MEETING OF THE PARLIAMENT

Wednesday 19 February 2003

Session 1

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DEPUTY FIRST MINISTER—Right hon Jim Wallace QC MSP

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DEPUTY MINISTER FOR JUSTICE—Hugh Henry MSP

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[THE PRESIDING OFFICER *opened the meeting at 09:30*]

Time for Reflection

The Presiding Officer (Sir David Steel): Good morning. To lead our time for reflection this week I welcome the Rev Marion Dodd, who is the parish minister of Kelso Old and Sprouston.

The Rev Marion Dodd (Minister of Kelso Old and Sprouston, Jedburgh Presbytery): I thank you, Sir David, for the opportunity to be here, and I congratulate you on your elevation to a higher seat in this chamber come May.

To all members I say that you and I have something in common, quite apart from the fear and trepidation of standing up here for the first time. We share a common task; we spend a lot of time standing up in front of people pontificating, although my ‘p’ verb is perhaps different, but not very different, from pontificating. In the nature of that task, members and I are subject to scrutiny and—let it be said—occasional criticism for the things that we come out with.

I would think, however, that the similarity ends there, because I am very good at getting things wrong when I stand up to speak—although I suspect that there might be one or two people here who identify with me. The longer I am in my job, the more I realise that getting things wrong is not in itself a crime; mistakes are part of the human lot. What matters—especially to people who are in the public eye—is how we handle those mistakes and how we cope with the fact that we are human and can get things wrong. Winston Churchill once said:

> “Success is never final. Failure is never fatal. It is the courage to continue that counts.”

Often, I find myself standing up in front of a congregation, a school or other group of people and coming out with something that I realise makes no sense at all. However I have long since learned that it is best to carry on as though nothing has happened. It is surprising—is it not?—how few people notice.

When it comes to the bigger blunders, which people notice, we have to take stock. Whether it is just a matter of my dealing with the aye-beeners and members dealing with hecklers who just do not like what we do, or if we really have got it wrong, we must recognise our responsibility to others and we must listen to our consciences. I find it interesting to see how people in the Bible coped with such problems, so I will give three examples. One is from right at the beginning: Adam and Eve went against the rules and ate the fruit that was forbidden—they got it wrong. So how did they react? First Adam, then Eve tried their hardest to apportion blame to someone else—a very human way in which to react.

We can skip a few hundred years to a fellow called Jacob, who was the son of Isaac. Jacob did the dirty on his brother Esau; he persuaded him to sell his birthright—which was, in those days, vital to a first child—for a mere bowl of soup. When Jacob was found out, he ran away, which was also a very human way to react. Neither Adam nor Jacob could face up to the responsibility of getting it wrong.

Much further on in the Bible we have a different example, of a man who had done nothing wrong, but who took other people’s blame on himself, the man whose name people love to take in vain—Jesus Christ. Far from accusing others of their mistakes, and very far from running away from his own responsibilities, he made it possible for people to deal with their consciences and to turn a wrong into a right. He was a great politician, even though he was crucified for it. He is the yardstick that I use when I try to deal with the things that I get wrong.

May God bless your work, especially in these difficult times.

Business Motions

09:34

The Presiding Officer (Sir David Steel): The next item of business is consideration of the weekly business motion. Motion S1M-3920, in the name of Patricia Ferguson, sets out the revised business programme.

Motion moved,

That the Parliament agrees as a revision to the programme of business agreed on 12 February 2003—

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after—

“2:00 pm	Continuation of Stage 3 of Criminal Justice (Scotland) Bill”

delete all and insert—

“*followed by*	Parliamentary Bureau Motions
6:30 pm	Decision Time”—*[Euan Robson.]*

Motion agreed to.

The Presiding Officer: The next item of business is consideration of business motion S1M-3924, in the name of Patricia Ferguson, which sets out the timetable for stage 3 consideration of the Criminal Justice (Scotland) Bill.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Criminal Justice (Scotland) Bill, debate on each part of the Stage 3 proceedings shall be brought to a conclusion by the time-limits indicated (each time-limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress)—

Groups 1 to 4 – no later than 1 hour 15 minutes

Groups 5 to 12 – no later than 2 hours 35 minutes

Groups 13 to 18 – no later than 4 hours 15 minutes

Groups 19 to 21 – no later than 5 hours and 25 minutes

Groups 22 and 23 – no later than 5 hours and 55 minutes

Groups 24 to 30 – no later than 7 hours

Motion to pass the Bill – 7 hours 30 minutes—*[Euan Robson.]*

Motion agreed to.

Fisheries

The Presiding Officer (Sir David Steel): We move to the debate on motion S1M-3914, in the name of Ross Finnie. I invite members who wish to take part in the debate to press their request-to-speak buttons.

09:36

The Minister for Environment and Rural Development (Ross Finnie): Members are aware that, to give effect to the various decisions that were taken during and after the December agriculture and fisheries council, the Executive has had to lay a number of statutory instruments. I want to stress that I considered it to be important that Parliament was in possession of those instruments before we had the debate, which is why I sought postponement of the debate until today. There will be further opportunities to discuss the detail of those statutory instruments.

In the debate, my aim will be to restate the underlying circumstances that we must address and which give rise to the need for the instruments. In laying out the principles behind each instrument, I will also explain why we think that the approach that we have adopted represents the best prospect for securing a sustainable white-fish sector for Scotland and for achieving sustainable fishing communities.

We must not forget the starting point. The scientific evidence shows that cod stocks are well below their safe biological limit and that haddock stocks, although they are in a better state than cod stocks, are nonetheless in poor condition. That scientific evidence led the European agriculture and fisheries council to adopt draconian interim measures that were aimed at conserving cod stocks. That is the background. I will now deal with the statutory instruments one by one.

First, there are the two restriction on days-at-sea orders, which are designed to give effect to the famous annexe XVII of the total allowable catch and quota regulations. Annexe XVII imposes limitations on the amount of time that fishermen can spend at sea. Our statutory instrument, which transposes a binding piece of European Union legislation into domestic regulation, has been designed to set out the practical management arrangements that are necessary to enable fishermen to comply with the regulation and the Scottish Ministers to have the powers to enforce it. We have not sought to gold-plate the EU regulation; on the contrary, we have tried to be as sympathetic as possible, while remaining true to its underlying spirit.

I am on record as saying that I am far from happy with the content of annexe XVII, which I

believe has a significant number of flaws. In particular, it does not allow sufficient commercial and economic flexibility and might have insufficient regard for safety.

Mrs Margaret Ewing (Moray) (SNP): I thank the minister for giving way. Yesterday, Ross Finnie and Elliot Morley said that they had achieved their objectives for the negotiations at the December council meeting. In the light of what the minister has just said, does he believe that he achieved the objectives that are necessary for the survival of the Scottish demersal fleet?

Ross Finnie: At this early stage, I do not want to get into a disputatious argument. We did not say that we were content with the outcome of the white-fish talks. We said that, in large part, we had reached our objectives in relation to the negotiations on the common fisheries policy. That was made quite explicit.

Annexe XVII is intended to provide an interim regime. The political understanding was that it would be replaced by a substantive regime that would take effect at the beginning of July. With that in mind, we have been in continuing discussion with the Commission about the flaws in annexe XVII. The Commission is committed to introducing some early changes to that regime, but it is not yet clear what form those changes might take. Although it seems to be likely that, initially, the changes will consist of amendments to annexe XVII, the Commission has also restated its intention to introduce proposals for a substantive new regime.

What matters is the nature of the changes and their impact on our fishermen, rather than the way in which they are framed. Therefore, I acknowledge that, because annexe XVII has some flaws, the implementation order is less than ideal. I stress that modifications to the regime are likely to be proposed and that we will continue to press the Commission to make changes in some of the most obvious areas.

Richard Lochhead (North-East Scotland) (SNP): Should Parliament therefore reject the Sea Fishing (Restriction on Days at Sea) (Scotland) Order 2003 (SSI 2003/56) until the changes have been introduced by the European Commission? Given the Commission's track record on breaking its word, surely we should not trust it in this matter.

Ross Finnie: Parliament should absolutely not reject the order because—as I said in my carefully worded introductory two or three paragraphs—the regulation is, as it stands, a binding obligation on us to implement the regulation under the Scotland Act 1998. The fact that we are having discussions on subsequent regulations that will have to be adopted is different from our blatantly flouting the law.

Phil Gallie (South of Scotland) (Con): Will the minister take an intervention?

Ross Finnie: No.

I turn to the two domestic initiatives that constitute our response to the severe quota reductions and the days-at-sea regime. Those are also subject to Parliament's approval and to EC state aid approval. As members know, our response comprises two elements: a decommissioning scheme and a transitional support scheme. We have said that we are willing to spend up to £50 million on those initiatives, of which up to £40 million would be for decommissioning and up to £10 million for transitional support. I will say something about the rationale of that approach, the rationale for the balance of expenditure that we have suggested and the specific objectives of the two schemes. There will be further opportunities to debate the details of the two statutory instruments.

We have tried hard to take a long-term view and to marry that with some necessary crisis management. The long-term view is informed by the state of the stocks and the industry—it is important that we recognise and respond to the underlying biological and economic realities. As far as the stocks are concerned, it seems to us to be likely that there will, especially in relation to cod, be no rapid increase in quotas, which will pose some difficulties. The difficulties that the industry faces might persist for some time, but we have taken seriously the need to implement the scientific advice that there should be a reduction in fishing effort on the stocks. I make that point to illustrate that this is not only a discussion about the state of cod stocks but is—inevitably—a discussion about the scale of fishing activity more generally.

There are about 500 Scottish boats in the over-10-metre category which, to varying degrees, catch cod and haddock. Over the years, the number of boats has decreased to 500, but we must acknowledge that although that has happened, the boats' aggregate power, their efficiency and the amount of time that they spend at sea have all increased. We must therefore consider further reducing that amount of effort in order to safeguard our fisheries.

Given those choices, our view is that decommissioning is a rational economic response. Not only will a smaller fleet have the opportunity to survive in such conditions, decommissioning will mean the opportunities for those fishermen are enhanced. Conservation and economics suggest that decommissioning is one of the routes to pursue. I do not pretend that decommissioning will have no adverse impact. We are trying to secure rational and ordered, rather than chaotic, change. We want change that occurs before, rather than as

a result of, stock collapse. Against that background, our decommissioning target is to reduce by some 15 per cent the Scottish fleet's fishing effort on cod stocks. We agreed that scale of reduction with the Commission as part of the December negotiations and we are now taking the steps to implement it.

We spent £25 million in our 2001 decommissioning scheme, which removed approximately 10 per cent of the fishing effort. We cannot do accurate calculations until we see the level of bids from those who might wish to decommission, but simple arithmetic suggests that another £40 million is likely to be required in order to remove a further 15 per cent of our fishing effort from those stocks.

In devising the scheme, we have set the eligibility criteria as widely as we can, which we hope will enable the widest range of bids. The scheme permits flexibility in the choice of vessels that can be approved and will also ensure that we can meet the reduction target, which is—as opposed to the decommissioning of a predetermined number of vessels—the key. The process of evaluating bids will subsequently ensure that we try to get that balance. I have no doubt that those who are engaged in the process will also try to ensure that the inherent flexibility in the scheme will allow them to make rational choices.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Will the minister comment on the revelation by John Farnell yesterday that there has been an application for €32 million for an emergency scrapping fund? Elliot Morley said yesterday that Scotland should not go cap in hand to Europe. Does that mean that the Scottish Executive will not apply for funding from the €32 million, although Scotland appears to be one of only three countries that would, given the 25 per cent reduction criteria, be eligible?

Ross Finnie: As I understand it, the €32 million scheme has not been approved; that is part of an overall sum for which the agriculture and fisheries council has applied but has not received approval. If such a scheme were approved, the United Kingdom would consider the terms of that scheme and would apply if appropriate. No one has suggested otherwise.

I return to the decommissioning scheme. We do not have a predetermined number: the 2001 scheme achieved its objectives, so we are building largely on that model. We have made some changes; for example, we propose that vessels that are under 10 years old, some of which have been hit very hard and are in difficult circumstances, should be eligible. We also plan to ensure that those who will be worst hit by the days-at-sea restriction—whose effort must be reduced by 25 per cent or more—will be able to take advantage of the new changes to the regulation, namely the 27 per cent premium on decommissioning that will be permitted by the amended regulation. We propose to make 50 per cent of the aid available to those who plan to decommission their vessels immediately, on their ceasing to fish and surrendering their fishing licences. It is hoped that that will put some decommissioning money into fishermen's hands much earlier than would have been the case under the previous scheme.

Richard Lochhead: The minister's comments are extremely worrying. I am sure that he is aware that there is unanimous opposition to the Scottish fisheries minister's spending £40 million on destroying the Scottish fleet. If there is to be any kind of decommissioning scheme, will the minister explain to the Parliament what will happen to the quota, given that it is the birthright of our fishing communities? Will he guarantee today that that quota will be taken back into the ownership of the Government and redistributed around the fleet, which is committed to the future of the industry, and that it will not fall into the hands of foreign owners?

Ross Finnie: There were at least four questions there. The answer to the first question is that we are not proposing, as part of the decommissioning scheme, to include the purchase of quota. The purchase of quota is a matter that is dealt with purely on commercial terms, and it would not be prudent for the Government to do that. However, we are looking carefully at the rules and regulations that govern the transfer of quota—Richard Lochhead will be aware that those rules and regulations are complex and require a potential buyer from a non-UK source to have acquired licences. I understand that there are difficulties in that. We continue to monitor the market. We had discussions with other people in the industry about how that might be facilitated, but there is also the fundamental question of state aid support, and we await somewhat anxiously the ruling on the scheme that was previously operated in Shetland.

I move now to the third statutory instrument. We are providing up to £10 million for six months to those who will be worst affected by the changes. Once again, the detail of the instrument will be debated separately. It is a transitional measure, the aim of which is to allow the industry necessary breathing space so that individual owners can undertake rational economic planning. We were most concerned that they would, without any aid, be forced into impossible choices. We hope that the statutory instrument will also allow those who do not wish to decommission not only to assess and adjust their businesses, but to retain their crews. It will allow some flow of money to those

who own the boats. In all those respects, we hope that what we are offering will help to underpin the prospects of our fisheries-dependent communities.

We are still considering the varied responses to the consultation exercise that we undertook at rather short notice, but there is wide support for the general thrust of what we suggest. We consulted on how eligibility might be determined on the basis of a given level of dependency for vessel income on white-fish landings, and how aid might be distributed on the basis of vessel capacity units—VCUs—plus an amount for lost days.

We want to review and refine our approach in response to points that were made during the consultation exercise. In particular, we want to consider whether we have the balance right between the various ports, and in respect of particular fleets and individual vessels. We want to decide the level of targeting of the scheme and how tightly the eligibility parameters will be drawn; based on the consultation exercise, I think that we are inclined towards the introduction of a fairly tight approach. Finally, we want to decide the basis for the distribution of aid. We are thinking about a payment per VCU day and about combining separate elements, as I said.

I want to make it clear that conditions will be attached to the scheme. For example, we will clearly expect those who receive such support to restrict their fishing days in keeping with the days-at-sea order. We will not pay transitional support to those who choose to fish additional days in the unregulated area, for example, nor will we pay transitional support to those who seek to diversify into other fisheries. We do not want to see a large diversion of fishing effort into nephrops or shellfish fisheries, for example.

We recognise that the downturn in the white-fish sector will also present difficulties for the onshore infrastructure. Therefore, for a transitional period of six months, we are prepared to fund 95 per cent—as opposed to the normal 75 per cent—of the costs to local authorities of providing emergency rates relief to affected fisheries harbours. We shall discuss the details of those arrangements with the relevant local authorities.

We have also asked the fish-processing sector to update the processors' action plan in order to build on achievements to date. More generally, Scottish Enterprise and Highlands and Islands Enterprise already have in place in each area that is affected a range of initiatives to stimulate business growth and employment. Furthermore, local enterprise companies whose areas include affected fishing communities are urgently assessing the economic impacts of the cuts and will draw up local plans to ensure a viable future for the worst-affected individuals and communities. In the next few days, we will firm up the detailed transitional aid proposals and begin preparation of the detailed guidance and documentation that will be required for the scheme.

The two schemes—the decommissioning scheme and transitional support scheme—must be seen as a package. Our clear underlying policy objectives are to conserve stocks and to facilitate sensible restructuring of the industry, which cannot be achieved unless the main emphasis is on looking at both sides of the equation. The transitional support element is designed to complement decommissioning—it is not intended to undermine it by offering the prospect of continuing subsidy. That is not the policy objective and we hope that, through such an approach, the industry can make the sensible choices in each port.

I do not pretend that circumstances are not exceptionally difficult. Unwelcome uncertainty surrounds the whole programme, because we do not know what will ultimately emerge from on-going negotiations in Brussels. The Executive's clear aim is to negotiate a successor regime and amendments to annexe XVII as quickly as possible.

Unless we take the necessary steps to secure a recovery in fish stocks, the industry will have to adapt to significantly lower quotas for a number of years; I am sure that none of us wants that. The economic prospects will be significantly better if we take the short-term opportunity to restructure, which is why the Executive is providing a £50 million package. We hope that, in co-operation and collaboration with the industry, the necessary degree of restructuring will be promoted through decommissioning, and that the package will inject significant liquidity into the sector and provide the short-term transitional support that will enable those who are most affected to adjust to the changed situation. In conservation and economic terms, such things need to happen. Annexe XVII has forced the issue in an unwelcome manner, but I hope that the remedies that we propose are sensible in respect of conservation of our fishing stocks and, just as important, in respect of our fishing communities.

I move,

That the Parliament welcomes the Executive's commitment of up to £50 million in aid to assist fishermen, on-shore fisheries businesses and fishing communities throughout Scotland as a very substantial response to the outcome of the EU Fisheries Council in December 2002; welcomes the result of quota negotiations in the nephrops fishery and the progress made in reforms to the Common Fisheries Policy at that Council; endorses the need for sustainable economic development of Scotland's fishing industry and communities; recognises this can best be achieved through healthier fish stocks; acknowledges this implies further restructuring of the white fish sector; welcomes the provision of up to £40 million for further

decommissioning; welcomes the provision of up to £10 million in transitional support to facilitate rational economic planning and adjustment by those who wish to remain in the sector; notes that such transitional support will be conditional upon, for example, non-diversification into other valuable fisheries, such as the west coast and North Sea nephrops fisheries, and supports the Executive in its negotiations to secure a more economically realistic EU legal framework initially through amendment to the current interim EU regulation and thereafter through a successor regime.

09:54

Richard Lochhead (North-East Scotland) (SNP): I welcome this long-overdue debate. For the past few weeks, Scotland's fishing industry and the white-fish sector in particular have had to come to terms with the most serious crisis that has befallen our fishing communities in living memory. Draconian quota cuts and an unworkable and dangerous days-at-sea scheme have been foisted on the industry. Our fishermen never imagined such a combination in their worst nightmares. Even the Scottish fisheries minister himself has described the measures as pernicious, inequitable, unfair and crude.

The deal that the UK Government supported at the tail-end of last year is anti-conservation, anti-fishing and most certainly anti-Scottish. We were told that Scotland need not worry about who led the UK delegation and that we need not be concerned that Scots fishermen did not have their own voice at the top table because our interests would be safeguarded by big influential team UK.

A few hours after the First Minister promised Scotland victory, we were left to pick up the pieces following yet another spectacular capitulation by the UK in Brussels. The UK's sell-out in the fisheries negotiations was but the latest in a long line that stretches back over the past 30 years of the common fisheries policy.

Rhona Brankin (Midlothian) (Lab): What quota cuts would team Lochhead have accepted for the Scottish fishing industry?

Richard Lochhead: I give the champion of positive contributions to debates my reassurance that the SNP would not have accepted this deal, the effect of which will be to destroy a large part of our fishing industry.

A couple of weeks after the deal, Ross Finnie came back to the chamber to defend the agreement. He told us how countries such as Denmark simply could not be shifted and that Scotland had, as usual, to take the brunt of the pain of the cutbacks in the North sea. Every other country except Scotland managed to get a deal that it could live with, despite the fact that Scotland is the most fisheries-dependent country in western Europe.

George Lyon (Argyll and Bute) (LD): Will the member take an intervention?

Richard Lochhead: Let me continue a wee while.

Scotland's vital white-fish quotas were halved; Denmark managed to save its industrial fishery quota in the same week that some of its vessels were being arrested for illegal bycatches. Danish boats won 23 days at sea per month, whereas the Scottish white-fish fleet, which is the fleet that uses the biggest mesh in the North sea, was told that it would get nine days.

The predicted economic consequences for our fishing communities are dire. Buchan and Shetland in particular face massive economic blows. The west coast ports are extremely concerned about the potentially devastating impact of displacement on the prawn fishery. With prices already at a 20-year low, the last thing that the sector needs is more prawns being landed by displaced vessels.

Vessels that were frozen out of the deep-water fishery in their own backyards following last year's decision to hand stocks west of Scotland to the French are staring bankruptcy in the face now that their white-fish quotas have also been cut. In some form or another, the whole industry and every port is feeling the impact of the measures.

George Lyon: Richard Lochhead said that he would have rejected the deal, but how would he have built a qualified majority to overturn it? Even if he had built a qualified minority, the Commission would have taken emergency powers with the result that we would have had 80 per cent cuts right now.

Richard Lochhead: The difference between the policy of the SNP and that of the Liberal Democrats is that Scotland would have had a champion at the top table not only at December's fisheries council but at every council over the past 30 years. Scotland would have had its own champion if we had been independent.

The reasons that I have laid out illustrate why it is so important that the Scottish Executive deliver an effective and appropriate aid package, but the Executive has been unable to get even that right. Ross Finnie compounded matters by announcing an aid package that offers little aid to our fishing communities and, if unchallenged by Parliament today, will simply aid the demise of Scotland's fishing industry.

In many debates in the chamber, MSPs from all parties have spent a lot of time informing the minister about the importance of the onshore sector, which includes not just fish processors but the service sector. However, it is difficult to identify any new cash for that sector in the package that

has been announced. The minister said that he was listening, but it is clear that all our pleas have fallen on deaf ears.

George Lyon: Will the member give way?

Richard Lochhead: Let me continue.

So far, there are few new significant measures for the processing sector. Without appropriate help, that sector will lose valuable supplies and skills and will struggle to cope with the costs of insurance and the sea fish levy. There is nothing for the hundreds of businesses that rely on servicing the white-fish fleet, which will be tied up for two weeks every month until July and may be decommissioned by the minister. At the very least, we should give all those businesses emergency rates relief.

The minister's decision to allocate up to 80 per cent of the package to destroying Scottish fishing vessels beggars belief. Other fisheries ministers help their fleets to weather the storm when times are tough; our minister fails to defend his industry during vital negotiations. His answer is to inflict two decommissioning schemes on our fleet in as many years. Other fisheries ministers returned from Brussels in December having seen off a threat to stop them from using European cash—our cash is being used to build new vessels for their fleets. Our minister returned to Scotland and announced that he wanted to use our cash to destroy vessels and kick our industry when it is down.

To rub salt into the wounds, the European Commission and the UK, which were the architects of the fisheries deal, are set to get off scot free because the £50 million aid package that the minister has announced is to be wholly funded from the hard-pressed Scottish budget. We have been taken for mugs—our European competitors must be laughing all the way to the EU bank. Why is it that, when other nations faced unprecedented fishing crises, Europe's purse-strings suddenly loosened?

Ross Finnie: Does the member understand that all money, from whichever Government source it comes, is taxpayers' money? The Scottish Executive is using taxpayers' money in the most effective way to deal with the real crisis that is on our doorstep.

Richard Lochhead: The minister has hit the nail on the head. The point is that European cash is our taxpayers' money, which is why we should be getting it to help our fleet. Other states benefit from our taxpayers' money, but Scotland does not.

When the EU-Morocco fisheries agreement collapsed in 1999 and a large part of the Spanish fleet was left with nowhere to go, the Spanish Government applied for and secured a €197 million emergency aid package from Europe. That package was to help 450 boats in Spain. Today, €150 million is available from the same emergency fund. Why do the minister and his counterpart in London not apply, as the Spanish did, for some of that money to help Scotland?

Phil Gallie: Mr Lochhead said that our money goes into Europe. Given that Britain is one of three nations that contribute positively to Europe, does he agree that it is ironic that we do not receive support when we need it?

Richard Lochhead: I am happy to agree with that important point.

Elliot Morley came to the Parliament yesterday. He is clearly not only a dismal fisheries minister, but completely and utterly ignorant. He accuses Scotland of wanting to support a begging bowl culture by applying for money that is rightly ours. This man Morley is not the slightest bit interested in saving Scotland's fishing industry. Scotland's fishing communities deserve what they are entitled to. Ross Finnie must leave no stone unturned and demand the funding that Scots taxpayers sent to Europe in the first place.

The emergency aid should be devoted to a recovery plan, not to the redundancy package that the minister has produced. The decommissioning of a huge number of white-fish vessels will turn fishing ports into ghost towns. The minister must get the package right. Last week in Aberdeen, an economist from the Sea Fish Industry Authority told the Rural Development Committee:

"without intervention, many vessels simply will not be able to remain in business with a 30 to 40 per cent reduction in throughput, and so could not survive the impact of the short-term recovery measures."

He went on to say:

"it is clear that the recovery measures will result in thousands of job losses around the coast of Scotland and millions—if not hundreds of millions of pounds—of output being removed from the Scottish economy."—[*Official Report*, *Rural Development Committee*, 11 February 2003; c 4256.]

Yesterday, a representative from Eyemouth community council told the Rural Development Committee that the decommissioning of one more vessel in Eyemouth would be devastating for the town. Only a few years ago, Eyemouth had 60 boats, each with a crew of six, but today it has 35 boats, each with a crew of three.

If the minister gets his aid package wrong, those predictions will become reality. We must maintain a critical mass, both in the onshore sector and in the fleet. The service sector will be hit hard if the £40 million-worth of decommissioning proceeds—the minister's package will end up doing more long-term harm than good.

There might be a case for a decommissioning scheme, but only a limited, voluntary one. The industry and communities throughout Scotland are united in opposition to decommissioning on the scale proposed. There is also a real concern about what will happen to the quotas if the scheme goes ahead because the vessels, the licences and the fishing entitlements must be surrendered in one package. Ministers must produce proposals to prevent our quotas from falling into the hands of foreign companies and to ensure that only fishermen who are committed to the industry enjoy the benefits of the package. The right to fish Scotland's waters is the birthright of our fishing communities; no one must be allowed to stand in the way of that right.

The package is one part of the jigsaw. The other part is negotiating a better deal and ensuring that a proper cod recovery plan is produced to replace the devastating interim measures. We have to secure more quota for our fleet. The minister has to persuade the Commission to separate the management of cod from that of other white-fish stocks so that the haddock and whiting quotas can be increased.

