MEETING OF THE PARLIAMENT

Wednesday 8 January 2003
(*Afternoon*)

Session 1

£5.00

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CONTENTS

Wednesday 8 January 2003

Debates

SCOTTISH MINISTERS AND DEPUTY MINISTERS

FIRST MINISTER—Right hon Jack McConnell MSP
DEPUTY FIRST MINISTER—Right hon Jim Wallace QC MSP

Justice
MINISTER FOR JUSTICE—Right hon Jim Wallace QC MSP
DEPUTY MINISTER FOR JUSTICE—Hugh Henry MSP

Education and Young People
MINISTER FOR EDUCATION AND YOUNG PEOPLE—Cathy Jamieson MSP
DEPUTY MINISTER FOR EDUCATION AND YOUNG PEOPLE—Nicol Stephen MSP

Enterprise, Transport and Lifelong Learning
MINISTER FOR ENTERPRISE, TRANSPORT AND LIFELONG LEARNING—Iain Gray MSP
DEPUTY MINISTER FOR ENTERPRISE, TRANSPORT AND LIFELONG LEARNING—Lewis Macdonald MSP

Environment and Rural Development
MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT—Ross Finnie MSP
DEPUTY MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT—Allan Wilson MSP

Finance and Public Services
MINISTER FOR FINANCE AND PUBLIC SERVICES—Mr Andy Kerr MSP
DEPUTY MINISTER FOR FINANCE AND PUBLIC SERVICES—Peter Peacock MSP

Health and Community Care
MINISTER FOR HEALTH AND COMMUNITY CARE—Malcolm Chisholm MSP
DEPUTY MINISTERS FOR HEALTH AND COMMUNITY CARE—Mr Frank McAveety MSP, Mrs Mary Mulligan MSP

Parliamentary Business
MINISTER FOR PARLIAMENTARY BUSINESS—Patricia Ferguson MSP
DEPUTY MINISTER FOR PARLIAMENTARY BUSINESS—Euan Robson MSP

Social Justice
MINISTER FOR SOCIAL JUSTICE—Ms Margaret Curran MSP
DEPUTY MINISTER FOR SOCIAL JUSTICE—Des McNulty MSP

Tourism, Culture and Sport
MINISTER FOR TOURISM, CULTURE AND SPORT—Mike Watson MSP
DEPUTY MINISTER FOR TOURISM, CULTURE AND SPORT—Dr Elaine Murray MSP

Law Officers
LORD ADVOCATE—Colin Boyd QC
SOLICITOR GENERAL FOR SCOTLAND—Mrs Elish Angiolini QC

PRESIDING OFFICERS

PRESIDING OFFICER—Right hon Sir David Steel MSP
DEPUTY PRESIDING OFFICERS—Mr George Reid MSP, Mr Murray Tosh MSP

SCOTTISH PARLIAMENTARY CORPORATE BODY

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MEMBERS—Robert Brown MSP, Mr Duncan McNeil MSP, Mr Andrew Welsh MSP, John Young MSP

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PRESIDING OFFICER—Right hon Sir David Steel MSP
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Scottish Parliament

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(*Afternoon*)

[THE PRESIDING OFFICER *opened the meeting at 13:00*]

Time for Reflection

The Presiding Officer (Sir David Steel): I wish everybody a good new year and welcome the Right Rev Neville Chamberlain, the Bishop of Brechin in the Scottish Episcopal Church, to lead today's time for reflection.

The Right Rev Neville Chamberlain (Bishop of Brechin, Scottish Episcopal Church): I was going through a bad patch at work, which was fuelled by avid media interest, and I was not prepared for the effect that that combination would have on my life: the lack of self-confidence, fear of the telephone and sleepless nights. I am sure that some members will know the feeling. Out of the blue, Stephen Jones, who is an American lawyer friend of mine and was the chief defence attorney for Patrick McVeigh, the Oklahoma bomber, sent me Desmond Tutu's book, "There Is No Future Without Forgiveness", which, as members will know, is an account of the Truth and Reconciliation Commission in South Africa. In it, Desmond Tutu argues that mercy—forgiveness—has a higher value than justice. Can that be? The book moved me deeply and I knew that there was only one person in the world who could help me with my difficulties—Desmond Tutu.

I had no idea where he was or who could effect an introduction, but I knew that I had to see him quickly. Miraculously, within six days, I was in Atlanta, Georgia with him. He was recovering from testicular cancer, but was prepared to give three days of his life to assist me and an adversary with our problems.

After our first meeting, he gave us nearly 40 biblical passages on which to reflect. Members might have guessed that his suggestions included the essential sayings of Jesus, such as:

"Blessed are the makers of peace, for they will be called children of God."

"If someone strikes you on the right cheek turn to him the other."

"Love your enemies and pray for those who persecute you."

"Forgive not seven times but seventy times seven."

Such counsel from a Nobel peace prize winner seems simple, especially for someone with a name such as mine—Neville Chamberlain—which encapsulates the paradox of war and peace. However, such counsel is difficult to follow—if it were not, we would behave in the suggested way all the time. Yet his counsel worked for me and continues to work. Although the teaching is radical and dangerous, it is tinged with compromise and even negotiation, which is the art of the politician.

Desmond Tutu discovered that, at the heart of what Jesus has to say, mercy—forgiveness—has a higher value than justice or truth. That is why justice and truth were sacrificed for reconciliation in South Africa. They were also the cost of the solution to my problems. For obvious reasons, mercy cannot be the foundation for the laws of a country, but it can move us all forward in our personal relationships. It can transform the way in which we relate to each another. Mercy—forgiveness—is outrageous. It may be insane, but it works and saves. As it is God's gift to us, perhaps we have a major responsibility to show mercy to others.

Fisheries

The Presiding Officer (Sir David Steel): The first item of business today is a statement on fisheries. It is an important statement and the time allowed for it is longer than usual. I shall therefore be more lenient than usual in accepting contributions from members after the statement. [MEMBERS: "We cannot hear you."] Sorry. Was the sound system not working? I said that I shall give more latitude than usual to members who are responding to the statement, although their responses should be questions rather than speeches.

13:07

The Minister for Environment and Rural Development (Ross Finnie): In rising to deliver a statement on fisheries, I am acutely aware—as I am sure all members are—of the absence from the chamber of a member who has a long and distinguished record of fighting for the Scottish fishing industry. I refer to Winnie Ewing. I hope that all members will join me in extending to Winnie, Fergus, Margaret and all the members of Winnie's family our heartfelt sympathy and condolences on the loss of her husband in such tragic circumstances. [*Applause.*]

I am grateful for the opportunity to make this further statement on fisheries. My aim is to offer a factual account of what was agreed at the December council and to make some observations on what that means in practice.

The problem that concerns us all is the new days-at-sea regime and its impact on parts of the fleet. However, we also need to be aware of other agreements reached at the council. As members know, three sets of issues were on the table. The first was reform of the common fisheries policy; the second were the cod and hake recovery plans; and the third was the normal total allowable catches and quota regulation for the year.

Let me begin with CFP reform. Our negotiations effectively secured all the Scottish Executive's objectives: inshore limits; the Shetland box; relative stability; the Hague preference; regional management; and the phasing out of distorting subsidies for new build. That is an important achievement, which will help to secure the long-term sustainability of Scotland's fishing industry.

The council agreed three new regulations. One is the new framework or so-called basic regulation, which deals with the conservation and sustainable exploitation of fishing resources and the framework of the CFP. The second was an emergency Community measure for scrapping fishing vessels. The third was a measure to amend the provisions for Community structural assistance in the fisheries sector.

On conservation and access to resources, the following key points were secured. First, the so-called 6 and 12-mile limits have been extended for a further 10 years and member states will have increased unilateral powers to introduce conservation and management measures within those limits. That means that only vessels that have traditionally fished there can continue to do so and that vessels from all member states will have to observe locally imposed regulations. There will be no new access to the zone for Spain or other member states. In addition, the Shetland box will remain in force. It will be subject to review alongside other conservation areas, but the Scottish Executive is determined to secure its long-term continuation.

Secondly, the principle of relative stability in the quota allocation system has been secured, which means that the quota shares that are enjoyed by each member state will continue as before. For example, there will be no quota allocations in the North sea to those who have not previously fished there. Furthermore, the council did not agree to an automatic review of relative stability next year, which sends a clear signal to the European Commission and has reduced an unwelcome element of uncertainty.

Thirdly, as part and parcel of relative stability, we have argued hard for the retention of the Hague preference, which is the mechanism that gives the United Kingdom and the Republic of Ireland preferential shares of certain stocks when they fall below predetermined trigger levels. The initial draft regulation that was before the council would not have secured the legal basis for invoking the Hague preference, but the regulation as agreed secures that objective, which is a major achievement from the negotiations.

The fourth key objective was to secure a more sensible way of managing our stocks. The Commission proposed a multi-annual management regime to try to secure longer-term planning. We had wanted such a regime to apply routinely to all stocks, but the regulation will apply in different ways to different stocks, depending on whether those stocks are within safe biological limits. However, that is an important step towards the long-term aspiration of sustainable fisheries.

The fifth key UK objective was to deliver regional management, for which the Executive and the Scottish industry have argued forcefully. There is now a clear commitment to establish regional advisory councils, but that must be regarded as only the first step, because the councils will be advisory and the Council of Ministers will still take decisions. However, we should not underestimate the potential of the council's offer to put fishermen at the heart of the process. Only by developing the regional advisory councils can we deliver better

locally generated solutions for fisheries management.

On fleet structure, a major concern for us has been the inequity of the subsidies in other member states for the construction of new fishing boats. The so-called friends-of-fish countries had hoped to secure the continuation of such subsidies for the long term, but they were unable to sustain their argument. The general financial regime for structural funds extends to the end of 2006, but the council decided that such public aid will terminate at the end of 2004. We argued for the immediate cessation of aid for new vessels and, although what has been agreed represents a move in the right direction, I do not think that it went far enough. Aid for the modernisation of fishing vessels has also been restricted and will now be available only for vessels that are at least five years old to improve safety, product quality or working conditions, to switch to more selective fishing techniques or to equip vessels with satellite monitoring systems.

On CFP reform, a range of improvements will be made to the enforcement and control arrangements and satellite monitoring is to be extended to vessels that are longer than 18m from 1 January 2004 and to vessels that are longer than 15m from 1 January 2005.

On access to resources, the CFP reform has delivered most of what we wanted on relative stability, on the Hague preference and on inshore waters and the Shetland box. The package also delivers the prospect of meaningful change on the removal of subsidies, multi-annual management planning, the scope for improved management in the 12-mile limits and the development of regional advisory councils. We all know that change in the Community takes time, but we should recognise that, in the reform, important steps have been made in the right direction.

Of course, I recognise that those decisions—important as they are to CFP reform—have been overshadowed by concerns for the more immediate future of the white-fish sector. I therefore turn now to the cod and hake recovery decisions.

As members will recall, we went into the negotiations with two specific reference points. First, we had the international scientific advice, which proposed a moratorium on fishing for cod, haddock and whiting and significant restrictions on various other fisheries associated with cod. Secondly, we had the Commission's proposals for an 80 per cent reduction in fishing effort as an alternative to total closure. I responded at that time and made it clear that a closure of the fisheries was politically and economically unacceptable. I said that we had to give the white-fish sector and the communities that are dependent on it a viable future, although we should not ignore the scientific advice and should pursue realistic goals based on the principles of sustainable development. I also made clear my concern that any cod conservation measures should be applied equitably in all fisheries catching cod.

I make it clear at the outset that the negotiating parameters changed as the council began. The Commission brought forward an interim measure, as an annexe to the TAC and quota regulation, which had not previously been seen or discussed. It concentrated solely on cod recovery and involved a different approach to stock recovery, focused almost exclusively on effort limitation.

My preference would have been for the council to develop a recovery plan based on a wider range of measures and a more flexible approach to effort management. However, the Commission deferred consideration of longer-term arrangements until later this year. That change of tack by the Commission was not only deeply frustrating, but had a profound impact on the final outcome. In practice, the interim regime will lapse when the TAC and quota regulation lapses at the end of the year. However, a commitment was made by the council to bring forward a successor regime for agreement by the end of March and for implementation by July.

Let me outline the interim measure. In geographic scope, it will apply to vessels that catch cod in the North sea, west of Scotland, and in the Skagerrak and Kattegat. However, its impact will be significantly different in different areas—for example, it is much less stringent in the southern North sea—and for some fisheries catching cod. Notably, the industrial fishery escapes lightly. I am therefore bitterly disappointed and annoyed that the interim measure is not equitable and I shall pursue the concerns in negotiations about longer-term arrangements.

The interim scheme is designed to limit days spent at sea by vessels catching cod. It does so by specifying the number of days that any vessel may spend at sea per calendar month. Those limits vary according to the type of gear that is carried. The intention is to bear down most heavily on the vessels that catch the most cod. Some vessels will not be affected at all. For example, the regime does not apply to pelagic trawlers, to scallop dredgers or to those using pots and creels.

Our negotiations were largely successful in respect of the nephrops fishery. Those fishing for nephrops will be allowed 25 days a month. That figure, taken together with the TAC to which I will refer in a moment, will mean that the nephrops fishery should be largely unaffected. The only danger that we will have to guard against and take measures against is the possibility of displacement on to nephrops from other fisheries.

The crucial issue is the number of days that are available to the white-fish demersal trawlers that pursue our mixed fishery for cod, haddock and whiting. At the outset, the Commission proposed a limit of seven days a month. In the end, we secured 15 days a month. Of those, nine days appear in the regulation, but we were given firm assurances that a further six days are available to the United Kingdom. That is a significant point. In effect, we have 15 days, based on effort reductions that have already been delivered by our 2002 decommissioning scheme and on assumptions about the time that is needed for vessels to reach the main fishing grounds, and subject to our delivering permanent reductions in fishing effort through further decommissioning. That was not a satisfactory outcome.

It is important to recognise that the 15 days in question are allocated on a vessel basis and apply equally to vessels that have historically fished for more than 15 days a month. The regulation will clearly impact more severely on those vessels. For that reason, we tried hard to secure tradeability in such days to enable vessel owners to transfer days among vessels of similar size. The regime also allows for days to be moved between months, which will give some operational flexibility—for example, to cope with the impact of the weather.

Let me make it clear that that is not the regime that any of us wanted or expected. We were arguing for a more sophisticated regime based on a wide range of management measures and, in the case of effort control, based—if it had to be based on anything—on fully tradeable kilowatt days. Without becoming too technical, I should explain that the significance is that kilowatt days would have provided much greater flexibility for meeting the needs of individual vessels. The interim measure with which we have to work is much cruder and bites hardest on the most active vessels, although it affords some flexibility.

Let me turn to the associated quotas. As members will know, the Commission originally proposed 80 per cent reductions in fishing mortality as an alternative to closure of the cod, haddock and whiting fisheries. In the event, what we agreed equated to fishing mortality reductions of about 65 per cent. However, that is not the same as a 65 per cent reduction in the TAC. In fact, the TAC reductions in the North sea amount to about 45 per cent for cod, 50 per cent for haddock and 55 per cent for whiting. The reductions might be less when measured against quota uptake for 2002, which was not fully taken up.

The situation is more favourable for TACs and quotas for other species. The pelagic sector can look forward to broadly stable economic returns. There has been a reduction in the mackerel TAC, but a significant increase in the herring TAC. The exclusion of the nephrops sector from the new effort-control regime and a roll-over of the existing TACs at a level higher than the Commission proposed was again an important gain from the negotiations and means that nephrops fishermen can look forward—subject to my caveat on displacement—to more stable economic returns, both in the North sea and in the west of Scotland. Taken in the round, the white-fish sector faces severe economic difficulty, but the pelagic and shellfish sectors should remain largely unaffected.

When the First Minister and I met the Scottish Fishermen's Federation after the council meeting, we undertook to carry out urgently two pieces of collaborative work with the industry. First, we will work through the operational details of the interim measures to assess how we can sympathetically manage a difficult situation in the best interests of the industry. Given the obligation on the Executive to implement the regulation, that work will help to clarify the nature of regulations that we will require to bring before Parliament. Until we have worked through the implications with the industry, I cannot speculate about the details of the new arrangements.

Secondly, we will examine port by port and community by community the socioeconomic impact of the interim measures. Let me assure the Parliament that the Executive is considering a reasonable financial package. I cannot say today what that package will comprise. However, I can say that it must include targeted decommissioning if we are to avoid a reduction in the 15 days and address particularly the underlying problem of excess capacity in the white-fish sector. We are also looking at what we can do to mitigate the socioeconomic consequences of the council's decision for the white-fish industry—both the catching and processing sectors—and the coastal communities that depend on it.

In addition, we agreed that, as it was clearly in Scotland's interests to find a more equitable long-term measure and to put that in place as soon as possible, we would give priority to developing alternative long-term proposals to put before the Commission before 31 March.

At the conclusion of the council, the presidency called for a single decision that would take CFP reform, the TACs and the interim measures as a single package. I am bound to say that that posed a serious dilemma. We had secured our objectives in relation to the CFP and the only member states that were likely to oppose the proposal were those that wanted no change to the new-build subsidy regime and those that sought access to the North sea and the west coast. We were not happy with the interim measures, but the only other member states likely to oppose the proposal were Germany

and Sweden, which wanted a 100 per cent moratorium in the North sea.

We took the view that we could not risk losing our hard-earned gains on CFP reform and we could not risk an even worse outcome for our white-fish sector. Therefore, with grave reservations, we did not oppose the package as a whole. Quite simply, there was no other option.

Our negotiations had secured our key objectives for CFP reform and we had secured a positive outcome for the pelagic and nephrops parts of the Scottish fleet. However, I do not pretend that the outcome for the white-fish sector is either fair or equitable, although it is far removed from a moratorium. As soon as the Commission changed tack and proposed interim measures focused on cod recovery, Scotland, with far and away the largest mixed white fishery, became the most vulnerable party to the negotiations.

Our persistent and stubborn efforts to secure a more equitable solution and to query the efficacy of industrial fishing or the use of much smaller mesh sizes in the southern North sea ultimately only had the effect of causing potential allies to look after their own interests first, which is what they did.

I am in no doubt whatever, given that we had the active and welcome involvement of the Prime Minister, that this was the only achievable outcome in all the circumstances and that the alternative of a Commission-imposed emergency measure would have been much more draconian in its effect.

Inequitable, unfair and even crude as the interim measures undoubtedly are, we must look forward. We must stick to our objectives of maintaining a sustainable fishing industry. We have to be clear, given the scientific advice, that any plan based on long-term responsible fisheries management is not going to be easy for our fishing communities. Our challenge is to develop long-term measures that tackle the scientific challenges with measures that are demonstrably fair and equitable in their application.

I hope that, despite all the difficulties that we undoubtedly face in the weeks and months ahead, the Parliament and, crucially, the industry will work together to address the challenge of securing a sustainable white-fish industry for the longer term. I shall, of course, keep the Parliament informed as we develop our proposals and the necessary regulations are drafted. The Executive intends to promote a debate within the next few weeks once those matters have become clearer.

Richard Lochhead (North-East Scotland) (SNP): I thank the minister for making available an advance copy of his statement.

Before I begin, I would like to associate myself and the SNP with the minister's comments about our colleagues, Winnie, Fergus and Margaret Ewing, who would have liked to have been here today, and who would have been champing at the bit to ask questions of the minister on a subject that is dear to their hearts. Our thoughts are with them today.

At the most recent First Minister's question time, Jack McConnell promised the Parliament that Scotland would win in the most important fisheries negotiations in living memory. However, within 36 hours, the UK had signed up to the worst possible deal for Scotland and to the worst deal secured by any of the 15 fisheries ministers sitting around the table in Brussels. There was no victory for Scotland, only massive defeat. Every other country that treats fishing as a priority left Brussels with a deal that it could live with; many left with concessions that they had gained at Scotland's expense. Is it any wonder that there is a seething anger in Scotland's fishing communities when their counterparts in Europe have the support of their Governments, which fight tooth and nail for their national interests?

Our ministers admit defeat even before the battle begins, then they go to Brussels and refuse to rock the boat. After that, they come home to Scotland, shrug their shoulders and talk about downsizing their own industry. Is the minister aware that papers that were released under the 30-year rule show that, when the Tories took Scotland into Europe and the common fisheries policy, they considered the industry to be "expendable"? Is not it ironic that it has taken 30 years and the arrival of a Labour-Liberal Democrat coalition to bring the industry to the brink?

Is the minister able to explain how the deal that he brought home promotes the conservation of fish stocks when the Scots, who use the biggest mesh in the North sea, are allowed nine days at sea per month while the Danes, who in the same waters use the smallest mesh, get 23 days per month? How can we conserve fish stocks by giving the fleets that use the smallest mesh the most days at sea? Will the minister also explain how the deal favours Scotland when measures to protect cod result in the haddock and whiting quotas, which are staple quotas for the Scottish fishing industry, being cut by more than the cod quota?

Will the minister explain why he is talking about forcing another round of decommissioning down the industry's throat? Is it because he believes that that will somehow strengthen his negotiating position? Will the minister assure us that his strategy is not to boil the fleet down to one vessel because he will then be confident that he will be able to go to Europe and get a quota that will allow

that boat to go to sea? Will the minister explain why Scotland finds itself in a position in which countries such as Spain and Ireland have left Brussels with the green light to use our money to build new vessels for their fleets, while he has come back home to Scotland wanting to use our money to destroy our fleet?

I will ask the three main questions on which the minister must get to his feet and give answers to the Parliament and Scotland's fishing communities. Does he agree that we do not need a financial package that will run down the Scottish fishing industry and turn our fishing communities into ghost towns but that, instead, we need a short-term aid package, funded by Europe and the United Kingdom Treasury, to preserve our fishing communities and keep the industry intact? Does he agree that we need to support the fleet and the onshore sectors through the difficult months ahead until we negotiate a better deal? Will he secure the necessary funds from the UK Treasury and Europe to achieve that aim and ensure that they, not the Scottish Executive, pick up the tab? Will he tour the fishing communities throughout Scotland in the coming weeks and consult on putting together a comprehensive survival plan for those communities?

I have a second question that I want the minister to answer. Does he now accept that Scotland should have led the negotiations all along? Elliot Morley cast his votes against Scotland's interests and scuttled back to London leaving Ross Finnie and our fishing communities to pick up the pieces. Morley called the deal "balanced", after signing a death warrant for our industry. Ross Finnie, returning to Scotland, called it "particularly pernicious" and talked of the unequal treatment of Scotland compared with some of the other member states. Morley thought that the deal was good and he signed it—no doubt he is singing in his bath. Ross Finnie thought that it was a "pernicious" deal and says today that he was bitterly disappointed, but given his non-person status in the UK delegation, his view did not count. Does the minister agree that, if there is one lesson that we must all learn from the debacle of 20 December 2002, it is that we can never again allow a UK minister to go into negotiations on behalf of key Scottish industries?

I have a final question that the minister must answer today. What plans does he have to challenge the common fisheries policy politically and legally? Does not he realise that landlocked countries, such as Luxembourg—which is the size of Dundee—and Austria, have more influence over the fate of our fishing communities and fisheries management in the North sea than does the Scottish Executive, which represents the most fishing-dependent communities in Europe? The CFP is a noose around the fishing industry's neck, so what is the minister going to do to remove that noose? When will he do it? When will he have a long-term plan to save Scotland's fishing industry?

Ross Finnie: It was somewhat difficult to distinguish in that speech between the long-term rant that we have heard for the past three weeks and serious questions, or even to discern in it a serious interest in the issues that face our Scottish fishing industry.

I note with considerable interest that Richard Lochhead chose to ignore completely the existence of scientific evidence regarding threatened stocks in the North sea. I regard it as utterly irresponsible to promote an argument on the basis of saving our industry while completely ignoring all the scientific advice.

Let me turn to the positions of other member states. As I made clear—this is a point that other SNP members will also have to answer—we opposed industrial fisheries. The Danes took the view that, if that was our stance, we had better just get a deal for ourselves. [*Interruption.*] No, it is not a matter of influence. The decision to pursue some immoral fishery does not necessarily give a country the kind of—[*Interruption.*] SNP members seem to be suggesting that they would have wanted to do a deal that would have improved the Danes' industrial fishery. They cannot have it both ways.

If the SNP wants to oppose the Netherlands' use of 80mm mesh nets, it must say so. However, if the SNP wants to go along with the use of those nets because it wants the Dutch as its friends, it too is buying into 80mm nets. If the SNP wants the Spaniards to have more access to the North sea, it can do its deal, but its members should be honest enough to tell us what that deal is.

Richard Lochhead is asking us for something when he is not prepared to tell us what cheap and tawdry deal the SNP would have struck to secure what he thinks might have been a different outlook. Such a deal would have hugely increased industrial fishing and would have led to more use of flatfish fisheries. The SNP would have backed that, but access to the North sea by the Spanish is not something that I would have wanted to sign up to.

There is no question about it: as I made clear in my statement, we will assess what is required port by port and community by community by way of financial measures to assist those that are most affected by the decision. I am happy to confirm that I intend once again over the next few weeks to go round a number of fishing organisations and communities, as I did in the run-up to the decision.

On the question of a public challenge to the CFP, members will know—if they had listened—that the CFP has just been reformed. The

prospect of our gaining an immediate reform is not on the agenda, but it is important—I thought that this was a point on which the SNP agreed—that we focus on the creation of regional advisory committees, which we should regard as a first step. We should put all our efforts into ensuring that we develop those committees so that they have real influence on the decisions that are taken by the fisheries council.

