the process started. However, we must put a slight caveat on that. Any large company—including that of the Barclay brothers—will still be able to make a hostile bid for the entire company and seek the Independent Television Commission's approval to sell the television interests. I hope that that will not happen, but the possibility remains. I understand that, if that

happened, the bid would be referred not only to the ITC, but to a body under competition legislation. The threat still exists, but it grows smaller with every day that passes.

We must ensure that the other two criteria—editorial independence and investment in the newspapers—are also met. I hope that the chamber will send a message to Gannett as it considers its options for Scotland. The first message is a welcome to Scotland for a company that has not invested here before and that has a large international media empire worth several billion dollars. The second message should be that we expect the company to value our national press as we value it, which means investing in the Herald group—*The Herald*, the *Sunday Herald*, the *Evening Times* and the magazines—and ensuring that the quality of the papers is maintained and that editorial independence is preserved.

We want to take a wider view than has been taken in recent weeks. I agree with Karen Gillon that it is right that the Education, Culture and Sport Committee and the Parliament have spoken largely with one voice. The past few weeks have taught the Scottish Parliament a valuable lesson. We can speak with one voice on such issues, but we should be able to act with one voice and influence what is taking place with the Parliament's powers, instead of being bystanders. I know that I shall lose some support from members of other parties on that issue, but that is a profoundly important lesson to learn, because other battles are coming.

I will give one example. Members might have seen that Trinity Mirror appointed a new chief executive today. As part of her strategy, she might consider whether the company's ownership of the *Daily Record* has a long-term future. That ties in with the circulation figures that were published in this week's media section of *The Guardian*, which showed a year-on-year circulation fall for the *Daily Record*. If the *Daily Record* were under threat from an existing tabloid in Scotland or an existing media owner—some of the arguments that applied in relation to the Barclay brothers might also apply here—the Parliament should be able to act on that, rather than sitting as a bystander and trying to influence others. I am certain that, if the circumstances that I described arose, the voices in the chamber would be unified, which would have an influence, but we could not make a difference. We must make that difference legislatively, as is happening at Westminster with the Communications Bill.

The threats to the Scottish media—print and broadcast—are great. An American company such as Gannett could come into Scotland and buy television companies, but it would be impossible for a Scottish company, such as a healthy SMG, to buy into television in America. That is wrong. We must protect the cultural market in Scotland as much as the media market, because they are inextricably linked.

I am glad that Karen Gillon lodged the motion, which the SNP supports whole-heartedly. We want to ensure that the Scottish media flourish. For the long term, we must learn the important lessons for the Parliament. The Parliament has still to complete the powers that it needs in relation to the media, to culture and to most other matters.

17:13

Mr Brian Monteith (Mid Scotland and Fife) (Con): I declare that I am a columnist with the *Edinburgh Evening News* and a former columnist with *The Herald*.

I thank Karen Gillon for lodging the motion and explaining the rationale behind it. There has been much talk this evening and previously about the Parliament speaking with one voice. That talk comes from people who say that they believe in a diverse editorial approach. Opinion about the assorted bids for the Herald titles is diverse, yet we hear that we talk with one voice. I am sorry, but we do not talk with one voice. If we had a vote—we cannot vote in a members' business debate—we might have one result, but a plurality of views about the issue exists.

Competition policy in our great union that is the United Kingdom is, properly, reserved, so I wondered why Karen Gillon had lodged the motion. Was it because of her concern about economic monopoly? No. The rules are quite clear about what is reserved in that respect. Was it because of the possibility of job losses and other difficulties arising from the change of ownership that might result from the merger? No. Karen Gillon has made it clear in previous statements that competition policy deals properly with those issues. It must, therefore, be the threat to the cultural monopoly—Karen Gillon is seeking to champion the diversity of editorial approach. It is a good thing that editorial approach should be championed, but what is the diversity—

Dr Winnie Ewing (Highlands and Islands) (SNP): Will the member take an intervention?

Mr Monteith: I must go on. I will be happy to take an intervention in a little while.