When the minister comes to negotiate, let him—for goodness' sake—learn lessons from December's fisheries council. Never again should we allow Elliot Morley, the UK fisheries minister, to lead on behalf of Scotland in negotiations. At the forthcoming important negotiations, Ross Finnie must take the lead. Elliot Morley can mislead and misrepresent as much as he wants, and as he did last night in the media when he said that the devolution settlement does not allow Scotland to lead European negotiations. He is wrong; he is misinformed; he is misleading the people of Scotland. The devolution settlement does allow Ross Finnie to lead negotiations. This Parliament has led negotiations in Brussels before, on education and health, so surely the man who is responsible for 70 per cent of the UK fishing industry should lead negotiations during the next few months to ensure that we save the future of Scotland's fishing industry.

I urge Parliament to support the SNP's amendment, and to support a recovery plan for Scotland's fishing communities and not the redundancy plan put forward by the minister today.

I move amendment S1M-3914.1, to leave out from first "welcomes" to end and insert:

"condemns the deal supported by the Parliamentary Under-Secretary of State, Department for Environment, Food and Rural Affairs at December's EU Fisheries Council; agrees with the Minister for Environment and Rural Development that the deal is "inequitable, unfair and even crude"; rejects the scale of the decommissioning element of the Scottish Executive's subsequent aid package and calls on ministers to agree with industry representatives a recovery plan that includes appropriate assistance for the catching, processing and service sectors and ensures as far as possible that the industry remains intact; believes that Her Majesty's Government and the European Commission should provide funding towards such a recovery plan; demands that the Executive and Her Majesty's Government renegotiate immediately the days at sea and quota cuts with a view to replacing these measures at the earliest opportunity with a management regime that promotes sustainability and protects the future of our fishing communities; urges ministers to ensure that Scotland's quota allocations only benefit active fishermen in Scotland, and recognises that the Common Fisheries Policy must be replaced by a policy that returns genuine control of our fishing grounds to the Parliament."

10:06

Mr Jamie McGrigor (Highlands and Islands) (Con): In the Scottish Executive's motion, the word "welcomes" is repeated at least four times, but it is the wrong word—"laments" would be more appropriate. If it said that the Executive "laments the destruction of our once-proud Scottish fishing industry", it would be more apt. During the four years of the Parliament's existence, we have watched the fishing industry lurch from one crisis to another—crises not of the industry's making, but caused by the appalling common fisheries policy management which, as I have said before, hides behind scientists and blames the work force. Any other management that did the same would have been sacked long ago and replaced by something that managed the Scottish fishing industry properly. That is what must happen if the Scottish fleet is to have a future.

We cannot allow micromanagement from Brussels to continue. It has failed to protect fish stocks and fishing fleets. If ever there was an example of bad governance by Europe, the common fisheries policy is it.

Elaine Thomson (Aberdeen North) (Lab): Could the member clarify whether the Tory party is proposing an immediate withdrawal from the European Union?

Mr McGrigor: Certainly not. I did not mention withdrawal. We should like to see national control by all member states of their own waters.

The Scottish white-fish fleet, despite doing more to adopt conservation measures than any other fleet in Europe, is being driven into the ground as the prime scapegoat for the collapse of the cod stock to satisfy Franz Fischler's obsession with his cod recovery plan—a plan that was simply a footnote to his common agricultural policy plans. The deep-sea species fiasco should have been a warning. Franz Fischler said that total allowable catches and quotas were the wrong way in which to manage the industry. Two days later, he introduced TACs and quotas that left Scotland with about 2 per cent of the deep-sea species in their waters; he gave 80 per cent to the French.

Yesterday's Rural Development Committee meeting, in which we questioned the UK fisheries minister, Elliot Morley, gave me no reassurance at all. It rather deepened the gloom, because he, too, seems hidebound by science and is obviously more impressed by European institutions than by any of the inside knowledge and practical experience that he would benefit from if he only listened to people in Scottish fishing communities.

Ross Finnie: Will the member give way?

Mr McGrigor: In a moment.

It was interesting yesterday to hear John Farnell—one of Fischler's chief assistants—saying that TACs and quotas are possibly not the right way in which to produce a sustainable fishing industry. It has taken 30 years to work that one out.

Ross Finnie: Mr McGrigor is obviously suggesting that we should ignore the science—

Mr McGrigor: I am not suggesting that.

Ross Finnie: The International Council for the Exploration of the Sea includes our own scientists at Aberdeen. Is the member also suggesting that there is something inherently wrong with what they are doing?

Mr McGrigor: In his evidence to the Rural Development Committee the other day, Professor Tony Hawkins did not seem to respect much of the science that had been carried out. Indeed, it is a question of how the science is interpreted. However, I will address that point later when I talk about the hake recovery plan.

The fishermen themselves are turning against TACs and quotas. After all, although the Scottish demersal sector has a very good percentage of quotas in haddock, cod and whiting, there is no point in having them if the fishermen are not allowed to catch the fish. Furthermore, there is no point in Mr Morley and Mr Finnie congratulating themselves on having secured another 10-year derogation for six and 12-mile limits, relative stability and the Hague preference if no decent Scottish fleet is left to take advantage of them.

I welcome the Scottish Executive's £50 million aid package; however, four fifths of it is targeted at decommissioning, which is a gross imbalance by any standards. Fishermen want to fish. The Scottish Fishermen's Federation is appalled by the proposal, and Elliot Morley would not answer my question about the number of vessels that he expected the Commission would want to be decommissioned in return for extra days at sea.

The Commission itself acknowledges that the practical operation of the days-at-sea scheme is flawed. It is compromising safety, making working conditions hell, and not giving the fishermen time to catch their very limited quotas. The Executive must call on the Commission to entertain claims for time lost due to bad weather. Moreover, time lost during long transit passages should be refunded to vessels that are able to demonstrate that their gear was not used during the passage. Less powerful vessels should be permitted to transfer their days at sea to more powerful vessels based on kilowatt days.

However, despite all the arguments over days at sea, the main problems lie with the quotas. Vessels will have to increase their income in order to survive, which can be done only through taking on other vessels' quotas. Will the minister tell us what has happened to the quotas that belonged to vessels that were decommissioned in 2002 and whether those quotas can be used now? Even if vessels receive a larger quota, they must be allowed the time to catch it safely, and a scheme must be evolved that allows them to do so.

As it appears that the so-called interim measures might go on well beyond July, the minister must tell us about his contingency plans if that happens. For example, is it possible to increase the allowable catch for haddock and whiting by fishing in areas that have very few cod?

As for the science, it would appear that it is interpreted in different ways to suit different people. Draconian measures have been brought in for cod, but why has there been an 11 per cent increase in the TAC for hake when the science suggested that there should be a virtual moratorium on catching that stock? Is it because the Spanish like catching hake? Indeed, what has happened to the hake recovery plan?

Scotland seems to have been singled out to carry the can for the failure of the CFP. That is simply not good enough. It is time for members to stand up for our fleet and to stop giving tacit support to bad decisions that are made miles away in Brussels. Geographically, Scotland might not lie in the heart of Europe, but Peterhead and Fraserburgh sit in the heart of Europe's richest fishing grounds. It is time to realise that only with the national and local management of UK waters can we save the Scottish fishing industry and the people who depend on it.

I move amendment S1M-3914.2, to leave out from first "welcomes" to end and insert:

"recognises that the results of the EU Fisheries Council in December were disastrous for Scotland; notes the severity of the crisis now facing the Scottish fishing industry; believes that the effects of the conservation measures already taken by Scottish fishermen have not been taken into full consideration; further notes the Scottish Executive's £50 million aid package but questions the balance of allocation between decommissioning and transitional funding, and notes that the Common Fisheries Policy of collective management has been disastrous for the Scottish fishing industry and must be replaced and that

only a move to national and local control will bring sustainability to the Scottish fishing industry in the future."

10:14

Elaine Thomson (Aberdeen North) (Lab): The solitary point of agreement between Richard Lochhead and me is that the white-fish industry is undoubtedly facing its greatest crisis for a generation. However, there we part company. It is clear that any decisions that are made now must focus on ensuring that the Scottish fishing industry can survive and be sustainable in the long term. However, that cannot be done by ducking hard decisions or even by denying the science, which is something that those who oppose the EU's harsh but necessary decisions often appear to do.

Richard Lochhead: Will the member give way?

Elaine Thomson: No—I am not even out of my first minute yet.

Once again, the SNP has come to the chamber with no real answers and the same old arguments about the constitution and who leads the delegation. What is really at stake is the future of the Scottish fishing industry, and that is what we should be concentrating on. It is clear that white-fish stocks have been in a long-term downward trend for many years. It is uncertain whether North sea fish stocks will ever recover. No one particularly wanted the recent EU settlement, but drastic action had to be taken to ensure a long-term viable, sustainable North sea fishery.

Currently, there is high cod mortality because the cod are often caught before they are mature enough to spawn. That situation is not sustainable. The marine laboratory in Aberdeen indicates that only one in 20 cod will survive to maturity at the age of four. John Farnell, of the European Commission fisheries directorate-general, made it clear in evidence to the Rural Development Committee yesterday that the new regime, which cuts fishing effort by only 65 per cent, is a higher risk one than that which is sought.

Richard Lochhead: Elaine Thomson said that it is important that the white-fish fleet survives. How will the fleet survive if every time a minister does badly in negotiations in Europe he comes back with a decommissioning scheme that will destroy part of the fleet?

Elaine Thomson: I am just going to move on to what really happened at the European negotiations, which was made clear to Mr Lochhead and others who attended the Rural Development Committee meeting yesterday. Mr Lochhead has accused Scotland and the UK of being unable to win over enough EU countries to support our position. One answer to that accusation is that European countries such as Sweden and Germany wanted to adopt either the original European Commission proposal, which was to have a complete ban, or the next proposal, which was to have an 80 per cent cut in fishing effort. Scottish ministers opposed, correctly, both those positions.

Phil Gallie: Elaine Thomson referred to Sweden and Germany. Can she advise me what fishing stocks those countries have and what has happened to their stocks?

Elaine Thomson: Both those countries are involved in fishing and, as they are part of the EU, they have a right to be involved in discussions on fishing. The proposals for a complete ban or an 80 per cent cut were opposed by both UK and Scottish ministers because they would undoubtedly guarantee the end of the Scottish white-fish industry, which would have consequent devastating effects on fishing communities around Scotland. The Executive has given clear support to the fishing industry to ensure that it has a long-term future. The further decommissioning and transitional aid, which will be supported by the £50 million, will allow those who remain in the industry to work for 15 days a month as opposed to the original proposal—

Alex Fergusson (South of Scotland) (Con): Will the member give way?

Elaine Thomson: No. I am running out of time.

The original proposal would have allowed fishing for only eight days a month. It was also made clear yesterday that the European Commission is willing to work with the Scottish Executive and others to modify and make more flexible the days-at-sea rules, so that consideration can be given to boats being in port for safety reasons.

Overfishing is the main reason for the current crisis, but that has undoubtedly been made worse by decades of failed fisheries management under the previous CFP. The new CFP contains almost everything that the Scottish fishing industry, the Executive and the Parliament seek and it should be welcomed. In particular, we should welcome the opportunity for increased local control, with regional advisory councils.

The fishing industry consists not only of boats at sea, but of fish processing and other ancillary industries, which employ thousands of people. About 1,600 people work in fish processing in Aberdeen alone. Danny Cooper and Robert Milne, who are in the public gallery, have often said that when the herring fishing closed in the 1970s, fish processing was given no support, so it collapsed. The result was that markets and businesses were lost and to this day we do not eat much herring, which is the kind of fish that forms part of the healthy eating lifestyle that the First Minister urges us to adopt.

I ask the minister to ensure that urgent attention is given to how best to support the onshore processors. They, too, are part of a sustainable fishing industry. As part of that, we need to concentrate on maximising the value of fish products and on ensuring their quality. Recently, I learned that one of the UK's largest supermarkets buys fish from a north-east fish processor. That is fine, but it insists on using imported fish because the quality of Scottish fish is poor and inconsistent. That is a ridiculous situation and I ask the minister to consider what we can do to raise the quality of our fish and support the fish processors and skippers who want to deliver that step change in quality.

The Labour party believes that the Scottish fish industry has a sustainable future, welcomes the Executive's commitment and support for that industry and supports the motion.

The Presiding Officer: This debate has to end at 11.30 and the two opening speakers were well over time because they were both generous in giving way. I must therefore be strict on timing if everyone is to get a chance to speak in what is an important debate for the people whom the members represent.

10:21

Stewart Stevenson (Banff and Buchan) (SNP): When I first came to Parliament, on 13 June 2001, it was to stage 3 of the Housing (Scotland) Bill. I made my first speech the following day, in a debate on the subject of fishing, and said:

"Taking too many boats out of the industry now will benefit only other countries' fishing industries."—[*Official Report*, 14 June 2001; c 1670.]

Today, our money is building Spanish boats and destroying our boats. Yesterday, Elliot Morley claimed as a victory the fact that the money being spent by the Spaniards must be spent by 2004 whereas, previously, they had to spend it by 2006. There is no reduction in the money, however, which means that Elliot Morley claimed as a victory the fact that the Spaniards must build their fishing fleet up even faster. The extremity of the situation in which our industry is in is perfectly illustrated by that difficulty.

There might be many ports around Scotland in which fishermen are happy with the EU result—I know of some—but the disastrous operation of the CFP will ensure only that their turn for misery has been postponed. We must not indulge in triumphalism because some local interests have a temporary victory. Ministers claim success in the renegotiation of the CFP and it is true that relative stability has been preserved, the Shetland box has been maintained and the Hague preference is continuing, but that is the case only for the time being. There are no guarantees and there is no permanence. The CFP remains absolutely and fundamentally flawed.

In 1975, I campaigned against our entry into Europe on the terms that condemned us to policies such as the CFP and, today, I believe that the CFP must be ended and that we must be out of it.

We must not allow ourselves to be blinded by science. As I said to Elliot Morley yesterday in the Rural Development Committee, there are many sources of science. The International Council for the Exploration of the Sea is the paramount source, and Scotland contributes to it. National fishing reports provide evidence to the EU but, in many cases, that evidence is flawed—as we know, the Danes' industrial fisheries are grossly under-reporting the white-fish bycatch using only the evidence of arrests in the last three months of the year. We must bear in mind the fact that the Department for Environment, Food and Rural Affairs released a report that showed that stocks of cod and haddock are separated to an adequate degree in the North sea.

We have to acknowledge that our view of the sea's ecology is akin to the knowledge of a room's contents that would be gained by looking through the keyhole. We have an incomplete understanding of what is going on. Our data are incomplete. To question the science is to question whether it can predict what will be, not to quarrel with what is seen. We must open the debate about the nature of extrapolation from the data that are known and about an environment with imperfect data and hidden variables. The Icelanders and Faeroese have used science differently and with huge success.

On 14 June 2001, I said:

"fishing is not just another industry. It is a way of life and a staple for many communities".—[*Official Report*, 14 June 2001; c 1670.]

Responsibility for fishery management must be delivered to those communities, which will then succeed or fail on their own efforts. The CFP has failed and must be ended in its present form.

10:25

Tavish Scott (Shetland) (LD): The appalling, unfair and discriminatory outcome of the December fisheries council is already hitting the fishing industry in my constituency very hard indeed. Grotesque uncertainty exists about the present position. Crews, agents and local fisheries managers are trying to run an industry for which there are few details and less hope. For many Shetland fishermen, after a promising 2002, the outcome of the fisheries council in December was a body blow.

I welcome the Minister for Environment and Rural Development's work in meeting fishermen from my constituency and the fact that the First Minister met the fishing industry on Monday in Scalloway. However, current fisheries policy, which is forever being micromanaged from Brussels, gives fishermen an impossible choice: bankruptcy or breaking the law. That is the reality of the present position, and why I oppose the arbitrary and artificial balance to the £50 million package that has been announced. I recognise a change of position, in that fishermen will be compensated through tie-up moneys where Europe has imposed a mandatory period in port. That is welcome, but it will not be enough unless the support is of sufficient value that boats will actually use it.

I suggest a simple formula that targets those boats and crews that are most in need and most disadvantaged by the present appalling position. Unless enough resources are applied to transitional support, boats will not take it and the results will be threefold.

First, those who are unfortunate to be decommissioned will face bankruptcy.

Secondly, many will fish regardless of the rules. They will fish north of the 61 deg line, but there will also be displacement. I agree with the remarks on displacement that have been made by Alasdair Morrison and George Lyon. We need to seek to avoid it, but there can be no doubt that it will happen unless the transitional support is adequate. To argue that there will be no displacement under the current package shows a fundamental misunderstanding.

Thirdly, imports of fish, which Elaine Thomson mentioned, will increase. Prices will remain as depressed as they have been in recent weeks around Scotland's fish markets. A Whalsay skipper who spoke to me on Saturday said that 300 boxes of good fish that were caught this week and landed into Lerwick on Friday were worth a gross of some £11,000. A week before Christmas, the same quantity of fish landed into the Lerwick market grossed £16,000. There are some serious issues with imports and the situation will get worse.

I fear that too many bureaucrats have no idea about the reality of the position that fishing communities around Scotland face.

Bruce Crawford (Mid Scotland and Fife) (SNP): I listened with interest to Tavish Scott's radio interview yesterday morning, during which he acknowledged that the pre and post-negotiation processes in Europe were part of the problem with getting the best deal for Scotland. Does he not acknowledge that Scotland could get the best deal by leading in the negotiations in its own right—with its own people in the process from the beginning, negotiating hard all the way beside colleagues in Europe?

Tavish Scott: I am really not interested in the Scottish National Party's constitutional nonsense. I am interested in finding the best deal for the Scottish and Shetland fishing industry. I am sick to death of wasting time on facts that do not matter. I am interested in finding a common fisheries policy that works, because the present one does not work. If the SNP had been leading in the fisheries council, it would have achieved nothing more than an 80 per cent cut in quotas. I will take no lectures from that lot on the issue.

The choice is stark: enforced bankruptcy or breaking the law. The director of conservation policy in the European Commission's fisheries directorate-general yesterday told the Rural Development Committee that the common fisheries policy had failed. However, the European Commission wants to continue to micromanage the industry. Yesterday, the Commission suggested six detailed points of change to the interim measures so as to alter the draconian days-at-sea rules. They are more of the same, however, and the policy is still to micromanage. That must change.

Unless decisions are made locally and quickly, fishermen will increasingly ask, as they are asking now, "Why are we in the common fisheries policy?" I am not prepared to accept the outcome as it stands at the moment; I trust that the Government is not either.

10:30

Mr David Davidson (North-East Scotland) (Con): As I have said before, I come from a fishing family. Some members of my family went to sea—some were skippers; others were fish buyers; others were processors; one had the ice plant in Aberdeen. A community is at stake. This is not just about those who go to sea. What about those on land who support them? We must consider the issue in a more holistic manner, and we should not get bogged down in silly constitutional squabbling. We need firm, sustainable action. We must ensure that we have a sustainable fleet that will secure jobs onshore in a sustainable manner. That is what the focus of the debate should be at this time.

Forty-four thousand jobs are involved in the sector, and they are not all at sea. Once again, I was disappointed to receive in the form of a parliamentary written answer this week a rejection of a plea to have a task force go in and examine the economies involved. I have asked five ministers now, and I have had five rejections, although one minister at least took things part of

the way, and a scheme led by the local enterprise company and involving local businessmen was set up. However, that scheme failed at the last minute.

We must start considering not just the arguments over the nonsense arising from the European fisheries policy and how Europe is meddling in the industry, but what we in the Scottish Parliament are doing to support our fishing communities. That is a large part of the debate; it is not just about the days-at-sea rule and the fact that policing is uneven. Our people are well disciplined, and we are sending out another fishery protection vessel. What will that vessel be doing, however? Does the contract that governs it enable it to sort out the foreign fishermen? I am not so sure about that. Is the vessel just another stick with which to beat our own crews?

EU aid is being allocated in several different forms, and I cannot believe that the Government down south in Westminster has not got the courage to take back some of our taxpayers' money to help the fishing communities. This is not just about helping fishermen or fish processors; it is about helping communities. If ever there was a need for the European Union to deliver, it is in the form of community support. Members have asked about rates relief. That, too, is not just for the fish processors; it is for all the businesses that are involved in this temporary situation.

The minister did not make much comment on the iniquitous industrial fishing. It is scandalous that that is allowed to go on—that has been mentioned in debate after debate—yet it is still not viewed as an issue. Elaine Thomson mentioned the quality of fish, which is an interesting point. A lot of work is being done on that, and quality is improving, but will we have any markets left to handle fish and to encourage landings anyway?

Mrs Margaret Ewing: Mr Davidson mentions industrial fishing. No wonder the Danes could walk away from the fisheries council talking about valuable results. The fish are starving because of industrial fishing, which is why their quality is reduced.

Mr Davidson: My first members' business debate after Her Majesty opened the Parliament was on the fish processing industry, and I will finish by making some points on behalf of that industry, which is vital to the economy of the north-east of Scotland.

The fish processors need transitional aid. They need assistance with rates; employment grants at times of fish shortage to retain skilled staff, who are hard to come by; help to insure premises, as the new insulation with composite panelling gives rise to increased fire risk; increases to the financial instrument for fisheries guidance—FIFG—funding for premises and plant; and help to downsize and move from larger to smaller premises, so that they may be sustained, as it is not possible to operate a small-turnover business in large premises. If fish processors are to restructure, we cannot leave them out of our considerations. I have not yet heard anything firm from the minister, other than, "Let the marketplace prevail." That is not good enough for the fish-processing sector, which is vital for jobs onshore.

We need a more holistic approach to this exercise, which is not just about those who go to sea; it is about those who support them and those who work onshore, and all the other industries that are based in their communities. It is about time that the debate took note of that.

10:35

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): Thank you for allowing the representative of a southern, land-locked constituency to express views about the on-going fisheries debate.

The fact that no fishing fleet sails from Kilmarnock—the Kilmarnock water is too small even for a rowing boat—does not mean that my constituents or I cannot have a view on the current state of the fishing industry. Indeed, I may be able to view the matter more clearly because my constituents' livelihoods are not at stake. Fish is also a major part of the diet of people throughout Scotland. Today Cathy Jamieson, the Minister for Education and Young People, is seeking to ensure that every child has access to fish at school at least once a week.

Clearly, the changes to sea fisheries are problematic. The Minister for Environment and Rural Development has made clear the Executive's commitment to help the communities that are affected by quota changes to adjust to the new realities. However, we must now proceed to examine how our fishing industry can be improved and made more valuable. There is no point in the Opposition attacking what happened at Brussels or elsewhere while failing—as usual—to come up with an alternative to progress the fishing industry in Scotland. We must reconsider our market targets and move away from a high-volume fishery to develop an even higher-quality fishery.

My statement that I have no direct constituency interest in the matter was not quite accurate. Earlier this week, I met representatives of a small-to-medium-sized Kilmarnock-based company, OWL Water Solutions Ltd, which drew my attention to problems that fishermen face in maintaining the freshness of their catch. I am advised that, on a 10-day trip, the fish caught on day 1 are much less valuable than the fish caught on day 9, because their quality deteriorates in the fishing boat's hold during the trip.

OWL Water Solutions has developed a product that has EU approval for use in drinking water and as a biocide. Early trials with the product have shown that it can maintain the freshness of the catch throughout the trip. As a result, fishermen may get the same high price for their entire catch. Later this year more extended trials, supported by Seafood Scotland, will take place.

There are some regulatory problems with the French—when are there not? However, using the new system there is the prospect of increasing substantially the value of the Scottish catch, which would go some way towards offsetting the loss of income that is caused by the decrease in quotas.

I am talking about a Scottish product, developed by a Kilmarnock company, which is being manufactured in Greenhills in Beith—in the constituency of the Deputy Minister for Environment and Rural Development. It has the prospect of assisting the painful regeneration of the Scottish fishing industry.

I call on the minister to investigate this and other projects that have the potential to improve and aid the industry. Ministers should consider ensuring that trials are accelerated, to see whether the system could be made available to the whole fleet. They should hold discussions with their Westminster colleagues to ensure that the Scottish fleet is not further penalised by spurious rules that create export hurdles in specific countries that are substantially higher than those that the European Community sets.

10:39

Mrs Margaret Ewing (Moray) (SNP): Having been the elected member for Moray since 1987, either at Westminster or in the Scottish Parliament, I do not come from a land-locked constituency. I want to talk from the heart about the implications of this deal for fishing constituencies.

Every year, in November and December, we go through the ritual of preparing for the December fisheries council. I have been through many bad times in those debates at Westminster, knowing that our fishermen would end up with a bad deal in their Christmas stockings. However, this deal is the worst that I have seen in all the years that I have represented my constituency.

I draw attention to a point that was made by the North East Scotland Fisheries Partnership in written evidence given to the Rural Development Committee yesterday. It said

> "There is no doubt that the latest proposals from the Commission spell economic disaster for the North East of Scotland."

The partnership also mentioned what the scientific, technical and economic committee for fisheries has done. It said

> "The experimental nature of this work combined with the lack of robust economic data on the North Sea demersal fleet undoubtedly raises serious questions regarding the reliability of the economic analysis. The economic advice available to the Commission is incomplete and out of date."

It is an insult to our fleet to use incomplete data.

If environmental impact assessments are done for many of the issues that come before Parliament, why should not a social and economic investigation be undertaken into the realities of what is facing our fishing communities? The deal has created such anger in our communities. The fleet in Europe that has done the most for conservation is bearing the brunt of the penalties that are being brought in by Europe.

In my area, women have formed their own version of the Cod Crusaders. In Moray Makes Waves, those women are showing the anger and frustration of their communities. We must remember that they are concerned not just about the present, but about the future. We must take into account the fact that young men in my area follow not only in their fathers' footsteps but in those of their great-grandfathers. They operate small family businesses and we owe them a great debt and should show our loyalty to them.

We are not prepared to turn our coastal communities into an industrial heritage museum trail. One of the biggest tourist attractions in Moray is watching the fleet plying to and fro. The highlight for many people was to turn up at midnight when large numbers of boats were coming in and to see what it was like when the fishermen came home and were greeted by their families.

I ask Ross Finnie—as I did yesterday at the Rural Development Committee—whether, in the March council, he will again raise the issue of fixed quota allowances, because it is important to retain FQAs in Scotland. Will the minister also pursue the issue of whether national quotas will remain in force? Mr Farnell said that they would remain for the foreseeable future. That needs to be clarified.

I want more progress to be made on the issue of industrial fishing, which is a disgrace. Industrial fishing is destroying the food chain and that impacts on all our stocks.

The minister said that the deal was pernicious and that means that we must get rid of the common fisheries policy.