There can be no doubt that the lesson from the recent council is that, without the active involvement of the fishing industry and community, we will end up with the sort of nonsense that was decided in Europe two weeks ago.

Mr Jamie McGrigor (Highlands and Islands) (Con): I thank the minister for giving me a copy of his statement. I associate the Scottish Conservative party with the minister's remarks about the terrible tragedy suffered by Winnie Ewing and her family. Our deepest sympathy goes out to them.

I am glad that the minister said that the pelagic and nephrop sectors will be unaffected. The nephrop industry was, however, looking for an increase in quota, rather than a small decrease.

How can the minister say that the quotas for member states will continue as before if he also says that there is to be a total allowable catch reduction of 40 per cent on cod, of 50 per cent on haddock and of 55 per cent on whiting? Those are all stocks on which the Scottish white-fish industry depends. What is the point of Scotland's having quotas if Fischler can simply turn off the tap?

Given that the scientists say that any cod plan might have to be in place for seven years, how many vessels does the minister estimate will remain in the Scottish fleet at the end of this year and in future years? Will he provide an estimate of the size of the Scottish fleet at the end of the seven-year period? Can he guarantee that there will be a Scottish fishing fleet? How many processing plants will be lost this year and in future years? How many jobs connected with the fishing industry will there be at the end of this year and at the end of future years?

I ask those questions because the real test for the fisheries minister, following the appalling Brussels result, lies in managing to save the Scottish fishing fleet, the jobs that depend on it and the livelihoods of so many rural communities that depend on the fishing industry. Fishermen have asked me why, when we are dealing with Scottish fish in Scottish waters, the Scottish fleet should have to suffer the pain while other fleets go relatively unscathed.

The regulation refers to days away from port, rather than days at sea. Will the minister confirm whether the regulation means days away from a specified port or days away from any port? Does the fact that the figure of 15 days—or nine days, which we are led to believe is the real figure—relies on decommissioning, the results of which will be monitored, mean that the number of days may be altered downwards in future years?

Can the minister confirm that the six-month emergency measures will last for six months and not for a further two periods of six months each if there is no full agreement on the future cod recovery plan? What plans does the Scottish Executive have to ensure that sufficient resources will be invested in the fishing industry by the beginning of February, to ensure minimum disruption to fishing communities?

Even if the minister does not believe in our policy of national control of fisheries, does he agree that nothing could be worse than this mess, which has been orchestrated by unelected Brussels bureaucrats?

Ross Finnie: I will begin by dealing with the first point that Jamie McGrigor made. The member said that I had indicated that no reduction in quota had been agreed. That is not what I said—I said that because there was no change in relative stability there was no change in the share of quota. Relative stability does not guarantee an absolute quota figure. It ensures that once quota as a whole has been agreed, the relative shares of quota remain the same. That is a very important point, and it is very different from the point that Jamie McGrigor made. Relative stability, which was under threat in certain elements of the negotiations, was a very important goal to secure for the long-term interests of our fleet.

The next series of questions related to our knowledge and understanding of the precise impact of the measures that have been agreed. Immediately following our return to Scotland, the First Minister and I undertook to examine those matters in detail. Given that the proposals are very different from those that anyone had envisaged, a day or two more is required to work out their impact on the number of vessels and on communities.

We need to speak to the processing industry. The impact of the proposals on that industry will vary greatly because, sadly, some businesses will seek to increase the amount of import substitution. That will change the economic impact of the measures on the industry as a whole. All those variables must be taken into account.

From 1 February the absolute figure for days away from port is 15 days. The review of days away from port relates to a very small proportion of that time. I have no doubt that we will be able to meet any conditions and to obviate the need for a reduction in the figure.

The six-month period to which Jamie McGrigor referred is a more vexed question. The Council has undertaken to present proposals for agreement by 31 March and for implementation by 1 July. I make no bones about saying that I regard that as an extraordinarily tight time scale. As I indicated in my statement, because it is clearly in Scotland's best interests, the Executive is committed to putting all its efforts into developing alternative proposals and presenting them to Europe as quickly as possible.

I do not share Jamie McGrigor's view. There would have to be a complete renegotiation of treaty obligations to secure his national fishing objectives; that is an unrealistic proposition. I have made no attempt to hide my dismay at the outcome—for which the Council members, not the Commission, voted—for the reasons that I gave in my statement.

Iain Smith (North-East Fife) (LD): I hope that the Parliament will join me in expressing our condolences to the family of the Fife fisherman who was so tragically lost in the Forth on Monday. That was a poignant reminder of the extreme dangers that fishermen face every time they put to sea.

I first express our gratitude to Ross Finnie for his sterling efforts in Brussels in trying to save our fishing industry against the odds and, in particular, for the relatively successful outcome in relation to the nephrops quota. However, I am sure that the minister will accept that the nephrops fishermen in Pittenweem feel less than certain about their future and that they are concerned about how the new regulations on days at sea, mesh sizes, displacement and other measures will affect them.

I am sure that the minister will also accept that a one-size-fits-all approach is not acceptable and that any financial support for the industry must not only reward those who wish to leave the industry through decommissioning, but assist those who wish to remain in the industry. Any approach must be tailored to meet the needs of fishermen and the onshore industries, including processing and fish merchants. Will the minister agree to meet representatives of the fishing industry in Fife?

Ross Finnie: I want to make two points in relation to the nephrops fisheries. I have already made it clear that we are acutely aware of the need for us to develop measures that will in some way inhibit displacement from all our fisheries. I made that clear in my statement and I am happy to repeat it. We are also acutely aware that there appears to be a number of anomalies within the regulation, particularly in relation to mesh sizes; those will have to be addressed as part of formulating the regulation. As I indicated in my statement, our aim will be to interpret the regulation as sympathetically as possible and in a way that is in the best interests of the Scottish fishing fleet.

The whole purpose of the exercise that the First Minister and I put in train when we met the SFF was to assess the impact not on a one-size-fits-all basis, but by examining different communities and ports. As I said in my response to Richard Lochhead, I am happy to meet a wide range of representatives of the fishing industry, not just in the catching sector but across the industry in the next few weeks.

Rhoda Grant (Highlands and Islands) (Lab): Will the minister ensure that he speaks to other businesses in fishing communities that supply goods and services to the fishing industry? That might not be the whole of their business, but fishing certainly has a large impact on their business and if anything happened to that part of their business the rest of the business would become unsustainable. Will the minister outline some of the measures that he will take to prevent displacement into the nephrops fishery, which is very important to large areas of my constituency?

Ross Finnie: I am happy to make it clear that my meetings with representatives of the industry will encompass the widest possible range of interests. I will do my very best; I cannot undertake to meet every single person, but I will endeavour to ensure that as wide a range as possible is covered.

We do not have a final view on the details of how we will seek to safeguard against displacement. We have been in discussions with our technical people since the end of the discussions in Europe. There is the question of whether we should consider ring fencing. I do not want to commit myself this afternoon, but we understand the serious nature of the problem and the need to introduce regulation that would give some measure of protection or control to the nephrops fishery.

Robin Harper (Lothians) (Green): Of course the best way in which to guarantee the viability of Scottish fishing is to guarantee the viability of the fisheries. After the measures have been implemented, will there be a reappraisal by the scientific community of whether the measures will be effective over the next seven years in guaranteeing the survival of stocks? Was there any discussion about the possibility of Governments' buying back quotas on the quota market?

Ross Finnie: The first point that the member made is important. I assure Robin Harper that I took the view that we did not need to support total closure only after I had discussed the matter with our local scientific community. I asked that community whether total closure was the only

option, given that its advice was directed at cod in particular. I asked whether there were alternatives, given that we have a mixed fishery. I received the response that providing that we put in place longer-term measures that would reduce fishing mortality by between 50 and 60 per cent—the closer to 60 per cent, the better—our actions could not be decried as not being credible in environmental and fisheries conservation terms. That was the basis for the line that I took.

We hope to receive some interim scientific advice during the year that will help us to discern the effectiveness of some of the other technical measures that the Scottish fleet has been deploying. We desperately need that information so that we can provide more robust support for the measures than we have been able to provide in the past. I hope that the combination of such advice and the process of keeping in touch with the scientific community will mean that any longer-term plan will be credible.

Mr Andrew Welsh (Angus) (SNP): Seventy per cent of Europe's fishing grounds are within our territorial waters. Given that the Minister has negotiated the greatest cuts in fishing effort, fishing fleet and fishing quota, while other European fishing countries have negotiated gains in buying new boats and securing more quota and more days at sea than we have, why is he claiming a success? In reality, he was isolated and defeated. The chances are that he will be isolated and defeated in future farming and fishing negotiations in Europe. In other European countries, that would be a resignation issue.

Ross Finnie: Why has no other country had any cuts? The answer might be quite simple. Cod was the only stock in relation to which the scientific evidence called for total closure of the North sea. [*Interruption.*] Mr Lochhead suggests that such a call was also made in relation to hake. That is not the case—there was no scientific evidence that called for the total closure of a hake fishery.

Given the constituency that he represents, I understand Andrew Welsh's serious concerns. Not even an independent Scotland could overturn solid and sound scientific advice about what one should do about cod stocks. The member has referred to the size of our fleet. That is why we were the only nation that was totally exposed to the impact of—

Mr Welsh: The minister was isolated and defeated.

Ross Finnie: We were isolated only in the sense that the other member states that were interested in the matter took very unkindly to our suggestions that it might be more equitable to include the industrial fishery and that the 80mm mesh—an example of which Andrew Welsh held up in a previous debate—might be inappropriate for flatfish fisheries in which cod is caught as a bycatch. Those states did their own deal because they took unkindly to those suggestions. That left us to face the music of a scientific assessment that called for a total moratorium in the North sea. One does not have to be Einstein to work out the impossible position that that evidence put us in.

David McLetchie (Lothians) (Con): I agree fully with the minister that we need to work together to implement measures that will address the crisis in the fishing industry and which will secure and provide adequate compensation for it during the present period. He will have our support in that. I have considerable sympathy with the minister in relation to the dilemma with which he was confronted during the negotiations. It is churlish and juvenile not to acknowledge that unpalatable compromises must sometimes be made in international negotiations.

Is not it the case that within the constraints of the CFP, the minister was caught between a rock and a hard place? Is not it about time that we acknowledged that the common fisheries policy has failed and that it needs to be replaced? I appreciate that our signing up to the CFP was part of the process of our entry into the European Union—which, in 1973, was the European Economic Community. Surely 30 years is sufficient time to see that the CFP is a fundamentally flawed system that has failed our fishing communities.

I draw the minister's attention to the comments that were made at the new year by his colleague Mr Alistair Carmichael, the MP for Orkney and Shetland, who argued against—I think I quote him correctly—"blind loyalty to the institutions of the European Union" and for effective regional management of our fisheries. Will the minister accept that advice and join the Conservatives in calling for a return to national control over our fisheries, or will he follow the line that was announced yesterday in the House of Commons by the Secretary of State for Scotland and dismiss such advice out of hand?

Ross Finnie: Mr McLetchie will not be surprised to learn that I am not about to join the Conservative party.

David McLetchie: What about Mr Carmichael?

Ross Finnie: I am in the same party as Mr Carmichael, as I am sure the member is aware.

It seems to me that there are issues about a lack of common purpose in relation to certain fish stocks. However, I do not have any instant solutions. Although I think that it is crucial that we have achieved the inclusion in the agreement of regional advisory councils, there is time to reflect on the impact of the overarching principles that ought to guide the allocation of stocks, irrespective of where or what they are, to obviate some of the

particular interests that are pursued by certain member states.

However, I do not agree that we should simply tear up the whole CFP. To do so would have wide ramifications within the European context, which might not be in Scotland's best interests. As I said, we need to examine and address certain elements of the lack of commonality in regard to fishing stocks and interests.

The Presiding Officer: As a very large number of members still want to get in, I appeal for short exchanges.

Elaine Thomson (Aberdeen North) (Lab): It is very clear that this year's negotiations have been exceptionally difficult. The UK Parliament and Scottish Executive ministers have fought hard to get what they could out of the negotiations and there have been some achievements, particularly in relation to CFP reform.

However, the interim measures will cause considerable difficulties, particularly for areas such as Aberdeen and the north-east and the catching and processing industries. For example, 1,600 jobs are involved in fish processing in Aberdeen city alone. Will the minister assure me that, when he consults different industry players including the processors, he will discuss the development of a smaller industry that is more viable in the long term? Will he also assist the people who will require considerable training and re-education in order to find alternative careers?

Ross Finnie: Obviously, all communities—particularly in north-east and the Northern isles, but also throughout Scotland—will be affected by the measures. I hope that I made it clear in my statement that, on the instruction to examine carefully what will be required, we are ruling nothing out and ruling nothing in at this stage. The First Minister said that to the fishing industry. Instead, we must examine thoroughly all aspects of the industry, including the communities and individuals that are affected by this most unfortunate imposition of the measures.

Stewart Stevenson (Banff and Buchan) (SNP): Does the minister recall that, in his speech in the fisheries debate on 12 December, he set a number of tests for success? He said:

"We cannot stand aside and watch the inevitable biological and economic decline."

He also said:

"All fisheries that impact on cod must bear the burden of recovery measures, whether in the northern or the southern part of the North sea … It must also emphatically take account of measures that the Scottish industry has introduced this year and last year."

Furthermore, he said:

"The guiding principle in our negotiations is that there must be equity".

Finally, he said:

"we also have a clear goal: to safeguard our fisheries infrastructure; to promote stock recovery; and to give our white-fish sector in particular a sustainable economic platform."—[*Official Report*, 12 December 2002; c 16391-2.]

My constituents and others around Scotland have watched with dismay the failure—I use the word deliberately—of negotiations; the failure to prevent economic decline in fishing communities around Scotland; the failure to deliver recovery measures that are equitable and bear on the south of the North sea as they do on the north; the failure to safeguard our infrastructure; and the failure to reflect the conservation measures already taken by our industry.

May I direct the minister to an answer given by the EU just after negotiations ended? In May 2002, the Danish industrial fishery landed 245,000 tonnes of sand eel. Does the minister accept that, on the commonly held basis that white fish may form a 4 per cent bycatch, that bycatch was 4,000 tonnes in a single month? Based on the number of Danish fishing boats that were arrested in the past year, does the minister accept that the Danish fishing industry probably kills more cod in the North sea than our industry has done in recent years?

Will the minister acknowledge the anger of people in the north of Scotland? He used terms such as inequitable, unfair and crude. Does he acknowledge the very real anger at the political stitch-up that has happened? His bitter disappointment will be valid only if he can deliver relief to the people of the north-east of Scotland and to communities throughout Scotland that depend on fishing, and deliver that relief in early course.

Ross Finnie: I fully understand that anger. One of the difficulties that emerged from the negotiations was our implacable opposition to the Danes continuing to have industrial fisheries at the level that they previously enjoyed.

With all due respect to Stewart Stevenson—and other members of the SNP—he has utterly failed to explain at any time during the course of parliamentary discussions, or in the press or anywhere else, what he would have done to secure the Danes' support. In the negotiations, the Danes were interested only in securing the continuation of their industrial fishery. He had nothing to offer the Danes other than giving implacable support to their industrial fishery. What kind of deal is that and what would it result in?

The SNP's logic is utterly flawed. SNP members are failing to confront the problem that, despite our opposition to industrial fisheries, regrettably there was no scientific evidence that could be used to

attack the Danish fishery that was similar to the clear and unambiguous evidence that led to the call for 100 per cent closure of our white-fish fisheries. That argument will therefore not wash.

Stewart Stevenson mentioned equity. I made it clear in my speech that the settlement was not equitable or fair and that it did not meet the conservation tests for north and south of the North sea. However, that leads to the same problem of trying to do a deal with those who saw cod being proclaimed as the fish that had to be 100 per cent protected in the North sea and then ducked and dived and did their own deal.

On the matters that Stewart Stevenson raised about infrastructure and communities, I repeat what I said in my statement, and what I have said in response to many other members. We are considering closely the impact of those measures on a port-by-port, community-by-community basis throughout the fishing sector. We will make proposals in due course.

Tavish Scott (Shetland) (LD): Will the minister accept the disgust that I feel about the manner in which the European Commission handled the negotiations? The negotiations did not relate to science or the conservation of fish stocks. They were more a cynical buying-off of different member states.

Does the minister recognise the utter frustration that fishing communities feel because of such a process? Does he understand that 25 per cent of the productive economy of Shetland depends on the white-fish industry and the ancillary industries that support it? Does he recognise the need to build a stable future for the white-fish industry, in particular in fishery-dependent areas such as Shetland? Given the uncertainty about the interim measures and the possibility that they could run not just until July but until December, will he give a commitment to Parliament to support the fishing industry and fishing communities with financial assistance through that period, including for tie-up, in order that fishermen who are being forced into port can come through the process with a future?

Ross Finnie: We share the view that not only the Commission's but the Council's failure to do anything other than pursue entirely national interests without any real regard for a common fisheries policy or, indeed, for a common set of objectives that would embrace conservation measures uniformly across the board, is a matter to be deprecated deeply. I understand fully—and I understand from my most recent visit to Tavish Scott's constituency—the importance of the fishing industry to Shetland.

On whether the measures will run for longer than six months—a point that was also raised by Jamie McGrigor—and on into December, I can only repeat that we are looking at a port-by-port and community-by-community assessment. We will come forward with proposals on what we think will be necessary to support those communities as a consequence of the measures that will have to be put in place.

Brian Adam (North-East Scotland) (SNP): The minister rightly suggested that the negotiations were rather unsatisfactory. He was at great pains to tell us that he had at least managed to elicit some improvements. Since we have only an interim arrangement, what is he going to do differently that will help to improve the situation in the coming six months? In particular, does he recognise that the cuts in the haddock and whiting TACs are much greater than the cut in the cod TAC, and that we were not trying to achieve a haddock recovery plan or a whiting recovery plan, but a cod recovery plan? What is he going to do differently in future discussions so that we have a better arrangement for haddock and whiting? How can we produce appropriate changes in effort that will target cod, not haddock and whiting?

Ross Finnie: One thing that appears to be clear—although nothing is certain, having gone through six days with it—is that the Commission appears to be much more willing to consider, as I indicated in the opening part of my statement, a much broader range of measures as part of a longer-term plan, therefore there is the issue of bringing matters back into play.

For example, we must urgently examine separator trawls, which have been used in other parts of the world, to decouple the cod fishery from the haddock and whiting fisheries. There is the issue of technical measures and counting them in a different way in a longer-term plan—they are counted in a crude way in the interim arrangements. Management issues have been proposed sensibly by a number of fishing organisations throughout Scotland and by the SFF. Those could all come back into play. Even if there has to be some measure to limit effort, the question of reverting to kilowatt days is not ruled out in the longer term. If that measure were used, it would be a far more equitable way of dealing with the problems in the longer run.

As I indicated earlier, as a matter of urgency we have to get a range of issues back on the table as part of developing a longer term plan for cod recovery that is different in shape and different in effect to what has been put in place as an interim measure.

Mr John Home Robertson (East Lothian) (Lab): Does the minister acknowledge the fundamental absurdity of small-time politicians trying to sidestep the need for the conservation of fish stocks? If we fail to conserve fish stocks, the fishing industry will have no future. The Scottish

Fishermen's Federation understands that, even if the Scottish nationalist party does not. The minister has made the best of a diabolically difficult job and the chamber should support him.

I have a question about the implementation of the days-at-sea rules. Will the minister give top priority to fishermen's safety needs? It is imperative that skippers should not feel compelled by those restrictions to go to sea in weather during which safety considerations dictate that they should stay in port.

Ross Finnie: I agree with John Home Robertson. The safety element is not entirely satisfactory. We will have to translate provisions on that when the rough agreement is transposed into a regulation. We hope that the flexibility that we negotiated for moving days backwards and forwards between relevant months will help to avoid putting an imposition on fishermen to go to sea in highly unsuitable weather. We will have to translate that in a way that obviates that problem, which is a risk of having such a restricted days-at-sea regime.

Alex Johnstone (North-East Scotland) (Con): I take the minister back to the commitment on compensation that he gave in his statement, on which I would like a little more detail. In ports such as Arbroath, which has a high dependency on the haddock supply, many merchants and processors operate on a small scale, which includes one-man operations in the manufacture of Arbroath smokies, in fish vans and in fish shops. Will the minister give a commitment that his attempt to seek out those who require compensation will extend to the final arm of the processing and merchant industry?

Ross Finnie: I hope that I have made it as clear as I can to the member that our attempts to cover the broadest range of the industry and the implications for it will be part and parcel of the process on which we have embarked. Not just the catching sector is under consideration; other sectors must be considered. We must assess the economic impact on them, on individuals and on communities. We do not rule out anything for that exercise.

Mr Duncan Hamilton (Highlands and Islands) (SNP): The minister mentioned potential displacement, particularly in relation to west coast communities. He will know that communities such as Oban, Skye, Campbeltown and the Argyllshire islands share the characteristic that more than 10 per cent of their employment is directly or indirectly related to the fishing industry. With that in mind, all that he has told us is that he will guard against displacement. Will the minister give more details of the measures that he has in mind to do that? If displacement occurs despite those measures, will the minister agree to include those west coast communities in any consideration of financial compensation because of that?

The minister will be aware that the Scottish Fishermen's Federation continues to consider a legal challenge to the regulation. He said that he was against parts of the agreement, so will the Executive consider such a challenge, on the bases of improper procedure, unfitness for purpose and disproportionate action? Would not that be a tangible way for him to stand up for the Scottish fishing industry?

When the minister describes the agreement as characterised by inequality, unfairness and crudity and Elliot Morley describes it as balanced, that raises a question in many people's minds. In his important and powerful role in the delegation, did the Scottish minister demur? Did he advise Elliot Morley to sign or not to sign the agreement? If he advised Elliot Morley to sign it, is not the minister tied into the shabby deal that is before Parliament?

Ross Finnie: I cannot advise the member on displacement, save only to say that I made it clear that provisions on that would form part of a regulation and would therefore be enforceable. The terms will be much clearer and more explicit. I loosely referred to the question of whether we ring fence, but I do not want to be tied into a regime. Our officials are examining closely the need for a regulation that would not only safeguard the situation, but be enforceable. As I made clear in my statement, the prospect of displacement into the nephrops fishery is a serious risk and problem. My aim is to avoid that and therefore to avoid the need to bring the nephrops fisheries into the case for financial support.

My position on the question of legal challenge is that elected ministers met in a council that was properly convened. Irrespective of the inequity of the outcome, I am not aware of anything in the process that was not conducted in accordance with the regulations. I will be interested to see the basis of the fishing industry's legal challenge. The Government does not have a grouse with the way in which the procedure was carried out, but as the industry has a different locus to the Government, others may be able to claim that they were put at a disadvantage as a result of the outcome of the meeting. No doubt in due course we will hear from the Scottish Fishermen's Federation about that.

I made it explicit in my statement that the Presidency's decision to take both measures as a single package placed us in a dilemma. Given the votes that were at stake in the Council meeting, no one should suggest that we should have put at risk what had been secured in respect of the common fisheries policy, especially given that the only serious pressure to amend the interim measures was to effect a 100 per cent moratorium. It was not

an easy decision to take, but it had to be taken at the time and we did so with grave reservations. I repeat that to have put at peril an already bad deal and so make it worse was not something that I was prepared to sign up to.

Rhona Brankin (Midlothian) (Lab): Does the minister agree that to constantly raise constitutional issues on fishing [*Interruption.*]—

The Presiding Officer: Let us hear what the member has to say.

Rhona Brankin: Does he agree that that masks the total lack of serious alternative proposals to address the perilous state of white-fish stocks? Indeed, the SNP and Tory spokesmen on fisheries did not mention the need to listen to the scientists or to conserve stocks, let alone to come up with solutions. Can the minister reassure me that by agreeing to measures that fall short of the advice that has been given by the scientists he is confident that we can rebuild stocks sufficiently to ensure a sustainable future for the Scottish white-fish sector?

Ross Finnie: I agree that in trying to address the serious issues that affect the problems of the white-fish sector no serious contribution is made by constantly dancing on constitutional pins.

As I indicated in my response to Robin Harper, the Scottish Executive takes seriously the need to have proposals that are credible in scientific terms and that can assist in building a sustainable white-fish sector. I cannot give any guarantees of a recovery. All that I can assure the member is that we will not totally ignore scientific advice. We do, however, want to take a proportionate response in respect of the fisheries that are at risk.

George Lyon (Argyll and Bute) (LD): I want to concentrate on one or two of the details of the deal that has been done. We have heard little so far in the debate about the fishing industry and all too much about constitutional matters.

The fishing industry has been placed in an invidious position. How many of its members will be able to survive in the short term until July? Even if they can survive until a long-term plan is agreed, what hope is there that they will survive under the long-term plan from July onwards?

It is essential that the minister meets quickly with representatives from the fishing industry to thrash out exactly what measures can be put in place to support the fishing industry through the initial six-month period and to get agreement on the longer-term solution.

The 15-days-at-sea measure on which the minister secured agreement seems to be predicated on a further decommissioning scheme. How great and how quickly is the requirement to decommission that will ensure that the 15-days-at-sea measure remains in force over the next six-month period?

Three paragraphs on displacement were contained in the document that was presented to the Council meeting that took place on the Friday morning. Will the minister explain exactly what measures were agreed to deal with displacement from the white-fish sector into the nephrops sector during the negotiations on that Friday?