Not so long ago, *The Herald* and *The Scotsman* were very alike in their views. Indeed, one could not pass a piece of toilet paper between their views on Europe, foreign policy, home rule or the Conservative party.

Dorothy-Grace Elder (Glasgow) (Ind): Will the member take an intervention?

Mr Monteith: Certainly, Dorothy.

Dr Ewing: My question—

Dorothy-Grace Elder: Thank you. I can assure Brian Monteith, having worked on the *Glasgow Herald*, man and boy, in earlier times, that it was a high Tory paper. I had special dispensation from the editor not to write the Tory leaders.

Michael Russell: On a point of order, Presiding Officer. It is clear that Mr Monteith intended to take Dr Ewing and that she had started to speak.

The Deputy Presiding Officer: Mr Monteith made it clear that he was giving way to Dorothy-Grace Elder, although he indicated earlier that he would take Dr Ewing's intervention.

Mr Monteith: And I still will.

Dorothy-Grace Elder: Please take Dr Ewing as well.

The Deputy Presiding Officer: Are you taking Dr Ewing now or will you answer Dorothy-Grace Elder?

Mr Monteith: I will give my answer first. It was always my intention to take Dr Ewing, but it was clear that Dorothy-Grace Elder wanted to come in at that point.

I agree that many journalists make contributions to papers. Throughout the 1980s and 1990s, however, it is clear that the editorial policies of *The Scotsman* and *The Herald* were very much the same and that both papers reflected what was then the establishment view in Scotland.

Dr Ewing: My question, which I have raised with the First Minister, is about the reserved nature of the debate. Competition law in respect of the newspaper industry should differentiate between the Scottish dimension, in which people read different newspapers, and the English one. I received a sympathetic answer from the First Minister. We should go along that line.

Mr Monteith: I have no difficulty in looking at the issue of monopoly in respect of economic competition policy. I believe that that can be resolved easily at Westminster. After all, 72 members represent Scotland at Westminster. They can make representations on the matter. From time to time in the past, Scottish members have held the ministerial position in that area.

I wish to return to cultural matters. From time to time, papers have been diverse in their editorial policy and, at other times, they have said the same thing. That has nothing to do with ownership. I challenge the idea that a change in ownership would necessarily bring about an end to a diverse approach.

Karen Gillon *rose*—

The Deputy Presiding Officer: Karen Gillon's intervention must be the last one.

Karen Gillon: Does the member believe that it would have been in the interests of Scotland and the Scottish press for *The Scotsman* to have purchased *The Herald*?

Mr Monteith: As I have said many times before, I take no economic view on whether it would have been in their best interests.

Michael Russell: That is not what Karen Gillon asked.

Mr Monteith: Is it not? I am not in command of all the business facts. As someone who has worked in business and with newspapers, I would have preferred to see a strong Scottish media group formed than to have an American multinational come to Scotland and begin to operate in the Scottish market. I say that for the simple reason that I have explained before. I would like to see Scottish business expand and go forth beyond our borders rather than to see Scottish businesses taken over by companies from other countries. If we believe in a strong Scottish economy, surely that is what we should seek to do.

The current bid from the owners of *USA Today*, which is a paper that has a wide reputation for using wire copy, might mean that we have to say farewell in future to our colleagues Robbie Dinwoodie, Murray Ritchie and Frances Horsburgh—[MEMBERS: "No."]—and have Joe Quinn writing his copy and wiring it to *The Herald*.

There is no certainty in the new bid. We have to reflect on it and wait for the discussion about the competition aspects and the reports to be published in March. That would be the time for a proper debate in the chamber, on which I hope that we could have a vote.

17:20

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I, too, thank Karen Gillon for initiating the debate.

As others have said, there is a sense in which some elements of the motion are shifting as we speak. I welcome the developments and support many of the comments that were made by Michael Russell. I also agree with Dr Ewing that the competition authorities should take account of the Scottish dimension.

I do not know enough about the commercial aspects of the various deals to go into the detail of that, so I will confine myself to some remarks about the papers in question and the importance of diversity in the press.