10:43

Mr Alasdair Morrison (Western Isles) (Lab): I am keen to ensure that a west coast perspective is given in this morning's debate. We are all agreed that the CFP is fundamentally flawed. We also appreciate what Ross Finnie and Elliot Morley are now doing within the new and emerging structures. They are trying to work within those

new structures to ensure the best deal for Scotland and the United Kingdom. We all appreciate that the old way of doing business—the annual bun-fight in Brussels—was not in the best interests of the Scottish fishing industry, and certainly not in the interests of those of us who genuinely want to support our fishing industries.

I am always amused when I come to the chamber for fishing debates and listen to a politician who portrays himself as the foremost authority on fishing not only in the Scottish National Party but right across the political spectrum—Mr Lochhead. A week ago yesterday, at an interesting, informative and constructive evidence-taking session in Aberdeen, Mr Lochhead started berating a witness, telling him that he represented a Government-sponsored agency. The bemused witness responded that the industry sponsors his agency and pays for research and wages. How can we possibly take Mr Lochhead seriously when he does not have a grasp of the basic details of the industry?

This cannot be an easy debate for the nationalists, who, for months, have been berating Ross Finnie and Elliot Morley. Both ministers sat in this chamber yesterday and were cross-examined for two hours. Answer after answer showed the flaw in the nationalists' infantile posturing. The nationalists are bereft of ideas and bereft of policies. Yesterday was an interesting lesson.

I turn to the west coast of Scotland. Over the years, the Western Isles fishing industry has diversified in relation to the stock and marketing opportunities that are available. Our fleet of 320 vessels, which employs around 700 people at sea and a further 200 in the processing sector, will largely be unaffected by the decisions that were taken at the crucial talks at the end of last year, but although we are not directly affected by the outcome of those talks, there are other matters that could lead to the destruction of our conservation-led fisheries.

I was grateful and relieved that the Scottish and UK fisheries ministers recognised yesterday the importance of putting in place a number of measures to protect our nephrops fisheries from potentially ruinous methods of exploitation. I urge Ross Finnie to put those measures in place as soon as possible, because the one great concern on the west coast is that we will see the displacement of fishing effort from other parts of the United Kingdom and from the north-east of Scotland.

When we talk about protecting our fragile fishing communities, we must ensure that our actions target the fragile fishing stocks, because without such action we will have no communities, workers, fishermen or processors to protect.

There is another issue that I want to raise in relation to decommissioning. The clearly stated view on the west coast is that the scheme must take out those who have the greatest impact on the white-fish sector, with the emphasis being placed firmly on effort rather than capacity. We know from bitter experience that in previous decommissioning schemes, vessels that had a low or negligible impact were removed. We all appreciate that that did not represent value for money, nor did it represent a favourable outcome in relation to the amount of fishing effort that was left in the sea.

In conclusion, and from a west coast perspective, I believe firmly that we must learn lessons from the disastrous management of our white-fish stocks over the years. We must take note of early warnings. As was stated at the Rural Development Committee yesterday by a number of witnesses, the time to put in place good management measures is when things are going reasonably well. In relation to the west-coast fishery, that is now. If we do not do that, we will create problems for the communities that we represent.

10:47

Phil Gallie (South of Scotland) (Con): I was elected to the House of Commons in 1992. My maiden speech in that chamber, following failure to get into a debate on Europe and Maastricht, was in a fisheries debate. At that time, my interest was in prawn fishing because it affected fishermen on the west coast, and in particular on the Clyde estuary. Then, we were arguing against scientific evidence that suggested that prawn stocks were in decline. We had that argument continually over the years that I was in Parliament. Each time, we found that quotas were cut initially then restored before the end of the year.

We found that the evidence from the fishermen was the best scientific evidence that was available. The fishermen knew that prawn stocks were okay and they were able to monitor them. They were able to self-regulate, which they did in a number of ways. In the Clyde estuary, they did it by establishing a block on weekend fishing and by changing net sizes. They did that in co-operation with the Government.

Alasdair Morrison said that it is good to see a change. It was also stated that this settlement is perhaps the best settlement that we could get. Over the period in which I have been involved and have shown interest in the fishing industry, this is the worst settlement that we have had. Quite honestly, it is unsustainable for the Scottish fleet.

Jamie McGrigor talked about the scientific evidence. It seems to me that scientific evidence is

always time based; it is always based on past findings, not on the present. It is astounding that when we examine the scientific evidence we see that the scientists have not even recognised the importance of the feedstock to the cod stock in the North sea. For goodness' sake, if the fish are to recover, surely we should protect their feedstock, yet the European Commission and the agreement that ministers have signed up to have not allowed that to happen.

Rhona Brankin: Will the member give way?

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

In the past, the industry showed that once it had signed up to such agreements, it stuck to them. It implemented agreements through regulation and the use of our fishery officers. In his term in office, the minister has presided over a 25 per cent cut in the fleet's size. A week or two ago, I asked the minister whether he would cut the number of regulatory officers. There are fewer British fishermen to regulate, so why do we need to maintain the number of fishery officers? The answer was that the Executive had no intention of cutting the number. Why do we need those officers? They seem to over-regulate our own fishermen.

If the draconian measures go ahead, I have no doubt that some stock will be preserved, but the Scottish fleet will be destroyed. The people who will gain from our preserving the cod stock will be the Spanish, who have built their fleet on British taxpayers' money. That must end. I go along with Jamie McGrigor's suggestion that it is time for national and local control of our fishery waters.

Change must take place in Europe. The Labour Government was elected on the basis that it would be at the centre of Europe, but we are now very much on the periphery of Europe. That must change. Perhaps the only way to change the situation would be to take a stand, as the French did by challenging the lifting of the beef ban in the European courts. Perhaps we should step back from immediate compliance and delay implementation until the measures have been tested in the European courts.

10:52

George Lyon (Argyll and Bute) (LD): Like Alasdair Morrison, I speak on behalf of the west coast fishing industry. I make clear its appreciation of the minister's efforts in Brussels on its behalf. The proposed 5 per cent cut in the prawn quota was fought off and the 25-days-at-sea rule leaves the industry in my constituency largely unaffected by the deal.

However, prawn fishermen on the west coast have two major concerns. Alasdair Morrison touched on one: displacement. There is huge worry that unless the short-term transitional relief scheme keeps boats tied to piers, white-fish boats will massively overfish prawns with unused quotas held by producer organisations. I already hear reports from Kenny MacNab of the Clyde Fishermen's Association and others of up to a week's delay in getting prawns into processors because of the quantity of prawns on the marketplace.

The worry is that displacement is happening as we speak, so it is vital that the transitional aid scheme delivers boats that are against piers rather than fishing prawns in our waters. It is vital that the transitional aid scheme works and that the west coast prawn fleet does not end up paying the price for the measures targeted at the white-fish fleet.

As the minister said in his speech, a rapid increase in the quota for cod or haddock is unlikely, so it is vital for the long-term sustainability of the whole Scottish fleet—which includes west coast and east coast fishermen, and not just the white-fish sector—that the Executive's decommissioning scheme works. We need to ensure a better balance between effort and stocks. Unlike Mr Lochhead, west coast fishermen fully support decommissioning. He did not speak for the whole fishing industry when he said that it was unanimously against decommissioning.

Another concern among my prawn fishermen is the anomaly that has resulted in twin-rig prawn trawlers being caught by the 15-days-at-sea rule. That was never the European Commission's intention and I understand that that has been formally acknowledged. I welcome the minister's consultation on a solution to the anomaly and I urge him to choose option B—the administrative solution—which is the right way to proceed.

I will now deal with the SNP's position. This morning, we sat and listened to Richard Lochhead in the hope that we would hear something constructive or even something sensible, but we heard neither. He said that he would have rejected the deal, in the very unlikely event that he would ever represent the Scottish fishing fleet, and would have voted with the Swedes and the Germans, who, by the way, were opposed to the deal because the measures did not go far enough—they wanted the cod fishing effort completely shut down. He would have voted with them, thereby allowing the Commission to take emergency powers and to implement its original proposals, which were an 80 per cent cut in quotas and only seven days at sea. That would be the reality if Richard Lochhead had been representing the industry in Europe. That is what the SNP policy really means.

The SNP also says that it would refuse to implement the decommissioning scheme. We all

know what that would result in. It would trigger another 15 per cent cut in days at sea—another two days off the allowable days at sea. The SNP's policy would mean further cuts in effort for the Scottish fleet.

The coalition Executive has backed the sustainable future of our fishing industry with £50 million. What is the SNP policy? Not a penny more. So much for fishing being at the heart of SNP policy. Is it any wonder that the fishing industry is putting up a fishing candidate against Mr Lochhead?

I have attended many agricultural council meetings in my time and never before have I witnessed an Opposition spokesman, whether Tory, Labour or Liberal Democrat, turn up at a council meeting in Brussels and proceed to undermine and stab in the back a minister battling hard for the future of our fishing communities. I know that Mr Swinney is not in the chamber, but I say to him that it is time that he decommissioned his fishing spokesperson, because he is a disgrace to his party and a disgrace to Scotland.

The Deputy Presiding Officer (Mr George Reid): Before I call Christine Grahame, I point out that the two remaining speeches from her and from Mr Smith should be about three minutes.

10:56

Christine Grahame (South of Scotland) (SNP): That last speech rather reminds me of the phrase:

> "full of sound and fury,
> Signifying nothing."

I will quote from Franz Fischler's open letter to the fishing industry. He said to the fishermen:

> "We are not forcing anyone to scrap their boats or to give up fishing. We are making an offer to those fishermen who can no longer make a reasonable living from fishing to leave the industry, in dignity and with appropriate … support."

He went on to say:

> "I am convinced that it makes no sense to spend money with one hand for scrapping vessels and with the other to finance new ones."

Well, well. He finishes the letter by saying "Best regards". That man had no regard for the fishing industry.

I have some other quotations. As Margaret Ewing said, communities are being destroyed. In Eyemouth, two years ago, £5 million was spent on the harbour and an ice plant. A recent report from the Liberal Democrat-led Scottish Borders Council said that between 500 and 600 jobs are being threatened by the recent draconian proposals that are being proposed as part of the CFP.

I will quote what fishermen and the people working there said in an article in the *Daily Mail* on Saturday 25 January. Robert Mitchell, boat welder, said:

> "These latest cuts are bound to affect boat building, and what really gets to me is the way we let all the foreign trawlers into our waters.
>
> My wife packs prawns and she makes more money than I do but, of course, her job will be affected too."

Robbie Walker, fish auctioneer, said:

> "My hair is going to turn grey very quickly this year, because it's make or break now."

Robin Aitchison, ice plant boss, said:

> "The ice factory is owned by a co-op of fishermen and was built about the same time as the new harbour two years ago. The cuts are going to devastate the whole thing. The boats will keep taking ice as long as they go to sea but will it be worth while to keep this going. I was a deep-sea fisherman for 12 years. It runs right through my life."

Rhona Brankin: Will the member give way?

Christine Grahame: No. I have only three minutes.

Graham Dench, charity worker, said:

> "Scots fishermen tend to be different from English; they have a lot of pride here and a determination to sort their own problems out.
>
> Men have been going to sea for seven days and coming home to find they've lost money and are further in debt."

The quotations go on and on. Johnny Johnston, harbour master, said:

> "The harbour is the hub of the community and if nothing's happening there, nothing's happening in the town."

We are talking about the destruction of Scottish communities. Elliot Morley suggested yesterday in the Rural Development Committee that we should treat the situation as just another major industry closure. It is that, but it is more; it is a fatal blow to our sea-coast communities and their way of life. The Executive does not understand that.

11:00

Iain Smith (North-East Fife) (LD): Like my colleague George Lyon, I will say a few words about the prawn industry. The prawn industry is vital to the fishermen in Pittenweem in my constituency.

There is no doubt that the EU regulations that we are required to implement are illogical, inconsistent and, in some cases, anti-conservation. There are good conservation reasons for a nephrops fisherman to use 100mm mesh rather than 80mm mesh. The fact that the larger mesh allows more juvenile fish to escape will enable him to produce a product that is of better quality and higher value and will allow him to conserve his limited quota. It makes no sense

that a nephrops fisherman should be penalised for such a practice by having fewer days at sea to fish. The regulations should be about what is fished, not how it is fished.

Like George Lyon, I welcome the Scottish Executive's efforts to find a way round the problem through its consultation paper. Even at this stage, the European Commission should recognise its folly and change the regulation in question. If a boat goes out from 5 in the morning until 5 at night, that counts as one day at sea, but if it goes out from 5 in the evening until 5 the next morning, that counts as two days at sea. That regime will have an impact on the prawn fishery, which tends to fish overnight. The system of measuring time from midnight instead of considering logically the number of hours that are spent fishing means that the prawn fishery will lose a day at sea per week. I hope that the EU will reassess that nonsense rule.

My main concern for the fishery in Pittenweem relates to displacement, which has been mentioned. There has already been an impact on the price of prawns as a result of displacement. That will affect the income that is available to the fishermen in my communities, who will not be able to get such good value for their product. In addition to the issue of using up existing quota, there is a genuine threat of illegal fishing for prawns. There is a serious danger of black fish being landed. Although the EU was warned about that being a side effect of its regulations, it seems to have ignored the warning. I hope that the issue will be addressed.

Quota will be used up early. When the quota that is unused by some of the producer organisations is used up, less quota will be available to the fishermen in my area, who do not have an allocated quota. They use up what is available. They will lose out towards the end of the year.

There will also be an impact on onshore industries, such as engineering, marketing and processing. Most of the processors require white fish from somewhere in Scotland. I hope that the Government will consider extending the emergency business rates relief scheme. Such a scheme was used during the foot-and-mouth crisis. That would help businesses that suffer from severe financial difficulties as a result of the regulations.

Scottish Enterprise and the local enterprise companies are beginning a local economic impact study of the effect of the EU rules. They must be told to get a move on with that. If a study is produced in six months' time, that will be too late. Businesses that needed support will have gone to the wall.

I welcome the extra £50 million in support that Liberal Democrat ministers in the Executive have secured for the fishing industry. We must ensure that there is an appropriate balance between funding decommissioning and providing transitional relief. It is no use having decommissioning or transitional relief schemes if no one takes them up because the balance is not right.

Let us be clear—without Liberal Democrats in government in Scotland, there would have been no £50 million package and there would have been no £10 million to support transition.

I support the motion.

The Deputy Presiding Officer: We move to winding-up speeches. We must reach the Criminal Justice (Scotland) Bill by 11.30, so speakers should stick to their designated times.

11:03

Maureen Macmillan (Highlands and Islands) (Lab): There can be no fishing industry if there are no fish. We can blame the situation on the common fisheries policy, as the Tories do, even though they signed up to it. We can blame it on the fishermen's reluctance to sign up to conservation measures in the past, as the environmentalists do. We can blame it on the scientists, as the Tories do. We can blame it on the foreigners, as the Tories and the SNP do. We can blame it on the minister for not announcing on his return from Brussels that he had negotiated another 100,000 tonnes of cod for the North sea, which would be swimming past Peterhead at any moment. That is what the SNP's position seems to be.

The minister and his UK counterpart did all that was possible at the time. The initial European Commission proposal would have closed down the fishery, but they clawed back significant concessions.

We have a last chance to save our fish stocks and, therefore, our fishing industry.

First, it is important to ensure that there is a fishing fleet left to grow and develop when the fish stocks have recovered, and I ask the minister to address that. We must also do our utmost to preserve unused quota entitlement in Scotland. It is a tradeable asset, which Highland Council, for example, would like to acquire for future times. I am aware that the Executive is pursuing in Europe whether it is possible to organise such schemes.

Secondly, we must have unanimity of purpose between fishermen's organisations and the scientists. They must get round the table together and work out the way forward for the industry.

Thirdly, we must have financial support for fishing communities in this dire time for them. That

financial support should not be for the owners of the boats alone, but for the crews, the support industries that supply fishing gear, the quayside workers and the fish processors who have to find other suppliers. For fishing communities, the situation is the equivalent of the closures at Motorola, Ardersier and the Jaeger factory in Campbeltown.

We must also ensure that cutbacks in the white-fish catch do not mean that there is displacement pressure to the detriment of the fragile inshore fisheries on the west coast, as Alasdair Morrison pointed out.

Stewart Stevenson: Will the member give way?

Maureen Macmillan: Thank you, but no. I have very little time.

I am pleased to see in the Executive's motion that support packages will be conditional on avoiding the situation I described. We do not want one sector of the industry to survive at the expense of another, and I ask the minister to keep a close eye on what happens there.

I make a special plea for the processors, who have often been neglected in the equation. I have raised the matter in debate before. As Elaine Thomson said, they are considerable employers in the north-east of Scotland, and they might need transitional help until they find new sources of fish from abroad.

We all pray that the stocks will recover and that we will still have a fleet to fish them. However, I end by offering my congratulations to a Wester Ross community that has received a prestigious international marine conservation award, never before won in this country. The award is for the prawn creelers of Loch Torridon, who came to an arrangement with the prawn trawlermen whereby the creelers fished the loch and the trawlers worked further out. The scheme has meant the preservation of young prawns and egg-bearing females. The whole fishing industry should take a lesson from that extremely important initiative on the west coast of Scotland, because it represents the way forward.

11:08

Alex Johnstone (North-East Scotland) (Con): In opening, it is appropriate to refer once again to the fact that the debate takes place rather later than many of us would have liked.

When the minister made his opening statement, it seemed obvious that he regards the debate as something of a pre-debate on the statutory instruments that he has introduced to implement the cuts that were negotiated in Europe. I am disappointed that that has been allowed to happen. Some six weeks ago, a statement was made in the chamber, and members should have been allowed to debate the matter then. At that stage, views from every corner of the chamber could have been expressed when there was still an opportunity—to some extent—to influence the drafting and ultimate implementation of the regulations.

I am disappointed that the minister seeks to talk about the statutory instruments when we have so much more to talk about in relation to the fishing industry, as we will have in the months and years to come. I am also disappointed, because the fishing industry, above all else, used to bring about consensus in the chamber. We all knew what the problems were and how difficult they were to face, but there was always a willingness to concede and to find consensus across the political divides. Today, we have witnessed the first manifestation of the polarisation of political argument, with the unfortunate results that that has for the fishing industry. We can no longer deliver what we want to deliver.

I mention in passing that the fishermen have decided to seek direct representation in the chamber, and have formed their own organisation to stand candidates at the Scottish election. I quote briefly Dr George Geddes, vice-chairman of the Scottish White Fish Producers Association:

> "It may well be time to put people into the parliament that will actually deal with these issues. There has got to be a stand against this because this parliament is letting us down badly in all areas. When this parliament was set up, I honestly believed it was going to be a positive thing for Scotland. But the fishing has been let down tremendously badly by this parliament, and the people in the Scottish Parliament, I honestly believe, lack the knowledge about the fishing industry."

Unfortunately, I must criticise Mr Geddes for criticising the Parliament directly; many of the actions at which he expresses dismay are not the Parliament's but the Executive's.

The Opposition has been consistent in its defence of the fishing industry, but it has become ineffective. That is partly due to the necessity for party-political posturing. The election is just around the corner, which is why we see the spectacle of the leader of the Scottish National Party, Alex Salmond, leading delegations and marches along the street outside. [*Interruption.*] It is interesting to hear calls from members on the SNP benches that he is not the leader. It is they who continually and repeatedly raise the issue of who leads delegations to the European Union. They should concern themselves with who leads delegations to the Scottish Parliament.

Richard Lochhead: Does the member accept that Alex Salmond represents the most fisheries-dependent constituency in the whole of the UK, not just Scotland? It used to be a Conservative

constituency, but the Conservatives were chucked out because they betrayed the Scottish fishing industry in Banff and Buchan year upon year.

Alex Johnstone: Indeed, Alex Salmond represents his constituency and the fishing industry very effectively—more effectively, perhaps, than Richard Lochhead, who has consistently worked himself into a position in which he becomes difficult to believe and hard to understand.

A party that says that it believes in the EU and in independence in Europe deems that its policy on fishing matters is for Richard Lochhead to go to the EU and behave towards Europe in a way in which we have only ever seen Margaret Thatcher behave. I support that mission, but the image of Richard Lochhead smashing his way round the EU with a handbag does not appeal to me at all. I do not think that it appeals to many in the Scottish fishing industry either.

The real problem is that, when Margaret Thatcher used her muscle in Europe, she had the support and authority of the whole of the United Kingdom. It looks silly for someone such as Richard Lochhead, representing Scotland alone, to attempt to use that type of bullying tactic, and I suggest that it would have got us rather less out of Europe than even the minister has done for us.

The Conservatives are convinced that there is no longer a future in the current common fisheries policy. It must be renegotiated and it must deliver local and national control, or we have no future within it.

11:13

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I am still not entirely sure from Alex Johnstone's speech whether he intended the comparison of Richard Lochhead to Margaret Thatcher as a compliment or an insult. Perhaps we will hear about that later.

There is no doubt that the Scottish fishing industry faces its greatest-ever crisis. This should be a serious debate and, from time to time, there have been serious contributions. When I came into the chamber yesterday before the Rural Development Committee meeting, I met one of the skippers who are looking bankruptcy in the face, not next year but this year, unless we can do something to ameliorate what the minister has admitted is a disastrous deal for the white-fish fleet. There are two questions that we should be asking in this debate: first, what assistance is required to secure the survival of the industry; and, secondly, how the December deal can be improved in a way that works towards that end. I wish to address those two serious matters in a considered fashion.

It is absolutely clear from the responses to the Executive's proposals that the industry does not back the split between social measures and decommissioning, which is weighted far too much towards decommissioning. I cannot think of any organisation that has supported the measures. When the minister winds up the debate, will he say whether he will proceed with the scheme despite the overwhelming opposition of the industry, or will he follow the excellent advice of the lady who spoke at time for reflection and admit that mistakes can be made? Does he believe that it behoves us to improve matters while we still can?

Looking at the wider scene, even if the decommissioning goes ahead, will not we be using money from Scotland—perhaps also from Europe—to destroy our fleet, while European money is being used to create a second armada for Spain? Richard Lochhead mentioned that problem, which was not ended by the current council, but was merely deferred to 2004, by which time the money must be used. The Spanish are building boats twice as quickly as they previously were. It is no surprise that, on 22 December 2002, *Le Monde* quoted the French fisheries minister, Hervé Gaymard, as saying during a press conference that the French fleet is practically unaffected. Are we really saying that we will proceed with a plan that everyone in the industry seriously believes puts the Scottish fleet's survival in jeopardy? I implore the minister to think about that.

The second serious matter is days at sea. Carol MacDonald, who is one of the Cod Crusaders, has given evidence to the Rural Development Committee. I think that she speaks for many people. She said:

> "God forbid, but with the weather that they have to endure, a vessel and its crew might fall prey to unexpected storms at sea. However, they would have no time to dodge such a storm because of days-at-sea restrictions."—[*Official Report*, *Rural Development Committee*, 11 Feb 2003; c 4272.]

I have mentioned in every fishing debate in which I have spoken that fishing, unlike virtually every other industry, is a profession in which people's lives are at risk every day. Every day, wives wait to hear whether their husbands are okay. Are we going to create further risks with days-at-sea restrictions? The Scottish Fishermen's Federation and others have made many excellent suggestions as to how things can be at least ameliorated. Even if one does not wish to say that all of us here may have blood on our hands, which is what people feel, it is absolutely essential that the days-at-sea proposals are—

Phil Gallie: Does Fergus Ewing recall that, back in the early 1990s, a Conservative Government came up with a days-at-sea restriction plan? The Labour party, the Liberals and nationalists spoke

against it, as other Conservatives and I did. The Tories backed off because of issues relating to health, safety and impracticality, to which Fergus Ewing has referred. Why should not we back off now?

Fergus Ewing: I do not remember that plan, but I am pleased that the Tories backed off.

I want to turn to the serious issue of European finance—I am afraid that the minister dodged that issue. I understand that the figure of €300 million, which John Farnell quoted yesterday, is wrong—the figure should be €200 million, of which some €150 million is available. From research, we know that when the Spanish fleet was prevented from fishing in Moroccan waters, it received €197 million and that 32 per cent of that deal was used for the social fund, rather than the 20 per cent that the minister mentioned. In his closing remarks, will the minister say whether the Scottish Executive will apply for some of that money—yes or no? He said that he would consider doing so, but that is not good enough. If we do not apply for it, the whole £50 million will come from the Scottish Executive's budget, even when money is available from Europe and when it seems extremely likely that the budget line will be approved—I refer to the emergency scrapping fund—which Mr Farnell confirmed to me yesterday. He also confirmed that Scotland would be one of the few countries that would be eligible because of the 25 per cent reduction criteria.

There has been much, rather simplistic, talk about the science, but it is clear from the evidence that Tony Hawkins gave to the Rural Development Committee that particular aspects of the science can be called into question. He told us that

"the evidence on which the Commission based the ranking of the different fisheries was poor and uncertain."—[*Official Report, Rural Development Committee*, 11 February 2003; c 4260-1.]

Tony Hawkins was the head of Fisheries Research Services when Mr Finnie took up his job as a minister. Given the fact that the ultimate authority has said that the evidence can be questioned, I believe that we should do so by seeking extra quota for haddock and whiting. That is what we need to do but has the minister done it? If not, when will he do so?

Let me conclude. The Prime Minister intervened in the negotiations at the stroke of midnight. Why did he not intervene before? Had he done as his counterparts throughout Europe did, I do not believe that we would be in the sorry state that we are in now. I simply do not believe that the Prime Minister has a heartfelt commitment to the Scottish fishing industry.

11:21

Ross Finnie: Today's debate has at times been interesting. Some contributions have been valuable and others less so. Phil Gallie admitted that he had not been allowed to speak in a Maastricht debate but had spoken in the next debate. I am still puzzled as to whether he gave us that old speech. However, let us move on.

The two issues that we need to get to grips with have been rehearsed in different measures and in different ways by those who have contributed to the debate. The first issue concerns the science. We have heard that different people, including the most recent head of the Fisheries Research Services laboratory in Aberdeen, take different views. However, the fact remains that the investigation into cod stocks in the North sea is—in a science that all the scientists agree is difficult to pursue—one of the longest pieces of investigation into any stock in the North sea.

I do not say that the science is perfect, but we must face up to the reality. When an internationally accredited body using internationally accredited procedures makes a recommendation based on evidence that shows that the cod stock is below its biological limit, we cannot credibly say that we are taking our ecological responsibilities seriously if we seek simply to dismiss that evidence.

Tavish Scott: Will the minister take an intervention?

Ross Finnie: I will take an intervention after I have made one further point.

One of the most alarming features of the recent debate has been the disconnection between the scientists and our fishermen. We must recognise that it is not good enough simply to try to trade off one against the other. We cannot, as some members have suggested, simply substitute the scientists for the fishermen, because the European Commission and others would simply say, "They would say that, wouldn't they?" There is a need for us to bridge that gap. We need to bring the scientists and the fishermen more into line and get them to co-operate so that the decisions and the scientific advice can be better informed than may have been the case in the past.