Finally, the minister will be aware that there are great worries in the west coast that nephrops fishermen in area 6A, 56 deg north are caught by the 15-day restriction, despite the fact that they fish for nephrops. I have already raised the issue with the minister. An amendment to a statutory instrument in the Scottish Parliament is required to deal with that matter. Will the minister give an assurance that the issue will be dealt with as quickly as possible?

Ross Finnie: I will deal with the last point first. I am conscious that there are anomalies in how the 15-day and 25-day rules overlap. I do not wholly share the view that an amendment to the statutory instrument will be required, although I have not ruled that out. That is not necessarily the only route that is open to us. In my statement and in response to a member, I said that we totally recognise that there are anomalies in the regulation and I have said to the chamber that we intend to implement the regulations as sympathetically as possible, in the best interests of the Scottish fishing industry.

Although at first sight the regulation appears to have a provision that deals adequately with displacement, I do not think that it has. That takes us back to a point that many members, including Duncan Hamilton, have raised about the need to bring forward a regulation that stipulates how we would seek to protect the nephrops fisheries from displacement.

On the long-term plan and having a meeting with the fishermen as soon as we can, we met the fishermen on 23 December and undertook that we would give priority to working out the long-term plan. I think that my officials are working with them again tomorrow. We will continue to meet the industry to develop the long-term plan and the regulations for implementation of the current arrangements.

At best, only two days of the 15 days that are available would ever be at risk in respect of decommissioning, although, as I said, I do not anticipate that they will be. We must consider that, in the longer term, it will be necessary for us to consider further targeted decommissioning to reduce fishing effort by around 15 per cent. It might be more than that, depending on how the regulation is fitted.

Mr Murray Tosh (South of Scotland) (Con): The minister has regularly referred to the danger to nephrops fisheries of displaced effort. I know that he has received representations from Euan Robson on a specific measure and I wonder whether the Executive is considering introducing regulations north of the Tweed similar to those that are in force off the Northumberland coast that allow fishing for prawns with a single trawl only. If the minister is not considering that option, will he advise us what other issues are being considered to protect the nephrops fisheries from displacement?

Ross Finnie: I assure the member that we are considering that proposal in considering measures that will be effective in reducing displacement, but I do not wish to commit myself until I have seen what options are available and considered what the best option would be for a regulation to give the protection that the member seeks.

Fiona Hyslop (Lothians) (SNP): The minister says that his aim is to offer a factual account. Does he understand that our aim is to scrutinise and hold the Executive to account? If he wants to hear the views of the SNP, perhaps he should have agreed to the debate that we suggested for tomorrow morning.

I have a specific question about regional management. The minister says that regional management has, in effect, been secured. My understanding is that regional advisory committees have been secured. Is there any guarantee that there will be a move and transition in respect of power as opposed to simply advice with regard to those advisory committees to achieve regional management?

Secondly, on the 15 days a month at sea, the minister says that there has been a firm undertaking. Where is that firm undertaking? Was the undertaking verbal or written? If it is not a written undertaking, why not?

Thirdly, does the minister think that the fishing crisis should lead us to reflect in the intergovernmental negotiations on whether Scotland, even under devolution, should have direct access to the European Court of Justice?

Finally, is the minister remotely aware that he and Elliot Morley had no other option, as they had no friends, no allies and, in effect, no clout?

Ross Finnie: As I am not a member of the relevant body I have no part in deciding whether there will be a debate or a statement. I think that to suggest that for a minister to deliver a statement of some 20 minutes and be subjected to 60 minutes of questioning is not holding him to account seems to be a rather strange notion on the part of the member.

On taking forward regional advisory committees, I made it explicit in my statement that I do not regard—I do not think that anybody regards—the inclusion for the first time of regional advisory committees in the common fisheries package of measures as being anything other than a first step. The challenge and task is for us to develop the regional advisory committees further. On their constitutional standing and their status for making decisions, the member will be aware that the Council of Ministers agreed at the outset of the negotiations on the common fisheries policy—this is not absolutely accurate—some three years ago that there would be no treaty change in the current negotiations. I think that that was a wrong decision. The possibility of enhancing the constitutional powers was negated at that stage, which is much to be regretted as I think that that was not the way in which the Scottish industry or most political parties in Scotland had seen the situation. The challenge for us is to demonstrate that the regional advisory committees do and can contribute within the loose framework that has been given to them and to make them as effective as possible.

Direct access to the courts is a matter for another minister.

The 15 days are available. That undertaking was given to us. We will have that confirmed, but it was given to us in a verbal undertaking. I have made the point time and again and at no point has anyone sought to challenge that. I know that what we were saying on the matter was being closely scrutinised.

On the question of being isolated, I repeat that no one in the chamber has demonstrated to me how we could have got a coalition of other member states without seriously endangering our position either on access to the North sea, on industrial fisheries or on other mesh sizes. The way in which the matter was focused on delivering the highest possible restriction on cod in the North sea meant that getting friends who were interested in that matter, as opposed to self-interest, was almost impossible.

The Presiding Officer: There are three minutes left and five members want to speak. I suggest that I take each of the five in turn—they will be allowed one question each—and the minister will then reply to them.

Nora Radcliffe (Gordon) (LD): It is sad that, as a pro-European, I have to admit that neither the Commission nor the Council comes out of this with much credit. Having said that, it seems to me that we have a great deal of work to do on getting round the fishing interests, sorting out how they can be compensated and how the situation can be tailored to mitigate the crisis that faces them. Equally important, we must get into the interim

measure and get that discussion reopened. We must have something positive and constructive to take to that discussion. Does the minister agree that bodies such as the North East Scotland Fisheries Development Partnership, which has a very wide membership, could make a helpful contribution in accomplishing the huge volume of work that must be done in short order?

Christine Grahame (South of Scotland) (SNP): I am still a bit mystified by the nine days and 15 days. My question is straightforward and simple. On 1 February this year, if there is no additional decommissioning in the Scottish fleet, how many days at sea are guaranteed?

Phil Gallie (South of Scotland) (Con): Given the emphasis on preservation and Rhona Brankin's comment on scientific evidence, what confidence does the minister now have in the scientific evidence that seemed to ignore the basic feed stocks for the cod stock? What does he believe will be achieved by preservation? Will it not be only the long-term interests of the Spanish fleet, which ultimately will gain access to the North sea?

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I will take the minister back to the shore-based industries, in particular the harbour industries. The minister is aware that such industries in Wick, in my constituency, are in an increasingly untenable position in terms of profit and loss owing to the decline in white-fish landings. The decisions that were recently made in Europe will make the situation even worse for Wick. What will the minister do? Will he encourage the Scottish Enterprise network to step in and will he carry out certain actions at his own hand to repair the situation?

Bruce Crawford (Mid Scotland and Fife) (SNP): According to the minister, the white-fish fleet will now have 15 days at sea every month. What mechanisms exist to amend the regulations once they are agreed by the Council of Ministers? What is the legal basis of the guarantee of 15 days?

Ross Finnie: I agree with Nora Radcliffe that, as I said earlier, we must put in place as quickly as possible discussions on long-term measures. In developing the longer-term proposals, I will have no hesitation in engaging with a range of organisations, including the North East Scotland Economic Development Partnership, which had a helpful role in formulating positions before I went into the earlier discussions.

Phil Gallie asked about scientists and conservation. We must put the matter into perspective. The work that has been done on cod has one of the longest ranges of work that has been undertaken on any species. That scientific field is one of the more difficult in which to achieve a degree of precision, but we cannot ignore such advice at will. Given the agreements that were reached on relative stability and on the inshore limits, I do not share Phil Gallie's view that there is an opening for the Spanish to gain unfettered access to the North sea. The Spanish have a legal right to access, but they cannot fish without a quota. Therefore, Mr Gallie's assertion is untrue.

Christine Grahame asked how many days at sea there will be if there is no more decommissioning: the answer is 15 days. On Bruce Crawford's question, the undertaking on the number of days at sea was given to us and is expressed in an annexe to the total allowable catches regulation and therefore is in force until December next year.

Parliamentary Bureau Motion

The Presiding Officer (Sir David Steel): The next item of business is consideration of motion S1M-3749, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out the timetable for stage 3 consideration of the Local Government in Scotland Bill.

Motion moved,

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

Groups 1 to 5 – no later than 35 minutes

Groups 6 to 13 – no later than 1 hour 5 minutes

Groups 14 to 21 – no later than 1 hour 45 minutes

Group 22 – no later than 2 hours

Motion to pass the Bill – no later than 2 hours 30 minutes—[*Euan Robson*.]

The Presiding Officer: John McAllion wishes to speak against the motion.

14:33

Mr John McAllion (Dundee East) (Lab): I seek guidance because various colleagues have informed me that today's business might continue until 7 o'clock or possibly until tomorrow morning. However, according to the timetabling motion that has just been moved, the final group of amendments must be concluded no later than two hours after the proceedings begin, which will be at half-past 4. What are we being asked to vote for? Are we being asked to vote on whether all the amendments should be dealt with by half-past 4? Will proper time be given to the amendments, which might mean continuing until 7 o'clock, or, if necessary, into tomorrow morning?

The Presiding Officer: The motion is set out in the business bulletin. I ask Mr Robson to respond.

14:33

The Deputy Minister for Parliamentary Business (Euan Robson): It was thought that it might be necessary to continue until 7 o'clock, but in view of the number of amendments, it is not now considered necessary to use the extra two hours. Stage 3 should be completed by 5 o'clock this evening.

Mr McAllion *rose*—

The Presiding Officer: You have had your say, I am afraid. You only get one go.

Mr McAllion I will just have to vote against the motion then.

The Presiding Officer: The question is, that motion S1M-3749, which is a timetabling motion, be agreed to.

Motion agreed to.

Points of Order

14:34

The Presiding Officer (Sir David Steel): Tricia Marwick has a point of order.

Tricia Marwick (Mid Scotland and Fife) (SNP): I have given you notice of my intention to raise the point of order, Presiding Officer.

At the end of last year, the Parliament approved the general principles of a local government bill, but the Local Government in Scotland Bill that is before us today is not the same bill that was approved then. Indeed, as the Scottish Parliament information centre background paper to the debate says,

"the general principle of the Bill was expanded to accommodate"

the stage 2 amendments. Those amendments have added new parts and sections on enforcement and scrutiny, rating, waste management and capital expenditure and grants. Presiding Officer, you will have noted that in the Local Government Committee, which considered those amendments, I tried to move a motion that would have allowed the committee to take evidence on the amendments. However, the convener would not allow that motion to be heard.

I turn to the stage 3 amendments that were lodged by the Executive during the recess and not published until Monday. Amendment 59, which would repeal section 19 of the Fire Services Act 1947, is designed to ensure that the most contentious recommendation of the Bain report is not scrutinised by any committee of the Parliament. It is unacceptable that an issue of great public concern will be debated and disposed of in 15 minutes. If the amendment is passed, it will have the effect of denying the public the right in the future to be consulted about the possible closure of their fire stations. That is unacceptable.

Presiding Officer, you have publicly expressed your concern about the quality of legislation coming from the Parliament and you have suggested that the Parliament needs a second chamber. I say to you, with the greatest respect, that the imperative is to ensure that the Parliament and its committees are allowed to use the powers that are already available to them to examine and scrutinise legislation effectively and that it is for the Presiding Officers to offer the Parliament protection from the abuse of power by the Executive. In the interests of the Parliament and the people of Scotland, I invite you to reconsider the decision to accept amendment 59, in the name of Andy Kerr, and to reflect on the type of amendments that will be accepted in the future at stage 2 and stage 3 of bills.

Tommy Sheridan (Glasgow) (SSP): On a similar point of order, Presiding Officer. In the past, you have told me that some amendments have been inadmissible. I feel that you have to use your authority in this case to protect the credibility of the Parliament. Amendment 59 is not just another amendment; it is a very important amendment, yet there has been no committee scrutiny of it. The credibility of the Parliament and its committee system is therefore under scrutiny. I appeal to you to reconsider your decision. If the amendment was essential, the Executive should have lodged it in time for stage 2 consideration. The amendment should not have been lodged at the 11th hour in such a devious and underhand way. I ask you to reconsider your decision to accept the amendment and to reject it on the grounds of admissibility.

Michael Russell (South of Scotland) (SNP): On a related point of order, Presiding Officer. There is a procedure in the standing orders to cover what Tricia Marwick and Tommy Sheridan have rightly drawn to our attention—an unprecedented, major amendment being lodged at stage 3, which has not been considered by a committee. Rule 9.8.6 of the standing orders allows the member who is in charge of a bill to refer back a proportion of the bill, after the stage 3 debate in the chamber, for further committee consideration. In trying to find a way to make that manageable, I seek your permission to move the following motion without notice:

"That the parliament calls upon the member in charge of the Local Government in Scotland Bill to propose that any sections relating to section 19 of the Fire Services Act 1947 which may be agreed to at Stage 3 be referred back to the Local Government Committee for further Stage 2 consideration as permitted under Rule 9.8.6."

The Presiding Officer: I am grateful to Tricia Marwick, Tommy Sheridan and Mike Russell for giving notice of their points of order, and I have an important ruling to make.

On the general point, the Executive's amendments at stage 2 and for today's stage 3 debate have been lodged in conformity with the relevant standing orders. None of the amendments at either stage falls foul of the rules on admissibility of amendments. There is no question of ruling them out on the grounds of admissibility. However, there is no doubt that the amount of new material that has been added to the bill by amendment at stage 2 and that is proposed to be added by further amendments this afternoon is considerable. It is, therefore, not unreasonable to question whether this is an appropriate way in which to make legislation.

The Presiding Officers have a role not just in ensuring that the letter of the rules is complied with, but in upholding the underlying spirit of those rules. In that context, we have some sympathy

with the concerns that have been expressed and we gave serious thought to them at our regular meeting before we came to the chamber this afternoon.

The three-stage process for considering bills is intended to ensure that proposals to change the law do not reach the statute book without adequate consultation and scrutiny by members. There is a difference between amending a bill—even quite substantially—at stage 2 or stage 3 in response to issues and concerns that have been raised at earlier stages, and adding in by amendments, particularly at stage 3, entirely new issues that were not anticipated at earlier stages. I repeat that the Executive has done nothing that the rules prohibit, but ministers might wish to reflect on whether the approach followed in this instance has been consistent with the principle of the most sound parliamentary scrutiny.

Let me now deal with Mike Russell's request to move a motion without notice. The motion is to invite the minister to exercise his right under rule 9.8.6 of standing orders to move that certain sections of the bill be referred back to committee for further scrutiny. For the reasons that I have given, I consider this an exceptional case and I am therefore minded to accept Mr Russell's request and allow the chamber to vote on whether such an invitation should be made to the minister. However, I should explain that the minister is not, in any case, entitled to move today the motion to refer the bill back to committee because such a motion would require notice. What the minister could do today is move without notice, under rule 9.8.5, to adjourn the remaining stage 3 proceedings to a later day. The minister's opportunity to move such a motion without notice, which he has a right to do whether or not the chamber agrees to Mr Russell's motion, would arise after the stage 3 amendments before us today have been disposed of, but before the debate on the motion to pass the bill begins. If that were agreed to, a date would have to be set for the remaining stage 3 proceedings. It would then be open to the minister to lodge a motion under rule 9.8.6 for consideration on that later day, to refer the bill back to committee.

That is my clear—I hope—ruling and I invite Mr Russell to move his motion without notice.

Michael Russell: Thank you, Presiding Officer. You rightly draw attention to the founding principles of the Parliament, which are, of course, contained in the report of the consultative steering group, whose work was chaired by Henry McLeish. Section 3.5 of that report lays out the legislative process for the Parliament. As you said, Presiding Officer, there are three stages to that process: the initial consideration of the general principles of a bill; the line-by-line consideration of the bill; and the final consideration of the bill, which can include line-by-line scrutiny, but which the CSG suggested should not include significant new material. Indeed, section 3.5, paragraph 15, of the report made a recommendation for stage 3:

"Further amendments should be allowed at this stage. Standing Orders should specify tight criteria for what sort of amendments might be moved."

The Procedures Committee might like to consider whether the time has come to act upon that recommendation.

Such recommendations arose not out of thin air, but from a general concern that the process of legislation as practised at Westminster was alienating the public and giving legislation a bad name. The opportunity for committees to consider at length and in detail all the issues surrounding a bill was an important principle for the Scottish Parliament. To bring to the chamber at stage 3 a major proposal that was not considered by the Local Government Committee and on which no opportunity was given to any interested parties, whether that be the Fire Brigades Union or anybody else, to put their point of view is fundamentally wrong and counter to the founding principles as they operate in the Parliament.

Today in *The Herald* newspaper there is a letter from Patricia Ferguson and Euan Robson, who know a great deal about the procedure of the Parliament. They say in their letter:

"Each bill before the Parliament is, and will be, carefully scrutinised as part of the standard process."

Unfortunately, within hours of that letter being written, a major legislative issue was proposed that could not, by definition, be carefully scrutinised as part of the legislative process.

Amendment 59 proposes a major legislative change. I take no position on it in terms of the debate, although I know that my party is opposed to it. That major legislative change will go through at a crucial time during sensitive negotiations with the Fire Brigades Union with only 15 minutes of debate, as John McAllion indicated, and less than 48 hours after it was published in the business bulletin. That is not the way in which it was intended that this Parliament would legislate.

Fortuitously, the standing orders of the Scottish Parliament contain a means by which this situation can be avoided, even at this late stage. Rule 9.8.6, which we referred to earlier, allows the minister in charge of the bill to take the issue away and to have it considered by a parliamentary committee, in this case, the Local Government Committee. That means that the proposal could be passed at a later stage—although, rightly, it will be opposed—but only after it has been subjected to the sort of scrutiny that was envisaged by the CSG. That process is fundamental to the

legislative process in this Parliament and should be endorsed by every member of this chamber—as it has been by you, Presiding Officer—and by the guardians of the business of this chamber, including the Minister for Parliamentary Business and her deputy, whose letter to *The Herald* I mentioned earlier.

We have an opportunity to vote not on an issue of party politics but on an issue concerning the way in which political debate should take place in Scotland's democratic chamber. It should take place by careful consideration, democratic participation and consent. It was never intended that it would take place by diktat and fiat from an Executive that could steamroller through major legislative changes two days after publication with only 15 minutes of debate and no scrutiny whatever. That would be wrong and I urge the chamber to support the motion without notice and ensure that, while this debate can go ahead today, the minister has an opportunity to think again and give the legislative processes of the Parliament the chance to operate as they were intended to.

I move,

"That the parliament calls upon the member in charge of the Local Government in Scotland Bill to propose that any sections relating to section 19 of the Fire Services Act 1947 which may be agreed to at Stage 3 be referred back to the Local Government Committee for further Stage 2 consideration as permitted under Rule 9.8.6."

The Presiding Officer: Mr Peacock has a right to respond to the motion.

The Deputy Minister for Finance and Public Services (Peter Peacock): I am slightly surprised that Michael Russell has raised the matter in this way, because, as he said, the standing orders provide for a member to make an approach to ministers to invite them to do what he would like me to do. As Michael Russell has made no such approach to me or to Andy Kerr, one wonders about the motivation behind his desire to raise it in the way that he has.

Michael Russell implied that the issue that amendment 59 deals with is an entirely new one for the Parliament and that the time that has been allowed for debate today is inadequate. However, that is not the case; the issue has been debated by the Parliament.

Tommy Sheridan: When?

Peter Peacock: I will tell the member precisely when. The issue was part of a consultation paper, "The Scottish Fire Service of The Future", which was issued by the Executive in April 2002. That consultation ran until July 2002 and the SNP made no response to it. In May 2002, the Executive sponsored a two-hour debate in the chamber on the consultation paper, during which a number of members of the SNP spoke. However, the issue that we are dealing with was not raised by the SNP at that time as an issue of contention.

The First Minister made clear to the Parliament on 19 December the Executive's intention to take an early legislative opportunity to repeal section 19 of the Fire Services Act 1947. That announcement followed confirmation that the Bain committee supported the position that the Executive had set out on the matter and the debating of the issues around the matter in Parliament. The First Minister made that announcement in response to a question on the fire service that was asked by Tricia Marwick. Tricia Marwick failed to raise any concern or to scrutinise the decision at that point, although it would have been proper for her to do so.

The key question for the Parliament this afternoon is whether it can give adequate consideration to the issue on top of the scrutiny and consultation that have already taken place. The answer is clearly that it can. We have met, as the Presiding Officer indicated, all the obligations that the Parliament places on us for lodging amendments. Indeed, the Parliament allows for the procedure specifically to permit such matters to be debated at stage 3. Tricia Marwick herself has lodged stage 3 amendments that have not been debated at stage 2.

The timetabling motion that we have just approved gives amendment 59 more time than any other single amendment today. It gives amendment 59 even more time than the other amendments that I indicated are coming. There is a guaranteed slot of time. If we get through the other amendments quickly, there will be even more time to debate the substance of the issue. The whole Parliament has an opportunity to debate the issue today, which seems proper in the circumstances. The Parliament is more than capable of asking the pertinent questions and scrutinising the issue properly this afternoon. That is perfectly obvious to all members who have witnessed the affairs of the Parliament over a number of months and years. We should get on with debating the issues and scrutinising them properly this afternoon. I suggest that we do that now.

The Presiding Officer: The question is, that Mr Russell's motion without notice be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce JP (Mid Scotland and Fife) (SNP)

Cunningham, Roseanna (Perth) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Ullrich, Kay (West of Scotland) (SNP)
Wallace, Ben (North-East Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Peattie, Cathy (Falkirk East) (Lab)

The Presiding Officer: The result of the division is: For 55, Against 57, Abstentions 2.

Motion disagreed to.

Local Government in Scotland Bill: Stage 3

14:53

The Deputy Presiding Officer (Mr George Reid): The next item of business is stage 3 consideration of the Local Government in Scotland Bill.

Section 1—Local authorities' duty to secure best value

The Deputy Presiding Officer: Amendment 1 is grouped with amendment 2.

Kate Maclean (Dundee West) (Lab): Amendment 1 seeks to implement recommendation 10 of the Equal Opportunities Committee's stage 1 report on the Local Government in Scotland Bill. For the benefit of anybody who has not read that report—although I am sure that everybody reads all the committee's reports—that recommendation says:

"The Committee recommend formal recording of the employment practices of partners/suppliers/contractors in order to examine the potential to establish criteria which local authorities can take into consideration before deciding to enter into or continue contracts."

In our stage 1 report, the committee noted that that does not set a precedent because the Greater London Authority states that, in

"the purchase of goods, services and facilities",

it will

"not use agencies or companies who do not share our values on equality of opportunity and diversity."

When I moved an almost identical amendment in the Local Government Committee at stage 2, the Executive responded by saying that it was prescriptive and would be ultra vires. The Equal Opportunities Committee has taken that response into account, even though we did not necessarily agree with it, and we have changed one word: in amendment 1, "shall" has been changed to "may". We feel that the amendment does not now represent a prohibition or regulation, but is an intra vires encouragement.

Amendment 2 also seeks to implement recommendation 10 of the Equal Opportunities Committee's stage 1 report. The committee feels that if public money is spent on public services, local authorities, when spending that money, should not be forced to bring their standards down to the lowest common denominator in order to compete to deliver those services. Amendment 2 seeks to ensure that local authorities take reasonable steps to ensure that the high standards that they set in their equal opportunities policies are reflected favourably in the equal opportunities policies of organisations that are contracted to do work on their behalf.

The Equal Opportunities Committee, like the Local Government Committee, is aware of the manner in which the previous compulsory competitive tendering regime, under which local authorities were forced to operate on an uneven playing field, resulted in staff terms and conditions of service being the major casualties. The Equal Opportunities Committee considered that amendment 2 does not represent a prohibition or a regulation.

I move amendment 1 on behalf of the Equal Opportunities Committee.

Tommy Sheridan (Glasgow) (SSP): I support amendments 1 and 2, which were lodged by Kate Maclean on behalf of the Equal Opportunities Committee. It is worth noting that the amendments secured the unanimous support of the committee and were viewed as a way of raising standards of employment throughout Scotland. The amendments use best practice in the public sector to try to raise standards in the private sector. After all, the Parliament should be about raising standards and ensuring that equal opportunities policies are not just for some but for all. That is why I hope that the Parliament will support the amendments. However, it is a pity that "shall" has had to be replaced with "may". I think that we should be prescriptive when it comes to equal opportunities policies. However, now that "shall" has been changed to "may", local authorities that wish to pursue and enforce equal opportunities policies when engaging with private contractors would be allowed to take the contractors' policies into consideration. That would allow us to move completely away from the cheapest, shoddiest supply of goods under the previous CCT regime towards the best possible standards of practice in employment and the supply of services. I encourage the Parliament to support both amendments 1 and 2.

Murdo Fraser (Mid Scotland and Fife) (Con): I will speak against amendment 1, not because I doubt the motivation of those who support it—I see where they are coming from—but for a particular reason: it could discriminate against specific providers.

Last year, I had the pleasure of visiting an organisation in Edinburgh called the Bethany Christian Trust, which is a faith-based provider of welfare. Many members will be aware of the trust and the work that it does, particularly among the homeless and people on the streets. It does a power of valuable work.

At the moment, the trust is discriminated against, as the City of Edinburgh Council will not allow it to be a contractor because it will not sign

up to the council's equal opportunities policy. That is simply because Bethany—as one would expect for a Christian organisation—operates a Christian employment policy, which breaches the council's equal opportunities policy. That is a disgrace. We should prevent such things from happening in Scotland. Indeed, we should not go even further than the existing law provides for by saying that such discrimination as currently exists should be entrenched in law. Amendment 1 would further entrench that discrimination. The Bethany Christian Trust and similar organisations are already being discriminated against, and the Parliament should reject amendment 1.