I remember going to Rothesay pier to buy the Saturday sports papers, the *Pink Times* and the *Green Citizen*. We used to get them in time for the half-time results and come back for another edition later. I am old enough to remember the then *Glasgow Herald* when it had only classified adverts on the front page. I have read the *Sunday Herald* since its inception, and I think that it is a colourful and stylish addition to the Sunday press, with high production values and quality journalism. Those papers are part of a kaleidoscopic picture of newspapers in Scotland, the diversity of which is hugely important.

At a recent meeting, a London journalist told me that Scotland—with its tremendous variety of local papers and the intense rivalry between the dailies that are available to the Scottish reading public—was more wedded to newspapers than any other part of the UK. That diversity is important. Arthur Miller said that

"A good newspaper is a nation talking to itself",

and we can see what he means with the news, editorials, letters and features. However, a nation would be the poorer if it talked to itself in only a single tone of voice. If we consider *The Scotsman* and *The Herald*, we can see that listening to two voices is better than hearing only one. A series of voices, expressing varied views, exploring different topics and speaking in different tones of voice, can make us wiser and better informed as individuals and as a nation.

As was noted earlier, in Scotland we have, perhaps uniquely, a variety of quality papers that are rooted originally in a regional base, with a loyal readership that comes from those roots. However, those papers aspire to see the world not only in parochial or regional terms, but in national and international terms. They have made great strides to be seen as national papers. When issues such as the sale of a group of newspapers arise, we worry if the number of voices is to be reduced.

Even in each quality newspaper, we want and expect to hear a variety of voices. C P Scott, the great editor of *The Manchester Guardian*, said that a newspaper is, of necessity, something of a monopoly and that its first duty is to shun the temptations of monopoly. Although I would frequently quarrel with the editorial line of *The Scotsman*, I must acknowledge that in the variety of its feature writers, it avoids the temptations of monopoly to which C P Scott referred. That is a great commendation of that paper.

In all those ways, the free press helps to drive and maintain democracy by informing and shaping opinion. There are times when, as politicians and others, we do not always see that as a blessing. There is a moment in a Tom Stoppard play when one character asserts the benefits of a free press. He says:

"No matter how imperfect things are, if you've got a free press, everything is correctable, and without it, everything is concealable."

The person to whom he is speaking replies:

"I'm with you on the free press – it's the newspapers I can't stand."

We know that some politicians, and their wives, must know what he meant.

No matter how much we would like to do so, it is not our business to tell a newspaper proprietor what his political stance should be. However, I hope that whoever ends up owning *The Herald* and the other papers recognises that a distinct voice is valuable, avoids the temptations of monopoly and ensures editorial independence. I hope that they can also be convinced that such an approach makes commercial sense.

17:24

Ms Sandra White (Glasgow) (SNP): I congratulate Karen Gillon on securing this debate. Unlike Mr Monteith, I share the worries of the staff of *The Herald*, the *Evening Times* and the *Sunday Herald*. They have been in limbo for the past couple of months and have wished for an end to the situation. Obviously, they are frightened about what will happen with their jobs.

Mr Monteith: I share the member's concern about the future of the staff. However, I am merely pointing out that the successful bidder—no matter whether they come from within or outwith Scotland—is likely to reduce the number of people employed at the titles. All the bidders have records of reducing staff.

Ms White: That might be the member's recollection of what he said; my recollection is that he said that we should be having this debate not now but later on. However, I feel that, as far as the staff on the newspapers are concerned, the debate should perhaps have been held sooner than this. I again congratulate Karen Gillon on securing it.

I am a Glaswegian who grew up with *The Herald* and the *Evening Times*, and I certainly remember the *Green Citizen*, which is no longer with us. Indeed, I remember *The Herald* when it was the *Glasgow Herald*. Since it lost "Glasgow" from its title, the newspaper has gone on to become one of the best newspapers—if not the best—in Scotland. I know that Mr Monteith will challenge that point.