Tavish Scott: I absolutely agree with what the minister has said. However, does he understand the frustration of fishermen, who see that although they return information on discards to his department, which sends it on to Brussels, people in other EU member states do not?

Ross Finnie: I wholly agree. I am perhaps even more concerned that there may be a slight assumption that we are the largest contributor to the discard problem. However, that is not the point that I want to make.

We run a serious risk of arguing a false case unless we build and improve on the science. We cannot play ducks and drakes with the science and say that of course we realise that it is important but then proceed to advocate a case that tends to ignore that science. That is an important point.

The second issue that we are dealing with is the reality of annexe XVII, which emanated from the fisheries council. Many members have mentioned the need to improve annexe XVII and to get rid of its most serious anomalies. Fergus Ewing mentioned safety at sea; I hope that the Commission is honest and earnest on that matter. When the Commission created the wording of annexe XVII, it knew exactly what it was doing. The concerns about safety at sea as a result of the inflexibility of the days-at-sea policy, which puts serious constraints on fishermen, were raised with the Commission during the five-day negotiations. I am sorry that it has taken the Commission the time since the negotiations to recognise that argument's validity.

We must face up to the body of scientific evidence and to annexe XVII. That takes us back to the fundamental problem, which, if we are honest, we all face: we must try to square the circle of achieving sustainable fish stocks and sustainable fishing communities. The Executive's response recognises that, if we are serious about tackling the difficulties of stock recovery, any package of measures must have an element of decommissioning. I do not back away from that, but I do not suggest that we must destroy the whole fleet or even half the fleet; I suggest that we must see the decommissioning scheme as part of the conservation measures to reduce fishing effort and the fishing mortality rate for cod by 15 per cent. That does not represent a 50 per cent reduction; nor does it represent the destruction of the fleet.

I hope that the way in which we have structured the arrangements will allow the widest possible range of vessels to be considered. We have extended the decommissioning arrangements to cover vessels that are under 10 years old and we have extended the premium for vessels whose effort will be reduced by 25 per cent or more. That is a sensible response to the conservation element of this two-sided equation—we must deal with conservation and the needs of our communities.

Richard Lochhead: Will the minister confirm that the decommissioning scheme is not about conserving fish stocks, but is an economic measure to help fleets through difficult times? Does he accept that there are ways of helping fleets through difficult times other than destroying them? Destroying the fleet means that, when stocks recover, there will be no fleet to take advantage of that.

Ross Finnie: I do not accept the basic proposition. We cannot ignore the internationally recognised calculation that reducing effort increases stocks. With due respect to Mr Lochhead, he is in danger of ignoring the scientific evidence on cod stocks.

The other element of our response is the transitional aid scheme, which is a substantial package that is aimed at supporting the greatest number of people. Alasdair Morrison, George Lyon and Iain Smith raised the issue of displacement into the nephrops fishery. I can only repeat that we intend to put conditions in the transitional relief scheme that will act as a disincentive to people who seek to move into that fishery.

Much mention has been made of the processors, who have, in recent years, rightly been the major recipients of the FIFG moneys—the industry has received about £30 million in the past six years. Curiously, the industry did not expend all the money that was available to it through the white-fish processors action plan. Last summer, I made the offer—which I have repeated—that, if the processors produce further proposals, we will build on that action plan.

Richard Lochhead: The minister is determined to use the bulk of his aid package for decommissioning, but he has also said that it is unlikely that there will be new fishing opportunities for the Scottish fleet after 1 July. Will his package result in the Scottish fleet going bankrupt after 1 July?

Ross Finnie: I do not accept that. We are offering a balanced proposal that tries to meet the realities of the situation. We have tried to address the various elements of the industry, as well as to focus aid on the fish catching sector. That ensures that fisheries crews are retained and that there is a spin-off effect for the wider communities in which those fisheries are located.

Mr McGrigor: Will the minister give way?

Ross Finnie: No.

We must take the issue seriously, and it is not credible for the SNP to talk about being concerned about the science and then effectively to ignore scientific advice when it makes proposals. It is not credible for the SNP to compare our position with that of other countries and to try to pretend that it could get us a better deal. The only country with scientific evidence for the closure of the North sea was the United Kingdom—the SNP should square up to that fact, and not be dishonest about it. It is not credible for the SNP to recite a litany of problems facing the industry. We all understand and recognise the problems. It is not credible for the SNP not to make one single concession to the need for a sustainable fishery and sustainable fishing communities.

The issue is very difficult. It starts with the state of our stocks in the North sea and it impacts hugely across all our fishing communities. The Executive's response of providing a package of up to £50 million is credible and realistic and recognises the need to take the issues of conservation and supporting vital fishing communities seriously. I support motion S1M-3914.

Criminal Justice (Scotland) Bill: Stage 3

11:32

The Deputy Presiding Officer (Mr Murray Tosh): We come now to the proceedings for stage 3 of the Criminal Justice (Scotland) Bill. Members will require the bill, as amended at stage 2, the marshalled list of amendments and the groupings list. In accordance with recent practice, I shall allow two minutes for the first division and reduce the time thereafter to one minute's notice for the first division after each debate.

Section 1—Risk assessment and order for lifelong restriction

The Deputy Presiding Officer: Amendment 11 is grouped with amendments 82 and 83.

The Deputy Minister for Justice (Hugh Henry): Section 1 of the bill will introduce a number of new sections in the Criminal Procedure (Scotland) Act 1995 relating to the new order for lifelong restriction and the associated risk assessment provisions. New section 210C of the 1995 act deals with the preparation of the risk assessment report. A list of requirements that the risk assessor must follow when taking account, in the risk assessment report, of any allegations of criminal behaviour, whether or not that behaviour resulted in prosecution and acquittal, was inserted by an amendment at stage 2. The amendment reflected the Justice 2 Committee's concerns that the use of such information should be properly regulated.

We confirmed to the Justice 2 Committee on 5 February that we would accept the intention of the change introduced at stage 2. However, we must ensure that there is consistency between the relevant provisions as they now appear in the bill. That is the purpose of amendment 11, which will ensure that, where information about criminal behaviour is to be used in the risk assessment report, the assessor is required to explain the extent to which that behaviour has influenced the risk assessment.

Amendments 82 and 83 try again to implant extracts from the MacLean committee report into the statutory risk criteria—set out in new section 210E—that will be used to assess an offender's level of risk. As the Parliament knows—indeed, members have supported this—the new high-risk offender strategy is based extensively on recommendations in the MacLean committee's excellent report. However, as we tried to explain to Duncan Hamilton when he tried unsuccessfully to introduce identical changes at stage 2, we do not

believe that the MacLean committee intended that the wording of the relevant recommendation should be adopted verbatim in the legislation. The MacLean committee was providing a steer in that respect. We believe that the construction of the risk criteria in new section 210E will achieve what the MacLean committee recommended and the agreed objective of providing an understandable and workable measure that the court can use to establish whether an offender is high risk.

We recognised the concerns that were expressed at the earlier stages of the bill's passage that the risk criteria as drafted were too wide and could have had the effect of drawing offenders who are not high risk down the risk assessment route and potentially into the new order for lifelong restriction sentence. We acted and lodged amendments to the risk criteria at stage 2 to tighten them up and to ensure that they are fit for purpose. The Justice 2 Committee accepted those amendments and I believe that, as a result, we now have an improved set of criteria.

Duncan Hamilton failed to persuade the majority of the committee to accept his proposed changes to the new criteria when he lodged identical amendments at stage 2. Roseanna Cunningham has now lodged the amendments again. We do not believe that the suggested rewording is an improvement or that it will achieve what we are all agreed should be a set of tight criteria. Indeed, as Richard Simpson said during the stage 2 debate on the same proposals, there is a real concern that the revised wording would have the reverse effect and throw open the criteria once again. In fairness, I know that that is not what Roseanna Cunningham wants.

We are confident that the construction of the criteria that now appears in the bill is the best way of achieving the agreed objective. The criteria are understandable and workable in law. Most important, we have had no indication from the judiciary, who will apply the criteria, that they present any problems or that there might be difficulties in comprehending their purpose.

I move amendment 11.

Roseanna Cunningham (Perth) (SNP): The SNP has no difficulty with amendment 11. However, we want to raise the issues that amendments 82 and 83 encompass. Although I accept the minister's comments about what happened at stage 2, I understand that the committee's decision fell to the convener's casting vote. That does not suggest that the committee had an overwhelmingly strong opinion one way or the other on the matter. As a result, it is worth taking a more detailed look at the arguments that were made at stage 2.

Effectively, we are suggesting that detail from the MacLean committee report should form part of the bill in order to narrow and clarify the risk criteria by which orders for lifelong restriction are assessed. Section 1 introduces orders for lifelong restriction into law and lays out the whole procedure in that respect. Amendments 82 and 83 seek to change the wording of the risk criteria.

We know that the MacLean committee proposed orders for lifelong restriction, although in fact they were first suggested by the SNP some years before the committee was set up—indeed, I recall raising the issues at Westminster. At stage 1, the Parole Board for Scotland, the Faculty of Advocates and the Law Society of Scotland expressed fears that the risk criteria were too broad. As a result, the Executive lodged amendments at stage 2 to restrict the original outline. Amendments 82 and 83—as I said, the same amendments were moved at stage 2 but were rejected on the casting vote of the convener of the Justice 2 Committee—would introduce into statute the precise risk criteria that the MacLean committee proposed.

New section 210E states that the risk criteria are

"that the nature of, or the circumstances of the commission of, the offence of which the convicted person has been found guilty either in themselves or as part of a pattern of behaviour are such as to demonstrate that there is a likelihood that he, if at liberty, will seriously endanger the lives, or physical or psychological well-being, of members of the public at large."

Amendment 82 would replace the words

"is a likelihood that he"

with

"are reasonable grounds for believing that the convicted person".

That terminology has been used frequently in criminal-law legislation and is absolutely acceptable. I do not understand the objection to it.

Professor David Cooke of the British Psychological Society said that it was not clear what the word "likelihood" would mean in this context. He asked whether it would mean more than 50 per cent or 95 per cent likely, for example. There is a question mark over how "likelihood" would be construed, whereas courts and lawyers would be better able to understand and consider the phrase "reasonable grounds". "Likelihood" is a much vaguer term, which is not usually used in law. The terminology that we seek to introduce is a test with which courts are far more familiar, so I believe that members should consider it.

Amendment 83 would replace the words "seriously endanger" with the phrase

"present a substantial and continuing risk to"

before the words

"the lives, or physical or psychological well-being, of members of the public at large".

The Parole Board for Scotland said in evidence at stage 1 that it hoped that the bill would make it clear that orders for lifelong restriction should be imposed only in cases where psychological factors were identified that indicated a high risk of someone seriously reoffending.

Except in the most extreme circumstances, indeterminate sentences are incompatible with proportionality, so there is an argument about whether the concept of "seriously endanger" complies with the notion of extreme circumstances. Amendment 83 would place the emphasis on the criterion of the continuing nature of danger to the public. It is not proportionate to place an order for lifelong restriction on someone who might pose a serious threat at one point, but would not do so for the rest of their life. Neither of the issues that are raised by amendments 82 and 83 was properly addressed by the ministers at stage 2. The committee was split three-three, so it is important that we return to the arguments.

The minister's position at stage 2 is similar to his position now, which is that the Executive believes that it has provided in the bill accurate legislative interpretation of the relevant MacLean recommendations. Instead of the recommendations being interpreted, we would prefer them to be included in the bill in the way that we suggest. Given the concerns that have been raised by organisations such as the Parole Board for Scotland and the Law Society of Scotland, we should seriously consider including the MacLean recommendations in the bill.

Bill Aitken (Glasgow) (Con): It is fair to say that the issues for consideration in the first two groups of amendments have caused genuine and general anxiety. We all acknowledge the potential dangers that those who are convicted of serious violent and sexual offences might pose on their release. We also acknowledge that, although the proposed orders for lifelong restriction are draconian, in many instances they have to be so.

It is also fair to say that the Minister for Justice has acknowledged the concerns that were articulated in earlier discussions and debate about the quality and extent of the evidence that would be necessary to obtain an order for lifelong restriction. In an ideal world, I would prefer the same criterion for evidence as would apply in a criminal court—evidence that is beyond reasonable doubt. However, I acknowledge that that is not always possible in the real world. I accept Jim Wallace's view that evidence would not be restricted to the apocryphal or to evidence that is provided by—as he said amusingly—somebody's granny. Evidence would have to be backed up by hard facts. I take comfort from the fact that not only would that be done on the basis of professional assessment, but a judge would make the eventual decision. Accordingly, in recognition of the fact that the safety of the public must be our principal concern, we are prepared to accept section 1 as amended by amendment 11.

Amendment 82, in the name of Roseanna Cunningham, would set a higher standard. Our view is that the phrase "reasonable grounds" is more satisfactory than the term "likelihood". Accordingly, we will support amendment 82.

Amendment 83 presents a slight difficulty. I appreciate that the amendment's wording is lifted from the MacLean report, but I do not think that the wording of section 1, as amended by amendment 11, would be inadequate. Therefore, I regard amendment 83 as unnecessary.

11:45

Pauline McNeill (Glasgow Kelvin) (Lab): I welcome the many changes that the Executive made to section 1 mainly because of the comments in the Justice 2 Committee's report. The section deals with orders for lifelong restriction. It is fair to say that the committee was concerned about the full operation of the provisions and spent a considerable time on the section. However, not so much attention was spent on the issue outside the committee and the Executive, which is a pity, because, as a result of the MacLean report, we are about to make provisions for a new, lifelong sentence that will involve the assumption of wide-ranging powers to deal with serious and violent offenders.

In essence, the court can move for an assessment to be conducted by the risk management authority—a new body—if the offender meets certain criteria and there is a likelihood that, if at liberty, he would seriously endanger someone else's life.

The issue that Roseanna Cunningham brings to the Parliament relates to the wording that should be used in the bill. That is fair enough. Parliament should have another chance to assess the wording. It is fair to say that the committee was torn on that issue and that the decision to support the Executive relied on my casting vote.

It is important to recognise that the risk management authority is crucial to the determination of how the provision will operate. For the second time, the Parliament will be allowing the use of non-conviction information, which is a risky path to go down. We should take note of what is happening. People will be using information that might not necessarily be objective to decide whether an offender is likely to commit an offence. The committee has made it quite clear that what the minister referred to as the important

standards and the quality of the risk management authority are the most important elements of the provisions.

The Executive is now amending an additional provision that the Justice 2 Committee inserted into the bill. I can accept amendment 11, as it is merely another way of saying the same thing. However, it is crucial that we stress in the bill the fact that the risk management authority has to give weight to non-conviction information that it is using to impose a lifelong sentence. The quality of that assessment is crucial. We must constantly review what the risk management authority is doing. We must be sure that it is operating to standards that ensure that people's human rights are adhered to.

The committee debated the nature of the risk management authority and its arm's-length status with Richard Simpson, who was the Deputy Minister for Justice at the time. I would like an assurance that Parliament will be able to review the decisions and the framework of the risk management authority. That is important because, although the authority will be an arm's-length body, it has to be accountable, as its decisions will impose a restriction for life on people who are deemed likely to offend again.

Dr Richard Simpson (Ochil) (Lab): Amendment 11 provides better wording than that which the Justice 2 Committee provided in its stage 2 amendment. Amendment 82 comes down to a question of balance and it is for the Parliament to choose which way the balance should go. However, I prefer the wording in the bill to the wording that amendment 83 would provide. I have difficulties with the word "continuing". Some risks are intermittent but nevertheless seriously endanger lives. Therefore, it should be possible for the court to take into account the fact that, in some circumstances, some serious offenders—given the stimulus of alcohol, for example, which is freely available in the community—will commit further serious offences. That is not a permanent risk; it is a risk associated with behaviour that would occur if an order were not imposed. I urge members to reject amendment 83.

Hugh Henry: On amendment 82, we believe that the word "likelihood", which the bill uses, is acceptable terminology. It is a recognised phrase in law and it is understandable. On amendment 83, we believe that "seriously endanger" is stronger than "present … a risk".

Our policy is that the package will apply to the high-risk offender throughout his life. Our measures have addressed the concerns of the Parole Board for Scotland and the British Psychological Society. Neither body has made adverse comments on the amended provisions that we introduced at stage 2.

Amendment 11 agreed to.

Amendment 82 moved—[Roseanna Cunningham].

The Deputy Presiding Officer: The question is, that amendment 82 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. Members who wish to support Ms Alexander's amendment should press their yes buttons now.

Members: Ms Cunningham's amendment.

The Deputy Presiding Officer: What did I say?

Roseanna Cunningham: You said, "Ms Alexander's amendment", Presiding Officer.

The Deputy Presiding Officer: I am sorry. The tongue and the brain are obviously not in sync this morning. The amendment is in Roseanna Cunningham's name.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
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)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)

Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 39, Against 62, Abstentions 0.

Amendment 82 disagreed to.

Amendment 83 moved—[Roseanna Cunningham].

The Deputy Presiding Officer: The question is, that amendment 83 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
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)
Stevenson, Stewart (Banff and Buchan) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
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)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
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)
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)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
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Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
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)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 25, Against 76, Abstentions 0.

Amendment 83 disagreed to.

Section 8—Preparation of risk management plans: further provision

The Deputy Presiding Officer: Amendment 12 is grouped with amendments 13 to 15, 84 and 17.

Hugh Henry: Sections 8 and 9 deal with the preparation, implementation and review of risk management plans. The provisions include a power for the risk management authority to direct a lead authority to take steps to bring any version of the risk management plan into line with the agreed standards. Although we do not expect the RMA to have to exercise that power often, the power has to be available in respect of the initial plan and any amended plan. We believe that it is important to ensure that the RMA has all the necessary powers to ensure that risk management plans are implemented. The Justice 2 Committee shared that view.

Amendment 12 is a minor drafting amendment to section 8(7) to make it clear that the right to appeal against any direction given by the risk management authority under section 8(6) applies to the lead authority and to any other person with duties under the risk management plan. It also ensures consistency with references to any "other person" in sections 8 and 9.

There is currently no way in which the RMA can address the situation—albeit highly unlikely—in which a risk management plan is not being implemented. That potential gap was spotted by the Justice 2 Committee during its thorough scrutiny of the bill, and I acknowledge with thanks the committee's helpful contribution.

At stage 2, Richard Simpson said that he would lodge an amendment to enable the risk management authority to act when it was clear that a plan was not being implemented without reasonable cause. He stressed that we wanted to ensure that any amendment was in tune with the rest of section 8 and reflected the balance of the relationship between the RMA and the lead authorities. I confirmed in my letter of 5 February that we would be lodging amendments to achieve that.

Amendment 13 will give the RMA the power to direct a lead authority or any other person to implement a new risk management plan where they are failing without reasonable excuse to do so. The amendment also provides a right of appeal against the RMA's direction on the ground that it is unreasonable.

Amendment 14 will give power to the RMA to set the time limit within which an amended plan may be required. Those provisions are the same as the ones that are already provided under the bill for circumstances where the risk management plan has not been prepared. Amendment 15 amends section 9(5) to clarify that intention.

At stage 2, the committee accepted an amendment requiring the Parole Board for Scotland to have regard to a risk management plan on each and every occasion when it is considering the case of an offender who has an order for lifelong restriction. That requirement now comes under section 35A.

Amendment 17 removes a provision in schedule 1 that has become redundant as a result of amendments at stage 2.

Section 13 details the risk management authority's statutory accounting and annual reporting functions. Roseanna Cunningham's amendment 84 seeks to make specific provision for the risk management authority to include an account of any directions given to it by the Scottish ministers under their powers detailed in section 12. As we said at stage 1 and during stage 2

consideration of section 13, such prescription is not necessary in primary legislation.

The purpose of sections 12 and 13 is to provide for the standard accountability and enabling powers that are required when establishing a new public body. Those provisions, which accord with Government guidelines, give the statutory basis for the construction of the framework under which the RMA will operate.

I am happy to give the assurance that any directions that the Scottish ministers give to the RMA under section 12 will be publicly available—for example, on the RMA website. It will be open to the RMA to include information about those directions in its annual report, although that may not always be appropriate—for example, if the directions relate to standard housekeeping matters about the keeping of records. Clearly, however, important issues would be contained in the annual report. In any event, as the directions will be publicly available, there is no need to require the RMA to include that information in its annual report.

I agree that it is essential that the RMA be obliged to report annually on fundamental matters such as whether the Scottish ministers have exercised their directional powers under section 12 and we will ensure that that happens. Those matters are not, however, for primary legislation, and I ask the member not to move amendment 84.

I move amendment 12.

Roseanna Cunningham: Amendment 84 would require the risk management authority to include in its annual report an account of directions given to it by the Scottish ministers. We seek some assurance from the minister—I hope that he will address some of these issues when he winds up—about the exercise of the powers of the Scottish ministers to give direction to the risk management authority.

It is proposed that the RMA will be a non-departmental public body. However, section 12(3) states:

> "The Scottish Ministers may for the purpose of or in connection with the exercise of the Risk Management Authority's functions give directions to the Authority; and the Authority is to comply with any such direction."

The policy memorandum, in considering the various alternatives to setting up the RMA as a quango, states:

> "The final alternative would be for the role to be carried out by a body under the direct control of the Scottish Ministers. However, it was felt more appropriate that these functions should be carried out at arm's length from the Scottish Ministers, which cannot be achieved by a body under their direct control".

It is difficult to see how the authority is not under the direct control of the Scottish ministers if it has to follow their directions.

12:00

The system has the disadvantages both of the additional bureaucracy of a quango and of direct control. I am not sure why the option of making the RMA an agency was dismissed, given that both the Scottish Prison Service and the Scottish Court Service are executive agencies. We are concerned about the authority's independence.

One of the authority's roles is to examine and approve risk management plans that local authority criminal justice social work departments or the Scottish ministers have prepared. Surely the independence of the RMA is vital. It is an oddity that the Scottish ministers will require approval from a body that they will be able to direct. What happens if the Scottish ministers take a particular attitude to risk management plans? They could say either that plans should require constant close surveillance or that they should involve as little expenditure as possible. Because of the way in which politics works, both are distinct possibilities. If the Scottish ministers wanted to dictate what an offender's risk management plan should be, they need only direct the RMA not to approve any other. Ministers might be so influenced by a media panic about an offender that they acted in that way. What price then the arm's-length body that the bill is supposed to establish?

I am seeking an assurance that ministerial powers will be used only for purposes of efficient management and will not be used to influence policy with regard to risk management plans or individual risk management plans.

Bill Aitken: We take no great exception to any of the amendments in this group. It is sensible that the risk management authority should be able to impose a reasonable time limit on local authorities for the preparation of amended risk management plans or to give appropriate directions where it is felt that matters are not proceeding as they should.

Similarly, we are anxious that the appropriate reporting procedures should be in place. For that reason, we think that amendment 84, in the name of Roseanna Cunningham, has some merit. We are inclined to support the amendment but, like Ms Cunningham, we will listen to the minister's explanation with interest.

The minister has cleared up a concern that I had about amendment 17. As he correctly explained, the amendment removes something that is redundant from the bill. Clearly, that should happen.

Hugh Henry: At stage 2, Richard Simpson made it clear that the Scottish ministers were to lay a copy of the report before Parliament. Roseanna Cunningham raised a number of issues relating to direction, accountability and

independence. Cabinet Office guidance on non-departmental public bodies, which the Executive has adopted, states that one of the key tasks in setting up a public body is the preparation of an agreed management statement. Such a published statement is required for all new public bodies. It is a key document that defines the nature of the relationship between the Executive and the public body at a strategic level.

We recognise that each management statement will be different, but at the very least such a statement should set out the role and aims of the body, what it is responsible for and how it relates to the sponsor department. The statement should specify arrangements for publishing an annual report and accounts, which outline performance of the body against key targets.

As Roseanna Cunningham indicated, there are concerns both about accountability and about independence. It is right to define the relationship between the RMA and the Scottish ministers. The Scottish Executive cannot give directions on fundamental issues that are within the discretion of the RMA. However, the Scottish ministers can direct the Parole Board for Scotland, for example. That is a standard power associated with NDPBs.

The Scottish ministers must exercise their powers reasonably. In doing so, they cannot contradict the RMA's statutory functions. In the management statement, the existing guidelines and the commitment given at stage 2, we have addressed properly the concerns that Roseanna Cunningham has articulated.

Amendment 12 agreed to.

Section 9—Implementation and review of risk management plans

Amendments 13 to 15 moved—[Hugh Henry]—and agreed to.

Section 13—Accounts and annual reports

Amendment 84 not moved.

Section 14—Victim statements

The Deputy Presiding Officer: Amendment 85, in the name of Roseanna Cunningham, is grouped with amendments 86, 18 to 23 and 87 to 90.

Roseanna Cunningham: The amendments to the section that deals with victim statements are part of a continuing debate about how those statements are to be used in court and how they will work in practice. There are a number of SNP amendments—85, 86, 87, 88, 89 and 90—which I will address in order.

The effect of amendment 85 would be to place a time limit, to be prescribed by ministers, for piloting the victim statement procedure. Thereafter, ministers may by order elect to continue to use victim statements, but we want to set a fixed time for the pilots so that there is a distinct point at which we will revisit the issue. In principle, it is right that the victim should have greater knowledge of, and a greater say in, what happens in his or her case—we all agree with that—but if the basic requirements of justice are to be met, it is also right that victim statements be examined in a pilot.

It is also appropriate that the legislation that would introduce the pilot should make it plain that it is a pilot, and that Parliament should, at the end of that pilot, have a proper chance to consider any potential expansion of the scheme. Children's hearings for 16 and 17-year-olds were specifically called pilots in the bill before the Executive removed them by amendment at stage 2. It is interesting that the section on victim statements is not written in such specific terms.

We all know that there are difficulties with victim statements, some of which amendment 86 seeks to deal with. What is the status of a victim statement? Is it evidence? If not, what is it? If the statement is made before the verdict, will the defence be allowed to examine it for consistency with the Crown case? If it is made after a guilty verdict, but it is inconsistent with the Crown case, what will happen? Will a victim statement constitute new evidence for the defence to use to seek a retrial? If the court must have regard to victim statements in sentencing, how will that relate to the sentence that is imposed? The Minister for Justice states that it is not intended that the victim will have a direct say in sentencing, but that leads to the question about what say the victim will have. There is a need for clarity for the likely participants in the process, including social workers and lawyers.

Another consideration will be the age of the victim statement—I do not mean the age of the victim, but when the victim statement was taken. How current is the statement in reality? Will it have more influence on sentencing if it is made near the time when the offence was committed, or if it is made nearer the time of sentencing? It is regrettable that, in our courts, there can be quite a long time between the two.