Ms Sandra White (Glasgow) (SNP): I voted for a similar amendment at stage 2, and I congratulate the Equal Opportunities Committee on lodging amendment 1 at stage 3. I do not want to get into an argument with Murdo Fraser, but I find his tone and the content of what he said absolutely disgusting. He said that the organisations that do not have equal opportunities policies are now being discriminated against. We have fought for many years to secure equal opportunities in this country, yet equality of opportunity is still not spread throughout the work force. The bill provides us with an ideal opportunity to introduce proper legislation that ensures that people are not discriminated against—whoever they may be—and that equal opportunities prevail throughout local government. I hope that the Parliament will lead the way for once and I urge members to support amendments 1 and 2.

15:00

John Young (West of Scotland) (Con): I have reservations about amendments 1 and 2. Would the conditions that they would impose be too onerous for small companies? Murdo Fraser has already provided one illustration of that. Some large international companies belong to major groups that exist in parts of the world where there is no equality for many people. Could the amendments be used against a major company that follows the main equal opportunities rules in the United Kingdom, but which is the head office for Asian, South American or African companies? I would like the member to respond to that point in her summing up.

The Deputy Minister for Finance and Public Services (Peter Peacock): I have listened carefully to Kate Maclean speak on this subject on at least two occasions, at stage 2 and today, and I have spoken to her about it in private. She and most other members know that the Executive is keen to advance the cause of equalities wherever that is feasible. Indeed, the Equal Opportunities Committee has supported the bill for what it does in that regard. Equalities are now central to the provisions of the bill. We share the objectives that Kate Maclean and Tommy Sheridan outlined, but we differ about how we may achieve them. Unfortunately, I continue to have problems with the amendments that Kate Maclean proposes, even though, as revised, they no longer place a binding requirement on local authorities. As she indicated, "shall" has been changed to "may".

Amendments 1 and 2 are concerned with contractors' policies to promote—rather than to observe—UK-wide equal opportunities requirements that are set by the UK Government. It is not clear what the amendments mean in legal terms or what their full implications may be. The amendments take us into uncertain territory in an area of law in which it is potentially difficult for the Parliament to legislate, given the terms of the Scotland Act 1998. If we agree to the amendments, which relate to an area in which our legislative competence is constrained, when we are uncertain of their effect, we could create difficulties for local authorities in practice.

It is clear that local authorities that take the amendments seriously might feel pressed to require contractual partners to pursue policies and meet standards that go as far as the standards that authorities set for themselves. Murdo Fraser mentioned a particular difficulty arising from one such interpretation. The amendments would also encourage authorities to discriminate against contractors whose behaviour may be perfectly legal but which are unable to match or surpass the standards of the authority. As John Young indicated, that might be especially difficult for smaller organisations.

The amendments encourage authorities to impose binding requirements on others or to require standards of behaviour that go beyond what the authority expects of itself. Such requirements and standards may exceed those that have been set in statute by the UK Government.

Because we listened to what Kate Maclean and the Equal Opportunities Committee have said, we have lodged an amendment, which we will deal with later, to empower ministers to issue guidance to local authorities on contractual matters. We believe that it offers a more flexible and powerful route than that suggested by amendments 1 and 2. Our amendment could bring about the practical effects that are sought, without any of the legal or interpretation questions that Kate Maclean's amendments raise.

We have already undertaken to encourage good practice by helping to develop and issue guidance and voluntary codes.

Tommy Sheridan: I want to ensure that there is absolute clarity on this issue. Is the minister

suggesting that if the Parliament were to agree to amendments 1 and 2, it would be acting ultra vires? Is he saying that it would be illegal for the Parliament to agree to the amendments?

Peter Peacock: I am making the point that, ultimately, this is not a matter for ministers or the Parliament. The amendments take us into uncertain territory, because of the complications that arise from the way in which equal opportunities are dealt with in the Scotland Act 1998.

I give an undertaking to use the new powers that we will seek later to issue guidance that addresses the issues that are raised by Kate Maclean's amendments. We need specific powers to do that.

Kate Maclean: To which amendment is the minister referring?

Peter Peacock: If I could find it immediately, I would indicate to which amendment I am referring. Kate Maclean and I have known each other for a long time. I hope that she will trust me when I say that we have definitely lodged an amendment that provides for the issuing of guidance to contractors in relation to the matters dealt with in the bill. I think that it is either amendment 59 or amendment 60, but I could be wrong about that. The amendment is there, we will come to it and I will explain it fully. It would give ministers the power to issue guidance to which local authorities would have to have regard before they laid contracts with contractors. That guidance would allow us to raise the matters that Kate Maclean addressed in her amendments 1 and 2. As I said, local authorities would be obliged to have regard to statutory guidance before they made those decisions. My helpful officials tell me that the relevant amendment is amendment 32.

John Young: The minister indicated that ministers could give guidance to local authorities. In essence, local authorities might decline to accept guidance that ministers give. Would it not be better to give local authorities direct instructions or orders, rather than guidance?

Peter Peacock: John Young rather contradicts his own point, as he asked us not to agree to amendment 1, but now he is hinting that we should. I am trying to make the point that the guidance is statutory and local authorities must have regard to it before they make a decision. They would have to be able to justify subsequently ignoring that guidance.

As I indicated, equal opportunities are complex matters for the Scottish Parliament to make provision for. I hope that the Parliament agrees with the comments that members of the Equal Opportunities Committee made earlier that the preparation of the bill has been exemplary from that point of view. On the basis of the Executive's amendment 32 on the issuing of guidance and the assurance that I have given the Parliament on using powers in relation to equal opportunities, I invite Kate Maclean to withdraw amendment 1.

Kate Maclean: I have found the amendment to which the minister referred. I am reassured by what he said about the guidance that the Scottish ministers would issue and about the fact that local authorities would have a duty to have regard to that guidance. I am prepared to withdraw amendment 1, but given that it is a committee amendment, any member of the committee who is not reassured by what the minister has said is entitled to ask to proceed with it. I obviously do not have time to discuss the matter with the committee, but I am quite happy to withdraw amendment 1 or for any member of the committee to pursue it.

The Deputy Presiding Officer: Does Kate Maclean have the Parliament's agreement to withdraw her amendment 1? Anybody who objects should say so now.

Tommy Sheridan: I object.

The Deputy Presiding Officer: In that case I will put the question. The question is, that amendment 1 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce JP (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)

Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (South of Scotland) (Con)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 27, Against 80, Abstentions 0.

Amendment 1 disagreed to.

Dr Sylvia Jackson (Stirling) (Lab): On a point of order, Presiding Officer. Are you able to confirm whether my console is working? I tried two other consoles and the light would not light up on either of them.

The Deputy Presiding Officer: I confirm that we are having some difficulty with sound and with voting. The system is being checked. I ask the Parliament to accept the vote on amendment 1. I do not want to rerun the vote, as we must reach the end of group 5 by 15:28. If members are willing to accept the vote, I will push on. In the meantime, we will continue to check the consoles. Is that agreed?

Members *indicated agreement*.

Section 10—Local authority contracts: relaxation of exclusion of non-commercial considerations

The Deputy Presiding Officer: We move to group 2. Amendment 5 is in a group on its own.

Peter Peacock: Section 10 provides that local authorities should be free to take certain work-force matters into account, to the extent that they affect the local authority's obligations, which include obligations under the Transfer of Undertakings (Protection of Employment) Regulations. Those regulations, which were made in 1981, have since been subject to occasional amendment. Therefore, it is not impossible that they will be updated some day—

Trish Godman (West Renfrewshire) (Lab): On a point of order, Presiding Officer. I am terribly sorry, but members sitting near me cannot hear anything. I am sitting right behind the minister and I cannot hear a word.

The Deputy Presiding Officer: Let me consult for a minute. [*Interruption.*] Members in other parts of the chamber have expressed similar views. With the Parliament's agreement, I propose to suspend the meeting for 10 minutes, so that we can sort out the consoles. Is that agreed?

Members *indicated agreement*.

15:11

Meeting suspended.

15:21

On resuming—

The Deputy Presiding Officer: Welcome back. There are still some problems with the microphones but we will do our best and press on.

I confirm that the result of the vote on amendment 1 was: For 27, Against 80, Abstentions 0. Amendment 1 therefore falls.

I propose to start again with group 2 of the amendments by calling amendment 5.

Peter Peacock: Section 10 will provide that local authorities should be free to take certain work-force matters into account to the extent that they affect the local authority's obligations. Those include obligations under the Transfer of Undertakings (Protection of Employment) Regulations 1981. Those regulations have been subject to occasional amendment since 1981 and it is not impossible that some day they will be updated to the extent that they are renamed. Amendment 5 simply seeks to ensure that should that ever occur, local authorities would continue to have discretion under section 10 to refer to the replacement regulations.

I move amendment 5.

Amendment 5 agreed to.

Amendment 2 not moved.

Section 11—Relaxation of restrictions on supply of goods and services etc by local authorities

The Deputy Presiding Officer: Amendment 6 is grouped with amendments 49, 50, 7, 56, 9 and 10.

Peter Peacock: These amendments are intended to clarify and tidy existing provisions. They will not alter the policy intentions of those provisions.

Amendment 6 seeks to amend the Local Authorities (Goods and Services) Act 1970—known as LAGSA—to remove the specific reference in that act to buildings maintenance. It follows from the insertion at stage 2 of new section 11A, which deals explicitly with local authority contracts for new-build construction and buildings maintenance. The reference in LAGSA is no longer needed or useful.

Amendments 9 and 10 are consequential to amendment 6. They would remove the definition given for buildings maintenance that is also made redundant.

Amendment 49 is intended to ensure that if local authorities benefit from dividend or profit-share income from a corporate body that is involved in relevant trading activities, that income should count as commercial services income of that authority where the statutory limits set by ministers in relation to such trading operations are concerned. Relevant trading activities are those which, if undertaken by the authority, would be counted towards the statutory limits.

Amendment 50 would insert definitions of "relevant dividend" and "relevant profit sharing agreement" to clarify the references in amendment 49.

Amendment 7 is a purely technical amendment to allow for the insertion of amendment 56.

Amendment 56 would amend section 1(2) of LAGSA so that local authorities are not bound to trade only with surplus capacity in goods or materials when that supply is conducive or incidental to an agreement to the supply of property or services, or where ministers have otherwise given consent for the surplus capacity restraint to be ignored.

I move amendment 6.

Amendment 6 agreed to.

The Deputy Presiding Officer: I intend to call amendments 49, 50, 7, 56, 9 and 10 en bloc. If any member disagrees, they should shout, "Object" now.

Amendments 49, 50, 7, 56, 9 and 10 moved—[Peter Peacock]—and agreed to.

Tommy Sheridan: For the record, Presiding Officer, I think that you asked Kate Maclean to move amendment 2. I understood that she had already moved amendments 1 and 2 when she spoke to group 1.

The Deputy Presiding Officer: The member moved amendment 1 only, Mr Sheridan, so that was perfectly within order.

Section 11A—Special provision for local authority contracts for construction of buildings or works

The Deputy Presiding Officer: Amendment 11 is in a group on its own.

Peter Peacock: Amendment 11 is a simple technical amendment. It seeks to insert a standard caveat into the power to issue regulations under section 11A, so as to ensure that when we introduce regulations, we have sufficient flexibility to be able to make different provisions for different local authorities or groups of authorities if, after consultation, that is considered to be appropriate. Amendment 11 is intended simply to clarify and

tidy an existing provision and does not in any way alter the clear policy intentions of that provision.

I move amendment 11.

Amendment 11 agreed to.

Section 15—Publication by local authorities of information about finance and performance

The Deputy Presiding Officer: Amendment 3 is in a group on its own.

Kate Maclean: Amendment 3 seeks to implement recommendation 9 of the Equal Opportunities Committee's stage 1 report on the Local Government in Scotland Bill. That recommendation says:

"The Committee recommend that local authorities conduct equal pay audits in line with Executive Agencies and NDPBs."

The Equal Opportunities Committee was aware of the commitment by the Scottish Executive to extend equal opportunities to all local authority functions carried out under the best-value regime and to work under community planning. We also noted that all Scottish non-departmental public bodies and executive agencies have been requested to conduct an equal pay review by April 2003. In the light of that, the Equal Opportunities Committee felt that the absence from the local government sector—which is a major employer in Scotland—of a requirement to complete an equal pay audit was a serious issue.

In the 30 years or so since the Equal Pay Act 1970, we still find ourselves in a position in which there is an average 18 per cent disparity between men's and women's pay. That act is not working, and we feel that such an audit in a major area of employment in Scotland would be useful.

I move amendment 3 on behalf of the Equal Opportunities Committee.

Tommy Sheridan: I support amendment 3, which was lodged by Kate Maclean on behalf of the Equal Opportunities Committee. I hope that the entire chamber will agree that equal pay is about equal rights. For far too long, legislation has been in place that has not delivered equal pay. The problem is that we sometimes do not even know the extent of the problem. Equal pay audits and reviews are necessary because once we know the extent of the problem, we can do something about it.

We have to know about the problem within local government, because action has to be taken so that equal pay becomes a fact of life for workers. Rather than leaving equal pay as just an idea, a phrase and an aspiration, we should be turning it into reality. I hope that amendment 3 is non-controversial. It was unanimously supported by the Equal Opportunities Committee and I hope that the Parliament will support it.

15:30

Peter Peacock: Amendment 3 is another that is similar to an amendment that we considered carefully at stage 2, and our basic view of the issue has not changed. The majority of the Local Government Committee supported the position that the Executive set out at stage 2. I repeat that the Executive is keen to advance the cause of equalities wherever feasible and that Kate Maclean's Equal Opportunities Committee has been supportive of what the bill does to that end.

As Kate Maclean said, the Equal Pay Act 1970 gives employees the right to equal pay and local authorities are bound by it. One way to check that employees have equal pay for jobs of equal value is to undertake an equal pay review, but that is not the only way. Councils can undertake an equal pay audit—Tommy Sheridan used the terms "pay audit" and "pay review" interchangeably, although the amendment refers only to a pay review—or a pay comparability study. A local authority might choose to deal with the whole authority at one time, to deal with the matter departmentally or to approach it in another way.

The Executive has no hesitation in recommending equal pay reviews as good practice, but amendment 3 would constrain other approaches that local authorities might wish to take to achieve the same outcomes. As Kate Maclean said, we all know that there is still inequality in pay between men and women. We all want to work towards eradicating the pay gap between men's and women's earnings.

Much of the bill is about trusting local government more to do the right things by local communities, within a clear framework. Amendment 3 is out of keeping with the thrust of that approach, because it would place a specific instruction in the bill, despite the general principle that it is local authorities' responsibility to determine how they meet their statutory obligations. Employers are under no statutory requirement to undertake equal pay reviews as a means of meeting their statutory equal opportunity obligations. I have already proposed that we should promote equal pay reviews explicitly in our guidance to support best value. I also gave the commitment, which I repeat, to work with the Convention of Scottish Local Authorities and the Equal Opportunities Commission in developing that guidance. As I said I would at stage 2, I raised the issue briefly with COSLA before Christmas and I was reassured that it is similarly happy to work with us on providing supportive guidance.

On the basis of the assurance that I just gave to advance matters flexibly through guidance, I ask Kate Maclean to withdraw the amendment.

Kate Maclean: Given the minister's assurances, which he also gave to the Local Government Committee at stage 2, I am prepared to withdraw amendment 3, but obviously, any member of the Equal Opportunities Committee could pursue it.

The Deputy Presiding Officer: Does Kate Maclean have the Parliament's agreement to withdraw amendment 3?

Members: No.

The Deputy Presiding Officer: The question is, that amendment 3 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Mrs Margaret (Edinburgh West) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
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Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
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Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
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Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
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Maclean, Kate (Dundee West) (Lab)
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Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Ben (North-East Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Young, John (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 27, Against 81, Abstentions 0.

Amendment 3 disagreed to.

Section 16—Community planning

The Deputy Presiding Officer: Tricia Marwick indicated that she wanted to raise a point of order about the problems that we are having with the consoles. We continue to have problems with them, but I intend to press on.

We move to group 6, which concerns community planning and young persons. Amendment 57 is grouped with amendment 58.

Tricia Marwick (Mid Scotland and Fife) (SNP): I was asked to lodge amendments 57 and 58 by an organisation called YouthLink Scotland. The amendments seek to ensure that local authorities consult young people and youth bodies when fulfilling their duties under section 16 to "initiate … maintain and facilitate" community planning.

The bill fails to recognise the significant contribution that young people and youth work bodies can make to the community planning process. Young people are the current and future users of the local authority services that are to be planned and provided through the community planning process.

In addition, youth work bodies play a significant role in promoting the interests of young people. Amendment 57 reflects the role of young people and youth work bodies by requiring local authorities to consult and co-operate with them as an integral part of the community planning process.

Amendment 57 is important because the definition of community bodies that is contained in section 16(4) does not naturally embrace young people. I understand that, in a reply to YouthLink earlier this year, the minister took the view that a reference to youth organisations should not be included in the bill and that such references would be best dealt with by guidance.

If the minister makes an explicit commitment that youth organisations will be referred to in guidance, as well as an undertaking to refer specifically to the need for local authorities to consult young people and youth groups, those organisations will be satisfied. If he does that, I will not press amendments 57 and 58.

I move amendment 57.

Donald Gorrie (Central Scotland) (LD): It is important not only that the minister gives an assurance that guidance will be given to empower local authorities to consult people but that he insists that authorities consult all sorts of bodies.

I accept the legalistic argument, which always annoys me but seems to be the case, that to mention youth somehow excludes elderly people, disabled people or some other group. However, if that is a legally correct argument, I will go along with Tricia Marwick. It is important that the minister gives an absolute guarantee that young people, who are often ignored—if they are under 18, they are not regarded as real people—and the organisations that represent them are thoroughly consulted. The local authorities must consult them. If the minister can give the chamber that assurance, I am happy.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I voice my support for amendment 57. A great deal of concern exists in Scotland about apathy and lack of participation in politics. We may not need the provision to be included in the bill, but the minister could give the chamber an assurance that the matter will be covered in guidance. Members of the Scottish Parliament should be doing all that we can to ensure that youth organisations are brought into consultation processes so that more and more young people become involved in the political and democratic process. We must also assure young people that they have a role to play and that they can take part in the process.

Iain Smith (North-East Fife) (LD): It is right that the issue should be highlighted at this stage. It is important that young people are considered in the community planning process. The Local Government Committee considered the issue as part of the renewing local democracy inquiry that we have been undertaking over the past few months.

I am concerned about the principle of whether individual groups of people should be included in the bill. The Local Government Committee considered the issue as part of our stage 1 inquiry into the bill. The committee came to the conclusion that it was better not to name specific groups, including community councils, in the bill. That was because it is difficult to know when to stop once such an attempt at listing is begun. Donald Gorrie referred to elderly people and physically handicapped people; he could also have mentioned people with mental health problems or, for that matter, three-legged sheep. Where do we draw the line when we start to list those who should be consulted in the community planning process?

It is much better to include such matters in guidance, as guidance does not have to provide an exhaustive list—it merely states those who should be consulted and does not exclude those who are not included from being consulted. The bill could state that only those who are mentioned in the bill should be consulted. I hope that the minister will give an assurance that young persons and youth work bodies will be specifically included in guidance. If he were to do that, I would be grateful if Tricia Marwick would withdraw her amendment—that would be the right way forward.

Peter Peacock: We agree with the spirit of amendment 57. Young people and youth work bodies already make a valuable contribution to the planning and provision of services and their involvement in youth fora and their active citizenship should be an integral part of the community planning process in the future. Indeed, there are many examples from throughout Scotland in which young people are being actively encouraged to participate in local decision-making processes in ways that we have never previously seen. We expect that engagement to be enhanced in the future.

To that end, I give an explicit assurance that young people and youth work bodies will be specifically mentioned in guidance associated with the bill in the way that Tricia Marwick, Donald Gorrie and Iain Smith request. That will complement our community learning and development guidance that is currently in draft, which specifically addresses young people as a key target. We do not believe that there is a justification for specifically mentioning them in the bill, which amendment 57 suggests. That is backed up by consultation with the community planning task force.

Community planning is a broad, overarching process and to begin to list the many specific community interests would be unworkable. At worst, it could lead to the problem of an exclusive list, which Donald Gorrie described, whereby interests that are not mentioned are excluded from the consultative processes that are set up by local authorities to ensure wide participation in community planning. Indeed, given the stage to which the bill has progressed, if we were to agree today that young people should be mentioned in the bill, but not older people, disabled people or environmentalists and so on, that could give the impression that Parliament thought that their interests and those of many others were less important than those of young people. That is clearly not our intention. We believe that it is proper and correct to use the guidance that the bill provides for to expand on key interests and key bodies. The committee accepted that approach during the passage of the bill.

I reiterate that explicit reference to young people and youth work bodies will be included in guidance and I understand that YouthLink Scotland would regard that as significant progress in its interests. In light of my assurances, I trust that Tricia Marwick will withdraw amendment 57 and not move amendment 58.

Tricia Marwick: I thank the minister for his helpful reply. I am satisfied that there will be explicit and specific reference to young people in the guidance and I am sure that that will go a long way towards ensuring that the concerns of the young people of Scotland, the organisations with which they are involved and those who represent young people will be taken seriously in the community planning process in the future. Therefore, I will not press amendments 57 and 58.

Amendment 57, by agreement, withdrawn.

Amendment 58 not moved.

Section 18—Reports and information

The Deputy Presiding Officer: Amendment 12 is grouped with amendment 13.

Peter Peacock: Amendments 12 and 13 reflect our further thinking about the drafting of section 18, which relates to reporting on community planning. The bill as it is drafted would require a report on what had been done by way of community planning to include information about improvement that is attributable to community planning. The section as it is drafted might pose difficulties in relation to the requirement to attribute improvement to community planning.

The word "attributable" has particular connotations in audit circles that differ from the connotations of the ordinary use of the word. On reflection, therefore, we considered that the requirement to attribute improvement to community planning was an unnecessary complication that could inhibit the reporting of outcomes.

Amendments 12 and 13 continue to emphasise improvement in outcomes, which is what matters to service users, and will make the reporting processes clearer to those who will need to work with them.

I move amendment 12.

Amendment 12 agreed to.

Amendment 13 moved—[Peter Peacock]—and agreed to.

Section 19A—Establishment of corporate bodies to co-ordinate and further community planning etc

The Deputy Presiding Officer: Amendment 14 is grouped with amendments 18, 30, 33, 34 and 37 to 39.

15:45

Peter Peacock: These amendments are concerned with clarifying parliamentary procedures for various sections of the bill and respond principally to comments made by the Subordinate Legislation Committee, which considered the bill.

Amendment 14 concerns the provision that would allow community planning partnerships to

become bodies corporate. The amendment introduces an affirmative resolution procedure for the order-making power, which is in line with the view of the Local Government Committee on the matter.

Amendment 18 is an entirely technical amendment. The Subordinate Legislation Committee was of the view that the order-making powers available to the Scottish ministers under section 25A, to extend or further extend the life of the proposed rate relief scheme, should be subject to affirmative resolution procedures. The new order-making powers will be to extend a time period set out in primary legislation. The Executive is content to accept the view of the Subordinate Legislation Committee, hence the need for amendment 18.

Amendment 30 is a technical amendment. It provides for the negative resolution procedure to be applied to any further statutory instrument should there be a need to extend the one-year period of suspension, as outlined in section 29. The amendment will ensure the smooth implementation of the job-sizing exercise in the unlikely event of delays to the timetable required as part of the teachers' recent settlement. The amendment makes sensible provisions for an event that we nonetheless hope and believe will not occur.

Amendments 33 and 34 are also technical. The section in the bill that deals with local authorities' power to invest money, which was added at stage 2, includes a power to amend, disapply or repeal by order any enactment that relates to the issue. The Subordinate Legislation Committee was concerned to ensure that the levels of parliamentary scrutiny were commensurate with such a power, especially when used to amend primary legislation. It was felt that the affirmative resolution procedure would be more appropriate and we are happy to accept that, hence the amendments.

Amendments 37 to 39 have also been lodged in response to comments from the Subordinate Legislation Committee. The Scottish ministers' power to repeal or suspend section 30C is removed in favour of the power to suspend the effect of subsection (1) only—that is, the duty placed on local authorities to make grants. That ensures that only a specific subsection of the section may be suspended or repealed by regulations and that any such suspension or repeal will be subject to approval by the Scottish Parliament, by affirmative procedure.

I move amendment 14.

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): I speak as the deputy convener of the Subordinate Legislation Committee. I am not sure whether I am technically allowed to speak on this particular point.

The Subordinate Legislation Committee considered at its previous two meetings the provision at section 25H for imposition of capital expenditure limits. The provision gives Scottish ministers substantial power to set by order the maximum amounts that local authorities allocate to capital expenditure. As the bill is drafted, ministers may make such orders administratively rather than by statutory instrument subject to parliamentary procedure.

Margo MacDonald, the convener of the Subordinate Legislation Committee, who is unable to be in the chamber, asked me to say that the committee asked the Executive whether it would be appropriate for an order that would apply generally to all councils to be dealt with in that way. The Executive replied that it does not envisage that the section would be relied on other than in exceptional circumstances, when the need was pressing, and that it had provided instead for a report to be made to the Parliament after the event. Two views were expressed in the committee. The first was that in such exceptional circumstances the exercise of ministerial power would in any case be likely to be controversial, so it should be considered by the Parliament in the form of a negative or an affirmative instrument. Other members of the committee felt that the use of the power would be bound to be so controversial and high profile that the court of public opinion would provide sufficient safeguard.