The Herald has become one of the best Scottish broadsheets because it consistently prints unbiased news, which is not something that many newspapers in this country do. That is why we must fight very hard to ensure that whoever takes

over *The Herald* and the *Evening Times* lets the editorial staff and journalists speak with their current voice, not only for the people of Glasgow but for the people of Scotland. We must watch the sale closely to ensure that the independence of the newspapers is not compromised in any way. I am sure that the Parliament will take that issue into account.

In Glasgow, the *Evening Times* is an institution. As Ian Jenkins pointed out, it was something to roll up in your pocket on a Saturday night, or to read on the subway or the bus. It was also handy for giving children a wee clip round the ear, which is something that I experienced. It is a much-loved newspaper in Glasgow and beyond, because it speaks with the voice of the Glasgow people. People do not simply read the *Evening Times*; they also contribute to it. The fact that it is such a campaigning newspaper is another reason why I am worried about the sale, and why I ask the minister to take a careful look at it. I believe that Gannett is up front and honest and hope that the company will maintain the newspapers' independence. However, I will be watching what happens very carefully.

I should point out that Maggie's Centre was started through an *Evening Times* campaign. That shows that the editorial staff of the newspapers give their journalists the freedom to be unbiased, which is very difficult to find and very unusual in this day and age. Diversity is very precious to a democracy, and if we do not hold on to freedom, democracy and diversity in Scotland, we will have nothing at all.

Although I congratulate Gannett and hope that it takes over the newspaper, I must echo Karen Gillon's comments about the unions. Like most members, I have received letters from journalists on *The Scotsman* about the appalling practices that are used against them. All members in the chamber know exactly what I am talking about. As a result, we need to keep an eye on things and ensure that good work practices are adhered to. Moreover, we must look after the uniqueness, the independence and the voice of these newspapers for the people of Glasgow and of Scotland.

17:29

Dorothy-Grace Elder (Glasgow) (Ind): I thank Karen Gillon for taking the initiative in securing the debate and pay particular tribute to Andrew Jaspan, the editor of the *Sunday Herald*. He is a brave man who has fought very bravely for his newspaper. I remember Andrew when he first came up to Scotland; he is now—and has long been—a better Scot than almost any of us.

Brian Monteith referred *to The Herald*'s past. It was a truly Tory paper for a very long time, but it still retained an independent core and allowed freedom of expression. It was not easy for me as a nationalist to be on such a paper in those days. Nevertheless I was on *The Herald*—or the *Glasgow Herald* as it was then—for seven years. First I was a reporter and then I was a leader writer excused from doing the high Tory leaders—never, never. I founded the paper's first investigative team, which was called the insiders—I think that it was probably the paper's last investigative team, too. It is a tragedy that there is now very little investigation in any paper. The big difference was that, even in those Torified times, there was a benign proprietor, no matter what his politics were. In my time, it was Sir Hugh Fraser, who was much underrated.

I give members an example of what it was like to work for a Scot who had Scotland's best interests at heart. I remember bumping into Sir Hugh Fraser in the corridor one day when I was just a spotty youth. I am still spotty, but no longer a youth. He said to me, "Well done, these investigations are putting the circulation up." I used my advantage to say, "Yes, but I don't have an office." He said, "You don't have an office? I'll get you an office." A few days later, he came back to me and said, "I've got you an office. Here it is." He opened a door, which I expected to be the door to the smallest cupboard in the building, but it was the luxurious boardroom of the old Charles Rennie Mackintosh building. I said, "That's your boardroom!" He said, "Yes, it is, but I don't use it much. It's only for showing off, so the journalists might as well have it." So, for a long period, Charlie Gillies, the crime man, and I moved in to inhabit the boardroom—with its glorious rosewood table and beautiful deep-pile carpets—where we parked our suitcases, our chips, our horrible, disgusting, scratchy old typewriters and our ashtrays. There are no benign proprietors today and journalists are at the bottom of the heap.