What happens to a victim statement if the court accepts a reduced plea, or if the accused is convicted on a lesser charge? What crimes are likely to elicit a victim statement? I realise I am asking a list of questions, but they must be answered if we are to be clear about the use of victim statements in court. Although we all agree that we want victim statements to be brought in, we need some clarity about what their introduction will mean.

Will it be difficult for some victims to make such statements? We should also take on board the fact that some victims might not feel that they can make such statements. Will they be penalised in some way because they have been unable to make such a statement? Will victims be under pressure to make the statements? There is a lot of concern about such questions and we need more clarity, which is why we are suggesting that some time limits be imposed. Many other questions can be asked, but I dare say that other members will ask a number of them.

Amendment 86 is a probing amendment that deals with further problems relating to cross-examination. Apparently, the Minister for Justice believes that a victim may be cross-examined under existing procedure regarding victim statements. All sorts of issues arise about the effect of such cross-examination on a victim—questions are being asked about whether the statement should be withheld from the defence. Cross-examination on proof and mitigation is extremely rare now, but I wonder whether the introduction of victim impact statements might open that up a great deal more than has been the case in the past. Many matters in victim statements might be completely irrelevant, so there is a question about how such information will be handled.

My other amendments are amendments 87, 88 and 89. I understand that the minister intends to accept amendments 88 and 89. If I am correct about that, I will not speak to them in detail. Amendment 87 would make it possible for informal carers, such as neighbours, to make victim statements. Although it is a rather broad amendment, it seeks to deal with the situation in which an informal carer has a strong relationship with a child victim. We saw that in the recent case of Chloe Bray, where an individual who had no formal relationship with the child had, in fact, brought her up for three years. Given the way in which the bill is drafted, the informal carer would be denied the opportunity to make a victim statement.

If amendments 88 and 89 are to be accepted, that is as much as I will say at the moment.

I move amendment 85.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): Amendment 85, as Roseanna Cunningham said, seeks to insert an additional subsection into section 14 to include in the bill the provision that victim statements will be piloted for a specified period, and evaluated before a decision is made to extend such schemes. That would require the Scottish ministers to set out in secondary legislation the duration of the pilot schemes. I make it clear for the avoidance of doubt that it is the intention of ministers to pilot those schemes. Roseanna Cunningham was right to say that they should only proceed by way of pilots, because there are a number of issues. We have always said that it was our intention to pilot victim statements in two areas for two years, and to evaluate the pilots before we sought to extend victim statements.

It will already be possible under the provisions of the bill to establish pilot schemes. The bill includes a power in section 14(1) to prescribe in secondary legislation the courts, or class of court, in which victim statement schemes will operate. That means that we can prescribe only those courts in which we will pilot victim statements. Obviously, an order will have to be brought before the Parliament. That order will be subject to affirmative resolution. Before the pilot scheme can be implemented, an order will have to state the courts in which the pilots will take place, so members will have the opportunity to debate and vote on the proposed pilot areas. Similarly, any proposal to extend the victim statement scheme will be subject to affirmative resolution of the Parliament, so the Parliament will have the opportunity to debate the extension.

As I said, it is intended that we will pilot the scheme for two years. Amendment 85 would only oblige ministers to put into secondary legislation what we have already said we will do. The establishment of pilots will require Parliament to debate an affirmative order.

Roseanna Cunningham said that amendment 86 is, in some respects, a probing amendment that seeks to achieve three objectives by querying some of the provisions in the bill. The first is to require the prosecutor to provide a copy of the statement "forthwith … to the accused". I assume that that means upon receipt by the prosecutor of a victim statement, although that is not clear.

The second objective of amendment 86 is to clarify in the bill the existing right of the accused to cross-examine the victim on a victim statement. The third objective is to enable the judge or sheriff to require the jury to withdraw from the court during any cross-examination of the victim by the accused, if the victim statement is deemed not to be relevant to the charge brought against the accused. I will deal with those issues separately.

First, I will deal with the early provision of the statement to the accused. The status of the victim statement is important in relation to the early provision of the victim statement to the accused. Victim statements are not intended to be evidential documents. Their main purpose will be to give victims the opportunity to tell the court directly the way in which, and the degree to which, the offence or crime has affected or continues to affect them. Their introduction is a response to the concern that victims have expressed that they do not have

a voice in the criminal justice process. The statement is intended to give victims that voice.

12:15

It is acknowledged that, occasionally, a victim statement might contain information that is of evidential value. In such circumstances, case law places a duty on the Crown to disclose to the defence evidence in its possession that would tend to exculpate the accused.

Roseanna Cunningham said that my amendments in the group might be inconsistent with an amended charge on which the accused might be found guilty. I have grave misgivings about introducing a requirement for the prosecutor immediately to provide the victim statement to the accused. In effect, that could mean that the accused had access to sensitive personal information about the victim before and during the trial. That information might not be relevant evidentially, but it could allow the victim to be cross-examined before the court on matters that were not relevant to the charge. That might make victims feel intimidated and pressured by the accused to update their statement.

Roseanna Cunningham: Is not the relevancy or irrelevancy of evidence an issue for the judge to decide in court? The minister seems to suggest that our sheriffs and judges would allow irrelevant evidence; I do not think that that is the case.

Mr Wallace: Roseanna Cunningham almost turned back on me the argument that I was using, and have made previously, about sheriffs having a victim statement that contains information that contradicts, or is inconsistent with, the charge of which the accused has been found guilty. She has referred to that before now. In the past, I have said that sheriffs can discount information day in and day out, but for the avoidance of doubt, my amendments in the group will make that clear in the bill.

Of course sheriffs can rule out matters that do not relate to the substance of the charge, but exposing the victim to potential cross-examination could distress the victim. Roseanna Cunningham has raised a not unreasonable point, but having given the matter careful thought, we think that if the accused had access to such sensitive personal information about the victim before and during the trial, that might discourage or dissuade victims from making victim statements or put them under unnecessary pressure, although not necessarily in court.

Pauline McNeill: I agree with what the minister says about amendment 86. Is the minister saying that the convicted person or their defence will never see the victim statement? Some confusion is felt about that, because when the Justice 2 Committee pressed ministers about the practicalities of victim statements, we understood that court proceedings would mean that the accused person or the defence had to see a victim statement. I would have thought that, under the requirements of the European convention on human rights, the accused person or the defence would have to be allowed to see a victim statement and the information that has been put before the judge. It would help if the minister clarified that once and for all.

Mr Wallace: I am certainly not saying that the defence or the accused will never see a victim statement. In the normal course of proceedings, the statement would be disclosed to the defence after conviction. If the Crown possessed a victim statement that included evidence that could benefit the accused, the Crown would be under a duty, under existing case law, to make that evidence available to the defence. However, a victim statement would not be given to the defence before the trial as a matter of course, which is what amendment 86 suggests.

In a case of domestic abuse, the victim might describe the effect on her—the victim would most likely be a woman. Even if that were not raised in court and the sheriff had no opportunity to challenge that or rule it irrelevant, the fact that the accused knew about information in the statement could mean that the accused could put some pressure, directly or indirectly, on the victim to update the statement or to withdraw comments that the victim might not want to withdraw. We want to prevent that kind of situation from arising.

Roseanna Cunningham: Is the minister saying that the victim can be cross-examined on something that is in the victim statement if, in the view of the prosecutor, some of the information might be of relevance to the defence? Is he saying that, in that case, the information would have to be disclosed so that it could be raised during the course of a trial, but that otherwise none of the information would come out until the trial was over?

Mr Wallace: That is precisely what I am saying. Case law places a duty on the Crown to disclose evidence that is in its possession to the defence, if that evidence tends to exculpate the accused. If the statement is purely on the emotional, financial or even the physical impact of the offence on the accused, it would not be relevant to the charge and therefore should not be in the hands of the accused. The accused and their counsel would receive the victim statement post conviction, but before sentencing, and would have an opportunity to consider the statement then.

Roseanna Cunningham: I might have missed something here; that would be entirely possible, given the size of the bill. What will happen when—

post conviction—the prosecutor puts up a victim statement and the defence says, "Hang on, why wasn't that bit disclosed to us before, because in our view it should have been?"

Mr Wallace: I do not think that the Crown would in any way underestimate its duty. Something might emerge from a victim statement that could, in the same way as any other piece of evidence, form the grounds of an appeal, but that is highly speculative, because we are talking about personal information that relates to the impact of the crime on the victim. I am making it clear that such information would usually be disclosed to the defence post conviction.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Is the minister minded to consider existing arrangements where there is a dispute—post conviction, but prior to sentencing—in relation to the narration of the circumstances in which an offence had occurred, and the effects of that offence? The sheriff in some circumstances might order a hearing in mitigation in which any facts—challenged or unchallenged—might be explored in the event that there was a serious objection to the nature of the complaint.

Mr Wallace: In fairness, during evidence taking at stage 2, we said that it was possible that a hearing could take place post conviction if there were a serious challenge to information in the victim statement. It is my understanding—I asked about this again yesterday—that that has never happened south of the border, where victim statements have been in place for a considerable time. In theory, it could happen, subject to section 14A of the bill, which would

"prohibit personal conduct of defence … in certain sexual offences."

That brings the bill into line with what Parliament has passed in the Sexual Offences (Procedure and Evidence) (Scotland) Act 2002. There could not be a circumstance in which the accused was in direct cross-examination of the victim.

The Deputy Presiding Officer: I am now becoming quite seriously concerned about the timetable, minister.

Mr Wallace: With respect, important issues have been raised and I am trying to address them.

I turn to the matter of the court requiring the jury to withdraw. If members agree with the position in relation to the first two objectives of amendment 86, the information in relation to the victim statement becomes relevant only to the third objective where it includes evidential materials. I see no good reason why a jury should have to withdraw. The jury is there to determine the facts of the case, so it makes no sense to have a provision that will allow questioning of factual information without the presence of the jury. Furthermore, if there is to be a cross-examination on relevant evidential matters, I question why the jury should not hear it.

I turn to amendments 18 to 23, which seek to clarify the role of the court whereby it is to have regard to only the information in the victim statement that is relevant to the charges of which the accused has been convicted. The victim may make the statement when proceedings are to be taken. That means that, if the accused has been tried on a number of charges but convicted of only some of them, it is likely that the victim statement will contain information that relates to a charge, or to part of a charge, of which the accused has been acquitted. Amendments 18 to 23 will clarify the court's duty in determining sentence. I hope that they will alleviate the concerns that the Justice 2 Committee expressed at stage 2.

Amendment 87 seeks to insert a further category of person who could make a victim statement; that is, a person who had charge of, or control over, a child. We believe that amendment 87 goes too far, because it could include people who were not employees, but who worked with children on a voluntary basis, such as neighbours or scout masters. It is not appropriate to give such people the right to make a victim statement.

As Roseanna Cunningham said, we wish to accept amendments 88 and 89, which are helpful. They relate to circumstances in which there is a de facto parent-child relationship.

Amendment 90 seeks to remove victim statements altogether. In 2001, the Executive stated its intention to pilot a scheme that would examine how the views of victims could be taken into account. That commitment was made in response to a need that had been expressed by victims and the families of murder victims who felt that they did not have a direct voice within the criminal justice process. The issue has been dealt with in considerable detail during the progress of the bill. Given that the Parliament endorsed the earlier strategy, I hope that it will be minded to keep such important provisions in the bill, which has been improved by amendments.

Mr Duncan Hamilton (Highlands and Islands) (SNP): Amendment 90 seeks to remove the section on victim statements, but I hope that I will not have to move it. I lodged the amendment because the Executive has been confused about the purpose and effect of victim statements throughout the process. We were supposed to have clarification at stage 3, but I am more minded to move amendment 90 than I was before we started stage 3, because the minister has shown that he is still confused about the purpose of victim statements. His exchange with Roseanna Cunningham made it clear that the proposal is only half thought out.

The progress group is considering the way in which victim statements could be implemented. Some of the issues that it has come up with are the same as those that the Justice 2 Committee raised. The matter is still being discussed, but such discussion should have been held before we thought about implementing such a scheme. We should not pass the bill and hope for the best.

I return to what was said at the start of the debate. Everyone agrees that we want to give victims a voice and let them know that their voice will be heard in the criminal justice system. Although the minister expressed that desire, he did not tell us what the purpose of victim statements is. The bill's explanatory notes identify a twin purpose: the first is that victim statements will have an impact on sentencing, the extent of which has not yet been defined; and the second is that the knowledge that their voice is being heard will be of therapeutic value to victims.

The minister will remember our discussions at stage 2, at which it was not made clear whether victim statements were meant to have a material impact on sentencing—in other words, whether they would change or add to a sentence. The danger of not making that clear is that the victim might expect that their victim statement would lead to a stronger and stiffer sentence. However, the reverse would be the case and the victims would be disappointed; victim statements would make things worse for the victim.

As the therapeutic value of victim statements rests on the victim's being able to see justice being done, the victim might well come out of the process less satisfied than if he or she had not been able to make such a statement. That is what some of the evidence—most important, an article that was entitled "Victim Impact Statements: Don't Work, Can't Work"—that the Justice 2 Committee received at stage 2 suggested. We need a great deal more clarity from the minister before we can support victim statements.

Cross-examination, which the progress group has already expressed concern about, has been mentioned. Victim statements raise the possibility that the victim will be cross-examined on their statement at a later stage. The victim would go through the process in court not just once, but twice. Would that be to the advantage of the victim? Would it make the system better and more inclusive? I do not believe that such a system would be better than the one that we have.

At face value, victim statements are an attractive idea, but we are in danger of raising expectations that will not merely not be met, but might be dashed. Victims' expectations will not be fulfilled.

We have discussed the question of what happens with conflicting evidence, but I do not believe we have had a great deal of clarity on the matter. We are not sure from what the minister said at which stage in the process possibly contradictory evidence in the victim's statement would come in. If, as the minister suggested, it would come in during the trial, or it were up to the prosecutor to make that evidence available, would that mean that the whole statement would be available? If the statement were not made available, would that provide grounds for appeal on the basis that it should have been made available? Those questions need to be answered by the minister today. This is not a stage 1 debate after which we will have more time: it is the final stage of the legislative process. If the minister is not at this stage clear, I do not, to be frank, know how the measure can be passed.

12:30

Bill Aitken: The debate thus far has encapsulated the problems that can be envisaged. My principal concern—shared by Duncan Hamilton—is that it has not been clear at any stage of the debate what the intentions are behind victim statements. Are they meant to impact upon sentencing? If so, there will be difficulties under a number of headings: the same type of offence might affect different people in different ways; some people are more articulate than others in expressing how a particular offence has affected them; and the degree of trauma that might be experienced by different persons as a result of the same offence might be quite different.

Inevitable difficulties will arise when a statement is made prior to either a plea's being accepted for a reduced indictment, or where the jury returns a verdict that is inconsistent with that statement.

On the other hand, there is a compelling argument that the giving of such a statement will have a therapeutic affect on the victim in general terms. After all, the victim is the most important person in the equation. Conversely, some witnesses might find the giving of a statement troubling, but on balance—it is a fine balance—we are prepared to go with what the Executive proposes today.

Roseanna Cunningham's amendment 85 has been dealt with. It proposes that provision for victim statements be made on a trial basis; we would not be content to vote for victim statements it they were not to be introduced on a trial basis.

Amendment 86 deals, to some extent, with the contradictory material that might be introduced. The interests of justice demand that the terms of a victim statement would have to be tested.

We do not object to anything in amendments 88 and 89, which I understand have been accepted and, although I appreciate that amendment 90, in

the name of Duncan Hamilton, is not likely to succeed, the points that he raised are valid and must be considered deeply. It is on a narrow balance that we are prepared to support the proposals.

The Deputy Presiding Officer: At this point, I must suspend the debate and move to the next item of business. The conclusion of the debate will take place when we resume this afternoon.

Forth Valley (New Hospital)

The Deputy Presiding Officer (Mr George Reid): The next item of business is a members' business debate on motion S1M-3864, in the name of Mr Brian Monteith, on the location of a new hospital for the Forth valley. Because of running times on the Criminal Justice (Scotland) Bill, the clocks will be stuck, but I will keep members right.

Motion debated,

That the Parliament notes the announcement by the Forth Valley NHS Board that its favoured location for a new single-site hospital for Forth Valley is the Royal Scottish National hospital site at Larbert; further notes that the board is to undertake further work including a feasibility study and transport impact assessment before submitting its outline business case to the Scottish Executive this summer; recognises that the Scottish Executive and the Minister for Health and Community Care retain the ultimate say over the location of the proposed new hospital for the area, and believes that the Executive should consider any case for a new hospital in the context of the accessibility of the hospital to the public and the consequential arrangements for community health care throughout the Forth Valley NHS Board area.

12:35

Mr Brian Monteith (Mid Scotland and Fife) (Con): I am grateful to those who have given me time to raise this matter in the chamber today.

My motives for lodging the motion and seeking the debate are not partisan. I would have written an entirely different motion if I had sought to score party-political points. In fact, I seek to raise issues that many members want to have discussed between several ministers.

I am fully aware of the strong local feelings between Falkirk and Stirling—or should I say between Falkirk bairns and the sons of the rock. Not only has this issue divided communities, it has divided political parties as they try to prove their own local loyalties. While recognising those feelings, I hope that we can address the issues in a broad and objective way, considering—as the Forth Valley NHS Board must—what is best for all Forth valley residents. It is also important that we have a debate with the Deputy Minister for Health and Community Care today so that she may respond to it.

I welcome the motion by Dr Richard Simpson that is to be discussed next week. The terms of his motion bring roads into discussion. In my estimation, that fact and the amendment by Dennis Canavan determine that the minister to respond should be the transport minister. It is important that we should hear both ministers respond to the debate because, although the transport element is important, the final decision

rests with the Minister for Health and Community Care.

The question of having two general hospitals, one in Falkirk and one in Stirling, has troubled Forth Valley NHS Board for a long time—at least as far back as 1985 and possibly longer. Once the management structure for the two hospitals was merged, it was inevitable that the two hospitals themselves would merge. As an Edinburgh lad, I was not bound by tribal loyalties, and I have always supported a single site where accessibility would make travel from west Perthshire, west Stirlingshire and Clackmannanshire, as well as from Stirling and Falkirk, as simple and timely as possible. Balanced by the large proportion of people in Stirling and Falkirk themselves, Crianlarich, Killin, Balfron, Aberfoyle, Dollar and Alloa must have their needs considered, and we all understand that. I met a mother from Killin who had had four children, all of whom were delivered in Stirling royal infirmary. However, she said that, had the location of that hospital been in the centre of Falkirk, two of them would have been born in the car.

I pay tribute to the health board chairman, Ian Mullen, who has expedited the issue since the first consultation two years ago. By considering and then rejecting the proposal that either the Stirling or the Falkirk hospital should be the new site for a single hospital, he has ensured that the final decision is made on the merits of the location, rather than on the local loyalties generated in previous years by the debate on which of the two existing hospitals should be chosen.

Larbert is not Falkirk, and the second choice that was being considered, Pirnhall, is not Stirling. Forth Valley NHS Board has now chosen Larbert, and that site has many advantages. It is available and can be developed without planning delays and there is room to expand. However, its links to local roads, and to the M9 in particular, are poor. To correct that will require considerable road construction work, at great cost. Pirnhall, on the other hand, offers space for development and offers far better access to local roads, and particularly to the M9. However, the difficulty is that the planning surrounding Pirnhall could delay progress for far too long.

Forth Valley NHS Board decided to go ahead with recommending Larbert, but showed that it had some doubts by deciding to commission traffic impact studies. It is important that members are able to raise the relative merits of the sites and are able to question ministers and bring to the chamber the concerns of residents.

I ask the minister to consider the whole package, including the costs and the length of time that it might take to build the necessary roads. She should ensure that roads are part of the package and that she considers the matter holistically.

I hope that the minister takes the opportunity to discuss the matter with her transport colleague, so that there is no possibility of the roads part of the Larbert project falling between two stools. We cannot have Larbert being chosen because Forth Valley NHS Board does not have to pay for the roads and the Minister for Health and Community Care approving the project without ensuring that the roads will become part of the plan. In the long run, we could find not only that the Pirnhall option would have been easier to travel to, but that it would have been cheaper and could have been delivered before the Larbert option, with construction added in. We must get to the bottom of such questions through the two departments.

Dennis Canavan (Falkirk West) Will the member take an intervention?

Mr Monteith: I am just closing. All I ask is that ministers treat the project with an open mind.

12:41

Dr Sylvia Jackson (Stirling) (Lab): Some members who have indicated that they will speak today, including Brian Monteith, represent a wider Mid Scotland and Fife regional perspective, but I will focus on the Stirling constituency, as that is the constituency that I represent. I want to discuss concerns and progress since the recent Forth Valley NHS Board decisions relating to the future Forth valley health strategy.

Locally, the decision by Forth Valley NHS Board to make the Royal Scottish national hospital site at Larbert the favoured site for the new acute hospital was a blow, given the accessibility of the proposed Stirling sites, which lie adjacent to the M9 and M80 interchange. Stirling Council has to be congratulated on the hard work that has been undertaken to have those sites considered.

The Stirling sites were seen by the board as problematic in respect of the time scale. Unfortunately, it was thought that sites such as the one at Pirnhall, which is within the proposed new growth area, would, through the local plan process, take up to two years before being available to the health board. The situation at the Corbiewood site is the reverse—business interests there wanted a quick decision by April this year, or alternative proposals would be considered. The independent report that was compiled by Ryden for the health board stated that both issues raised questions about the viability of the two sites. Therefore, time factors became critical in the discussions, and that was reinforced by clinicians on the health board, who maintained that acute services would not be maintained in the Forth valley without speedy action.

Brian Monteith mentioned that accessibility continues to be a key concern. Although the

Larbert site became the favoured option, it was agreed that there would be an investigation into transport infrastructure there. The issue is important, particularly for the Stirling and Ochil constituencies and the whole Forth valley.

Although the transport study is to take place as soon as possible, I bitterly regret that, in moving to a favoured site option, the board acted in a way that failed to address the shortcomings of all the sites. I suspect that when the transport costs are assessed, the board may live to regret its haste in reaching a preferred option in advance of knowing all the cost factors in developing each site.

However, the battle is not over and we must use the time that is available to us while the transport study takes place to explore whether there are any mechanisms by which Stirling Council's local plan process can be shortened, or whether an agreement can be reached with developers in the new growth area to release a site in less than two years. I have already met Keith Yates, the chief executive of Stirling Council, and Corrie McChord, the leader of the council, to start discussions. I hope that we will move forward on the issue in a meeting that will take place soon with developers. Certainly, we are trying hard to decouple the site that could be used for the hospital from the local plan process. It should also be remembered that planning for a new hospital will take considerable time. I suspect that, if there is a one or two-year delay in knowing exactly where the hospital site will be located, that will not materially affect the building time to any great degree, especially if a public-private partnership option is to be pursued.

The siting of the new acute hospital is critical, but it is clear that the development of community health provision is also important, particularly for our rural areas—in particular, I am thinking of Aberfoyle, Balfron, Callander and Killin.

I have spoken and written to Fiona Mackenzie, who is the chief executive of Forth Valley NHS Board, to ask her to start discussions about the developments as soon as possible. She has assured me that that will happen.

Finally, I assure members that I will fight Stirling's corner, both for the residents of the city and for those who live in its rural communities. I firmly believe that that will prove to be in the interests of all residents of the Forth valley area.

12:45

Michael Matheson (Central Scotland) (SNP): I congratulate Brian Monteith on securing time for this afternoon's important debate.

As Brian Monteith mentioned in his opening remarks, this consultation exercise is not the first to have been carried out into how the health service should be configured within the local communities that are served by Forth Valley NHS Board. However, no one can be in any doubt that the consultation exercise on the new single-site option has proven to be effective and fair. We need only look at the figures for those who participated in the consultation exercise. Some 5,626 responses were received from across the whole of the Forth valley. If we compare that against the number of people who were involved in the previous consultation exercise, we can see that the most recent consultation was fair and that it was effective in engaging and involving people.

The consultation exercise was also fair because it was extended to allow Stirling Council time to propose other sites that it wished to be considered in the consultation process. Those sites were also measured against criteria that were fair and that were established by the health board. No one disputes how the health board should have evaluated the individual sites. The RSNH site is the only one that meets all the criteria that the health board laid down.

At more than 82 hectares, the RSNH site is of sufficient size to allow the hospital to be configured in the way that is most appropriate for offices, laboratories and parking. I believe that the site offers the greatest flexibility for building a new hospital within the Forth valley. I understand the many concerns that people have—in particular, those in west Stirlingshire and in some parts of Clackmannanshire—about the possibility that there may be problems in accessing any new hospital that might be built on the RSNH site. However, the site is closest to the majority of people within the Forth valley, given the fact that 63 per cent of the residents of the Forth valley are within a 15-minute drive of the site. As transport links improve, that proportion is likely to increase yet further.

In addition, the accessibility analysis that was undertaken by Forth Valley NHS Board last August highlighted that 93.43 per cent of the population are within a 30-minute drive of the site. The RSNH site also addresses the socioeconomic aspects of accessing a hospital. A major rail link is within 10 minutes' walk of the hospital site. That will allow those who do not have a car to gain access. There are also plans to improve access within the area.

I believe that now is the time to make the business case to ministers to ensure that the new hospital is built on the RSNH site. If additional factors must be taken into consideration in addressing transport links, I am sure that ministers will be prepared to work alongside the health board to ensure that those are addressed. We need to ensure that the people of Forth valley get the state-of-the-art hospital that they require as part of the best possible health service.

12:49

Mrs Lyndsay McIntosh (Central Scotland) (Con): I intend to make only a small contribution to today's debate on the motion in the name of Brian Monteith, whom I congratulate on securing time in the chamber for today's discussion.

Obviously, we all have our own viewpoint as to where the new hospital should be. I fully understand the concerns that have been expressed by Brian Monteith, whom we should perhaps not single out as the only person to harbour doubts. It will never be easy to make a decision of this magnitude that satisfies everyone. As politicians, we are only too well aware that tough choices must be made from time to time.

For my part, I welcome the announcement that a single-site hospital at Larbert is the board's favoured option. A whole host of considerations were taken into account and I do not intend to rehearse them all. Among the comments made to me was one about the growing unsuitability of the present site at Falkirk. I have been in Falkirk at peak traffic times on many occasions and I believe that it can readily be understood why a move is necessary. For no other reason than base self-interest, I think that it is perfectly understandable why the residents of Falkirk and its environs should have their fears addressed.

In the interests of balance, I point out that I am aware that people furth of Falkirk will see the decision in a different light. Brian Monteith is right to highlight the issues of accessibility, timing and cost. However, no site is ideal; if it were, we would not be having the debate.

We should note the terms of the motion: we are rightly asked to note that the matter should be considered on accessibility and community health care grounds. I sincerely hope that, when the decision is made, those factors are taken into account and that the people of Falkirk get the decision that they want.