Margo MacDonald asked me to bring the matter to the attention of the Parliament, in order that the issue of parliamentary scrutiny for this sort of imposition would be considered when members were considering the overall provisions of the bill.

Peter Peacock: I hear the point that Ian Jenkins has made. I was aware that he was going to make it—I was, thankfully, given notice of that.

As I indicated in my comments on the group of amendments, we tried to respond positively to the Subordinate Legislation Committee wherever we could. We have brought in a reporting procedure in relation to the powers to which Ian Jenkins referred. It is not quite the reporting procedure that the Subordinate Legislation Committee has suggested, but it is nonetheless an indication that we are trying to move in the direction in which it was seeking us to move and in the direction that members of the Local Government Committee sought us to move. I hope that that reassures Ian Jenkins that we are taking those matters seriously.

Amendment 14 agreed to.

Section 23—Limits on power under section 21

The Deputy Presiding Officer: We move to group 9, on complying with codes and guidance.

Peter Peacock: At stage 2, we introduced measures into the bill relating to local authority involvement with corporate bodies, such as companies. Those measures were intended to ensure that such involvement falls full square within the accountability framework for local government without interfering unduly in such companies' own affairs or the statutory framework within which they operate.

We want to extend the grounds on which we would expect local authorities to follow relevant codes of practice in their involvement with corporate bodies. We have in mind the Accounts Commission's and COSLA's "Code of Guidance on Funding External Bodies and Following the Public Pound". At stage 2, we provided for that in relation to involvement that is justified by the power to advance well-being, but local authorities can involve themselves with corporate bodies using powers other than that one. We see no reason why the requirement to follow the relevant codes of practice should be limited to the power to advance well-being. Amendments 15 and 31 ensure that whatever the statutory basis for doing so, any involvement with a corporate body will be governed by the appropriate codes of practice.

Amendment 32 is intended to ensure that the Scottish ministers can issue advice to local authorities on good practice in the negotiation of contracts with other service providers. I referred to that earlier in the debate with Kate Maclean. We also have in mind issuing guidance on the handling of work force issues, including the treatment of the work force and of new recruits throughout the life of the contract. That issue is sometimes called the two-tier work force issue. Local authorities will be obliged to have regard to such guidance and must expect to defend publicly any decision to ignore it.

A significant reason for lodging amendment 32 is the successful outcome of the negotiations on the protocol to end the two-tier work force in all future public-private partnership projects in Scotland, which was announced on 11 November. Discussions with the unions on that front had been undertaken on the grounds that, if they were successful, we were prepared to consider whether there was more we could do to extend good practice across the full range of contracts that local government enters into. Amendment 32 should help us to deliver on that understanding.

I move amendment 15.

Amendment 15 agreed to.

The Deputy Presiding Officer: Group 10 deals with local authority charges.

Peter Peacock: We have become concerned that the wording of the bill leaves room for misinterpretation of our intentions. The bill as drafted does not make it clear enough that fire authorities may not charge for fire intervention, which means putting out fires. Since stage 2, we have considered the drafting of section 23 carefully and have concluded that the wording "in case of fire" might be misinterpreted to imply fire prevention activities and not firefighting when fire occurs. That is not our intention and to remove any doubt we believe that it would be better expressed as "when fire occurs".

I move amendment 16.

Amendment 16 agreed to.

Section 7—Enforcement directions

The Deputy Presiding Officer: Group 11 is on enforcement directions.

Peter Peacock: Amendment 17 is a result of further consideration in our efforts to ensure consistency and accuracy throughout the bill. We made it clear at stage 2 that we intended to ensure that an enforcement direction issued by the Scottish ministers under section 7 might be a direction that is intended to remedy a failure to comply not only with the duties in section 1, which relates to best value, but with those in section 15, which is on reporting on performance, section 16, which is on community planning and section 18, which is on reporting on community planning.

Although section 6 was amended to that effect at stage 2, a corresponding amendment to section 7 was omitted. Amendment 17 rectifies the matter.

I move amendment 17.

Amendment 17 agreed to.

Section 23A—Scrutiny of local authorities, police and fire functions

The Deputy Presiding Officer: Group 12 deals with scrutiny of local authorities' police and fire functions. Amendment 51 is grouped with amendments 52 and 53.

Peter Peacock: Amendments 51 and 52 are purely technical amendments and have the effect of applying section 23A to joint police and joint fire boards as well as to unitary police and fire authorities. The amendments bring joint police and joint fire boards fully into line with unitary authorities.

Amendment 53 extends the scrutiny of both unitary and joint boards to cover their use of the power to advance well-being.

I move amendment 51.

Amendment 51 agreed to.

Amendments 52 and 53 moved—[Peter Peacock]—and agreed to.

Section 25A—Rate relief on former agricultural premises etc

Amendment 18 moved—[Peter Peacock]—and agreed to.

After section 25E

The Deputy Presiding Officer: Amendment 54 is grouped on its own.

Peter Peacock: In November, I announced that the Scottish Executive had published a consultation paper seeking views on the removal or reduction of the current 50 per cent discount on council tax for second and long-term empty homes. The Scottish Executive agreed to consult on the issue as part of its response to the Local Government Committee's report on its inquiry into local government finance. The specific recommendation was that

"in the interests of equity, the full Council Tax should be levied on second homes."

The consultation is on-going and will end on 20 February.

As I have said previously, I am sympathetic to the case for change in such circumstances. Second homes can have a significant impact—both good and bad—on the nature and sustainability of local communities. The arguments for and against change will all be explored in the on-going consultation process. I want to ensure that careful consideration is given to all views before a final decision is made on changes to the existing arrangements.

However, any change will require primary legislation. The provision of the regulation-making powers in amendment 54 will allow the Scottish Executive to introduce any changes at the earliest opportunity. It will mean that if we decide to change the discounts with respect to empty dwellings, we will not have to wait for the next suitable legislative vehicle. Let me be clear: the acceptance of amendment 54 does not commit the Executive to any particular course of action or to any action at all. It does not pre-empt or prejudice the outcome of the consultation exercise. The regulation-making powers are deliberately flexible and will allow for a number of outcomes. The powers will simply not be used if it is decided not to change the discounts with respect to empty dwellings. Scottish ministers are required to consult before making any regulations using the powers introduced by the amendment, and all such regulations will be subject to affirmative procedures. The amendment simply provides for future change if that is the recommendation of the consultation, and it seems a sensible measure to take in the bill.

I move amendment 54.

Iain Smith: Far be it from me to welcome additional work for the Local Government Committee. However, I certainly welcome the spirit in which the amendment is moved by the Executive, seeking to make provision to enable it to abolish the discount for second homes if the consultation comes out in favour of that. That is to be welcomed. For some time, the Liberal Democrats have been arguing that there should be no automatic discount for second homes, but that it should be a matter for local government to decide what is right in its area. That recommendation was made in the Local Government Committee's lengthy report on local government finance, and it is to be welcomed if something of that lengthy report is to be implemented.

Amendment 54 agreed to.

Mr John McAllion (Dundee East) (Lab): On a point of order. According to the timetable that we have adopted for this afternoon, various groups of amendments must be dealt with an hour and five minutes after proceedings began. When did the proceedings begin? There is some confusion. We did not start right away and there was a 10-minute suspension. If we have to deal with all the amendments by two hours after the proceedings began, at what time will that be?

The Deputy Presiding Officer: The proceedings started after all the points of order, and we have taken into account about 14 minutes for the suspension when the sound system failed. That has pushed the deadline back, and I am informed that it will be approximately 5.30, according to our latest count.

Section 25F—Integrated waste management plans

The Deputy Presiding Officer: We move to group 14, on the modification of waste management plans. Amendment 19 is grouped on its own.

Peter Peacock: Amendment 19 is intended simply to tidy up a textual drafting error. The sentence to be omitted does not mean anything and its removal will have no effect on section 25F.

I move amendment 19.

Amendment 19 agreed to.

Section 25G—Capital expenditure limits

The Deputy Presiding Officer: We move to group 15, on capital expenditure regulations. Amendment 20 is grouped with amendments 21 and 27.

Peter Peacock: Amendments 20 and 21 are purely technical amendments that simply clarify

the capital expenditure provisions that we introduced at stage 2. They are intended specifically to ensure that the power for ministers to issue regulations on capital finance is flexible enough to cover all the issues that, after consultation, are considered appropriate. Discussions about specifics are likely to continue over the coming year.

Amendment 27 will ensure that there is full consultation on any capital expenditure regulations before they are issued.

I move amendment 20.

Amendment 20 agreed to.

Amendment 21 moved—[Peter Peacock]—and agreed to.

After section 25I

16:00

The Deputy Presiding Officer: We move to group 16, on the power to pay off loans. Amendment 22 is grouped with amendments 23, 24 and 26.

Peter Peacock: Amendments 23, 24 and 26 propose minor drafting changes as a consequence of amendment 22. The primary purpose of amendment 22 is to enable the Executive to fulfil its commitment to repay the housing debt of those councils that transfer their housing stock into community ownership. A similar amendment was disagreed by the Local Government Committee at stage 2 because the committee was concerned about a lack of accountability to Parliament and about the fact that the powers would be wider than simply dealing with debt associated with housing transfers. To some extent, Ian Jenkins covered those points in his earlier intervention.

To address the concerns about accountability, the reintroduced amendment contains a statutory requirement for ministers to provide a report to Parliament each time that payments are made under the powers. It is envisaged that the use of the powers will be restricted to the repayment of debt associated with housing transfers. However, it seems sensible to use this legislative opportunity to include a more general provision that would enable the repayment of other local authority debt should the need ever arise. I stress that we have no particular application in mind, but simply envisage that certain circumstances might arise in future for which it would be sensible to have the powers. There have been examples in which the proposed powers would have eased the administration of debt repayment, for example the movement some years ago of water services from council control to a new structure.

It is highly unlikely that the proposed powers would be exercised in any circumstances in which Parliament had not been involved in deciding on a significant policy change, such as stock transfer or the changes that took place in water services, and we do not regard the proposal as a vehicle for repaying debt of any kind other than capital debt as determined in the terms of amendment 22. As mentioned, to enable appropriate scrutiny, the Parliament will receive a report on any payments that are made under the proposed powers.

Amendment 22 is a revised amendment that tries to meet the Local Government Committee's concerns about a similar amendment at stage 2.

I move amendment 22.

Ms White: I thank the minister for his clarification, because I have asked numerous questions about amendment 22. The amendment does not mention stock transfer, but the minister has explained that he thinks that it is prudent to refer to general debt rather than just stock transfer debt. I am a little concerned that we might not know what the debt is, but the minister has confirmed that any payment will be brought to the attention of Parliament. Will the minister clarify whether that will be done by affirmative instrument, which would allow a parliamentary debate about any debt that the Executive might write off?

Peter Peacock: I dealt with that point, I think, when I dealt with Ian Jenkins's points earlier. The committee asked us to provide an opportunity for scrutiny in the event that we ever use the proposed powers. We have chosen to use a mechanism that is proposed elsewhere in the bill, which is that ministers will provide a report to the Parliament that will afford an opportunity for scrutiny. Parliament will then decide how to deal with the report. The affirmative procedure will not be used in the way that Sandra White suggests. There will simply be a report on the fact that we have used the proposed powers. Ministers' reasons for using the powers will then be able to be scrutinised in the usual way.

Amendment 22 agreed to.

Section 25J—Provisions supplementary to sections 25G to 25I

Amendments 23 and 24 moved—[Peter Peacock]—and agreed to.

The Deputy Presiding Officer: I return to the point raised by Mr McAllion and Mr Sheridan. We are making good speed and if we continue to do so, we will have about half an hour for group 22.

We now move to group 17, on definitions. Amendment 25 is grouped with amendments 29, 44, 45, 46, 60 and 61.

Peter Peacock: The amendments are simple, straightforward technical amendments that

propose wording changes that are necessary for the definition of local authority for various sections of the bill.

I move amendment 25.

Amendment 25 agreed to.

Amendments 26 and 27 moved—[Peter Peacock]—and agreed to.

Before section 26

The Deputy Presiding Officer: Amendment 28 is grouped with amendment 62.

Peter Peacock: Amendment 28 is designed to ensure that councillors who have been given paid time off by their employers to allow them to undertake council duties will not have to declare the value of any salary paid to them in respect of the time taken for those duties as if it were a political donation for the purposes of schedule 7 to the Political Parties, Elections and Referendums Act 2000. The amendment ensures that the provision applies retrospectively.

The Political Parties, Elections and Referendums Act 2000 was never intended to apply to the receipt by a councillor of paid time off for carrying out his or her duty as a councillor. However it is considered that the act as currently drafted does have that effect, which is why we have lodged amendment 28. Its effect is retrospective to ensure that any paid time off which may have been granted to councillors since the 2000 act came into force on 16 February 2001 will no longer be considered as a political donation. The provision will relieve employers and employees of any reporting requirements which have arisen in respect of paid time off for council duties. It will require the Electoral Commission to remove any references to any such donations that have been entered in its register maintained under schedule 7 to the act. The provision will also confirm that any failure to comply with the requirements of schedule 7 in relation to payments of salary before the enactment of the amendment does not constitute an offence.

The provisions of the amendment reflect provisions introduced for the same purpose in the Local Government Bill that was introduced at Westminster on 25 November.

Amendment 62 is a technical amendment that ensures that subsections (1) and (2) of the proposed new section come into force on royal assent.

I move amendment 28.

The Deputy Presiding Officer: The computer informs me that Jamie McGrigor has indicated that he wishes to speak, but I see that Keith Harding has risen.

Mr Keith Harding (Mid Scotland and Fife) (Con): I used my own card, not Mr McGrigor's, so I do not know what the problem can be.

The Deputy Presiding Officer: In that case, you can be Jamie McGrigor for the moment.

Mr Harding: But I know absolutely nothing about nephrops.

We are not against amendment 28 in principle, but we have some concerns. In the climate of openness and transparency, the move seems to be a retrograde one and we wonder what public scrutiny there will be of what amounts to a political donation. Will it appear in any register of interests?

On a connected point, will the minister clarify the situation regarding those of us whose staff will be given paid leave during the forthcoming elections? Will they fall into the same category?

Iain Smith: I had not intended to speak on this amendment as it seemed to be a straightforward issue of correcting an error in the law, but I will speak as it has been challenged.

The amendment simply attempts to get the law back to what it should be. We want to encourage employers to give paid time off to employees who are public representatives. The act was not intended to result in a situation in which, if an employer gives Tavish Scott time off to be a councillor in Shetland Islands Council, they will have to declare that as a donation to the Liberal Democrats, irrespective of whether the employer supports the Liberal Democrats. That would be nonsense. The amendment will correct an error that was made by the Electoral Commission, which might be getting a bit more power than it needs.

Peter Peacock: I agree with the point that Iain Smith has just made.

I will not enter into the realms of what happens to parliamentary staff during the election—life is hard enough without trying to interpret those rules. The amendment is simply designed to rectify an unintended consequence of a piece of legislation. It was never intended that employers and employees would have to declare the value of their time off while attending council meetings as if it were a political donation. We want to ensure that no one falls foul of the law because of an unintended interpretation of it.

On the point about a register of interests, I would have thought that it was normal practice for any elected representative who is in employment to declare that in the register of interests. The guidance that is generally given is that it is far better to declare more rather than less. It would be open to members to declare the value of time off work if they chose to do so.

Amendment 28 agreed to.

Section 27A—Power to provide funds for speed cameras etc

Amendment 29 moved—[Peter Peacock]—and agreed to.

Section 29—Suspension of requirement to advertise principal teacher posts

Amendment 30 moved—[Peter Peacock]—and agreed to.

After section 29

Amendments 31 and 32 moved—[Peter Peacock]—and agreed to.

Section 30B—Power of local authorities to invest money

Amendments 33 and 34 moved—[Peter Peacock]—and agreed to.

The Deputy Presiding Officer: Amendment 35 is grouped with amendments 41 to 43.

Peter Peacock: Amendments 35 and 41 to 43 are purely technical and act simply to reorder sections of the bill to improve their flow.

I move amendment 35.

Amendment 35 agreed to.

Section 30C—Power to provide funds for private water supplies

The Deputy Presiding Officer: Amendment 36 is grouped with amendments 4 and 40.

Peter Peacock: Amendment 36 simply amends the definition of private water supply. We have considered the definition carefully and, on reflection, think it appropriate to give the wider definition that is now provided. The breadth of the general definition will ensure that a grant can be paid in respect of those water supplies that we consider should qualify for an improvement grant under the proposed scheme. Our consideration will take account of a consultation exercise that is to be undertaken in relation to new private water supplies grant regulations.

We believe that it is appropriate to introduce amendment 40 to ensure that we pay for expenditure that is "reasonably incurred" by local authorities. Amendments 36 and 40 signal not only the Executive's commitment to drinking-water issues but its recognition of the expenditure that will be required by local authorities administering the grant scheme.

The Executive also supports amendment 4, lodged by Tricia Marwick. During stage 2, the Executive gave a commitment to consider how local authority expenditure relating to the grant scheme could best be provided. We accepted that the most appropriate legislative mechanism to provide funding would be to place a duty on the Scottish ministers to pay grants to local authorities in respect of expenditure reasonably incurred on the grant scheme. As that is the purpose of amendment 4, the Executive supports it.

I move amendment 36.

Tricia Marwick: I am grateful to the Executive for supporting amendment 4. As Peter Peacock said, I lodged a similar amendment at stage 2, because it seemed to me that it is a matter of principle that, where the Government of the day places a duty on local authorities, that duty should be followed by a requirement that the Government provide the money for the duty to be carried out. That is right and proper.

Amendment 4 is a simple matter of changing "may" to "shall" in section 30C(6). I acknowledge the Executive's willingness to listen on amendment 4 and hope that, when we come to later amendments, it will show the same willingness.

Amendment 36 agreed to.

Amendments 37 to 39 moved—[Peter Peacock]—and agreed to.

Amendment 4 moved—[Tricia Marwick]—and agreed to.

Amendments 40 and 41 moved—[Peter Peacock]—and agreed to.

Section 30D—Establishment of further local authority funds other than general fund: setting of council tax

Amendment 42 moved—[Peter Peacock]—and agreed to.

Section 30E—Power to charge for vacant places on school buses etc

Amendment 43 moved—[Peter Peacock]—and agreed to.

After section 31

16:15

The Deputy Presiding Officer: Amendment 55 is in a group on its own.

Peter Peacock: Amendment 55 provides a power to make orders containing such ancillary provision as is necessary for the purposes of the bill. It is essentially a technical amendment, which will allow us to respond to any further issues related to the effects of the bill where subordinate legislation would be an appropriate way to deal with those issues. That is a sensible measure in

view of the number of miscellaneous items concerned, and it will give added flexibility to deal with any unexpected effects of the bill.

The amendment follows similar provisions that have been made in a number of other acts of the Scottish Parliament, and so follows precedent. Any proposal at any time to make changes to primary legislation will, of course, be subject to the affirmative procedure in the Parliament.

I move amendment 55.

Amendment 55 agreed to.

Section 33—Repeals and consequential amendments

The Deputy Presiding Officer: We now come to the final group, which is on repeals. Amendment 59 is in a group on its own.

Peter Peacock: The purpose of amendment 59 is to remove outdated requirements under the Fire Services Act 1947. The change for the fire service will be broadly in line with the similar provisions that were made for the police some time ago and it will bring the fire service broadly into line with other local services that are dealt with at a local level. In particular, the amendment will remove provisions for the fire authorities to have to seek and get ministerial consent for what are now regarded as operational matters that are properly under the direct control of chief fire officers and their locally accountable fire boards. Those provisions relate to any decisions to close a fire station or to reduce staff or equipment.

The amendment will ensure that chief officers can deploy their resources efficiently without any of the constraints that are currently exercised by ministers. It will effectively remove detailed control by ministers over establishment levels, as such control is archaic. Fire authorities will still be expected to consult local communities on any changes to local provision. We will use powers to issue guidance to formalise best practice in such matters, ensuring full local consultation on any such moves on the part of fire boards. Fire boards and councils will be obliged to have regard to the guidance that we would issue, which will help to increase local democratic accountability in these matters.

The amendment will ensure that the deployment of resources is a matter for local management. The Executive consulted on the issues that the amendment covers last summer in our policy paper "The Scottish Fire Service of The Future". That paper was fully debated by Parliament in May 2002. We highlighted the existing very prescriptive and long-standing standards of fire cover and we recommended changes to the Fire Services Act 1947 to provide for a more flexible framework for fire authorities and fire brigades.

The policy intention behind the amendment is supported by the Chief and Assistant Chief Fire Officers Association. The amendment is also consistent with the principles of delegated responsibility and effective management, which are at the heart of the independent review into the reform of the fire service as set out in Professor Bain's recent report.

The amendment follows from the First Minister's announcement in the Parliament on 19 December that, in line with the Bain report's recommendations, an early legislative opportunity would be sought to repeal section 19 of the 1947 act. That question was raised by Tricia Marwick earlier.

Alasdair Morgan (Galloway and Upper Nithsdale) (SNP): Will the minister enlighten us on how far Executive thinking goes on the matter? The Executive has an analogous power in relation to the closure of schools, notably rural schools that are some distance from the nearest school and Roman Catholic schools—in those cases, the closure of a school requires the approval of ministers. Is the principle that we are discussing now not entirely similar? What does the minister think about the potential closure of rural fire stations that are located some considerable distance away from other rural fire stations? In such cases, should not ministers have precisely the same powers as they have in relation to schools?

Peter Peacock: The essence of what we are trying to achieve through amendment 59 is a further delegation of power and responsibility to a local level, which is consistent with the delegation of powers to the Parliament and with the rest of the bill, which seeks to free up local authorities in a variety of ways. As Alasdair Morgan knows, local authorities have full discretion at the local level to deal with questions of school provision, except in very limited circumstances.

As I was saying, we highlighted the existing, very prescriptive and long-standing standards of fire cover and we recommended changes to the 1947 act in order to provide for a more flexible framework for fire authorities and fire brigades. As I also said, the intention behind the amendment is supported by the Chief and Assistant Chief Fire Officers Association.

Tommy Sheridan: The minister makes great play of the fact that the amendment is supported by a range of organisations, including the Chief and Assistant Chief Fire Officers Association. However, why have the firemen and firewomen, who deliver the service on the ground, not been properly consulted on the proposed changes or on the amendment? Why are they so ferociously opposed to the repeal of the act in this fashion? No one denies that the act needs to be amended

or replaced, but the Executive is arguing for repeal. Why has the minister not negotiated the matter with the relevant trade union?

Peter Peacock: I am pleased to receive Tommy Sheridan's support for the proposed changes to the 1947 act. As I indicated, the matter was subject to consultation in the report "The Scottish Fire Service of The Future", which set out the issues. I know that the Scottish Socialist Party did not respond to that consultation.

Tommy Sheridan: The Fire Brigades Union did.

Peter Peacock: It did, but it did not raise concerns about the part of the report to which the amendment relates. The FBU focused on the question of public-private partnerships.

The amendment is consistent with the principles of delegated responsibility and effective management, which are at the heart of the report of the independent Bain review.

Fiona Hyslop (Lothians) (SNP): I took part in the debate on the report "The Scottish Fire Service of The Future", which referred to attempts to achieve capital returns from the use and sale of fire service property. Like many members, I objected to that at the time. However, the document did not mention repeal of section 19 of the Fire Services Act 1947. That is the issue that we are addressing at the moment.

Peter Peacock: Some scaremongering is taking place. Members are trying to suggest that the amendment is part of a centrally driven effort to reduce fire services. That is not the case. The amendment is consistent with the rest of the bill, which is about freeing up local authorities and fire boards to do what they believe is correct at a local level. That is consistent with the principles that the Executive has pursued.

As I indicated, the amendment follows up on the First Minister's announcement to the Parliament on 19 December that, in line with the Bain recommendations, we would seek an early legislative opportunity to repeal section 19. The amendment is consistent with provisions that are being introduced in England and Wales through the Local Government Bill.

Mr Lloyd Quinan (West of Scotland) (SNP): Given that the idea of repeal appears to have arisen after the publication of the Bain report, can the minister tell the chamber whether there is a reference to repeal of section 19 in the pathfinder report that the Executive has consistently suppressed?

Peter Peacock: I make it clear that we did not decide to proceed with repeal of section 19 until we saw that the Bain report confirmed the proposals on which the Executive had consulted and which had been debated in the Parliament. The matter was debated in relation to the Local Government Bill for England and Wales, which had its second reading at Westminster yesterday.

I know that members from all parties would like to make a number of points. I am happy to stop speaking now and to pick up other issues when I wind up in the debate.

I move amendment 59.

Mr Quinan: Will the minister answer the question that I asked?

The Deputy Presiding Officer: Order. There is plenty of time for debate. Under the timetabling motion—allowing time for the broadcasting time-out—we have until 17:04 for this debate. Speeches of four and a half to five minutes are permitted.

Tricia Marwick: Today, the minister has repeated the assertion that consultation on the repeal of section 19 of the Fire Services Act 1947 has taken place. The assertion is without any basis in truth.