There is wider concern than with the sale of *The Herald* and its sister papers—like Sandra White, I pay tribute to the *Evening Times* for marvellous campaigning for the city of Glasgow. The Communications Bill is going through Westminster. It will have major implications for the control of the Scottish media, as we have heard. We are told that there is nothing that the Scottish Parliament can do about it because it is another of those reserved powers. There are 161 reserved powers, which is about 150 too many. The campaign for press and broadcasting freedom says:

"Labour has accepted even more enthusiastically than the Tories, the argument that the market should be allowed to drive the media industry."

That cannot be. We must have a voice in the Scottish Parliament in a debate where we have a vote.

I am glad that the bid by the USA newspaper chain Gannett has been referred to the Competition Commission. The commission will report by 10 March 2003, which is rather a long time away. Gannett is offering £215 million. The Barclay brothers—owners of the Scotsman Publications Ltd—withdrew from the bidding recently and I am sure that a nation mourns.

We seem to be on a sounder footing with the Herald titles and we wish them well in the future, but we must be extremely vigilant in Parliament.

The Deputy Presiding Officer: Dorothy-Grace Elder's ability to conjure up offices for herself continues to impress to this day.

17:33

The Deputy Minister for Enterprise, Transport and Lifelong Learning (Lewis Macdonald): I congratulate Karen Gillon on securing a debate on such an important question for the Scottish newspaper industry. As has been made clear, the future of *The Herald,* the *Sunday Herald* and the *Evening Times* is of great interest to many people. There has been great concern about whether their prospective sale might result in the compromising of their editorial independence or in a reduction in editorial diversity in Scotland. As a result of those concerns, a great deal of debate has taken place, not least in the chamber a couple of weeks ago and within the Scottish media.

As it happens, the timing of the debate could not be more opportune. Melanie Johnson, the Parliamentary Under-Secretary of State for Competition, Consumers and Markets in the Department of Trade and Industry, announced that the proposed acquisition by Gannett UK of the titles is to be referred to the Competition Commission following the company's application for consent under the special newspaper merger regime. The Competition Commission will be directed to report on whether the proposed transfers might be expected to operate against the public interest. It will consider in particular the need for accurate presentation of news and free expression of opinion. As has been said, the Competition Commission will report back to DTI ministers by 10 March next year.

The importance of the sale of the titles was also recognised in a debate at Westminster last week. That is as it should be, given that policy on competition, including competition in the media industry, rests with the UK Government and the Westminster Parliament.

Mr Monteith: Can the minister reassure Dr Ewing that the process will take account of Scotland's interests, be they cultural or economic?

Lewis Macdonald: I can indeed assure members that the terms of reference of the Competition Commission allow it to make a judgment on what is the appropriate market to be considered. In one case that might be the United Kingdom, in another case it might be Scotland, and in a third case it might be a region within Scotland or within another part of the UK. That is one of the considerations that the Competition Commission must address.

Although responsibility for policy and legislation on competition lies with the UK Government, the Scottish Executive clearly has a number of interests in the matter. First and foremost, we have an interest in a healthy future for key Scottish businesses. It is important to say that the business that is selling *The Herald*, the *Sunday Herald* and the *Evening Times* is itself an important part of the Scottish media world and of the Scottish economy. The newspaper and publishing business within SMG has, like SMG as a whole, achieved significant growth over a number of years. Members will be aware that, besides the three titles, the newspaper and publishing business that is up for sale includes a number of magazines and an online business, and accounts for some 800 jobs.

The issue is clearly significant, simply in economic and employment terms. SMG is the 12th largest Scotland-based company and a major player in the economy with its radio, television and advertising businesses. It has recently invested significantly in its corporate headquarters and, on the newspaper side, in a state-of-the-art printing plant at Cambuslang. SMG's decision to sell its publishing arm is a commercial judgment for it to make. If the sale goes ahead, we would wish to see not only the newspaper business continuing to thrive but SMG continuing to play a major and positive role in broadcasting and in the economy in general.

It is not for the Scottish Executive to pass judgment on the details of Gannett's application for consent, or indeed on the interests of any other potential buyer. Those are highly sensitive commercial matters and it is for DTI ministers to make judgments on them and to consider the acceptability of proposals under the merger provisions of the Fair Trading Act 1973.