12:51

Dr Richard Simpson (Ochil) (Lab): I congratulate Brian Monteith on securing the debate and I thank him for his kind comments about my motion on the subject. Next week, we will talk about the accessibility issues in greater detail with the transport minister.

All members welcome the fact that, after more than 30 years, the Forth Valley NHS Board, under the chairmanship of Ian Mullen, has at long last grasped the nettle and decided to have a single-site hospital. He will not find division in the chamber on that issue. It is 30 years since I was involved in the group that proposed a single site to Sir John Brotherston. That was before the motorway from Stirling to Edinburgh was built, which meant that Bellsdyke hospital could have been provided with the links that we wanted at that point.

Constant delays have damaged the case in successive years, not least because the substantial, necessary developments at Falkirk and Stirling in the 1980s will largely be put to rest as a result of the new single-site hospital. That has been a waste of public money.

We must consider the infrastructure. All the reports that have been produced show that we must put the infrastructure for the acute hospitals on the correct basis. The board has stated that part of that should involve the new Clackmannanshire community hospital and resource centre, which is vital because it will provide not only primary services, but intermediate care, diagnostic services, rehabilitation, out-patient services and, I hope, minor accident and emergency services.

We do not need an acute services review; we need nothing less than a total review of the health service. That applies to every area in Scotland, not only to the Forth valley. I urge the Executive to use the Forth Valley NHS Board proposals as a model for examining the need for integrated care that, as far as possible, brings services closer to the patient and which leaves only acute in-patient short-term stays in hospital.

Given that the board has problems with recruitment and retention that will only get worse in the interim, early decisions are necessary. It will be important for the minister, in considering the problem, to ensure that any temporary movement of services does not endanger my constituents, particularly those in Clackmannanshire.

I will discuss accessibility in greater detail during next week's debate, but if the RSNH site is chosen, the board and the minister must balance the absence of a new Forth bridge crossing until 2007 and the probable subsequent closure of the old Kincardine bridge until 2008 with the planning disadvantages at Pirnhall. That will be a difficult decision for the minister.

I return to a theme that I wanted to develop earlier in my short speech. A modernised, integrated national health service must be addressed nationally. A strategic view must be taken in making the decision on the new district general hospital. There are problems in Livingston because of its distance from a new hospital, problems with the change in services at Perth, and problems with Dunfermline's Queen Margaret hospital's relationship to Kirkcaldy.

Without a strategic Scottish view, we—not me, I am glad to say, but our successors—might in 20 years say once again that the health service does not meet the needs of modern Scotland. A

strategic view must be taken. I hope that the minister will tackle that difficult problem.

12:54

Dennis Canavan (Falkirk West): I welcome the opportunity to debate the review of acute services in the Forth valley, which has been dragging on for well over a decade. I am pleased that the Forth Valley NHS Board, at its meeting on 28 January, at last took a decision, which was unanimous, that there should be a new single-site hospital and that the favoured location is the Royal Scottish national hospital site at Larbert. I welcome that decision not simply because the RSNH site is in my constituency, but because I believe that it is in the best interests of the majority of people in the Forth valley.

When a new single-site hospital was first suggested, I expressed the view that the RSNH site was the best location and that it should emerge as the favourite. However, some politicians in the Stirling area, perhaps understandably, suggested two other sites—one at Corbiewood and the other at Pirnhall.

The health board sought to be fair to all concerned by commissioning Ryden consultants to assess the other two options, but the health board made it clear that any alternative site to RSNH must satisfy four criteria. First, any alternative site must be of sufficient size. Secondly, it must be within half an hour's car journey for at least 90 per cent of the Forth valley population. Thirdly, there must be no significant increase in costs. Fourthly, there must be no significant delay. It was obvious from the consultants' report that the RSNH site was the only one that met all four criteria. It has huge advantages over the other two options. It both belongs to the national health service, and is designated as a hospital site. Costs and planning delays would therefore be minimised.

Dr Sylvia Jackson: How does the member think possible transport costs will be taken into account when the transport study is completed?

Dennis Canavan: I am coming to that.

There were proposals to have better access to and egress from the motorway system at Larbert long before the RSNH site was suggested as a possibility for a new hospital. Proposals were required, for example, for better access to the business park on the Bellsdyke road. Brian Monteith's point about the roads department having to meet any improved infrastructure for roads has therefore been on the agenda for many years. It is clear from the Ryden consultants' report that the sites at Pirnhall and Corbiewood do not satisfy the criterion of no significant delay, and the Corbiewood site does not satisfy the criterion of no significant additional costs. The RSNH site, on the other hand, satisfies all four criteria and is therefore the best location for the new hospital.

I accept that much work has to be done, including a transport impact assessment. The new Kincardine bridge will mean better access to the hospital for people coming from Clackmannanshire, and access will also be improved if there are better links to the motorway system at Larbert, which will benefit the nearby business park.

In conclusion, I urge the Executive to take appropriate action to ensure that the new motorway links and the Kincardine bridge are constructed as soon as possible. I also urge the Executive to respond positively and quickly to the health board's case for the new hospital when it is submitted in a few months' time. As I said earlier, the matter has been dragging on for well over a decade, and we have a great opportunity—the opportunity of a lifetime—to ensure that the people of the Forth valley get a new state-of-the-art hospital that will serve them well into the 21st century. It is an opportunity that must be grasped now.

12:58

Donald Gorrie (Central Scotland) (LD): We would all sign up for Richard Simpson's concept of integrated care by having good, appropriate local facilities in Stirling, Falkirk and Clackmannanshire and having a central hospital for acute services.

The health board has conducted a good consultation—perhaps it is not perfect, but it seems better than most—and it has come to a conclusion. I think that the Larbert site is good—I have been there and know it well. I do not know the other sites, so I am not in a position to say whether they are better. However, the health board clearly preferred the Larbert site.

The most important thing that I have stressed in discussions with the health board has been the access question, especially relating to public transport. Michael Matheson mentioned the railway. It is also essential that there is a really good bus service from the train station and from other communities. After all, that is a major failing of some new hospitals in other areas. Furthermore, given the very large housing and business developments that are proposed for the Bellsdyke area, there will be a big demand for public transport. Obviously, roads will have to be improved. Presumably, the costs for such improvements can be shared out between the hospital and other beneficiaries in the community.

As other members have said, I hope that the Executive will ensure that the matter is concluded soon. If better arguments can be made for the

other sites and if they can be assessed as quickly as the Bellsdyke site was, we should consider them. However, at the moment, a good proposition is on the table, and the Executive should reach a rapid conclusion on it.

13:01

Cathy Peattie (Falkirk East) (Lab): I will not cover all the points that have already been covered. However, as a Grangemouth resident, I am pleased that a decision has been reached. Like Dennis Canavan, I have campaigned for a long time for a decision to be made on acute services in the area.

Good transport links are essential for any hospital, and decisions are obviously easier if there is a single concentration of population that already has such links. Where that is not the case, any decision will have more profound effects and we must consider carefully how people will be disadvantaged.

In particular, we must consider the effects of any decision on people who are socially disadvantaged and might therefore have poorer health. The population of the Falkirk Council area is greater than that of the other two council areas in Forth valley combined. Although the breakdown of health information is limited, the information that is available shows clearly that the Falkirk area has higher rates of lung cancer, heart disease and strokes than the rest of the Forth valley.

Dr Sylvia Jackson: Will the member give way?

Cathy Peattie: No. I am sorry, but I must continue.

The average household income varies from about £18,000 in Falkirk to £20,500 in Stirling. By constituency, unemployment is highest in Falkirk East and Ochil; long-term illness is highest in Falkirk West; and, although almost 40 per cent of school leavers in Stirling and Ochil go on to higher education, little more than a quarter of school leavers in Falkirk do so.

Because of the high level of need in Falkirk, there was enormous concern about the proposals. Almost 800 people attended the Falkirk area consultation meetings. There were 4,811 written submissions from the Falkirk area, 99 per cent of which were clear that the hospital should be located on the RSNH site. Almost 2,000 people signed petitions that supported the choice of that site; more than three quarters of the questionnaires that were returned came from the Falkirk area; and of the 5,345 letters and questionnaires that were received, 5,193 supported the choice. As a result, I believe that the RSNH site is the natural choice for a new hospital.

The site might not be convenient for people who favour private health care interests. However, it is large enough, it is already owned by the health board and it is near enough to the motorway. On that last point, I look forward to next week's debate and other discussions on the transport infrastructure.

As long as community hospitals are maintained to sufficiently high standards, I believe that the site represents the best solution for Forth valley. It is important that the health board begins real consultation and perhaps does some lateral thinking on the delivery of primary care services. It is time to stop going over the same old ground; instead, we must look forward and find out how we can achieve the best for all the residents of the Forth valley.

13:04

Bruce Crawford (Mid Scotland and Fife) (SNP): Members have pointed out that the issue has a long history: some have mentioned 30 years, others have mentioned 10 years. Whatever the length of time, the issue has been too long in the melting pot. Earlier consultations have ended in confusion, failure, disappointment and disengagement and no final decisions have been reached. As a result, I am glad that on this occasion a decision has actually been made.

At the beginning of the consultation, I was worried that the process would fall into disrepute. However, I have been greatly heartened by Forth Valley NHS Board's consultation exercise, which was better than others that I have witnessed in Fife and in the Tayside area. The consultation was comprehensive and effective. I think that we all agree that the decision to have a single-site hospital is right.

Questions still need to be asked. I say to Dennis Canavan that it is our job as politicians not to do down other potential sites, but to ensure that we get the best option for all the central Scotland area that the Larbert hospital will serve. I understand why Forth Valley NHS Board decided that Larbert is the preferred site. However, I am concerned that irrevocable decisions will be taken without the necessary long-term strategic perspective that would consider all the sites and, as others have said, the primary care aspect. Perhaps that aspect should have been central to the consultation.

Dr Sylvia Jackson: Will the member give way?

Bruce Crawford: No. I do not have much time.

It is obvious that if primary care had been at the centre of the consultation process, and the transport study issues had been considered beforehand, the process could have been greatly strengthened.

Larbert might be the correct site and the sites that Stirling Council identified at Corbiewood and Pirnhall might have associated challenges, but any site has those. I believe that Stirling Council must be given every opportunity to ascertain whether the problems of the Corbiewood and Pirnhall sites could be overcome, because the sites deserve the opportunity, as do the people of Stirling and of Falkirk. If those sites were given a further opportunity, they might end up being better options. However, after further investigations, Larbert might still come out at the top of the list.

Whatever happens—whether the preferred site is Larbert, Corbiewood or Pirnhall—we must have a real examination, as others have said, of the impact on the rural communities of Aberfoyle, Callander, Balfron and the Strathendrick area, particularly in relation to community health facilities. There is a black hole in those communities that must be filled, whatever the circumstances. The Deputy Presiding Officer has been involved in the campaign for, and has a long-standing commitment to, a hospital in the Clackmannan resource centre area. Something like that should be considered for the Strathendrick area and the Callander and Aberfoyle area for the future.

The public transport issue must be investigated further to ensure that we get the links right between whichever town the hospital is eventually sited in and the towns that are furthest away. That must be a prerequisite for the future.

Let us take a wee bit longer to get the decision dead right so that we have the right option for the whole Forth valley area, which deserves such a chance.

13:08

Mr David Davidson (North-East Scotland) (Con): I wanted to speak in the debate because it is important. I used to be involved in consultation processes as a former resident and councillor in Stirling. I was the councillor for the Trossachs ward, which is a rural area, and I felt that the biggest issue—which has only just begun to be addressed and which was referred to fleetingly by Sylvia Jackson and Bruce Crawford—was the rural hinterland of north-west Stirling. I defy anyone to make the journey from that area to the proposed site by car in 30 minutes during the summer tourist months; it cannot be done. During the tourist season, it used to take me more than half an hour just to get from the back of Aberfoyle into Stirling. What I am concerned about is not the routine, high-quality medical care that the existing hospitals currently supply—I am sure that any new hospital would do the same—

Dennis Canavan *rose*—

Mr Davidson: May I just finish my point?

I am concerned about emergency access rather than primary care facilities that could take some of the load away from the rural areas. There is no public transport from such areas, anyway. What about provision for accident and emergency, maternity services and cardiac arrest? Wherever the hospital is sited, accessible emergency service care for the whole of the Forth valley area must be built into the planning. The issue is about patients' needs, not just about convenience because there is a nearby bus route. People can make a journey for routine medical attention and it does not matter whether that takes 30 or 45 minutes. However, emergency treatment is important.

Dennis Canavan: If there were an accident or emergency in the Aberfoyle area, someone would probably be quicker going to a hospital in Glasgow than to one in Stirling. Indeed, some people in the Aberfoyle area use national health services in Glasgow rather than those in Stirling.

Mr Davidson: The medical practices have an option about where to send patients, but that would work only in routine circumstances. I would not recommend trying to get into Glasgow from the rural hinterland of Stirling in a hurry in the tourist season, with all its associated problems.

The minister should pay attention to the fact that the issue is not just one of ease for the majority. The same level of care must be available to everyone. By having outreach units to supply some of the consultants' care, or by using the model that operates in Aberdeen and Grampian, where community hospitals are serviced from the centre, a lot of the problems of movement and transportation could be dealt with. It is vital that the rural hinterland of Stirling is considered in relation to emergency care on the basis of the worst transport conditions that might arise. I have no doubt that parts of Clackmannanshire fall into the category that we are talking about, although the situation is a little better in the Falkirk area.

Bruce Crawford: Crieff community hospital does some emergency work, such as cardiac treatment, and allows other services to be delivered. Does Mr Davidson agree that that model would work in the Stirling area?

Mr Davidson: I agree. I am asking the minister to consider those options and to try to find a way in which such services can be delivered in that area. When I was a councillor in the area, people were desperately worried about the removal of a hospital facility from Stirling. That fear was based not on the usual turf wars between Stirling and Falkirk, but on the need for access at times of emergency.

13:11

The Deputy Minister for Health and Community Care (Mrs Mary Mulligan): I listened with interest to Brian Monteith's remarks and to the positive speeches by other members, all of whom have an interest in modernising and improving the health services for all the people of the Forth Valley NHS Board area.

It has been evident from today's lively debate that there is broad support for Forth Valley NHS Board's initiative to develop a new hospital for its area on a single site. That support comes from the public, their representatives, national health service staff and other stakeholders.

The shape of hospital services in the area has been under discussion for some time, as many members have said. In the past couple of years, the NHS board and trusts have been concerned with identifying a way to ensure that safe, sustainable and accessible services can be enjoyed by all. There was a real possibility that, otherwise, hospital-based services for residents in the area would end up being provided from outside the region.

I think that the NHS board would agree that some difficult points were encountered along the way. However, the board has succeeded in developing options for clinically sustainable and affordable models of care. The recent consultation exercise has been thorough and wide-ranging, as many members noted. It went beyond public consultation to embrace engagement and involvement. All local people and organisations had the opportunity to have their say.

Bruce Crawford: Does the minister agree that the consultation process would have been strengthened if it had wrapped in primary care issues with the acute care issues that were dealt with?

Mrs Mulligan: It is important that primary care issues continue to be considered in the on-going discussions. We have not reached the end of the process by any means. There is still a lot of work to be done.

The board specifically sought views on the development of a single acute hospital to serve the population of the area; proposals for community-based health services, including a community hospital in Clackmannanshire, which would incorporate a new health centre for Alloa; the best location for a new acute hospital; what factors should be taken into account in choosing a site; and, importantly, what immediate changes needed to be made to ensure that safe, high-quality services could be maintained until the long-term vision was realised.

The public's feedback from the consultation has been encouraging, with more than 5,500 responses. The board, the public and other stakeholders are to be commended for their active involvement and for ensuring that the exercise was conducted openly. One of the key outcomes of the consultation was the increasing level of public involvement in the shaping of NHS services. I want the board to continue in that way, and I know that the chair, the board members and Fiona Mackenzie, the chief executive, share my view.

Ultimately, it is for the board to decide on the organisation and location of health services in its area, but it must ensure that those services represent best value for all the people of the Forth valley. The board must also demonstrate that effective linkages will be made between primary and secondary care to create the fully integrated services for which Richard Simpson asked. Those services must deliver for the patient in the right place at the right time.

It is evident from this afternoon's debate that there are areas of concern to members. Those areas include accessibility and the further development of health services in the community. As part of the consultation exercise, the board proposed key access criteria, including

"accessibility to a minimum of 90% of the population within 30 minutes by car, and with the potential for appropriate public transport links to all main population centres within Forth Valley".

That recognises that it will not be possible for 100 per cent of the population to realise that 30-minute access. However, I say to Mr Davidson in particular that discussions must also take place with the Scottish Ambulance Service, particularly on accidents and emergencies, in which the service is called on to stabilise a patient wherever it picks them up and ensure their safe delivery to the hospital. There is, therefore, less of an issue about how long it might take for even an emergency ambulance to access a hospital. Those are the kind of developments that we want in the Ambulance Service and which will allow safe transport in future.

The board has been able to take account of the impact of the proposed Alloa rail link and the planned new Forth crossing at Kincardine. That investment in the transport infrastructure will make a significant impact on accessibility, especially for the 80,000 residents of the wee county. I am sure that we will return to that subject in the transport debate next week.

I understand that the board's chair and chief executive are to meet the three local authorities shortly to discuss how the development of community health services might be taken forward. The board is considering using the same successful model of involving local people, staff and key stakeholders as was used previously.

The overriding issue is that the future configuration of health services in the Forth valley, as in the rest of Scotland, must be clinically safe, achievable and financially sustainable. The board is approaching the task of identifying options and reaching decisions openly and even-handedly. It is very important that the public are engaged and involved in the process. I believe that Forth Valley NHS Board is doing its best to achieve that. For example, the board has placed all the relevant consultation documents on the worldwide web and made them available to anybody who wants them. That is the kind of involvement that we want.

I expect Forth Valley NHS Board to be able to demonstrate that it has listened and taken into account local opinion, as well as all the representations made and data provided to it. It is easier for the board to demonstrate that since the restructuring of health boards 18 months ago.

It is evident from the debate that there is consensus that what is required for the people of the Forth valley is one centre with well-developed, modern, local services. The board will take further independent advice on location issues before a final decision is made. We expect the transport impact study to be thorough and to have been consulted on when we receive it. We will look to Forth Valley NHS Board to develop its ideas on future patterns of primary and community care in partnership with the local community.

Of course, any proposals for major changes, such as those that we have discussed, will require the approval of my colleague Malcolm Chisholm, the Minister for Health and Community Care. That will give the Executive an opportunity to ensure that the proper processes have been followed and that all relevant information has been taken into account. It is inevitable that not everyone will agree with the board's decision on the location, but it is clear that there can be only one new hospital in the Forth valley and that it can be in only one place.

I have listened to the points that have been raised today, and members can be sure that Forth Valley NHS Board will be made aware of the debate. However, the development of a new hospital, important as it is, is only a part of a wider, continuing review of NHS services in the Forth valley. I am sure that the public, their representatives and staff will support the NHS board to make whatever decision is eventually taken work—and work well—for all the people of the Forth valley.

13:20

Meeting suspended until 14:00.

14:00

On resuming—

Criminal Justice (Scotland) Bill: Stage 3

Resumed debate.

The Deputy Presiding Officer (Mr George Reid): Good afternoon. We pick up consideration of the Criminal Justice (Scotland) Bill from where we left off this morning. We were on group 3, on victim statements. We have to get through all of groups 3 and 4 in the next 15 minutes, so I ask members to keep their speeches tight. I call Roseanna Cunningham.

Roseanna Cunningham: Are we not moving straight to the vote?

The Deputy Presiding Officer: Do you not want to wind up?

Roseanna Cunningham: No. I think that enough has been said on amendment 85. I want to withdraw the amendment.

Amendment 85, by agreement, withdrawn.

Amendment 86 not moved.

Amendments 18 to 23 moved—[Mr Jim Wallace]—and agreed to.

Amendment 87 moved—[Roseanna Cunningham].

The Deputy Presiding Officer: The question is, that amendment 87 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Barrie, Scott (Dunfermline West) (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)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
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)
Wallace, Mr Jim (Orkney) (LD)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Gallie, Phil (South of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 22, Against 42, Abstentions 1.

Amendment 87 disagreed to.

Amendments 88 and 89 moved—[Roseanna Cunningham]—and agreed to.

Amendment 90 not moved.

Section 15—Victim's right to receive information concerning release etc of offender

The Deputy Presiding Officer: Amendment 24 is grouped with amendments 44, 25, 26 to 29, 91, 30, 31 and 92.

Lord James Douglas-Hamilton (Lothians) (Con): I am glad to speak briefly to amendment 24. Section 14(2) restricts the victim's statement to

"a natural person against whom a prescribed offence has been … perpetrated".

The Law Society of Scotland questioned why the provision is so narrowly drafted. Should not a sole trader, a family partnership consisting of parents and their children or a close company that has been the victim of a crime also be given the chance to present a statement detailing the impact of the crime?

The Scottish justice system has often found itself criticised for the scant information that is provided to victims of crime. The definition of those who may give a victim statement is dealt with under section 14(10). Although I have no wish to extend that definition to include a cast of thousands, we should extend the category of those who are entitled to make victim statements and receive information, as the amendment proposes. The impact on a surviving partner after a homicide would be considerable; therefore, it seems equitable to allow them to make a victim statement and to obtain information, as appropriate.

Amendment 44 seeks to time-limit certain aspects of section 15, which is understandable.

Amendment 28 brings into play a necessary part of legislation where the convicted person is extremely young.

I see the sense behind Roseanna Cunningham's amendment 91, but were section 15(2) to be left out in its entirety, we would have to try to resolve a historical situation involving innumerable victims of crime. Many of those persons might have moved house or changed name on marriage or for other reasons. Therefore, the amendment would place on the authorities an onerous duty that could, in practical terms, prove impossible to meet.

Amendment 92 is necessary. Although we must avoid alarming people unnecessarily, victims who might be prejudiced by the escape of a convicted person should be notified. We will support amendment 92.

I move amendment 24.

Mr Jim Wallace: As James Douglas-Hamilton says, amendment 24 would extend to legal persons the right to receive information about the release of an offender from prison. I remind the Parliament of the purpose of victim notification, which was to provide the right for individuals who have been the victims of certain crimes to receive information on the release of their assailant. The notification scheme exists primarily to allay any concerns that victims have about their safety or about possibly meeting their assailant unexpectedly.

I give James Douglas-Hamilton the reassurance that the scheme will include sole traders or individuals who have been affected in what might be described as a corporate situation. What the

scheme will not do is to notify Boots the chemist if someone who committed fraud against the company is released. However, a sole trader who was the victim of an assault—although the assault might have occurred in a trading situation—will be an individual for the purposes of the provisions. The intention was never to provide that right to private companies or other corporate bodies.

Amendments 25, 26, 27 and 28 seek to fulfil the original policy intention behind the provisions by ensuring that offenders who have a mental disorder and are detained in hospital as patients, rather than being sentenced to prison, are excluded from the provisions of section 15. A tension clearly exists between the rights of the victim and the rights of the patient. There are complex issues surrounding patient confidentiality, which place different constraints on the information that can be disclosed. In addition, there are European convention of human rights considerations to take into account. We are aware that the release of information to victims of mentally disordered offenders requires serious consideration, and we have given a commitment to consult all relevant interests on the issues.

Amendment 29 removes from section 15(1) the requirement for ministers to prescribe through subordinate legislation the method by which a victim intimates that they wish to receive information about the release of their assailant from prison. We consider that it is not necessary to prescribe in secondary legislation the specific format in which victims are to indicate that they wish to receive information. At present, the Crown Office and Procurator Fiscal Service issues forms to eligible victims, which they can complete and send to the Scottish Prison Service if they wish to receive information. Victims whose assailant was convicted before 1 April 1997 can write to the Scottish Prison Service, which will check whether they are eligible to receive information.

The victim notification scheme came into being on 1 April 1997, from which point all eligible victims have been asked whether they wish to receive information about the release of the offender. Section 15 gives a statutory right to eligible victims to receive information about offenders who were sentenced after 1 April 1997. Executive amendment 44 seeks to extend that right to eligible victims of offenders who were sentenced prior to 1 April 1997. However, we recognise that amendment 44 does not go far enough.

Amendment 91 seeks to give victims who are eligible to receive information under section 15(1) the right to receive the information set out in section 15(4) when the offender was sentenced prior to 1 April 1997.

We accept that the combination of amendment 91 with amendment 44 achieves the policy intention, to which Lord James Douglas-Hamilton referred, to extend the right to receive information to victims whose assailant was sentenced prior to 1 April 1997.

Amendment 44 is in the Executive's name and we will also support amendment 91. We thank Roseanna Cunningham for bringing the matter to our attention.

Amendment 30 seeks to clarify that the information provided to victims about the date of release of convicted persons pertains to release under the Prisons (Scotland) Act 1989 or the Prisoners and Criminal Proceedings (Scotland) Act 1993. That means that victims will always be informed of release from sentence, but will not be informed of release from hospital if the convicted person has a hospital disposal and is detained beyond the duration of their prison sentence by virtue of their illness.

Amendment 31 seeks to clarify that the information provided to victims about the temporary release of convicted persons pertains to temporary release under the Prisons (Scotland) Act 1989. The effect of the amendment is that victims will not be informed of temporary release from hospital if the convicted person has also been detained in hospital because they have a mental disorder.

As I said in relation to amendments 25 to 28, we intend to consult on our policy in relation to the future release of information to victims of mentally disordered offenders.

Amendment 92 seeks to insert an additional category into the list of information that should be supplied to victims who sign up to receive information. It would require the Scottish ministers to inform the victim if the convicted person had escaped or absconded from custody. That information is not provided to victims under the current scheme and I believe that Roseanna Cunningham has identified an important addition to the list of information to be given to victims. Therefore, the Executive will support the amendment.

I hope that, following the reassurance that I have given Lord James Douglas-Hamilton, he will be prepared to withdraw amendment 24.

Michael Matheson (Central Scotland) (SNP): I welcome the Executive's decision to accept amendments 91 and 92.

If a person was sentenced prior to 1 April 1997 the Executive has the power, but is not required, to provide information to the victim on the convicted person's date of release, death, transfer out of Scotland or temporary release. Amendment 91 will require that the Executive's provides the

information even if the offence was committed before 1 April 1997. I note the concerns that have been expressed by Lord James Douglas-Hamilton on behalf of the Conservative party. However, I remind him that the victim must intimate their wish for information, so tracking them down should not represent a particular difficulty.

I welcome the Executive's willingness to accept amendment 92. The purpose of the amendment is to require the Executive, in addition to providing information to victims on the date of release, death, transfer out of Scotland or temporary release of the convicted person, to tell the victim if the convicted person escapes or absconds from custody. That seems reasonable.