I refer the minister to the consultation document "The Scottish Fire Service of The Future", which he has mentioned. I am prepared to give way to him if he can point me to a specific reference in that document to the repeal of section 19 of the Fire Services Act 1947. No such reference exists. Page 18 of the document contains a recommendation from the Executive that the 1947 act be amended. Paragraph 121 on page 40 states:

"In paragraph 13 the need for legislative change has been discussed. We would welcome specific or general suggestions about those areas which require reform or a new statutory basis."

Dr Sylvia Jackson: Will the member give way to me?

Tricia Marwick: I want to finish the point that I am making first. The assertion that the minister has made and that the First Minister made in the chamber on 19 December is not true. The consultation document contained no specific recommendation for the repeal of section 19. Indeed, the Executive was not even clear in its own mind what kind of legislative changes it wanted. That is why it was asking for specific or general recommendations from the people who were being consulted.

Despite the fact that there has been a consultation, the minister has yet to publish the consultation report, which means that no one in the chamber has read the findings of the consultation process.

It is a matter for the Parliament that the Bain report has not been made available to members. The minister advised us that copies would be

made available to us. On the day that we received the letter telling us that, I requested a copy from the Scottish Parliament information centre. I understand that only yesterday six hard copies were placed in SPICe. I was the seventh person to request a copy, so the report was not available to me, although I have a copy from the web. If that is the level of consultation that we are talking about, it is simply not good enough.

Dr Jackson: I ask the member to explain why she did not make an approach either to members of the Executive or to committee members when in response to her question on 19 December the First Minister said:

"Today I can confirm that, in line with one of the recommendations of the Bain report, we will be looking for an early legislative opportunity to repeal section 19 and related provisions in Scotland."

Tricia Marwick: In that reply, the First Minister also said:

"In our consultation paper, which we published earlier this year, we considered repealing section 19 of the Fire Services Act 1947".—[*Official Report*, 19 December 2002; c 16607.]

That was at best misleading the Parliament, because, as I and other members have explained, there was no specific reference whatever to this proposal to repeal section 19 of the 1947 act.

Amendment 59 is sleekit, it is underhand and it strikes at the heart of the democracy of this new Parliament. To slip in an amendment that will deny any scrutiny of the proposals is to legislate by diktat. The purpose of the amendment is to allow the closure of fire stations and a reduction in the number of firefighters and appliances. It will take away the right of communities to be consulted about those changes. I see the minister shaking his head when I suggest that the amendment will do that specifically.

I will quote the Bain report and the reasons that it gives for recommending the repeal of section 19 of the 1947 act. In case the minister still has any doubts, I will tell him that Bain said that the Government must repeal section 19 of the Fire Services Act 1947, because, under that provision, a fire authority in Great Britain may not close a fire station or reduce appliances or firefighter posts without consent. Bain said that that is not consistent with the delegation of responsibility and effective management, which is why he believes that the repeal of section 19 of the 1947 act is needed.

What the minister has been saying today is simply not true. The Executive has taken the most contentious of all the Bain recommendations and is now trying to bludgeon it through the Parliament without allowing for any scrutiny. Delicate negotiations are going on with the Fire Brigades Union and the employers to end the present dispute. This shabby sleight of hand will inflame that situation and the responsibility for that rests squarely with the Executive and the Government.

The consultation paper said that the most significant thing to happen to the fire service in Scotland was the establishment of the Scottish Parliament, because the Parliament has responsibility for all matters concerning the Scottish fire service. I wondered why the Executive was slipping in amendment 59, but it became clear last night that, because something similar was happening at Westminster, the Executive had been telt to lodge amendment 59.

I urge the minister to withdraw the amendment. If he insists on pressing it, I urge members of all parties to combine to defeat it, to allow the Parliament the time for scrutiny that the proposal deserves and to ensure that, when fire stations are closed in future, communities will have the right to be consulted.

16:30

Mr McAllion: It is perfectly legitimate for the Executive to propose a policy of repealing section 19 of the Fire Services Act 1947 and it is equally legitimate for members of the Parliament to be opposed to that policy. However, it is not legitimate for the Executive to seek to prevent the Parliament from exercising democratic scrutiny of the policy, which is what is happening this afternoon.

I am delighted that we will have more than the 15 minutes that the Executive originally scheduled for debating amendment 59. The Presiding Officer suggested an extra half an hour, so it looks as though we will have 45 minutes. That is better, but it is not much better. It remains the case that the Executive planners intended to allow just 15 minutes of debate to push through a highly controversial measure. No member of the Parliament can be happy at that prospect and no member should support such a move.

If the Executive has known since April that it intended to repeal section 19 of the 1947 act, why did not it lodge an amendment to that effect at stage 2? Why was the Local Government Committee not allowed to consider amendments to amendment 59 and why was evidence not taken on the proposal? If the Executive believes that the Parliament should be open, transparent and accessible, as we all claim that we want it to be, why did not it support Mike Russell's motion without notice, which would have allowed the Local Government Committee to consider what is a controversial issue and to seek the views of outside bodies on the Executive's proposal? That is the intention behind the Parliament's set-up.

It is a matter of huge regret that at Westminster the Government has indicated its intention to repeal section 19 of the 1947 act. However, the fact that it did so on second reading of a bill means that members of Parliament at Westminster will have the chance, at the committee stage, to table counter-amendments. At the report stage, they will have another chance to table amendments and to have proper debate. There will be proper parliamentary scrutiny, to the extent that Westminster is capable of carrying out scrutiny. We will look shabby by comparison. The Scottish Parliament should reject the Executive's proposal and have nothing to do with it.

As a socialist, I am always in favour of decentralisation. I believe that socialists should take power in order to give it away. However, the Executive's proposal is not such a measure. As other members have indicated, the Executive has kept powers to call in various issues—planning issues, issues associated with the closure of schools and land-sale issues, for example—even though local government has responsibility for those areas. The Executive says that the ability to appeal to ministers against local government thinking should be maintained in some areas.

Amendment 59 would allow chief fire officers to close down, or to merge, fire stations without an appeal to ministers. The minister says that he will introduce guidelines that will allow proper consultation. However, if the financial decision that forces police and fire boards to close fire stations has already been taken, it will still be possible to consult, but it will not be possible to listen to what people say, as the financial reality will be that the boards will not be able to afford to keep the stations open and will therefore close them anyway.

The power to close down, or to merge, fire stations is a central plank of the Bain recommendations. We are not simply debating local government powers. The issue goes to the heart of the present firefighters' dispute. It is about whether we have a fire service in this country that is safe, that meets the needs of the people and that is paid for through taxation, or whether we get a cut-price fire service that is easy on taxpayers but hard on the people whose lives are at risk in the evenings, when fire stations should be open and available to everyone.

In seeking to push through a highly controversial measure at the last minute, the Executive is in danger of throwing a bomb into a delicate and controversial dispute. The recommendations of the Bain committee seem almost to have been designed to be unacceptable to the firefighters. As they stand, they will never be accepted by the Fire Brigades Union. There is no possibility of a fair and just settlement that is acceptable to both sides if we go ahead with measures such as the proposal in amendment 59. If we agree to amendment 59, no one—particularly those on the side of the firefighters in their dispute—will trust the Executive again.

The new democracy that we seek to set up in this country cannot be tinkered with. If we begin to look shabby in comparison to Westminster, we will let down not only ourselves, but the Scottish people, who voted for the Parliament in a referendum and who put their faith in us. It is time that we responded to that faith by ensuring that we deal with matters democratically. We should deal with matters more democratically, not less democratically—as the Executive seeks to do by attempting to push through amendment 59—than Westminster does.

Mr Harding: In her intervention on Tricia Marwick, Sylvia Jackson pointed out that the First Minister stated on 19 December that the Executive was considering the repeal of section 19 of the Fire Services Act 1947. However, no one in the chamber expected that to happen through the Local Government in Scotland Bill with only 48 hours' notice.

We oppose amendment 59 not on its merits or otherwise but simply because we have been unable to take evidence on the proposal and to scrutinise it properly. Indeed, we are in danger of legislating on flawed policy. The key point is that we wish to consider the matter in the context of current circumstances. As a result, it is important that we speak to the various bodies involved, including councils, fire unions and firemasters. We oppose amendment 59 on that basis.

Tommy Sheridan: I hope that some back-bench Labour MSPs listened to that speech. The Tories have asked the Executive to be more considered about amendment 59, but not because they oppose it. In fact, I am sure that, after they listen to the evidence, they will support the amendment because it is about the right to manage, as the minister said.

Amendment 59 is about giving chief fire officers the ability to close and merge stations and to reduce staff without proper public scrutiny or appeal. As I said, I am sure that, after hearing various representations on the amendment, the Tories will be convinced and will support it, because ideologically they believe in such measures.

However, the Tories are opposing amendment 59 because of the Executive's completely underhand and devious methods. The Fire Brigades Union has referred to the amendment as a "ludicrous, backhanded manoeuvre". Furthermore, the chairman of the FBU in Scotland has said:

"I am stunned by the arrogance of the Scottish Executive … It is a scandal which beggars belief."

Members have mentioned the Executive's consultation document on the fire service in Scotland. On page 5, it says:

"The Executive recognises that as a third driver the key to strong quality local services remains a shared sense of direction amongst those who work within the fire service and those who are responsible for it".

Quite clearly, the chamber is faced with an amendment that has been sneaked in and will allow the closure of fire stations and a reduction in the number of fire service employees in the name of the right to manage. If the Executive has absolute confidence in amendment 59, it should subject it to proper scrutiny. If it thinks that the amendment is necessary, it should allow it to be re-examined in the proper place, which is the Local Government Committee. Members will then be able to hear evidence from representatives who oppose the provision.

Quite frankly, the deputy minister has misled Parliament today. Andy Kerr has also misled Parliament, because he has said several times that the Executive has consulted on the issue. However, when I asked where in the consultation document it says that section 19 of the Fire Services Act 1947 will be repealed, there was no answer. Mr Kerr later told us to look at a particular page that refers to the idea that the 1947 act needs to be amended. However, there is no mention of section 19. The FBU recognises that the 1947 act must be amended, because it is an old piece of legislation that needs to be updated. A risk-based fire service must be introduced. However, I repeat that the consultation document does not mention section 19.

The minister has misled Parliament and is about to show his utter contempt not just for the Parliament but for the FBU and the men and women who risk their lives daily to deliver our fire service. That is why I appeal to Parliament to reject amendment 59. If the amendment is to be reintroduced, let it be reintroduced properly and discussed, debated and scrutinised, not dealt with by a back-handed Executive manoeuvre.

Iain Smith: A great deal of artificial indignation has been expressed about amendment 59. We need to consider what amendment 59 is about, not what people want to pretend it is about. The amendment is about giving more powers to local government and local fire boards. Locally elected people would have the final decisions. The amendment is about taking powers away from Scottish ministers. If John McAllion and Tommy Sheridan are right and it is true that the amendment is about ministers wanting to close fire stations and make firemen redundant, where is the protection from ministers who have that power now? They will still be able to do that. It is absolute nonsense to say that that is what the amendment is about.

Amendment 59 is about moving the fire service on to the footing that the police service has been on for years. It used to be that Scottish ministers had the final say in the establishment of the police service. That did us very little good in Fife, where our police establishment was stuck at a low level for donkey's years because Tory ministers at the time refused to increase it. It is not in the interests of local government, fire services or police services that Scottish ministers should have the final say.

I ask the SNP members who they think should be responsible for the fire service. Do they think that it should be locally elected councils and fire boards? Do they think that Scottish ministers should be responsible for the fire service? If the SNP wants a national fire service, it should argue for that. Who is best placed to determine the best level of fire service cover in an area? Is it locally elected councillors and members of fire boards or is it Scottish ministers? To be frank, I would prefer to trust locally elected councillors to even the good words of Peter Peacock or Hugh Henry. Who is more accountable to the local community for decisions about fire services and whether a fire station should be kept open? Is it locally elected councillors or is it Hugh Henry and Peter Peacock working at the centre? Locally elected councillors are clearly more accountable; I support any system that gives more power to local government.

I believe in local government, local democracy and local accountability. Amendment 59 seeks to deliver more local government, local accountability and local democracy and I support it.

Michael Russell (South of Scotland) (SNP): It is clear that Iain Smith believes in the right of everyone to be consulted except the Scottish Parliament and the people who are involved in the issue. His was the most disgraceful speech today, apart from the minister's.

I do not want to use unparliamentary language, but the minister's response to Alasdair Morgan was not economical with the truth; it was contrary to the truth. Because he is a former Deputy Minister for Children and Education, he knows that there is a procedure through which school closures must in certain circumstances be referred outwith a local authority area. That was the answer he should have given to Alasdair Morgan, but he gave an answer that did not mention that, which was wrong of him.

It was equally wrong of the minister to lodge amendment 59 in the way that he did. There are two issues—timing and process. I concur with

what Tommy Sheridan and John McAllion said. The issue might well require to be attended to, but the moment to attend to it is not in the middle of sensitive negotiations. To do so—I concur with my friend Tricia Marwick—is a deliberately provocative action. No doubt the Scottish Executive was told to take such action, so it has taken it, but it is extremely foolish to take such action at this time and it is more foolish to take that action by breaking the established procedures of the Parliament. That was doubly wrong and it will be doubly felt in Scotland by the FBU.

In the normal legislative process of the Parliament, the FBU expects, and has the right, to be consulted on such a change. As convener of the Public Petitions Committee, Mr McAllion was already receiving approaches from the FBU for the Parliament to consider the matter. Mr Peacock can still take the step of referring amendment 59 back to the Local Government Committee and allowing those who are directly involved to be consulted, as the Parliament must do, according to its procedures.

All that the minister has to do at the end of the debate is agree that amendment 59 and the amendments that are consequential on it should go back to the Local Government Committee for consultation. We would then be able to hear from the FBU, from the fire officers, from local authorities and from those who are deeply concerned about their safety. We can hear from people like Iain Smith, who want power to be closer to the people. We can hear from those people properly by scrutinising the amendments, but the minister seeks to prevent that scrutiny. There has been a failure in respect of timing and there has been a failure of process.

16:45

To add insult to injury, the argument that was presented by the minister and parroted by Sylvia Jackson is, in a sense, that if someone does not notice sleight of hand, they deserve all that comes to them. That is an appalling way to treat the Parliament and it suggests that the job of ministers is to indulge in trickery so that the elected members of the Parliament do not notice what is going on. In such circumstances, ministers could get away with anything.

Thank goodness there is an election on 1 May because—[*Interruption.*] I see that Jamie Stone is waving—he is the epitome of a turkey voting for an early Christmas. The reality of the situation is that a Government that believes that it can not only survive but flourish as a result of trickery is a Government whose time has run out.

Cathy Peattie (Falkirk East) (Lab): I had not intended to speak in the debate, but I am embarrassed by amendment 59 and I ask the minister to consider withdrawing it. Firefighters and folk in communities fear that agreement to amendment 59 could lead to closure of fire services and, subsequently, to loss of jobs. Although I welcome the minister's commitment to ensuring that a requirement for full consultation will be in the guidance, I ask him to take that further in order to ensure that consultation involves stakeholders, people in communities and people who are really concerned about the decision on amendment 59.

Donald Gorrie: Amendment 59 contains a certain amount of sense. As Iain Smith said, measures to decentralise and give more local control are a good thing, and if the regulations insist on adequate consultation, that will be a step in the right direction. However, as other members have said, the way in which the measure has been introduced is absolutely unacceptable. If there was previously consultation, why was not the measure included in the bill, or at least in an amendment at stage 2?

There is no excuse for lodging such an amendment now, other than to parrot what is being done at Westminster. The Procedures Committee will have to consider carefully this business of parachuting in absolutely new measures at stage 3. It is totally unacceptable and subjects the Parliament to ridicule.

To be cynical about it, if someone has a really dodgy proposition, there is some excuse for trying to sneak it in when nobody will notice. However, if someone has a perfectly straightforward and—as I believe amendment 59 is—quite honourable proposition, they make the most awful blunder if they try to sneak it in in a way that people object strongly to. The debate is then all about the way in which that was done, rather than about the merits of a proposal that might be quite good. The lodging of amendment 59 is the most extraordinary blunder.

As a distinguished colleague in another party said to me a few minutes ago, the lodging of amendment 59 is the worst example of abuse of Executive power in the duration of this Parliament—that is not the way that the Government should carry on. I will not support governments or executives or whatever they like to call themselves that behave in that way. It is absolutely counter-democratic and counter to how most members believe we should do things.

Elaine Smith (Coatbridge and Chryston) (Lab): Like Cathy Peattie, I had not intended to contribute to this part of the proceedings, but having listened to the debate I wish to make a short speech.

The main issue is not whether the repeal of section 19 of the Fire Services Act 1947 is right or

wrong; the issue is the need to debate and scrutinise that repeal. I dispute one of Donald Gorrie's points: the issue is not parity with Westminster. I understand that Westminster yesterday held its second reading of the Local Government Bill, so the repeal was considered at that stage. At least the opportunity to debate the issue is available at Westminster.

From speaking to Labour members, I think that there is slight confusion. Will the minister clarify in his summing-up whether the Local Government Committee scrutinised the repeal of section 19 of the Fire Services Act 1947 at stage 2 or whether wider fire service and modernisation issues were discussed? If that committee did not scrutinise the repeal at stage 2, we must ask why not, given that the consultation document was published early last year.

Tricia Marwick: I assure the member that the Local Government Committee did not see the amendment at stage 1, at stage 2 or any other time. There has been no consultation. The first knowledge of the amendment was when it was published in the business bulletin on Monday.

Elaine Smith: I thank the member for that comment. I hope that that clarifies the situation for any Labour members who think that the repeal was scrutinised.

Just before the recess, we had a good members' business debate on the firefighters' dispute. During that debate, some members asked—rightly—that we be careful with language, actions and other matters, so that the negotiations were not adversely affected by anything that was said in the chamber. This last-minute amendment—amendment 59—does not help the process of reaching agreement in that dispute. Whether the repeal of section 19 is right or wrong is not the issue. In the middle of an industrial dispute, amendment 59 is, to say the least, inflammatory.

Alasdair Morgan: As Elaine Smith said, the matter is not whether the amendment is good or bad; rather, it is about the fact that the procedure that was used is shabby. We have an interesting precedent for consultation and we have a new meaning for consultation. In the future, it will apparently be fair to include in a consultation document reference to possible intentions to amend an act of Parliament. Thereafter, when a proposal is produced to amend any section of that act, it will be fair to say that that general reference to the act means that people have been consulted on that proposal.

We have been told that because the First Minister said that he would take an early legislative opportunity to introduce the proposal, we should have jumped up the day after he said that—on 20 December, would you believe—to make representations. However, nobody believed that the definition of an early legislative opportunity was the lodging of an amendment two days before stage 3 of a bill that does not refer to the subject.

John McAllion was right to mention all the people at Westminster and all the opportunities that exist there to scrutinise the equivalent proposal for England. Even Scottish members of that Parliament have more opportunity to scrutinise English legislation than we have to scrutinise our legislation. Moreover, the House of Lords has more opportunity for scrutiny than we have. Unelected and appointed people in England have more opportunity to scrutinise their legislation than we have to scrutinise ours. That says it all.

Robin Harper (Lothians) (Green): The Executive has heard the debate and I urge it to tak tent of what has been said and, for the Parliament's sake, to make a move before the vote to refer amendment 59 to the Local Government Committee.

Peter Peacock: We have listened carefully to the points about procedure that members of all parties have made and I have no doubt that ministers and members will reflect on those points. However, I want to separate the process point from the points of substance. Several members expressed concerns about the process but nonetheless indicated support for the measure. At the end of the day, that is what is important in relation to how we take forward this particular measure. Very few opportunities are available for us to do that.

I want to reflect on a number of the comments that have been made. I will start with those that were made by John McAllion.

Alex Neil (Central Scotland) (SNP): Will the minister give way?

Peter Peacock: No. I have a very short time and I want to make progress. I was very generous with interventions earlier in the debate.

John McAllion made a point about timing. One of the reasons why the amendment was lodged when it was lodged is that—notwithstanding points to which I will soon refer about the consultation that the Executive undertook on the issue, which the Executive does not believe it undertook in secret—it would have been quite wrong to proceed on the matter prior to discovering whether the Bain report supported the general measures that are contained in amendment 59. Had the Executive proceeded with its intention to pursue those measures and subsequently found ourselves out of step with the Bain report when it came out in the middle of December, we would have put ourselves in an extraordinarily difficult

position. That is why the Executive reserved its position on the issue until the publication of the Bain report. I will move on to pick up on the points that the First Minister made about that.

Tommy Sheridan: Where in the consultation document is section 19 of the Fire Services Act 1947 mentioned?

Peter Peacock: Anyone who is familiar with such matters who looks at paragraph 47 on page 18 of the consultation document will see that the Executive makes it explicit that it recommends that the Fire Service Act 1947 be amended to reflect changes. I make the point that that part of the document is all about section 19 of the 1947 act. People who now claim to have knowledge of the matter should have been aware of that at the time.

Notwithstanding the serious points that I have made, I regret that the issue has today been picked up as it has by the SNP in particular, and by the SSP. Those parties, in a modern form of political alchemy, have tried to make fire where there is no smoke. They have attributed to the Executive motives that relate to some central Government agenda to close fire stations, but there is simply no such agenda. If members believe that there is a central Government conspiracy to close fire stations, why on earth are ministers giving up powers in relation to such decisions? Iain Smith made that point. We are doing the opposite of what would be required of such an agenda.

John McAllion made the point that there is some explicit financial pressure in relation to these matters that would force an agenda of fire service closures, but that is simply not the case. The fact of the matter is that the grant to support the fire service is growing year on year; in fact, we have recently made special provisions that will allow fire authorities to carry money between years. We are also supporting them in a variety of ways in relation to pension funds and so on. A lot of financial support is going into the fire services to try to prevent the scenario that has been suggested today from happening.

I want to address the suggestion that we have somehow sneaked in amendment 59. I will repeat a point that I made earlier: in response to Tommy Sheridan's question, I said that we flagged up the question about change in paragraph 47 of the consultation document. As I said, the SNP and SSP were so concerned about the matter that they made no comment on that point whatever; indeed, even the Fire Brigades Union did not raise the issue when it wrote to the Executive. We debated the subject on 15 May 2002, but SNP members who spoke in the debate and its front-bench spokespersons—who are the most knowledgeable people on the subject—did not express any concerns about that matter of principle.

The First Minister—not, as Mike Russell described, using some sleight of hand—told the Parliament that there would be a repeal of section 19 of the Fire Services Act 1947.

Tommy Sheridan: Will the minister give way?

Michael Russell *rose—*

Peter Peacock: Far from using sleight of hand, the First Minister said that at the premier point of the week during First Minister's question time. He made it clear to the Parliament that the Executive would take an early opportunity to repeal section 19 of the Fire Services Act 1947. We are not talking about a measure that was hidden or sneaked in; it was declared openly to the Parliament, which was given the opportunity to ask questions. Indeed, Tricia Marwick raised that point but she failed to follow up on it.

Alex Neil *rose—*

Michael Russell *rose—*

Peter Peacock: The accusations that we are preparing the way in that manner are simply not true; the opposite is the case. We want to see a stronger fire service throughout Scotland because we respect what the fire service does in communities throughout the country. We want to see that service being more effective in dealing with the problems in communities. We want to remove central control and diminish central influence and those aims are not in line with some kind of conspiracy theory. We want to devolve power to local areas and to trust local leaders to make the right decisions locally. We also want there to be local consultation.

I want to pick up on the point that Cathy Peattie rightly made that it is important for us to have proper local consultation when change is proposed at local level. That consultation must be thorough and it must involve people. There is a lot of experience of how such consultation should be done in, among others, education circles. We will issue guidance on those matters to ensure that local authorities and joint fire boards have regard to such matters. We need to ensure that full public consultation and democratic scrutiny take place.

Mr McAllion: Will the minister give way?

17:00

Peter Peacock: With respect to John McAllion, I have not given way to other members and do not think that I should give way on the point that I am making.

The measures are entirely consistent with the rest of the bill, which is about removing central prescription and constraints on local authorities. The issue is about giving more local freedoms and trusting local leaders to be accountable locally for

their actions. Local leaders should take people along with them, consult and make decisions that are right for their communities and not to be subject to the silly provisions whereby the fire chief in Grampian, for example, must come to the Executive for ministerial approval to move an aerial from the top of his building to another building within his command. That is absurd in the modern day. We do not want a situation whereby people in Oban must come to us to try to upgrade a fire station from retained to full time. Such things should be done locally through local decision making, which is what we seek. The rest of the bill makes similar provisions.

We are repealing compulsory competitive tendering, giving more local freedom, involving the fire service in community planning and ensuring that its influence will be increased. There is a new power to advance well-being in local areas. We trust local people to get on with things locally and to be accountable. We are abolishing section 94 controls on local authorities, which will give them freedom and allow them to trade more locally. We are also removing section 171 controls on economic development powers and so on.

Amendment 59 is entirely consistent with the spirit of the bill, with provisions in the rest of the bill and with measures that have been taken across the Executive. For example, it is intended that changes will be made in relation to the Schools (Scotland) Code 1956, because it is ancient. The amendment is about making the fire service consistent with the police service, which the Conservatives changed some years ago. We have made a series of provisions throughout the Executive to remove controls on local authorities.

The issue is about local authorities and local managers managing. It is about local decision makers taking decisions locally. It is about removing ministerial powers and archaic practices. There is not a threat; rather, there is an opportunity for more responsive local management, more local accountability and full democratic scrutiny at local level in exactly the way that Cathy Peattie described. That is how things should be. I urge the Parliament to agree to amendment 59.