It might be useful to set out some of the processes by which the sale of the business falls to be considered under merger control provisions. In the situation that has now been referred to the Competition Commission, the bidder for SMG's newspapers is already a player in the UK newspaper market. A circulation threshold has been met and the bid is therefore being referred to the Competition Commission under the special newspaper merger regime. The threshold is that the total circulation, both of the newspapers

already owned and of those being purchased, exceeds 500,000 a day. Because the bidder's circulation falls within the terms of that regime, the transfer would require the written consent of the Secretary of State for Trade and Industry. When a formal application for consent is made, details are published for consultation and an opportunity is offered very widely inviting comment. That is why the process will take three months. We should welcome the opportunity for people to respond to the consultation process.

Except in specific circumstances, the secretary of state cannot give such consent without a Competition Commission inquiry. The commission has therefore been directed to report on the public interest aspects of the bid. As I said in response to Brian Monteith's intervention, one of the decisions that the Competition Commission must make in that regard relates to the part of the market that is being considered, whether that be the UK, Scotland or a smaller area.

Dr Ewing: If the minister's optimistic statements turned out to be wrong, what would the Scottish Executive do?

Lewis Macdonald: Perhaps the member has heard something that I have not said. I have attempted to lay out the facts of the case rather than predict the likely judgment of the Competition Commission. The Competition Commission will make a judgment on the matter and DTI ministers will consider it in due course. The Scottish Executive or Scottish ministers should not second-guess the judgments of our colleagues south of the border, but I would expect the secretary of state to have regard to the commission's report in deciding whether to consent to the proposed transfers.

I do not accept the view that competition issues should be addressed only with reference to Scotland. If that were the case, it would have been less likely that the Gannett bid for the Herald titles would have been referred, given that Gannett does not have an existing portfolio of titles in Scotland. There is indeed a distinctive Scottish media, but that operates in a UK context. For that reason, the competition laws and procedures that govern ownership of the Scottish media operate within a UK context.

We look forward to the updating of UK merger control provisions by the UK Government and we regard such updating as significant. Under the Enterprise Act 2002, which reforms UK merger control and which is likely to come into force next spring, the vast majority of mergers will be assessed only on a competition basis, but with retained recognition that a plurality of views in the press is vital to the public interest.

Michael Russell: I welcome the conversion of the minister and his party to plurality. Perhaps he will reflect on how welcome that conversion will be to *The Herald* newspaper, which, as Murray Ritchie's book reveals, was threatened by the Labour party during the 1999 election. The Labour party withheld advertising to try to make the paper change its editorial position. The fact that things have changed is wonderful and I hope that the Labour party will continue to hold such views during the forthcoming election campaign.

Lewis Macdonald: Far from there being a conversion, as Michael Russell suggests, a key role in the debate has been played by my colleague Karen Gillon, as he acknowledged. That reflects the Labour party's historic commitment to a diverse and democratic press in this country. I support that commitment and welcome the support of the SNP and other parties for it. We have been proud of that commitment throughout our history.

On the amendment to the newspaper merger regime, we welcome the commitment of UK ministers to maintaining a plurality of views in the press. The Enterprise Act 2002 and reforms in the Communications Bill provide for the means to ensure that that plurality of views is protected and maintained. The reforms in the Communications Bill will simplify those procedures and make them more transparent for the general public. We should welcome such moves.

Every member is aware of the importance of our diverse newspaper and broadcasting media in Scotland. Many views have been expressed and Brian Monteith was correct to say that unanimity does not exist, as has been clear in the debate.

For reasons that I have explained, it is not for the Scottish Executive to comment on individual merger cases. However, the debate has provided a useful opportunity for views to be recorded in the *Official Report*. The Executive will continue to follow the issue closely and I will ensure that a report of the debate is passed to those who are considering the matter. I am glad that we have had such a timely opportunity to discuss the issue.

Meeting closed at 17:44.

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