Lord James Douglas-Hamilton: I thank the minister for his reply, but his assurance does not include private companies, which was one of the Law Society of Scotland's concerns. I will press amendment 24, as a marker that private companies should be entitled to give victim impact statements if they are adversely affected by robberies and crime.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Gallie, Phil (South of Scotland) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Young, John (West of Scotland) (Con)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
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)
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)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Swinney, Mr John (North Tayside) (SNP)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

14:15

The Deputy Presiding Officer: The result of the division is: For 8, Against 82, Abstentions 0.

Amendment 24 disagreed to.

Amendments 44 and 25 to 29 moved—[Hugh Henry]—and agreed to.

Amendment 91 moved—[Michael Matheson]—and agreed to.

Amendments 30 and 31 moved—[Hugh Henry]—and agreed to.

Amendment 92 moved—[Roseanna Cunningham]—and agreed to.

Section 24—Consecutive sentences: life prisoners etc

The Deputy Presiding Officer: That takes us within the guillotine to group 5, on consecutive sentences. Amendment 49 is grouped with amendments 50 to 53.

Hugh Henry: In essence, amendments 49 to 53 replace the provisions that are in the bill at present, but do not change what they aim to achieve.

As the policy memorandum for the bill explains, we wish to provide the courts with a new power in relation to life sentences. Currently, a life sentence cannot run consecutively to another sentence, nor vice versa. We want to give courts a new power to order that a subsequent determinate sentence of imprisonment for an offence or the punishment part of a second life sentence can be ordered to run consecutively to the punishment part of an existing life sentence.

Similarly, we want to give the courts the power to order that the punishment part of a life sentence can be ordered to run consecutively to a determinate sentence that a prisoner is serving or is liable to serve. In a nutshell, the provisions introduced by these amendments will do just that.

Furthermore, they will mean that a prisoner in respect of whom such sentences are imposed will have no right to be considered for release, or to be released, until he or she reaches the point at which he or she may be considered for release or must be released from all the sentences that the courts have ordered to be served.

I move amendment 49.

Bill Aitken: I am somewhat intrigued by amendment 49. I would have thought it unnecessary; cannot the matter be dealt with administratively? Would not the simple way forward be for the judge to impose a further life sentence, stipulating the punishment part and stating that it has to be served consecutively to any sentence already imposed by the courts or any other sentence that might be imposed in the interim? What is proposed does not seem in any way unreasonable, but I think that it is an over-complex way of resolving the matter. The issue is quite simple and straightforward. The judge would simply say that any further life sentence, and the punishment part thereof, should succeed the initial sentence.

Amendment 49 agreed to.

Amendment 50 moved—[Hugh Henry]—and agreed to.

After section 24

The Deputy Presiding Officer: Amendment 32 is in a group on its own.

Bill Aitken: Amendment 32 is an attempt to reduce the logjam in sheriff and jury courts. At present, on summary conviction, a maximum sentence of three months' imprisonment can be imposed, although that increases to six months where the accused person has previously been convicted of an analogous offence. There are specific provisions under the Police (Scotland) Act 1967, whereby, for example, a sentence of nine months can be imposed by a sheriff or stipendiary magistrate in a district court in Glasgow for an offence of police assault. Nevertheless, there still appears to be a great amount of business going through sheriff courts, where sentences on indictment are 12 months or less.

I am always reluctant to interfere with the long-established principles of Scots law, and I recognise that the right to a jury trial where the sentence could be six months is a right with which we should not interfere lightly, but what is proposed in amendment 32 would not interfere seriously with the inherent fairness of our system.

If the amendment is passed, its effect would be to reduce significantly the amount of work going to the sheriff and jury courts, to enable those courts to deal with more serious matters and to speed up the judicial process in a high percentage of cases that currently go before the sheriffs on indictment.

I move amendment 32.

Michael Matheson: Bill Aitken might recall that it was the Conservative party, under the Criminal Procedure (Scotland) Act 1995, that extended the powers of sheriffs to be able to sentence up to six months in summary procedures. It is clear that the Conservatives think that there should be a further extension, but I am not sure whether that is the best way to tackle the problems in the criminal justice system.

Bill Aitken will be aware that the McInnes review is considering the whole issue of sheriff courts. I would have thought that it would be more appropriate to wait for the outcome of that review and to see what should be implemented from it before we start to make changes.

Why Bill Aitken has decided to pick out serious offences such as personal violence and dishonesty is unclear. It could be argued that other serious offences—such as drugs trafficking or collecting child pornography—could equally be included.

Hugh Henry: I echo some of what Michael Matheson said. Amendment 32 replicates section 13(2)(b) of the Crime and Punishment (Scotland) Act 1997. Commencing the provision would pre-empt the findings of the summary justice review committee. Members will know that we set up that committee, which is chaired by Sheriff Principal McInnes, to consider all aspects of summary justice, including the important matter of the dividing boundaries for sentencing powers between the different levels of criminal court. Sentencing powers cannot be taken in isolation, but must be considered in the context of the structure of the criminal justice system and, in particular, of the types of cases that should be dealt with at each level of the criminal courts. We must also bear in mind the need to distribute work appropriately between summary and solemn courts.

The summary justice review committee is considering sentencing powers in that context. If the committee recommends that there should be a change, we will certainly consider seriously its recommendation.

As the terms of amendment 32 are already enacted, I invite Bill Aitken to withdraw it.

Bill Aitken: I do not propose to withdraw amendment 32, albeit that I am faced with the unholy liberal alliance of Hugh Henry and Michael Matheson—if ever I needed any justification for knowing that I was right, that is it.

On what Michael Matheson said about the particular type of offence for which we suggest that the procedure be introduced, crimes of violence is the section of criminal activity that, unfortunately, is showing the most spectacular increase. On that basis, there is justification for the amendment.

What Michael Matheson said about the activities of the McInnes inquiry into the operation of the summary courts has slightly more validity. His argument that the matter might be best dealt with by the inquiry has some credence. However, I suspect that, before the Parliament is much older, it will debate the inquiry's report and one of its recommendations will almost inevitably be to suggest exactly what I am suggesting today. It would be as well for us to agree to my suggestions here and now and get on with things.

The Deputy Presiding Officer: The question is, that amendment 32 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Gallie, Phil (South of Scotland) (Con)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Young, John (West of Scotland) (Con)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
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)
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)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)

Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 9, Against 83, Abstentions 0.

Amendment 32 disagreed to.

Section 27—Release on licence: life prisoners

Amendments 51 and 52 moved—[Hugh Henry]—and agreed to.

After section 27

Amendment 53 moved—[Hugh Henry]—and agreed to.

The Deputy Presiding Officer: Amendment 78 is grouped with amendments 54 to 56 and 45.

Bill Aitken: There is an inherent dishonesty in our approach to sentencing. As members will be aware, a remission of 50 per cent is currently applied to sentences that are of four years or less and a remission of a third is applied for sentences that are higher than that. The net effect is that a person who is sentenced to nine years does only six years, a person who is sentenced to four years does only two years and a person who is sentenced to six months does only three months. Those are typical examples. The public are increasingly concerned about the fact that the judicial system is misleading.

Amendment 78 would mean that the sentence that was handed down would be the time that the person would serve. I ask members to put themselves in the position of someone who, having been the victim of a serious assault, sees the perpetrator jailed for three years. Two years later, they see their assailant walking down the street and getting on to the same bus or entering the same public house. That sort of thing increases public unease considerably. The victims of crime are finding it increasingly difficult to understand why such things happen. Amendment 78 would stop such things happening.

The amendment is not an attempt to increase the amount of time that individuals spend in jail, as we would fully expect judges to reduce the tariff in such circumstances. However, the situation would at least be up front and honest.

The original intent of remission was that it would act as an incentive to convicted persons to behave well in prison. If they did not do so, their remission could be reduced with the result that they would spend more time in jail. However, the European convention on human rights has had a negative impact on that, as on many other aspects of Scots law. Questioning of the Minister for Justice has revealed that few prisoners have suffered loss of remission over the past couple of years. Basically, the use of remission as a tool to control behaviour is no longer relevant to our considerations.

We have no objection to amendments 54, 55 and 56. We feel certain that amendment 45 is fairly innocent, although I would like to hear a ministerial explanation of it. I do not have any suspicions, but an explanation would be helpful in the interests of clarity.

It is time that we were up front with the Scottish public. Judges should mean what they say when they pass sentence. I stress that amendment 78 is not a device to ensure that people spend more time in prison. We fully expect that the tariffs would be reduced, but at least everyone would know where they stood. Amendment 78 would mean that we could obviate the difficult situation that confronts many people when they see someone who has assaulted them being released from prison a lot earlier than had been expected.

I move amendment 78.

Mr Wallace: Amendments 54 and 56, like amendments 55 and 45, are technical amendments. Amendments 54 and 56 will remove from the Repatriation of Prisoners Act 1984 provisions for the treatment of repatriated life prisoners that have become obsolete. The provisions are obsolete because of the changes to the system for the consideration of the release of life prisoners that were made by the Parliament when it passed the Convention Rights (Compliance) (Scotland) Act 2001. The amendments will make it clear that life prisoners who are repatriated to Scotland will, like other life prisoners, normally have a punishment part of their life sentence set by the High Court. They will have to serve that punishment part before the Parole Board for Scotland can consider them for release.

Along with amendment 55, amendment 56 will provide that the provisions to be inserted by section 29 of the bill into the schedule to the 1984 act will apply only to prisoners who received a sentence on or after 1 October 1993 and who are

repatriated to Scotland after section 29 comes into force. Taken together, the amendments ensure that the new provisions governing the eligibility for release of prisoners who are repatriated to Scotland from abroad will not apply retrospectively. That is in line with the normal presumption that changes in the law should not apply retrospectively.

As Mr Aitken is eager to hear an explanation of amendment 45, I point out that it is a minor consequential amendment to section 34. Section 34(2)(c) inserts a new subsection (5) into section 7 of the Prisoners and Criminal Proceedings (Scotland) Act 1993. Paragraph (c) of that new subsection refers to a provision of section 17 of the 1993 act that section 32 of the bill will remove. Therefore, the new subsection (5)(c) is no longer appropriate and requires to be deleted, which is all that amendment 45 seeks to do.

14:30

Mr Hamilton: Say that again without notes.

Mr Wallace: The amendment is technical.

On amendment 78, Bill Aitken is certainly a trier in his attempt to change a law that his party introduced. It is worth reminding members that the effect of amendment 78 would be to repeal provisions of the Prisoners and Criminal Proceedings (Scotland) Act 1993, which was introduced by the Conservative Administration, of which Lord James Douglas-Hamilton was a distinguished member. That act followed a review of the early-release system by a committee under the chairmanship of Lord Kincraig, which was set up by the then Secretary of State for Scotland, Mr Malcolm Rifkind.

Bill Aitken lodged a similar amendment at stage 2, although it did not go as far as amendment 78, which would create some undesirable and, in some cases, irrational effects. First, in spite of what Bill Aitken says, the amendment could lead to a substantial increase in the daily prison population. I cannot put an exact figure on that, but, given that Bill Aitken's expectations are not correct, I will say that the figure would be of the order of 2,000.

Secondly, the amendment would create some blatant anomalies. By way of illustration, let us take two co-accused, one of whom is sentenced to four years and the other to three years. The prisoner who is sentenced to four years could be released on licence after serving half the sentence if the Parole Board for Scotland recommended that. In other words, he could be released after two years. However, his co-accused, who was sentenced to three years, would be required to serve the full three-year sentence. I am sure that such an irrational situation is not Bill Aitken's intention. It goes without saying that such a system would lead to severe difficulties for the management of prisoners.

In the case of long-term prisoners who are not released on parole, there would be no compulsory supervision in the community on release as there is at present, which would be counterproductive. Prisoners would not be under the supervision of a social worker with whom work to address offending behaviour could continue during a period on licence and from whom the prisoner would be able to get help with resettlement in the community.

Given those points, I ask members to reject amendment 78 and to support amendments 54 to 56 and 45.

Phil Gallie (South of Scotland) (Con): It is perhaps not surprising that I support Bill Aitken's amendment 78. Jim Wallace referred to the fact that Conservative ministers introduced the provisions that amendment 78 would remove. He is quite right, but he should also recall that the only opposition to the provisions came from within the Conservative party. Members from the Liberal and Labour parties and the nationalists went along whole-heartedly with the proposals.

Jim Wallace suggested that amendment 78 would lead to an increase in the number of prisoners, but I suggest that it might have another effect. Although there might be a marginal increase in the short term, the number of prisoners being sent to prison to serve their time will be reduced as a result of better rehabilitation within prisons. We have heard all too often that short sentences have no effect on individuals. Amendment 78 would provide a means of addressing that problem and would give the prison authorities the chance to work with individuals to improve their habits.

Amendment 78 would have another effect. Many individuals who are released early from jail are simply recycled back into the courts because many of them commit another offence within a few days or weeks. They do not learn their lesson and are back in the courts, clogging up the court system. The amendment would benefit not only individuals, but the court system.

All members suffer from the problem of the electorate's disillusionment, which arises because politicians are seen to be dishonest. When an offender is sentenced to two or three years, the victim feels that it is dishonest when that individual is back on the streets a relatively short time after the sentence is passed. There are some cases in which a person has served time on remand, is sentenced and is then back on the streets within days of that sentence being passed. The minister would do well to listen to Bill Aitken's comments and to accept amendment 78.

Dr Simpson: The speeches by Bill Aitken and Phil Gallie indicate the confusion in the Conservative party. One says that the prison population would not increase, whereas the other says that it would and that it would be good for prisoners if it did.

There is a serious point behind Bill Aitken's amendment 78, although I do not believe that the amendment should be supported. The loss of additional days added—ADA—means that a review of the sentencing system is needed. However, the amendment is wholly inappropriate in this context. If it were agreed to, the court's ability to send somebody back for an additional sentence—the element that had not been served—would also be removed. I would not have thought that the Conservative party wanted that. The amendment would remove the deterrent effect when someone knows that some of their sentence is still to be served if an offence is committed.

It is totally wrong to say that the provisions on the release of prisoners show the negative effect of the ECHR, because there has been no problem whatever with the removal of ADA. To suggest that there has been a problem—as the press did when England removed ADA after we did—is totally false. I urge the rejection of amendment 78.

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

The Deputy Presiding Officer: I think that Richard Simpson has finished.

Dr Simpson: Lord James may ask me a question.

Lord Douglas-Hamilton: Is Richard Simpson aware that prison governors have informed the Justice 1 Committee that, on account of the ECHR, they do not consider the use of added days as a punishment in any circumstances?

Dr Simpson: I am aware that ADA has been abolished because of the ECHR, but the ECHR has had no negative effect—of any sort—on the governance of our prisons.

Bill Aitken: We have heard some interesting contributions. Having heard the minister's succinct description of what is meant by amendment 45, I am content to accept it.

The minister talks about legislation introduced in 1993 and says that amendment 78 indicates a change of heart on our part, but he fails to recognise the fact that the legislation is now almost 10 years old. He fails to recognise that his party has been part of an Executive that has been in control for four years, that the Labour Government was in control for the previous three years and that the situation has so deteriorated under his control that the action that we propose in the amendment is necessary.

The minister claimed that there would be some anomalies under our proposal. However, those anomalies would be temporary and would soon work their way through the system. Liberal Democrats should not criticise others for making U-turns when they make them so frequently that, in the Glasgow vernacular, they do not know whether they are coming or going.

On Dr Simpson's intervention, I must say that the situation is not as he described. For sound reasons, Governments of varying persuasions over the years have used the possible loss of remission as a tool for managing behaviour in prisons. That is accepted and understood. However, as my colleague Lord James Douglas-Hamilton said, prison governors no longer use that tool, as was confirmed in the minister's answer to a parliamentary question that I posed not long ago. We therefore have a genuine problem. Prisons are, to a large extent, getting out of control, as has been evidenced by recent events in Shotts, Low Moss and elsewhere.

We want to put down a marker to make it clear that sentences must have a deterrent effect. At the moment, prisoners who are sentenced can immediately perform quick, simple mental arithmetic to realise that the effect of a six-year sentence is not quite what people think it is. Given that the level of crime is rising, there has to be a shift in emphasis. As a result, I will very forcefully press amendment 78.

The Deputy Presiding Officer: The question is, that amendment 78 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Gallie, Phil (South of Scotland) (Con)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Young, John (West of Scotland) (Con)

AGAINST

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)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
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)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
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)
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)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 12, Against 88, Abstentions 0.

Amendment 78 disagreed to.

Section 29—Prisoners repatriated to Scotland

Amendments 54 to 56 moved—[Mr Jim Wallace]—and agreed to.

Section 34—Special provision in relation to children

Amendment 45 moved—[Mr Jim Wallace]—and agreed to.

Section 36—Drugs courts

The Deputy Presiding Officer: Amendment 33 is in a group on its own.

Bill Aitken: At present, the drugs court concept is operating in Glasgow and is being rolled out elsewhere on a pilot basis. We have absolutely no objection to that, with the caveat that a hard-headed and realistic assessment of the concept must be made at the end of the pilot period. I should stress that we do not regard the end of the pilot period as being the anniversary date of the establishment of the drugs courts. That would come a year later, by the time that any outstanding prosecutions involving the clients of drugs courts had worked their way through the system.

However, there is an inherent unfairness in the way in which the drugs courts operate. Only multiple offenders with many convictions and previous custodial sentences go before the courts. On the day that I visited the Glasgow drugs court as a guest of the Justice 1 Committee, the offender group seemed to be somewhat older than I had expected. It is ironic that, in some cases in Glasgow, the only way in which to get prompt treatment for drugs is to commit numerous offences. A younger person with a handful of offences would not be considered for the service that the drugs courts can provide. That is quite wrong.

I am certain that time will prove that the success rate will be much higher if we can get drugs-driven offenders into the courts before they are settled in their habits. I suggest that amendment 33, which would put an age restriction on the category of person who goes before the courts and restrict to six the number of offences that such a person had committed, is the answer.

I accept that resources are finite, which is why I think that they are not best used by our sending hardened cases to the drugs courts. We need to reconsider the issue. It is a sad commentary on our times that a young person who has developed a drug habit—through their own fault, I concede—cannot receive appropriate drugs treatment when they are willing to undergo such treatment. Indeed, in many cases, those young people are anxious for it. However, they are prevented from receiving treatment because, under the current policy, only people with a considerable record are sent before the drugs courts. No one is beyond salvation, but, where it is necessary to prioritise, we should focus on people with whom we are likely to achieve a measure of success. Unfortunately, I do not think that that is the case in the present system.

I move amendment 33.

Roseanna Cunningham: Bill Aitken must be given marks for persistence, because he seems to be trying to revisit the whole drugs court debate. What he proposes in amendment 33 should be resisted. The drugs courts are a pilot scheme and it would be strange to tinker with the scheme as it went along. To do so would make it difficult to make a reasonable assessment at the end of the pilot, because we would be dealing with different regimes from different points of the pilot's history. I do not see how that could be helpful.

Similarly, I do not see how the proposed restrictions on the drugs court process could be helpful. I am not sure why Bill Aitken feels that there should be an age limit for diversions to the drugs courts. A drug addict's age is irrelevant. People can become drug addicts at any age and need not necessarily have taken drugs previously.

Moreover, I do not understand why the amendment proposes to restrict referrals to the drugs courts to those whose offences do not exceed a certain number. To do so would remove from the group of people who might benefit from going to the courts folk whom we would want to be diverted there.

I wonder what Bill Aitken really wants. It is clear that locking up drug addicts in prison is not achieving anything, so amendment 33 must be resisted.

14:45

Stewart Stevenson (Banff and Buchan) (SNP): Bill Aitken tried this on in committee and failed; he is trying it on again today, but he will fail again. I share his concern about the fact that youngsters who want drug treatment sometimes cannot receive it because the courts make such provision only when resources are available. However, that is not an issue for the criminal justice system; it is a broader one about the way in which we resource the treatment of drug addiction. We will discuss that issue at another time.

The drugs courts exist because the current court system has failed those who keep returning to it. The court system has a long track record of not reforming people who have gone through it, so we must try another way. If Bill Aitken cannot acknowledge that fact and accept that drug abuse incorrigibility does not magically stop during the transition from the age of 24 to the age of 25 but can occur at any age, I will be disappointed in him—he is a man who I have thought can treat matters analytically and with whom I have had many honest disagreements. On the proposals in amendment 33, he must think again. Indeed, I could use the same argument for amendment 38, which we will discuss next.

Mr Wallace: It will be no surprise that the Executive opposes amendment 33. I would agree with the arguments of Roseanna Cunningham and Stewart Stevenson, but that would confirm Bill Aitken in his view that he is right and I do not want to encourage him on such a road. I think that amendment 33 is profoundly misguided.

Amendment 33 would reduce the number of offenders who were likely to be considered suitable for diversion to a drugs court by using the criteria of age or the number of previous convictions. The amendment would remove the ability of a drugs court to deal with offenders who were over the age of 25 or who had more than six convictions. I am advised that those who are being dealt with by the drugs courts have an average age of 30. It would be wrong to restrict severely the drugs courts' ability to deal with offenders who have been drug dependent for a number of years. As Roseanna Cunningham said, the amendment would take out of the drugs courts the people whom those courts are meant to address.

The drugs courts deal with offenders aged 21 and over who have a pattern of offending that is directly linked to their drugs misuse. Those criteria are based on the experience of drug treatment and testing schemes and, indeed, international experience and research, which have shown that members of that age group are more likely to be at a stage in their lives when they want to commit to addressing their drug addiction and will respond to treatment and to the drugs court regime. In exceptional circumstances, the drugs courts will consider offenders aged 16 to 20. However, it is acknowledged that people in that age group are less likely to be at a stage in their dependency and offending to be sufficiently motivated or mature to cope with a drugs court regime.

The drugs courts are, of course, a pilot scheme. Roseanna Cunningham was right to say that we do not want interference that could thwart much of the scheme's purpose. Therefore, I invite the

Parliament to reject amendment 33, if Bill Aitken will not withdraw it.

Bill Aitken: Roseanna Cunningham slightly missed the point about the age limitation that amendment 33 proposes. If someone were within the proposed age range, that would indicate that the extent of their drug abuse was not as great as that of someone who was much older and who would therefore have been the victim of a drugs habit for a much longer time.

My visit to the drugs court did not leave me without hope but, from what I saw, it did not provide a great deal of hope, either. It is slightly naive of Stewart Stevenson to suggest that the availability of drugs treatment is not an issue for the judicial system. I agree that the resources that are devoted to the treatment of drug addicts are woefully inadequate. However, when there is an inadequacy of resources, we must prioritise. The judicial system must ensure that those who are offered a particular treatment are the ones who are most likely to benefit. That is the purpose behind my amendment.

We are in no way having a go at the drugs court system. We are more than content for the pilot to run, provided that, at the end of the trial period, there is a realistic, not an idealistic, assessment of what has happened. At that stage, we will consider the matter firmly and fairly. However, if the proposal is to have a chance of success, the amendment is necessary.

The Deputy Presiding Officer: The question is, that amendment 33 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
Young, John (West of Scotland) (Con)

AGAINST

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)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Jackson, Dr Sylvia (Stirling) (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)
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)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 14, Against 90, Abstentions 0.

Amendment 33 disagreed to.

After section 36

The Deputy Presiding Officer: Amendment 38 is in a group on its own.

Bill Aitken: In the previous debate, I referred to the recent visit to the drugs court, saying that it was interesting and left me not totally without hope. Nevertheless, a great many problems were manifest to me that day. It struck me that most of the offenders had failed, to a greater or lesser extent, to comply with the terms of the order. In some cases, the transgression was fairly mild, such as being late for an appointment; in other cases, it was a failure to attend for drug testing, testing positively for drugs and, in one case, committing a further theft five days after being made subject to a drugs court order, which is not a particularly happy situation.

If the system is to work—as we all hope that it will—there is no point in beating around the bush. Those who are made subject to drugs court orders must comply with them. If they do not, they, and the various agencies with whom they are involved, are wasting their time. There are too many people who are being denied the facilities through lack of resources to show much leniency to those who are not prepared to take the chance that is offered to them.

In effect, amendment 38 would operate a "three strikes and you're out" approach to the drugs courts. The amendment is not intended to be unnecessarily draconian and it recognises that it is difficult for many of the people in the category with which we are dealing to stop taking drugs overnight. Certainly, however, they should not be allowed to offend and get away with it. Acceptance of the amendment would concentrate the minds of those who are subject to the strictures of the courts, ensure a greater degree of co-operation than was evident on the day on which we visited the drugs court, and go a long way towards ensuring that the project might be a success at the end of the pilot period.

Unless some sort of sanction can be brought against those who are not prepared to play the game with the drugs court, the pilot will end in failure. I am certain that none of us wants that.

I move amendment 38.

Roseanna Cunningham: We are in the same position as we were with the previous amendment. The "three strikes and you're out" approach ignores the reality of what we are trying to achieve with drug testing and treatment orders or drugs court orders.

Bill Aitken wants, in effect, to introduce automatic sentencing, which is an enemy of rational sentencing. The sheriff in the drugs court or who deals with the DTTO already has the power to revoke the order and send the offender to prison. I do not see what could be gained if the Parliament were to decide that it will force the sheriffs to do so even in circumstances in which they believe revocation to be wholly inappropriate.

Amendment 38 is not helpful. If anything, it would wreck the system and set us back rather than move us forward in attempting to achieve what we are trying to achieve—to get drug users away from their drug habits. The SNP will not support it.

Pauline McNeill: The drugs court is one of our criminal justice system's most imaginative methods of tackling crime. The development is to be welcomed.

When Sheriff Matthews, one of the sheriffs who conducts the drugs court in Glasgow sheriff court, came to speak to the Justice 2 Committee, he made some interesting points about that pilot project. The crucial point was that the multidisciplinary approach to drugs courts was the most important issue. That approach acknowledges that those who are involved directly with the offender and who see how the offender started and gets along on the programme are crucial. The right point at which to refer the person to another sheriff is when the multidisciplinary team takes the view that the person is failing.

Such offenders' lifestyles are chaotic because of the nature of drug addiction, but amendment 38 does not acknowledge that. Those who are most severely addicted to drugs can take time to get that addiction under control. The test should be that the convicted person is free from drugs and not offending. It is not necessarily the case that, because a person has been unable to deal with their drug addiction, they are offending. That is the crucial test.

Breach of a probation order is contempt of court. That is right, because the nature of probation is different. With DTTOs, we are dealing with many offenders who have got themselves into a cycle of drug addiction and who therefore offend. That is the ethos behind the drugs courts. Therefore, as

Roseanna Cunningham rightly said, a simplistic, "three strikes and you're out" approach is wrong. That is not to say that we should not constantly review how the drugs courts operate, and that those who fail to comply with treatment once they have had enough time and who still offend should not be referred back for another sentence.