The Deputy Presiding Officer: The question is, that amendment 59 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Brown, Robert (Glasgow) (LD)
Campbell, Colin (West of Scotland) (SNP)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)

Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Maclean, Kate (Dundee West) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Ullrich, Kay (West of Scotland) (SNP)
Wallace, Ben (North-East Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

ABSTENTIONS

Butler, Bill (Glasgow Anniesland) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

The Deputy Presiding Officer: The result of the division is: For 56, Against 56, Abstentions 2.

Like Presiding Officers around the world, I am obliged to cast my vote for the status quo. The bill as published was the status quo and amendment 59 would change it. I therefore vote against amendment 59.

Amendment 59 disagreed to.

Section 34—Definitions

Amendments 44, 45, 46, 60 and 61 moved—[Peter Peacock]—and agreed to.

Section 35—Short title and commencement

Amendment 62 moved—[Peter Peacock]—and agreed to.

The Deputy Presiding Officer: That ends the consideration of amendments.

Motion without Notice

17:05

The Deputy Presiding Officer (Mr George Reid): Before we move to the motion that the bill be passed, I am minded to accept a motion to move decision time to 5.35. Do members agree to that?

Members *indicated agreement*.

Motion moved,

That S1M-3755 be taken at this meeting of the Parliament.—[*Euan Robson*.]

Motion agreed to.

Motion moved,

That the Parliament agrees under Rule 11.2.4 of the Standing Orders that Decision Time on Wednesday 8 January 2003 be taken at 5.35 pm.—[*Euan Robson*.]

Motion agreed to.

Local Government in Scotland Bill

The Deputy Presiding Officer (Mr George Reid): The next item of business is a debate on motion S1M-3652, in the name of Andy Kerr, which seeks agreement that the Local Government in Scotland Bill be passed.

17:06

The Minister for Finance and Public Services (Mr Andy Kerr): Of course the Executive fully respects the decision made by Parliament. We believe that we are correct in wanting to devolve powers to local authorities—that is part of the Executive's ethos, and we learned that lesson from the Parliament. The Executive will seek another opportunity, in another debate, to do what I think is the right thing: continuously to devolve from this Parliament, to local authorities and beyond, power for local decisions to be made in the right environment, by the right people, in the right location and at the right time. That is what we seek to achieve. There was no lack of consultation in the Executive's proposal. Peter Peacock outlined clearly that consultation would be a thorough part of the guidance.

Let us not forget the positive aspects of the bill. Local government in Scotland is a key driver for many of our public services. It is a democratic structure that provides services in education, community care, transport, police and fire services—of which we are of course aware—and a vast range of other services that affect the quality of life of many people in Scotland. We want to remove barriers that hinder delivery and to show increased trust in local authorities. That is exactly what the legislation seeks to do. It was developed closely with the stakeholders: local government, public bodies, equalities interests, the voluntary sector, the business community and the trade unions. The Local Government Committee played a crucial role. I thank it and its clerks for the work that they carried out.

We have also benefited from the wealth of experience that exists within the Parliament. Many of us have worked in local government as officers or have served in local government as councillors. We have brought that experience to bear during this process—particularly during our discussions on best value and community planning. The consultative approach, involving a full range of bodies, individuals and communities, will continue in the development of the guidance. Guidance forms a major part of what we seek to do and we will continue that democratic engagement with all of civic Scotland to ensure that we produce proper guidance to achieve the implementation of our objectives.

Members are familiar with the contents of the bill, but it is worth referring to key elements, such as best value. As someone who had to work with compulsory competitive tendering in local authorities, I am glad to see the end of that negative, petty and centralising legislation. We are replacing CCT with best value, which means decisions made in the right environment at the local level, not measures prescribed by central Government. CCT has been a failure and the bill sweeps away all its remaining elements. Best value offers flexibility, quality and value for money. It ensures that decisions are made at the right level and the right point by local communities and their local representatives.

Local authorities are familiar with best value, which they have taken ownership of and developed. There is a lot of good practice out there. Members are aware that we want to introduce best value across public sector bodies, including the Executive. As Peter Peacock said in committee, we are looking for the next suitable legislative vehicle to introduce at the earliest opportunity a statutory duty of best value across the public sector. I hope that that statement is not quoted as often as was the First Minister's response in a similar vein to other matters.

The duty of best value in the bill reflects and builds on the good practice that already exists and further embeds the culture of quality, equality and continuous improvement. Quality public services rely on accountable public services. The accountability within the legislation is an extremely important aspect of what we seek to achieve.

The bill also sets out a framework for reporting directly to the public on local government performance. Those measures are intended to get the right information to the right people at the right time. Accountability also comes through formal scrutiny and a number of provisions will ensure that the Accounts Commission for Scotland and its auditors have the right responsibilities and powers to increase local government accountability.

Part 2 of the bill provides a statutory basis for community planning. It is innovative and is an example of the Executive working in partnership at a local level to ensure greater collective engagement among the agencies that work in communities to assess needs, develop policies and deliver services. The bill encourages effective local working between bodies and a commitment to sharing objectives and to following that work through into real improvements in local service delivery. My local council has a community planning pilot and I have attended many of its events. The pilot is making real changes in the community through proper consultation.

The measures also provide an excellent opportunity for better connections between

national priorities and those at a local, neighbourhood level. Two-way processes and local partnerships collectively influence the national direction and help to deliver national and local priorities. The measures provide a solid platform for on-going engagement with key participants in the community planning process, with the aim of improving the planning of local services. We have shown our firm commitment by including a duty on ministers to promote and encourage community planning.

The third core element of the bill is the power to advance well-being, which is a wide-ranging power that was known as the power of general competence. It was recognised by the McIntosh report, but has been renamed so that the focus, which is to improve communities' well-being, is clear. The power will give local authorities scope to be creative and innovative, to respond to communities and to provide better services. The term "well-being" is deliberately broad and is intended to avoid a restrictive interpretation. It includes social, economic and environmental well-being. Together with best value and community planning, the power completes a framework for the provision of better local services within local authorities.

The bill also makes provision for a range of miscellaneous items. I will not go into them all, but I am particularly pleased with the prudential framework for local authority control of capital borrowing, which replaces the section 94 consent regime and was warmly welcomed by local authorities. That is an historic measure from the Scottish Executive.

The bill is important for local government. It will reduce confrontation and create trust by providing the basis for local authorities to work effectively in partnership with other bodies in the communities that they seek to serve. Most important, the bill will assist with the delivery of better public services.

I move,

That the Parliament agrees that the Local Government in Scotland Bill be passed.

17:12

Tricia Marwick (Mid Scotland and Fife) (SNP): Today has been a good one for the Parliament. I was heartened by Andy Kerr's remark that he accepts the Parliament's decision on amendment 59. The Executive should acknowledge that the processes that it followed for the bill were, frankly, insulting to the Parliament. The Executive has received the Parliament's answer. I hope that lessons have been learned and that the legislative opportunity that the Executive is looking for will not arrive in two days' time. I also hope that the Executive will allow proper scrutiny in future, not only of amendments such as amendment 59, but of all legislation.

We are entering into an extremely difficult period because of the number of bills that are before the Parliament—we have around 22 outstanding bills to deal with between now and March. As I have said previously, it is important that parliamentarians are responsible for producing good legislation. That does not mean that we must agree with every piece of legislation—sometimes we will not—but we have a duty to ensure that the legislation that comes out of the Parliament is the best that it can be. I sincerely hope that the minister will pay more than just lip service to that duty and that he will embrace the consultative steering group proposals in their entirety.

There are a number of good measures in the bill, such as those on community planning, best value and the power of well-being. I will not replicate what the minister said on those issues.

All the measures have been a long time in coming. I believe that, if the will exists, local communities, local bodies, local authorities, health boards and the like should be able to work much more closely together. It is a disappointment that we have to legislate for community planning. Most of us would expect statutory bodies and the like to build that in. Legislating is all very well, but we also need to ensure that a culture change takes place that embraces community planning, best value and the power of well-being. There is much work to be done outwith the legislative process to ensure that that happens.

A number of the amendments that we discussed at stage 2 were marred but are now part of the bill. As a member of the Local Government Committee, I did not give them the scrutiny that they deserved because there was not enough time. I am not convinced that the bill is a good bill—I hope that it does not come back to haunt us. However, because of the good things that are in the bill, the SNP group will support it today.

17:16

Mr Keith Harding (Mid Scotland and Fife) (Con): I declare my registered interest as a member of Stirling Council. Like others before me, I record my thanks to Eugene Windsor, the clerk to the Local Government Committee, and his staff for guiding my colleagues on the committee and me through the lengthy bill process.

At stage 1, Conservative members were unable to support the general principles of the bill, as we felt that it was unnecessary to enshrine in statute the principle of best value, which is already entrenched in councils and which may not prove to be as effective as CCT, despite the minister's optimism. Community planning is something that

the better councils already successfully undertake. The power of well-being is just a watered-down power of general competence and nobody appears to be able to explain how it will be used. That said, with the proliferation of amendments that have been moved by the Scottish Executive, the bill has changed considerably from the one that was debated at stage 1. Perhaps it should be renamed the local governance bill.

Regrettably, the bill is a lost opportunity to drive forward local government modernisation. We acknowledge the fact that a further bill will be introduced to address the remaining recommendations of the McIntosh report, including those that relate to councillor remuneration and proportional representation. However, it is, at the very least, disappointing that all those issues have not been addressed in the lifetime of this Parliament.

Another area of considerable concern is the large number of amendments that have been lodged by the Scottish Executive—they have already been mentioned—on which the committee could not take evidence. In fact, the convener refused to take such evidence. As the minister said, one of those amendments is based on a recommendation of the Bain report on fire services. I was not aware of that, as I have not had the privilege of seeing a copy of the report. Our concern, which we have expressed, is that if we make legislation without scrutinising or taking evidence properly, it is possible that it may prove to be flawed. Therefore, I am pleased that the Parliament was able to defeat amendment 59.

The bill will do little to reassure deeply disillusioned councillors. It is about propping up a failed and tired coalition that is bereft of ideas, not about addressing the real needs of local government and meeting the aspirations of the people of Scotland.

17:18

Iain Smith (North-East Fife) (LD): It is perhaps unfortunate that this important day for local government will be overshadowed by an issue that relates to a relatively minor part of the bill.

Ms Sandra White (Glasgow) (SNP): Will the member take an intervention?

Iain Smith: No, not at the moment. I have barely started.

The bill addresses many significant issues for local government and it is vital that we reflect on how important today is for local government in Scotland. The bill is about enhancing the power and status of local government. It is not just about best value, community planning and well-being; it is about saying that, in the democratic process, local authorities have the same status as, and are equally important as, the Scottish Parliament. The bill removes a lot of restrictions on local government that have been imposed over the years. It is probably the first bill for 30 years—sadly, since 1974, if not longer—to enhance the power of local government in Scotland.

Over the years, the powers of local government have been eroded time and again. Powers have been removed and local authorities' ability to operate in the interests of their communities has been restricted. However, the bill contains a series of important measures that will significantly enhance the powers of local government. Best value is a significant improvement on CCT because it allows councils to take into account factors beyond price, such as quality and sustainability—an issue that was put into the bill following consultation. It is important to put on record at this stage that, although the Executive might have chosen a slightly unfortunate way of dealing with the fire brigade issue, it listened to the members of the Local Government Committee during the bill's progress through Parliament and made significant improvements to it.

On several occasions, the Executive lodged amendments that significantly enhanced Parliament's powers, as distinct from subverting the interests of Parliament. For example, it changed the bill's approach to secondary legislation from the use of negative instruments to the use of affirmative instruments, which will require the Executive to report when it uses those powers.

Today is an important day, although it is slightly unfortunate that the fire service issue will overshadow it. As a matter of principle, I believe that the Scottish ministers should not have the final say in how local fire services are provided. That should be a matter for locally elected, accountable representatives.

Tricia Marwick: Does Mr Smith accept that local communities should have a statutory right to be consulted? If not, is he satisfied with the watered-down version of guidance? It is either one or the other.

Iain Smith: I do not think that local authorities have a statutory right to consultation under section 19. That is where the whole argument becomes a bit of a myth. At present, if fire boards want to cut back a fire service, close a fire station or reduce the number of appliances, they must get permission from the Scottish ministers. The Executive's proposal was simply to remove that final say from the Scottish ministers.

Tommy Sheridan (Glasgow) (SSP): Mr Smith is wrong.

Iain Smith: Mr Sheridan should sit down. I have heard enough from him today.

Any good fire authority—Fife Council is also a fire authority—will consult its local community and would not dream of trying to close a fire station without full consultation with the relevant local authority. It would be ridiculous and stupid of a fire authority to do otherwise. Parliament took a decision on the fire service issue that will have to be revisited. It was unfortunate that the Executive used that process but, at the end of the day, the bill is about enhancing the power of local authorities. There is more to be done. The local governance issues in the bill that will be published later this month by the Executive are important, particularly those that deal with proportional representation. Addressing those issues will also enhance the status of local government.

The bill is welcome. We should reflect on that and enjoy it today, rather than glorify one particular issue.

The Deputy Presiding Officer: We have nine minutes for open debate, which means that we have time for three brief speeches.

17:23

Trish Godman (West Renfrewshire) (Lab): I, too, thank the Local Government Committee members for their hard work on what I think is a very good bill. I also thank the clerks and their staff, the official report and the Scottish Parliament information centre for all their hard work.

It was no accident that the first debate in the Scottish Parliament was on the McIntosh report on the future of local government in a devolved Scotland. There is a clear recognition that local government, more so than the Parliament, is important in the daily lives of constituents. Parliament does not deliver services directly to the people of Scotland—that is the role of local government.

Donald Dewar said on 1 July 1999 at the opening of the Scottish Parliament that the Parliament was rooted in the past but would not operate in the past. I believe that we have remembered that in our progress through the past four years, which culminates, as far as the Local Government Committee is concerned, in the Local Government in Scotland Bill.

The Executive listened to local government and accepted the major changes to the bill that were sought both by local government and by the Local Government Committee at stage 2. For example, as Andy Kerr said earlier, the bill repeals section 94 of the Local Government (Scotland) Act 1973, on borrowing consents for local authorities, which will be placed under a prudential system of capital investment.

There were long and hard arguments on either side about including in the bill a statutory duty to extend best value across the whole of the public sector. The Deputy Minister for Finance and Public Services assured the committee that legislation will be introduced to ensure that all public bodies will be governed by a duty of best value. The committee has accepted that it is outside the scope of the Local Government in Scotland Bill to extend the duty of best value to other public bodies. Given that commitment from the minister, we are content that the matter will be addressed as soon as possible and that, in the meantime, a wider part of the public sector will be placed under a duty of best value through administrative means using the existing powers.

The committee would like information on outcomes from the community planning process and on the future targets to be incorporated in reports. We agree with the minister that the focus should be on community planning outcomes rather than on a glossy document when we are addressing community planning issues.

I want to deal briefly with the power to advance well-being or, as I used to know it, the power of general competence. The essence of that part of the bill is to give local authorities greater scope to work in a way that allows them to respond to the needs of their community while recognising their democratic accountability and their community leadership. It is intended to give local authorities responsibility and scope to work in a genuine partnership with others to improve the communities that they serve.

In our report at the end of stage 1, the committee considered that the bill could be improved. I am pleased to say that, in some of the amendments and improvements that I have outlined, the Executive has listened not only to local government but to the Local Government Committee and has moved significantly.

This bill has been amended, altered and, I hope, improved by the committee. As with other bills, that shows plainly the powerful role that the back benchers play in the Scottish Parliament. That fact of parliamentary life does not always thrill the Executive but I believe that it is a defining feature of this Parliament, even though it appears to be lost on the Parliament's critics in the media and other organisations.

I should point out, in all fairness, that some of the changes in the bill have been brought about by sensible and courteous negotiation with Peter Peacock. Again, that is a positive reflection on the work of back benchers as it is a recognition of our influential role in the passing of legislation.

I urge members to support the bill.

17:27

Ms Sandra White (Glasgow) (SNP): Lessons have been learned in the chamber today. Trish Godman mentioned the powers of back benchers and I believe that we have seen the power of the Parliament today. I hope that the Executive has learned lessons today. If nothing else, this Parliament should be democratic.

I want to thank the clerks, Eugene Windsor, Ruth Cooper and others, who have done many hours of stalwart work to draft amendments and help members of the committee. I also want to thank various members of the committee for their work in the scrutiny of the amendments—those that we were allowed to scrutinise. I did not always agree with members of the committee, but they always listened to me with respect, unlike the members of the Executive, who appear not to want to listen to anyone.

There are many good things in the bill. I welcome the policy of community planning, which is excellent. If it works properly, it will be an asset to local government and the people whom it serves. Along with the power of well-being, the policy will result in dramatic changes in local government that will benefit people throughout Scotland.

Although they deal with a matter that is important, sections 25B and 25C have not been mentioned today. They deal with rate relief for food stores in rural settlements and the derating of automatic telling machines in rural settlements. In the committee, I asked the minister to consider extending those provisions to cover other areas of deprivation in which the population was under 3,000. Many people in deprived areas across the country would benefit from rate relief for small food stores and the derating of automatic telling machines. I ask the Executive to consider those points.

We welcome the bill. There are elements that I would like to have been included but which have not been. However, unlike the Executive, if we have any amendments to make to bills, we will certainly ensure that the relevant committee has the opportunity to scrutinise them.

The Deputy Presiding Officer: I apologise to Dr Sylvia Jackson and Michael Russell, who sat through the debate but were not called.

17:30

The Deputy Minister for Finance and Public Services (Peter Peacock): Much has been said about the matter over a number of years, so I do not intend to delay Parliament too long.

Like others, I thank the clerks to the Local Government Committee, who put a lot of work into the bill, which is a significant piece of legislation. I also thank the committee members, and I mean all the committee members, including Opposition members. Notwithstanding the outrageous speech that Keith Harding made, he is still invited for a drink with the others after the day's proceedings. I also thank all the Executive staff who put a huge amount of behind-the-scenes work into preparing all the policy advice, all the detail and a lot of the consultation on the bill that went on formally and informally throughout Scotland. As a consequence of the work of all those whom I have mentioned, we have a better bill today than when we started the process. That is the benefit of the Parliament's process of scrutiny.

It is ironic that the amending of the bill finished on the tone on which it did, because there has perhaps been more consultation on the main provisions of the bill than on any other bill that the Parliament has scrutinised. There were a huge number of meetings, consultations and seminars, which ran over many years. Informal sessions were held with the committee, and the committee held conferences. That all helped to inform the bill's provisions.

I will put the bill into context, because it should not be seen in isolation. It is part of a process, in which the Executive has been involved, of trying to modernise the context in which local government seeks to work. When the Labour party came to power in Westminster in 1999 and the Executive came to power in 1997—I am sorry: in 1997 and 1999. It is the reverse of what I said—that was a Freudian slip. When Labour and the Executive came to power, the relationships that existed with local government were truly appalling. Trust between local government and central Government had broken down completely. We have spent a lot of effort trying to rebuild that trust and partnership because, if we have a strong partnership at the local level, we can deliver better public services. That, ultimately, is what a lot of our activity is about.

That is why we tried to create a new environment for discussions with local government. It is also why we brought in significant finance reforms, such as three-year revenue and capital budgets and less ring fencing of funding. It is why we pushed capping into the background and introduced shared outcome arrangements with local government about what we are trying to achieve. It is why we have abolished spending guidelines and why we fund central initiatives 100 per cent and give minimum grant increases to councils. We have also given councils a longer term of office—a four-year term rather than a three-year term—so that they have a longer time to plan.

Against that background, the Local Government in Scotland Bill clicks into place. It is about trying

to create trust within the framework that we have created in the bill. It is about giving more trust, more authority and more responsibility locally but, equally, expecting local councillors to be accountable for their decisions locally.

The bill contains historic provisions, such as the abolition of CCT. Many members campaigned for that in many capacities over many years. The bill replaces CCT with best value. That is a much more sensible, balanced approach to how we make decisions about service delivery. The bill also puts community planning at the centre of what a local authority does locally and includes a power of general competence, targeted, in the way in which it is described, as a power to advance well-being, because it is about the well-being of communities. People have campaigned for that for many years.

The changes that the bill heralds, along with the other matters that I have mentioned, transform for the better the landscape in which local government in Scotland operates. They create a better climate for the future. That is why I trust that the Parliament will support the bill as part of that process.

Parliamentary Bureau Motion

17:33

The Presiding Officer (Sir David Steel): The next item of business is consideration of the Parliamentary Bureau motion S1M-3747, in the name of Patricia Ferguson, on the designation of a lead committee. Euan Robson has one minute to move the motion.

The Deputy Minister for Parliamentary Business (Euan Robson): I seek your guidance as to whether you have dealt with motion S1M-3652.

The Presiding Officer: That will be dealt with at decision time.

Euan Robson: I hope that that question has used up a couple of minutes.

I move motion S1M-3747.

The Presiding Officer: Would you care to read it out?

Euan Robson: I will if you would like me to do so. I would be grateful of the opportunity for a long speech.

I move,

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003.

The Presiding Officer: I am very grateful for that, as is the whole chamber, as you earlier decided to make decision time start at 17:35—which we have now reached.

Decision Time

17:35

The Presiding Officer (Sir David Steel): There are two questions to be put as a result of today's business. The first question is, that motion S1M-3652, in the name of Andy Kerr, to approve the Local Government in Scotland Bill, be agreed to. Are we all agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce JP (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Grn)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McLeish, Henry (Central Fife) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Mr Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Russell, Michael (South of Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Thomson, Elaine (Aberdeen North) (Lab)
Ullrich, Kay (West of Scotland) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

ABSTENTIONS

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

The Presiding Officer: The result of the division is: For 96, Against 17, Abstentions 0.

I declare the bill to be passed.

Mr Keith Harding (Mid Scotland and Fife) (Con): On a point of order, Presiding Officer. If

you check the voting record, you will find that there were 17 abstentions, not 17 votes against the motion.

The Presiding Officer: I will call that a mechanical error. For some extraordinary reason, the electronics record the vote in a different way from the piece of paper in my hand—which causes confusion. When we get to Holyrood, that will be changed.

The result of the division was: For 96, Against 0, Abstentions 17.

Motion agreed to.

That the Parliament agrees that the Local Government in Scotland Bill be passed.

The Presiding Officer: The second question is, that motion S1M-3747, in the name of Patricia Ferguson, on the designation of a lead committee, be agreed to.

Motion agreed to.

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the draft Scotland Act 1998 (Transfer of Functions to the Scottish Ministers etc.) Order 2003.

Drugs and Driving

The Deputy Presiding Officer (Mr Murray Tosh): The final item of business is a debate on motion S1M-2874, in the name of Bristow Muldoon, on drugs and driving.

Motion debated,

That the Parliament expresses concern about the number of lives lost in road traffic crashes that may have been caused by people driving whilst under the influence of legal and illegal drugs; recognises that, in law, driving while unfit through drugs is an offence; notes that Transport Research Laboratory tests demonstrated a significant increase between the 1980s and 1990s in the percentage of people testing positive for illegal drugs who have been involved in fatal collisions; welcomes the launch by the British Medical Association of its web resource on research that has been undertaken and is currently in progress; considers that there should be speedier and more specific and co-ordinated research in order that appropriate and conclusive drug testing devices can be introduced, and believes that there should be a Scottish campaign in order to educate the public that the side effects of illegal and certain prescribed drugs can affect their ability to drive.

17:38

Bristow Muldoon (Livingston) (Lab): I lodged the motion many months ago, in the wake of an initiative taken by the British Medical Association, which launched a web-based resource on research into the impact of drugs on driving and the shortage of appropriate testing. The initiative called for research into testing techniques and for public education campaigns to inform people of the dangers of the use of illegal and legal drugs and of the effect of drugs on their ability to drive.

Some time ago, I lost any expectation that the motion would be picked for members' business, as several months have now passed since it was lodged, but I am still pleased that it has been called for debate today. It is perhaps opportune that the debate has been secured shortly after the festive period, when there is a focus on drink-driving. We now have the opportunity to consider the impact of the increasing prevalence of drugs on fatal and non-fatal accidents.

I thank the BMA for its initiative in setting up the web-based resource that I mentioned, for drawing the issue to the attention of Parliament and for encouraging us to respond to the issue.

I will refer to the total number of road deaths at the United Kingdom and Scottish levels. Members know that I have a strong interest in transport issues and in transport-related safety. One of this country's most appalling records is our degree of tolerance of deaths on the road caused by whatever means.

We accept deaths on the road that we would not accept if they were caused by other modes of

transport. There are more than 300 deaths on the road each year in Scotland and more than 3,000 in the UK. In some of the major rail crashes that we have experienced, tragically, upwards of 30 people have lost their lives at one time. The number of deaths on the roads equates to in the order of 110 major rail crashes every year, but because the deaths tend to happen in low numbers—in ones or twos—they do not make headline news.

On other occasions, we have concentrated on the dangers of inappropriate driving and speed. We have also concentrated on alcohol and driving. One of the issues on which the Parliament has not often concentrated is the negative influence of drugs on driving. By drugs I mean not only illegal drugs, but legal drugs, including painkillers, antidepressants and tranquillisers. A recently published research paper by the University of Dundee revealed that about 110 deaths are caused in the UK each year by drivers who are under the influence of legal drugs.

Brian Adam (North-East Scotland) (SNP): Will the member advise the chamber whether in post-mortems for all road-related deaths there is screening to establish whether drugs were present in the body at the time of the accident?

Bristow Muldoon: I cannot give Brian Adam a definitive answer to that question, but I imagine that such screening takes place. The research that has been produced by the University of Dundee and the BMA refers to the percentage of people involved in fatal accidents who are found to have legal drugs in their system. If Brian Adam wants to help me to answer his question, he is welcome to do so. It is estimated that 110 road deaths per year are the result of prescribed or legal drugs. The proportion of fatal accidents in which there have been positive tests for illegal drugs has risen fourfold for cannabis in the past 10 to 15 years and sixfold for all illegal drugs.

Mr Keith Raffan (Mid Scotland and Fife) (LD): Is not one of the major problems with the statistics the fact that cannabis, other illegal drugs and prescribed drugs are often found in the system in combination with alcohol? That makes it difficult to determine whether an accident was caused by alcohol, drugs or—in the case of prescribed drugs—the illness for which drugs were being taken.

Bristow Muldoon: I accept the point that Mr Raffan makes, which I intended to address later in my speech. In many cases, one illegal or prescribed drug is present in combination with other prescribed or illegal drugs or with alcohol. An accident may occur for a complex range of reasons. The BMA indicates that there is a need for more research into the impact that each drug has on people's ability to drive. In many cases, there is insufficient evidence to determine that.

Last week, the *Sunday Mail* identified a case in which a driver was found to have heroin, ecstasy, methadone, diazepam, cannabis and codeine in their system. The driver concerned was prosecuted, but the case reinforces the point that a combination of drugs or of drugs and alcohol may be present in the bodies of people who are involved in accidents.

The need to improve detection rates for driving while under the influence of illegal drugs is highlighted by the fact that, during the recent festive period, Strathclyde police detected 84 people for driving under the influence of alcohol but charged only three people with driving under the influence of drugs. Taken together with the statistics to which I referred earlier, those figures suggest that a number of people who are driving under the influence of drugs are not being detected.

That is not a failure of the police. It is the result of not having in place roadside detection systems, apart from systems based on failed impairment tests, which test people's ability to perform certain tasks. That in itself is not a comprehensive system, and not all police officers are trained in such tests. If a regular police officer identifies someone whom they feel needs such a failed impairment test, they are required to call out trained officers to carry out the test before they decide to arrest the person and take blood or urine samples to test whether they are under the influence of illegal drugs.

I have concentrated quite heavily on testing and detection, which is a key issue. In my last minute, I will address education and awareness, which are a key part of so many aspects of safety on the roads.

I am sure that many of the people who drive while taking prescribed drugs do not believe that they are a danger. We need to reinforce the message that certain prescribed drugs are regarded as creating a danger. We need to reinforce the message around certain legal drugs and we need to send out the message about illegal drugs. We have to acknowledge that there is an increased prevalence of the use of illegal drugs, a number of which impact on a person's ability to drive safely. We need to reinforce that message through schools, in drug awareness sessions, and through public awareness campaigns.

I would welcome a response to those points from the Executive and I encourage it to work in partnership with medical authorities and colleagues in the UK Government to make progress on the issue.

17:46

Michael Matheson (Central Scotland) (SNP): I congratulate Bristow Muldoon on securing time for this debate on an important topic. I also congratulate the BMA on the work that it has done in leading the campaign to highlight the influence that drugs might have on someone's driving ability. I know that the BMA has provided information on its website for people to find out more about how legal and illegal drugs might influence their ability when they are behind the wheel.

In the past 10 years or so, there has been a considerable cultural change in the way in which society perceives drink-driving, which people now think is socially unacceptable. That change has been achieved through public education and by making people aware of the amount that they can drink before getting behind the wheel. There has also been better enforcement by the police, who have run campaigns to make people more aware of the issue, particularly at the festive times of Christmas and new year. More recently, we have seen the police trying to encourage people to report people whom they suspect of drink-driving so that action may be taken. We have now moved the whole campaign on to trying to inform people that if they have had a lot to drink the night before, they should not drive the next morning.

To a large extent, the influence of illegal drugs and medication has been left behind. There has not been the same level of education about the impact that they might have on people's ability to drive and about how their functioning might be impaired. The BMA provides statistics that highlight the number of people who are on normal medication that can be bought over the counter at a pharmacy but which will probably impair their ability to drive because it has a sedative effect. Many people are unaware of the issue and, although a label might say, "This mixture may make you drowsy," will not equate that with its influencing their ability to drive.

When those statistics are coupled with the number of people who have been taking illegal drugs, which the BMA has highlighted, we can see the extent of the problem. I suspect that a large number of the public are ignorant of the influence that legal and illegal drugs might have on their ability. I hope that, in tackling the problem, we take on the BMA's two suggestions. First, there should be greater public information about the effect that legal and illegal drugs might have on people's functioning. We could also provide a mechanism that the police could use at roadside checks to detect more effectively those who might have drugs in their system.

Secondly, the pharmaceutical companies are stakeholders, and we should try to engage them in the issue with regard to legal drugs. In recent years, there have been changes in the information provided to those who purchase medicines over the counter. An attempt has been made to make such information more explicit and simple to understand. Saying that a mixture might make someone drowsy does not equate with an instruction not to drive. Perhaps the information on medicines should be much more explicit. We should encourage pharmaceutical companies to take a much more responsible role in educating the public about the dangers of legal drugs that might have an effect on their driving.

I hope that the minister will address some of those issues. He will have cross-party support for doing so. A number of practical measures to improve public education and to bring in the pharmaceutical companies could be taken in the short term. In the medium term, we should address the issue through a device that the police could use for better detection.

17:51

Mr Keith Raffan (Mid Scotland and Fife) (LD): I, too, congratulate Bristow Muldoon on securing this important debate on drugs and driving. I agree with most of what Mr Matheson said, which seems to be becoming a bit of a habit. It is well known that many drug addicts, such as cocaine and crack addicts, use cough medicine to bring themselves down if no temazepam or diazepam is available. That underlines the point that Mr Matheson made.

It is unwise to drive after taking mood or behaviour-altering substances, just as it is unwise to drive when tired. That said, it is difficult to estimate the effect of driving after using drugs—I use that phrase intentionally—as opposed to driving under the influence of alcohol. Driving after using drugs is a highly complex and grey area. Although there is a surfeit of statistics, many of them are of dubious reliability and uncertain usefulness and there is a lack of research. Driving after the use of drugs is not as simple and straightforward an issue as driving after the use of alcohol.

Different drugs have different effects. Some prescription or medicinal drugs are more likely to impair driving ability than illegal drugs are. Antidepressants, antihistamines, painkillers, benzodiazepines and cough medicine all have a sedative effect and can produce drowsiness. According to scientific research, those drugs have a greater adverse impact on driving skills than cannabis, heroin and methadone. Indeed, it has been argued that, in limited doses, amphetamines can actually increase alertness and improve driving ability.

The difficulty in assessing the impact of drugs on driving ability is compounded by the fact that drugs

are often used in combination with alcohol, as I said in my intervention in Mr Muldoon's speech. It can also be difficult to judge whether medicinal drugs, rather than the illness for which they are being taken, are responsible for impairing driving ability.

Blood and urine samples are unreliable because traces of cannabis remain in blood and urine for up to 30 days, although that does not mean that driving ability is impaired for all that time, whereas cocaine and heroin remain in the blood for only two or three days.

All those points, together with the lack of data and research, make it difficult to define safe and unsafe usage levels for drugs as opposed to alcohol. Dosage and duration of effect are crucial in estimating whether there is an increased risk of accidents. I agree with the BMA and with Mr Muldoon that we need data and research that is far clearer and more conclusive before we can develop accurate methods, tests and equipment for identifying drug-impaired driving.

I also agree with Bristow Muldoon and the BMA that we must increase awareness of the potential problem of using drugs and driving. Medicine leaflets that are usually left unread in medicine packets are not enough. General practitioners and pharmacists have a central role to play in alerting patients to the dangers of drugs and driving when they issue prescriptions or sell drugs across the counter. I hope that the minister will take on board that point in particular.

Television adverts, such as those of the Scottish Road Safety Campaign, are important. The minister might be able to tell us whether he has evaluated the campaign that started in May and what the results are. We were told that an evaluation was being carried out in the autumn.

The voluntary sector also has a crucial role. Organisations such as Crew 2000 that are active in the rave and club scene have an important role to play. We must encourage them to play that role, as they deal with the age group that is most likely to use drugs and among whom the prevalence of drug use is highest. We must try to alert those who attend clubs to the dangers of using drugs and driving—especially at weekends, when recreational drugs are most used.

17:55

Bill Aitken (Glasgow) (Con): I have heard little with which I could possibly disagree. Michael Matheson was correct to highlight the significant cultural change that has taken place over the past 20 years. Drinking and driving is no longer seen as acceptable. Twenty years ago, it was considered to be in the pattern of behaviour for people to take their car to a public house half a mile away, where they could consume copious quantities of alcohol before driving home.

People do not do that nowadays for a number of reasons. First, improved enforcement facilities are now available to the police. Secondly, the education process has been a success and people now recognise the evils of drink-driving. The challenge is basically to ensure that the message is passed on.

It is quite clear to me that those who seek solace in the white powder rather than in the amber nectar are prepared to take the chance of driving while impaired. Why do they do so? Michael Matheson, Keith Raffan and Bristow Muldoon were correct to say that, in many instances, people do so as a result of ignorance. People can be ignorant about the effects not only of drugs that have been properly prescribed but of illegal drugs.

It may seem illogical to us sitting here that someone who would take cocaine or smoke cannabis for the purpose of feeling more relaxed or being on a high should at the same time not realise that such drugs must inevitably impair their driving. However, it is clear that many people do not recognise that.

Members will appreciate that I am not a regular clubber. However, it is clear from my observations—on those occasions when I succumb to temptation and attend clubs—that a significant number of the clients of Glasgow's nightclubs would not think for a moment of consuming alcohol and driving but would take drugs and then drive. That is a problem. We have not got the message across.

However, enforcement is difficult. The roadside tests that the police impose are probably quite unsatisfactory. Having seen those tests in action, I suspect that someone who had no drugs in their system but who was not particularly co-ordinated might find it difficult to satisfy Strathclyde's finest that they had not been using some dubious substance.

At present, there is no reliable testing device, nor is there an absolute. For drink-driving, the breathalyser and the breath-testing equipment that is produced by the Car and Medical Instrument Company Ltd—CAMIC—can give a reading of the alcohol content within a person's blood. The cut-off point is 35mg per 100ml.

However, it is quite difficult to arrive at a similar system for drugs. As Keith Raffan said, people could have traces of drugs in their bloodstream without their driving being impaired. How do we define the correlation between the amount of drugs in a person's system and the fact that the person is unfit to drive? That is a difficult and complex problem, but it must be addressed.

Brian Adam indicated that blood samples were not taken at post-mortem tests, but I understand that such samples are indeed taken and that the figures make depressing reading. It seems that a significant number of those who are killed in road accidents have illegal drugs in their system. That should concern us all.

17:59

Christine Grahame (South of Scotland) (SNP): Tonight's debate is indeed valuable, because our society overlooks the fact that drugs are as important—and perhaps gaining in importance—as alcohol in terms of their effects on people's driving. Attitudes towards drinking and driving have completely changed and it is time that we addressed taking drugs and driving.

The legal position is stated under section 4 of the Road Traffic Act 1988:

"A person who, when driving or attempting to drive a motor vehicle on a road or other public place, is unfit to drive through drink or drugs is guilty of an offence."

There is no difference between drink and drugs in that context. The penalties are the same.

"At the very least you will be disqualified from driving for a year and be heavily fined, with the option of imprisonment. If you cause death by careless driving while under the influence of alcohol or drugs, you can spend up to ten years in prison and have to pay an unlimited fine."

I wonder how many people are aware that that is the position with drugs, even though they might well be aware of the legal position with regard to drink-driving.

I am grateful to Irene Oldfather for obtaining figures on the incidence of drug-driving. Figures published by the UK in 2001 indicated that

"18% of people killed in road accidents had used illegal drugs."

Of course, often one should not make a distinction between illegal and legal drugs that people did not understand would impair their judgment.

"This represented a six-fold increase in the incidence of such drugs since a similar survey in the mid-1980s. There was no change in the incidence of medicinal drugs (6%) since the previous survey."

Obviously, one cannot say that it is therefore the case that people were killed because they had drugs in their system, but the statistic cannot be ignored. Other statistics obtained by Irene Oldfather showed that

"nearly 10% of drivers aged 17 to 39 have driven under the influence of illegal drugs;

cannabis is the most common drug to have been used by drug drivers;

drug driving is more prevalent among 20- to 24-year-old age group, and

driving after recreational drug use is widespread among people attending night-clubs and dance venues."—[*Official Report*, *Written Answers*, 3 December 2002; p 2433.]

Some 69 per cent of one sample of people said that they had taken cannabis during the year; of that figure, 85 per cent had driven afterwards.

The BMA website is extremely useful and it was invaluable that Michael Matheson should have highlighted it. Keith Raffan mentioned hard drugs, but the BMA website says:

"Cannabis can impair co-ordination, visual perception, tracking and vigilance."

Brian Adam: I recognise that cannabis can impair drivers' ability to make judgments, but is it not also true that it is difficult to correlate any amount of cannabinoid in a bodily fluid with the events surrounding an accident? Cannabis and its by-products can be found in the urine 30 days after it has been taken.

Christine Grahame: I am coming to that valid point. I am just drawing attention to the fact that young people do not seem to be aware of that and think that cannabis is perfectly okay because it is not a hard drug.

I will take a description of driving from the BMA's website.

"Driving is a complex task where the driver continuously receives information, analyses it and reacts. Substances that have an influence on brain function or on mental processes involved in driving will clearly affect driving performance."

That fact cannot be avoided.

On the difficulties in detecting drugs in someone's system, I refer members to the website of the International Council on Alcohol, Drugs and Traffic Safety. The IACDTS is currently conducting a study of clinical signs of impairment in relation to drugs. It is also trying to find out how drugs can be detected in the system so that a link can be more clearly established.

I say that we do not need to do that. We need to say to young people who are out clubbing—not with Bill Aitken, because he leads a quiet life in his slippers—and who take cannabis and perhaps alcohol, as I have seen them do in Gala, then come out of the club and get into their cars, that they might well have impaired their driving ability and one day that might cost them their life.

18:04

Robin Harper (Lothians) (Green): I hope it is not too much of a diversion to mention that in relation to deaths caused by driving, people are still concerned about disparities in charges and reparation resulting from the differences in sentences for careless driving, dangerous driving and reckless driving. Many families in Scotland

who have lost people have formed an association and feel a deep sense of grievance about that matter.

To pick up the point about cannabis, I feel that there is a problem, but I am not quite sure how it can be solved. As Brian Adam rightly pointed out, someone can smoke cannabis in one month and still have traces of it in their system towards the end of the next month. Some kind of reaction test that is reasonably sound in law might have to be devised and given in conjunction with other tests for drink and drugs in order to ensure that prosecutions that are brought are sound and can stand up in court.

The other point that I wish to make about drugs, and about inculcating in the population the feeling that the law will be fair to people who have taken drink and drugs ill-advisedly, is that one of the first steps that we should also take—which I suppose is up to Westminster, because it is a reserved matter—is to reduce the acceptable level of blood alcohol to 30 milligrams per litre. I think that I am correct in saying that we have one of the higher tolerances of blood alcohol in Europe. For example, in some of the northern countries any amount of blood alcohol while driving results in the loss of one's licence.

I congratulate Bristow Muldoon on bringing the issue to our attention.

18:06

Nora Radcliffe (Gordon) (LD): I also thank Bristow Muldoon for securing the debate. The statistics on road traffic deaths that he quoted at the beginning of his speech underline the importance of the issue.

It took a long time and a wide range of complementary actions to change attitudes to drink-driving. That included incontrovertible and widely understood and recognised evidence on how alcohol impairs performance. It took educational campaigns about the dangers of drinking and driving and it took legislation to ban driving while under the influence of alcohol and the enforcement of that ban, which required a way of establishing whether drink had been taken. It will be necessary to go down that same route in order to tackle drug-driving. The legislation is in place but, as Christine Grahame said, are people aware of that?

There is increasing recognition of the dangers of drug-driving, but a lot of that centres on awareness of the dangers of driving with illegal or recreational drugs in one's system. There is much less awareness of, and much more needs to be done to recognise, the dangers of legal or prescribed drugs. There are leaflets in packets of pills, but how many people read them? There are warnings on cough medicine that it might make people drowsy and so they should not drive, but we need more visible warnings, just as we have health warnings on packets of cigarettes. Keith Raffan made a good point about encouraging general practitioners and pharmacists, when they hand over such medicines, to underline the dangers of taking them and driving.

Christine Grahame: I do not wish to erode Nora Radcliffe's time. I take the point that she makes about legal drugs, but the parliamentary answer to which I referred indicated that there had been no change in the percentage of people who were killed in road accidents and who were found to have medicinal drugs in their system—the figure was 6 per cent. In contrast, the figure for illegal drugs had increased six-fold, so the focus is still on illegal drugs.

Nora Radcliffe: I agree absolutely. There are two issues, which I was going to move on to. When we run information and education campaigns, we must target two groups of people: first, we must target people who use legal or prescribed drugs and second, we must target people who are on illegal drugs. Different approaches are needed.

As Christine Grahame said, the greatest danger—by a factor of goodness knows what—concerns young men and illegal drugs. By definition, young men are the risk takers. The most effective way in which to deal with that group is by changing the balance of risk. The single factor that did most to tip the balance in the anti-drink-driving campaign was the roadside blow-in-the-bag test. Finding a similar test for drugs will not be easy, for all the reasons that members have stated. The matter is not straightforward and it will need to be underpinned by better evidence-based understanding of the effects on human performance of different drugs and different combinations of drugs.

I support in particular the part of the motion that calls for a targeted effort to develop "appropriate and conclusive", portable and easily used tests for the presence of drugs in the human body and the effect that they have on driving capability. That is the single most effective thing that we could do.

18:10

Brian Adam (North-East Scotland) (SNP): I hope that I will not go over too much old ground, but in my previous life, I performed testing such as has been mentioned. The experience of being a witness in court was not easy. I would say what a person's blood Valium level was, and naturally enough, the next questions were, "What does that mean? How impaired did that mean that the driver was?" The answers were that we do not know. Such information is not available.

To those who have a great deal of confidence that 80mg of alcohol per 100ml of blood means that someone is drunk, I say that that is arbitrary, too, and was established on the basis of the ability of bus drivers in Manchester to park double-deckers. I do not want to run that down, but we cannot perform such tests for all the drugs that can impair people's ability to drive.

The major difference between alcohol and drugs in general is that alcohol is a very small molecule that rapidly goes round the body, as many people undoubtedly know. The molecule is not changed much—it tends to go out as alcohol as well as coming in as alcohol. That is not true of drugs.

I will return to the example of cannabis and cannabinoids. When people take cannabis, they do not take just one substance that will have a pharmacological effect. They take a range of substances that are metabolised. What has been chosen to be measured is not arbitrary; it is pharmacologically active and is called Δ^9-tetrahydrocannabinol—I am sure that the official report will have to speak to me afterwards about that. However, by and large, that substance is easily detected only in urine. Unless things have moved on in the past four years—they might have—detecting the substance in blood is difficult. I do not think that a roadside test for someone to blow into a bag to see whether they have taken cannabis is available and I do not think that such a test is likely.

My advice to the minister, who might have an input on what will happen at the United Kingdom level, is that we should have not only the occasional survey post mortem, but a statutory requirement to test for alcohol and a range of defined drugs.

Another matter on which we will have some difficulty is antihistamines, which definitely have an effect, but are not routinely measured post mortem because, by and large, there is no great interest in them. People either take them or they do not. People do not die because they took or did not take antihistamines, so not much work is done on that. However, a defined range will have to be produced.

My advice to the minister is that limits should be set that relate not to impairment, but to the capacity to detect the drugs with confidence without false positive results. As Robin Harper suggested, we should thereafter rely on the current roadside tests. Measurement or detection should support evidence of impairment, because measuring something in blood, urine, breath, saliva or anything else tells us only a number and what is present. It does not tell us the impairment level, which causes difficulties.

It is easy to set limits that are sensible cut-offs of the detection capacity of machines. The presence of illegal drugs in association with evidence of impairment ought to be enough to secure conviction. The situation in respect of legal drugs is much more difficult. I hope that the minister enjoys tussling with the problem—I am glad that it is not my problem to tussle with.

18:15

The Deputy Minister for Justice (Hugh Henry): In lodging the motion, Bristow Muldoon has done the Parliament a favour. If I can use such a word in the context of the debate, by lodging the motion, he has stimulated an informed range of contributions about an important issue. Although many of the specific points that members raised are matters that are reserved to Westminster, the debate has given us the opportunity to air some concerns, which I hope can be reflected back to our colleagues at Westminster. The debate has also allowed us to reflect on some of the issues for which the Scottish Parliament has responsibility, such as road safety education and publicity.

One issue that has emerged clearly from the debate is that, although there may be differences between those who take medicinal drugs and those who take illegal drugs, the implications and effects are often similar. As far as the drugs that are legally prescribed for medicinal purposes are concerned, the 1992 European Community directive on the labelling of medicines requires the packaging of all medicines that affect the central nervous system to carry warnings advising patients not to drive. We recognise that recent research on over-the-counter medicines suggests that those recommendations on labelling are not universally complied with. It is clear that the Medicines Control Agency will have to give consideration to that issue.

As Keith Raffan and other members suggested, people very often do not read the recommendations on medicine labels. In our education and publicity campaigns, we need to advise people to be cautious when they are taking medicines. People need to think through the implications and work out what they have to do.

I am not sure whether Bill Aitken was referring to medicinal or illegal drugs when he said that some people take drugs and drive but would never think of drinking and driving. In a sense, it is neither here nor there whether the drugs are medicinal or illegal; we have to get the message across that people should think carefully and clearly about their actions. The use of drugs impairs a person's performance as a driver, and driving while unfit through taking drugs has long been a criminal offence. The more that we can do to prevent the problem, the better.

Firm information about the number of drug-related road accidents is not available. Many members expressed clearly the difficulties that arise in respect of testing.

Brian Adam: If post-mortem analysis were to be done to test for drugs, that would not be an inexpensive process. I understand that, over recent years, some of the people who provide such a service have charged £300 a go. In spite of the figures that were produced by Christine Grahame, I understand that in most cases such tests produced a blank result. It is for ministers to decide whether such tests would achieve value for money. I think that that would be the case, but the minister will have to define what he wants and work on from that standpoint.

Hugh Henry: I understand what Brian Adam is getting at. Nevertheless, judgments need to be made about the commitment of resources to a process that is to some extent unreliable and unproven. That should not deter us from trying to encourage better ways of evaluation. That said, I do not want to try to minimise the problem.

A pilot for a proposed system for recording contributory factors in road accidents is currently under way. Research in Great Britain that was published in 2001 found that 18 per cent of people who had been killed in road accidents had used illegal drugs. On that basis, around 59 adults who had used illegal drugs could have been killed in road accidents in Scotland. We know that there has been an increase in that number. There is concern that 5 per cent of drivers under the age of 40 had driven after using illegal drugs.

Christine Grahame: On difficulties relating to information, I am concerned by an answer to a parliamentary question that Irene Oldfather lodged. She asked about the percentage of drivers who had been tested who had failed the voluntary physical co-ordination test. As usual, she was told that

"The information requested is not held centrally"

—which it ought to be—but I am concerned that she was also told that

"the level and manner of testing is an operational matter for Chief Constables."—[*Official Report, Written Answers*, 19 September 2001; p 86.]

Does that mean that there is not a standard manner of testing? If the minister cannot answer that today, perhaps he could give me an answer at some point. It concerns me that we are not even looking at similar data.

Hugh Henry: I will respond to Christine Grahame at a later date.

We know that young people are more inclined to use drugs and then drive. The problems of cannabis have been clearly highlighted.

Reference has been made to advertising. The advert that was launched in May 2002 demonstrates the techniques that are used by the police to detect drug drivers. The message is that those who drive under the influence of drugs run the real risk of being caught. Keith Raffan asked about the advert's effectiveness. That is being evaluated and we expect the evaluation to be finalised and published in the next couple of months. Initial results are broadly positive, with the highest awareness levels among 20 to 24-year-olds, which is the highest risk group. I am sure that we all await with interest what comes out of the evaluation.

The Scottish Road Safety Campaign is implementing a publicity strategy that is aimed at raising awareness of the dangers of drug-driving. A leaflet that outlines the key facts was launched in June 2001 and continues to be widely distributed. The campaign liaised closely with the Association of Chief Police Officers in Scotland on the development of the television advert and leaflet and is now working on the development of further publicity to complement and build on the television advertising.

We recognise the problems and the differences between drugs and alcohol. The United Kingdom Government is considering legislation on powers for testing drivers for drugs at the roadside, notwithstanding the difficulties that that involves.

Members have made many points that are worthy of comment. Bristow Muldoon has given us the opportunity to focus on an issue that is clearly not just a social concern, but a real social problem. It blights and destroys individual lives and the fabric of many families.

We will continue to work closely with our Westminster colleagues and to look at the effectiveness of our advertising and education powers. We will do anything that we can do collectively to get the message across that people who use illegal drugs should not only stop using them, but should not think of using them before driving. We should continue to reinforce the warning to those who take drugs for medicinal reasons and caution them that there could be considerable difficulties with their driving if they take certain medicines. We still have a job to do individually and collectively, but the debate has been useful.

Meeting closed at 18:24.

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ISBN 0 338 000003 ISSN 1467-0178