Stewart Stevenson: Bill Aitken gave the game away when he used the words "play the game". Unfortunately, drug addicts do not know the rules of the game. The point about drug addiction is that it has a series of concomitant symptoms—such as paranoia, manic behaviour, obsession and memory loss—all of which can contribute to the addict's chaotic lifestyle.

Phil Gallie: Stewart Stevenson is absolutely right, but drug addiction also has the effect that individuals often commit serious crimes. How does he consider that we should treat such individuals with respect to the crimes that they have committed?

Stewart Stevenson: Phil Gallie makes a perfectly valid point. Of course drug addicts commit crimes—that is the impact of drug addiction on society, as distinct from its impact on the individual. Both are serious. However, if the traditional court system has failed to address the offending behaviour, we need the drugs courts and another way forward.

My father was a general practitioner in the days when GPs dealt with drug addicts. I have been familiar with drug addicts coming for treatment over 50 years—the problem is not new.

Towards the end of amendment 38, proposed new section 234G(2A) of the Criminal Procedure (Scotland) Act 1995 reads:

"On the third occasion on which it is proved to the satisfaction of the appropriate court that the offender has failed without reasonable excuse to comply with any requirement of the order, the court shall, by order, revoke the order."

That contains the seeds of the destruction of what Bill Aitken is trying to achieve, because the fact of the addiction and the symptoms that are associated with drug abuse give drug abusers who offend the "reasonable excuse" for breaching orders erratically and irregularly. Amendment 38 is simply an attempt to sabotage a worthwhile initiative in the criminal justice system.

15:00

Mr Wallace: It will come as no surprise that I invite the Parliament to reject Bill Aitken's amendment 38. The amendment would remove the power of the drugs court to consider the imposition of interim sanctions of short periods of imprisonment or community service, which are already provided for under section 36 in cases where an offender relapses. Under amendment 38, there would be a mandatory sentence for offenders who relapsed on three occasions. The amendment would remove the drugs court's discretion when dealing with failure to comply with an order. Instead of having the power to impose interim sanctions and to continue the order, the court would have no alternative but to revoke the order and sentence the offender for the original offence.

As Roseanna Cunningham, Pauline McNeill and Stewart Stevenson have indicated, the nature of the offenders who are likely to be subject to drugs court orders is such that positive tests and other lapses are not uncommon. For the order to be successful, it is surely important for the courts to have the option of ensuring that the offender remains subject to the order, and therefore in drug treatment, for as long as possible. It is the drugs court that is in possession of the information relating to any failure by an offender to comply with a condition of the order, and it is the drugs court that should decide at what stage sanctions should be imposed and, if necessary, at what stage the order should ultimately be revoked.

The various orders are not soft options, and offenders who might think that they can work the system are very quickly found out. The pre-review meetings that are held between the sheriff and representatives of the drugs court team involve detailed discussions of the offender's progress and response to the order concerned. The review hearing allows the sheriff the opportunity to engage in direct dialogue with the offender, in the presence of his solicitor. Both the offender and his solicitor have the opportunity to respond to any concerns that are raised by the sheriff about the individual's progress or commitment.

Given the intense nature of the drugs court process, the sheriff will be able to detect very quickly whether the offender has what it takes and is showing willingness to get through the order. It should be the sheriff who ultimately decides what action requires to be taken at whatever appropriate stage in the process. Introducing mandatory cut-off points would serve only to undermine the intention of the drugs courts. For those reasons, I ask Mr Aitken to withdraw amendment 38.

Bill Aitken: One or two interesting points have been made in respect of amendment 38. I point out to Roseanna Cunningham that our proposals do not involve automatic sentencing. The person who would have total control in this instance is the offender—the drugs court client—himself. The offender is being given opportunities, initially by dint of the fact that his case has been sent to the drugs court, and he is being asked to comply with the order. He is being allowed two failures. By any standard, that is fairly reasonable.

Pauline McNeill said that the disposals are imaginative and innovative. I have no difficulty with those descriptions but, if the procedures do not work, it does not matter how imaginative or innovative they are—and the system is, to an extent, failing to operate at the moment, judging from the day when I made my visit to the drugs court. Of the 14 cases that were dealt with, there was only one in which the accused person had complied fully. Some breaches were minor and would not necessarily have brought about a sanction under the provisions in amendment 38. In other cases, there were breaches that would have been, and indeed should have been, dealt with in that way.

Pauline McNeill: We would all be concerned if the drugs courts failed in any way. I know that Bill Aitken is not against the existence of the drugs courts, and that he is just saying that we should look at the failures. Why did he choose the figure of three relapses? What is his evidence to suggest that that is the point at which it should be deemed that the offender has failed? What is Bill Aitken's research behind that?

Bill Aitken: I thank Pauline McNeill for giving a fair encapsulation of my views and attitudes in this respect. The figure three was selected not arbitrarily, but on the basis that two failures would seem to be a reasonable criterion to apply. Amendment 38 does not demand absolute compliance; it gives the individual the opportunity to fail twice, and surely that is reasonable in the circumstances. Had a certain individual not gone to the drugs court, he would almost inevitably have had a six-month prison sentence imposed. The offenders concerned really should comply fully with the terms of their orders.

Maureen Macmillan (Highlands and Islands) (Lab): Surely it is for the sheriff to decide how many chances someone who has abused drugs should get. That should not be specified in statute.

Bill Aitken: I hear what Maureen Macmillan says. However, in this area, as in many others, Parliament needs to give direction. That is the purpose of amendment 38. We should let sheriffs know that breaches must be dealt with much more seriously, although not in a draconian manner. Surely that is not too much to ask, given that we would be allowing offenders to fail twice but still meet the terms of an order. That is why I am more than happy to press the amendment.

Stewart Stevenson mentioned the definition of reasonable excuse, but that is self-evident. No matter what misfortunes we have suffered in life, each of us has an element of personal responsibility. A drug addict still has personal responsibility. Reasonable excuse would mean illness, accident, family bereavement or a plethora of other justifiable reasons. The matter is quite straightforward.

The Deputy Presiding Officer: The question is, that amendment 38 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

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

AGAINST

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)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
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)
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)

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)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, 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)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

ABSTENTIONS

Tosh, Mr Murray (South of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 14, Against 91, Abstentions 1.

Amendment 38 disagreed to.

Section 37—Restriction of liberty orders

The Deputy Presiding Officer: We must get through three groups in less than half an hour. If the debate on this group can be kept tight, that will leave us time to deal with the amendments relating to anti-social behaviour orders.

Amendment 39 is in a group on its own.

Bill Aitken: Restriction of liberty orders definitely have a place in the judicial set-up. On this issue, there is not much difference between what the Executive intends and what we would wish. However, I would be concerned if RLOs were used inappropriately.

RLOs are an ideal disposal for the sort of individual who gets tanked up at the weekend and commits crimes of disorder and vandalism. A period of being confined to his home at weekends might well get the message through to such a person. It would also enable him to maintain employment, which would not happen if he were awarded a custodial sentence.

Petty thieves could also benefit from restriction of liberty orders, although I have no doubt that some would simply switch from night-time to daytime theft. Nevertheless, I am happy that these disposals should be available in such cases.

The restriction that I seek to introduce is that RLOs should apply only to those who have been convicted on a summary complaint. Persons convicted of serious or sexual assault, for example, would not be eligible for RLOs and their cases would invariably be taken on indictment.

Protection of the public must always be our primary consideration in the passing of legislation or the imposition of penalties. RLOs have a part to play in that set-up, but we must ensure that we do not put the public at unnecessary risk by allowing people to be released who would otherwise be in prison. The safety of the public would be prejudiced if those who would not normally be subject to a non-custodial disposal were released.

By all means, go ahead with the tagging process, but it must be recognised that some cases will involve taking a chance and we should not be taking that chance. Sexual offenders and those who are guilty of serious assault or other indictable offences should not be subject to restriction of liberty orders.

I move amendment 39.

Mr Wallace: A similar amendment to amendment 39 was lodged at stage 2. In some respects, that was a probing amendment that sought more detail on the types of offences for which the courts were imposing restriction of liberty orders. I provided information on that to the convener of the Justice 2 Committee on 5 February.

The figures suggest that the courts currently use restriction of liberty orders appropriately. Examination of the figures shows that between 1 May—the national roll-out—and 31 December 2002, 10 per cent of RLOs were imposed for offences involving assault. The largest percentage of RLOs were imposed for theft and fraud, and 14 per cent were imposed for breach of the peace.

Restriction of liberty orders were introduced as part of a framework of custodial disposals to provide the courts with an alternative just short of

a custodial sentence. As was stated at stage 2, the pilot projects and the support from respondents to the consultation on the future of tagging in Scotland agreed that experience had demonstrated that RLOs were being used for high-tariff offenders whose offending patterns meant that they were at risk of custody.

Ministers have the power to prescribe the class or classes of offender in respect of which an RLO might be made, so there are powers to limit or define a class or classes. We might wish to exercise, or propose to exercise, that power in the light of future experience. However, at present, I recommend that we resist restricting the use of the orders.

Bill Aitken's amendment 39 would, in effect, reduce the target group and limit the options that are available to the court. It would also result in removing the option of an RLO from indictment cases in sheriff courts and totally from the High Court. To date, three RLOs have been made by the High Court: for assault and robbery, and for contraventions of road traffic and misuse of drugs legislation. No doubt the judges who imposed those sentences did so after giving great care and consideration to whether they were appropriate.

We do not believe that it would be appropriate at this stage to remove the option for indictment cases. Rather, we want to ensure that sentencers have a robust range of alternatives to custody available to them. The RLO is an addition to that range and, being punitive and invasive, is certainly not a soft option. I ask Parliament to bear it in mind that the court is in possession of the facts and the circumstances of each individual case and will take account of those and the risk that is posed by the offender to the community when imposing a sentence. I ask Parliament to resist amendment 39.

The Deputy Presiding Officer: Mr Aitken, do you require to say any more?

Bill Aitken: I do not think that there is much more to be said. There is a clear difference between us and I want to put it to the vote.

The Deputy Presiding Officer: The question is, that amendment 39 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

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

AGAINST

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)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
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Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
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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)
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)
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Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (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)
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McMahon, 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)

Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 15, Against 92, Abstentions 0.

Amendment 39 disagreed to.

Section 38—Interim anti-social behaviour orders

The Deputy Presiding Officer: Amendment 4 is grouped with amendments 93 and 109.

Johann Lamont (Glasgow Pollok) (Lab): I rise to speak to and move amendment 4 in my name, and to speak to Executive amendment 93 and amendment 109, also in my name.

I cannot overstate the importance of this part of a bill that is of central importance to improving the quality of life of people across Scotland. I acknowledge the key role of ordinary constituents who have fought to have their voices heard and for recognition of their experience of anti-social behaviour. No longer is such behaviour dismissed as just a neighbourhood dispute. We now acknowledge the huge impact of anti-social behaviour on people's health and well-being, and the impact that it can have on the quality of life of ordinary families. In the worst cases, people are forced to move from their homes.

15:15

In this Parliament, we have the opportunity to express an opinion on many things, but we have a great power to listen as elected representatives to what ordinary people are saying, to draw general conclusions from that experience and to act to address the problems. I am grateful to have that privilege.

The problem of anti-social behaviour has been acknowledged through the development of anti-social behaviour orders. However, there is a recognition of the weakness in the way in which the orders have been implemented. They have not been as effective as we may have hoped. I seek to address that with amendments 4 and 109.

I start with a couple of caveats. We know that anti-social behaviour is not the province only of those in council housing or, more broadly, in the socially rented sector. It is a problem across sectors, including the owner-occupied sector, and therefore needs to be addressed not just through good housing management, but through the work of the police and local authorities, and by changing the attitudes of the courts and the judicial system. However, the vast majority of ASBOs that have been implemented have been against council house tenants, and we have to recognise that that is a weakness.

I am glad that the Executive has lodged an amendment that seeks to address that by giving power to other social landlords to promote the use of ASBOs, but equally it has said that they must do that in conjunction with the local authority, so that we will still have a practical approach. In the past, I have highlighted the problem of the private sector and I seek an assurance from the minister that that will be addressed. We may not expect the use of ASBOs to be promoted, but good housing management and management of complaints by private-sector landlords can inform the work of local authorities in promoting the use of ASBOs in the private sector.

Amendment 4 addresses one weakness in the development of ASBOs. One problem that has been identified is the length of time that it takes to implement an anti-social behaviour order. That problem undermines the confidence not just of those who need the protection of ASBOs, but of those who are considering their options in tackling anti-social behaviour. It is a problem if that delay acts as a deterrent to people using the tools that are available to them. That has been addressed in the bill through the establishment of interim anti-social behaviour orders, but there is still an opportunity to create delay. My amendment 4 seeks to address the potential to delay that is created by section 38, which states:

> "after considering any representations made by or on behalf of that person".

That does not identify a time scale, and would allow someone to simply not turn up or use other means of delaying.

Interim anti-social behaviour orders can be speedy and effective without reducing people's rights. We should view them in the same way that we view interim interdicts. Such orders will not diminish the rights of alleged perpetrators of anti-social behaviour, since cases will still have to be made and determined, but they will allow for offending behaviour to be halted while a determination is being made. Members may wish to compare that with how we respond to domestic abuse cases.

The other amendment in my name—amendment 109—addresses the persistent problem, which was identified to me, of the police, local authorities and all relevant agencies sharing information. The issue is about taking a varied approach to having responsibility for addressing anti-social behaviour in a local area. Sharing information will clearly help. The Convention of Scottish Local Authorities argued in favour of that at stage 1. The Scottish Federation of Housing Associations is in favour of it. The Auditor General recommended in an Accounts Commission report that appropriate systems must be developed to enable information to be stored and transferred between all agencies involved in youth justice. It is clear that that is also true of anti-social behaviour.

There is a need for more uniformity. Action in this area should not be dependent on the good will of individual police officers and officers in housing departments. The amendment would allow for proactive work, looking at issues such as acceptable behaviour contracts, and it is important to develop local strategies that include information sharing. That is what amendment 109 seeks to do. By supporting amendments 4, 93 and 109, the Scottish Parliament can send out the message that we take anti-social behaviour seriously, and that we are giving the agencies that are trying to reduce or prevent such behaviour adequate tools to do their job.

I move amendment 4, and urge support for amendments 93 and 109.

Hugh Henry: Johann Lamont has been tireless and determined in her efforts to see action taken to curb anti-social behaviour in the communities that she represents. Much of what she has said on the issue has reflected the views and concerns that other members have expressed in committee and in debates. Johann Lamont is right to say that the people whom she represents and whom we represent want to live in peace and quiet with some dignity. They need to be supported and protected from the minority of individuals who seek to make their lives a misery.

As Johann Lamont said, members have expressed some concern that anti-social behaviour orders are not as effective as we had hoped that they would be. The Executive acknowledges that there is scope for improving how we tackle the problem, because we know that the orders must be effective to protect the people whom we represent.

Interim anti-social behaviour orders were part of the bill from the outset, but we are now moving to support a wider range of measures to tackle anti-social behaviour more effectively. At stage 2, members made clear their concern that interim ASBOs could become subject to delays similar to those that full ASBOs have experienced. That is a worry, because such delays have undermined ASBOs' effectiveness and people's confidence in the obtaining of ASBOs.

We have reflected on members' comments and considered European convention on human rights implications and other issues. We are satisfied that, provided that the right to intimation is maintained, the removal of the explicit reference in section 38 to

"any representations made by or on behalf of"

the respondent before an interim ASBO is granted has no ECHR implications. The court still has discretion to consider any representations that are made following intimation.

In supporting Johann Lamont's amendment 4, I acknowledge that it will have the same effect as Stewart Stevenson's stage 2 amendment 44 would have had.

Amendment 93 will add a new section to the bill. We will extend the power to apply for ASBOs and interim ASBOs to registered social landlords. That will make it easier for registered social landlords to obtain ASBOs against persons who behave anti-socially and who reside in, are otherwise on or likely to be on or in, or are likely to be in the vicinity of, an RSL's properties.

It is important to extend the right in that way. Many good social landlords throughout Scotland want to protect their tenants. The housing stock transfer in Glasgow will mean that Glasgow's public sector housing will comprise solely properties that are managed by social landlords. Those landlords will have the opportunity to tackle anti-social behaviour by private residents in the vicinity of their properties. As Johann Lamont suggested, some complications make it more difficult to tackle such behaviour in places such as the west ends of Glasgow and Edinburgh, but we will reflect on those issues.

Although anti-social behaviour orders can be made against persons in any housing tenure, most ASBOs have been made against local authority tenants. The perception among social landlords has been that local authorities do not attach enough priority to cases that involve social landlords' tenants. Whether or not that perception

is justified, we want to take immediate steps to make it easier to apply for ASBOs.

Like local authorities, social landlords will have to consult the police before applying for an ASBO. The local authority will have to be notified of the social landlord's intention to apply for an ASBO. We will issue guidance to all relevant authorities before the new powers are brought into effect.

I commend Johann Lamont for amendment 109. We make clear our commitment to joint working. At stages 1 and 2, some members complained that local authorities, the police and other agencies do not work closely enough together and do not share information enough. We think that many improvements have been made to such practices in recent years, but through the bill, we will make clear our intention for that joint working to take place. Local authorities and the police are key agencies in dealing with such behaviour and the requirement to prepare a joint strategy will go a long way towards ensuring a co-ordinated approach from organisations.

Together with our housing legislation and initiatives such as the introduction of community wardens, the amendments can have a major impact on the anti-social conduct that, cumulatively, causes considerable alarm and distress to many in our communities.

I commend Johann Lamont for her amendments. I understand, and am wholly sympathetic to, her concerns about the extent of anti-social behaviour in many of our communities. She may be speaking for her constituents in Glasgow Pollok, but she echoes the views of many MSPs throughout Scotland.

The Deputy Presiding Officer: I have to finish the group by 3.30 pm. I hope to fit in Miss Cunningham and Mr Aitken, but I may not be able to fit in any of the other eight members who have indicated that they want to speak.

Roseanna Cunningham: I rise to support the three amendments in the group. The intention behind amendment 109 is very good and the SNP will support it. It might have been more helpful if we were not preparing ASBO strategies but implementing them—we might have to return to that issue.

Amendment 93 is very important. I know that the social landlords in my area want the provisions that are contained in the amendment and I am sure that that is the case across Scotland.

I thank the minister for explaining why my colleague Stewart Stevenson's equivalent amendment to amendment 4 was not accepted at stage 2. The minister's explanation about the ECHR was important, as there was a bit of a puzzle over why amendment 4 was accepted when Stewart Stevenson's amendment was not.

The Deputy Presiding Officer: Thank you. That contribution was helpful.

Bill Aitken: At the risk of destroying Johann Lamont's street cred for evermore, I have to say that her contribution was particularly welcome and worth while. Johann Lamont operates at the sharp end of politics and I know that the issues under discussion have been particularly manifest in her constituency. If ASBOs are to work, they must have an immediacy about them. Johann Lamont's amendment 4 will improve matters and amendments 93 and 109 are also acceptable.

The Deputy Presiding Officer: That contribution was also helpful. It allows two short contributions of a minute each.

Robert Brown (Glasgow) (LD): I have a question about amendment 93. One or two of the smaller housing associations fear that the resource implications could be quite significant for them. Amendment 93 contains provisions that would lead to expensive actions for such housing associations if they go any distance down the line. Has the minister given any thought to giving assistance to the smaller associations to deal with the provisions that are contained in amendment 93? If not, could the partnership arrangement with councils that is being thought about be applied in this connection?

Tricia Marwick (Mid Scotland and Fife) (SNP): The lives of some of my constituents in central Fife are an absolute misery because of anti-social behaviour. A whole community is affected, but Fife Council has yet to get the alleged perpetrators to court. There has been a delay of almost seven months mostly because of the failure of the legal aid application to be processed quickly enough. The situation is simply not good enough.

Interim orders are an immediate measure and the granting of an interim order may in itself help to modify the behaviour. Delaying the granting of an interim order would allow and encourage the alleged perpetrators to increase the level of harassment and violence—that is the case with ASBOs. Johann Lamont's amendment 4 is necessary; without it, interim ASBOs would be rendered useless.

Johann Lamont: If my street credibility were to be destroyed by Bill Aitken commending me, it would have been destroyed a long time ago. The Labour party and Labour members have fought long and hard on the issue of crime and disorder in our communities. It is a matter of justice, social justice and equality. In representing my community, I would not be able to do anything other than fight on that issue.

We need to consider the expense that is involved in ASBOs. Even if ASBOs were pursued only by local authorities, the housing associations

would continue to have to do the work to gather the information—there is no change in the situation. I hope that the minister will look at the operation of ASBOs in practice to make it as easy as possible for those who wish to use this means of addressing the problem.

Amendment 4 agreed to.

Amendment 93 moved—[Mr Jim Wallace]—and agreed to.

After section 40

The Deputy Presiding Officer: That takes us, just in time, to group 12, which deals with the adjournment of certain cases. We have five minutes to consider amendment 79, which is grouped with amendment 58.

15:30

Pauline McNeill: Amendment 79 is supported by Hugh Henry and I thank the Executive for that support.

Amendment 79 is designed to tackle a gap in the law, which was recently debated at Glasgow sheriff court in relation to a community service order. The amendment refers to cases in which the offender has failed to comply with an order.

It has been brought to light that there is a gap in section 239 of the Criminal Procedure (Scotland) Act 1995. The problem arises when there is an apparent breach in an order such as a community service order, a probation order, a supervised attendance order, a restriction of liberty order or a drug treatment and testing order. The provision would apply in only a small number of cases, but, crucially, those would be when the offender denied the breach. The effect of the provision would be to allow the sheriff to detain the offender, if appropriate, or to order the offender to appear before the court to put their case.

Amendment 79 is a minor tidying-up amendment, but it is an important one. Without it, sheriffs will not have the power to detain those who do not comply with the orders that are mentioned in the amendment.

I move amendment 79.

Hugh Henry: Amendment 58 makes a slight alteration in the provisions for adjournment between conviction and sentence. Most adjournments are to allow time for preparation of further reports on the individual who is to be sentenced. Sometimes those reports take longer than three weeks to prepare. At present, when reports are not ready within three weeks, a convicted person who is remanded in custody must be brought back to the court for remand to be renewed. Bail cases are slightly more flexible, and adjournments may be for

"four weeks or, on cause shown, eight weeks."

Amendment 58 simply brings the time limits that apply in custody cases into line with those that apply in bail cases.

In many cases, it is obvious to the judge that more complex reports will take more than three weeks to prepare. The tighter time limit in relation to those who are remanded in custody results in a considerable number of repeated adjournments. Those result in inconvenience to the convicted person—who must be brought from prison to be present in every case, even for a five-minute hearing—and considerable cost to the public purse. The amendment should reduce the number of unnecessary procedural hearings by giving limited additional flexibility in custody cases.

I am happy to support amendment 79. Through her amendment, Pauline McNeill has achieved helpful clarification in establishing the power of courts in dealing with offenders who, for example, are contesting alleged breach of their community sentence when the court wishes to adjourn to enable inquiries to be made or to determine a more suitable way to deal with the offender. At present, there is considerable doubt as to whether the courts have those powers. Placing the provisions on a statutory footing ensures that sentencers can deal with such situations with consistency and confidence.

Bill Aitken: Amendment 79 is a worthwhile amendment, and Pauline McNeill has done well to spot a not-too-obvious flaw in the 1995 act. At present, there is a real gap in respect of the ability of courts to remand those who breach orders. One of the concerns that we have with regard to alternatives to custody is the fact that breaches are seldom reported and seldom acted on. Amendment 79 is welcome, and the fact that it is supported by Hugh Henry introduces a welcome degree of realism, albeit uncharacteristic, on his part.

Amendment 79 agreed to.

Section 43—Physical punishment of children

The Presiding Officer (Sir David Steel): Amendment 6 is grouped with amendments 94, 95, 41 and 43.

Bill Aitken: There appears to be a basic mistrust of Scotland's parents and courts on the part of the Executive. It seems that, despite his embarrassing withdrawal over the smacking episode, Jim Wallace is still determined to deny parents the right to discipline their children in accordance with reasonable rules that they would impose in their own homes, subject to the fact that the courts have always taken a robust stance against those who seek to impose unreasonable chastisement on their children.

In its stage 2 deliberations, the Justice 2 Committee considered significant case law. In every instance, the sheriffs and judges got it absolutely right. The courts ruled, for example, that striking a youngster on the head is an assault—rightly so. In the case of the Hamilton schoolteacher who spanked his eight-year-old daughter because she had become terrified on a visit to the dentist, the sheriff ruled that that was assault. I submit that, in the circumstances, the sheriff was absolutely correct to do so. When parents lay into their children with belts, sticks, canes or miscellaneous instruments, the courts will invariably find that to be assault.

Everyone is anxious to avoid child abuse. Sadly, in the past two weeks there have been two classic cases of it. It is difficult to see how the legislation would have prevented such incidents.

The fact is that Scottish parents are invariably caring, responsible people who are intent on bringing up their children in a loving and caring environment in which discipline probably plays a very minor part. Some of the thinking behind the Executive's legislation would suggest that many parents are at best irresponsible and at times little short of sadistic. That is clearly not the case. The Executive should leave the matter to the good sense of parents and do so in the knowledge that the courts have not failed Scotland's children.

The amendments lodged by Mr Hamilton and Ms Cunningham demonstrate exactly the difficulties that will arise. For example, how does one define shaking with unreasonable force?

Brian Fitzpatrick: Will Mr Aitken apply the same logic to housebreaking? Given that most householders do not break into their neighbour's property, but respect their neighbour's property, should we dispense with the laws of housebreaking and burglary?

Bill Aitken: That is an entirely spurious and utterly silly contribution. Mr Fitzpatrick must try harder. He knows full well that that has no relevance to what is proposed in amendment 6.

I will return to the more constructive contributions from the SNP. Amendments 94 and 95 are well intentioned, but they underline how ludicrous the situation is. If the bill goes through unamended—or even with the benefit of amendments 94 and 95—it will largely be unworkable. All law is based on reason and common sense. The existing situation is eminent common sense. The children of Scotland can in almost every case rely on their parents to behave in a reasonable manner and when their parents do not behave in a reasonable manner, the courts will intervene. They have been doing so, properly, for hundreds of years and there is no reason to assume that they will not do so in the future.

The issue of shaking, for example, is fraught with difficulties. If one shakes a six-week-old baby that would be totally irresponsible, and criminal and would be assault. However, what about the 5ft 2in mother who shakes her 5ft 10in son, who is 15 years of age, because she finds him in possession of an ecstasy tablet? Do members seriously think that that would be an assault and that the matter should go before the court?

Pauline McNeill: The Justice 2 Committee's report said that the Executive ought to consider that important point. However, if one looks at section 43 as a whole, is it not clear that the circumstances and the age of the child should be taken into account? When prosecutors are making that determination, they will consider the whole of the act and if the situation involving a 6ft boy and a 4ft 2in mother comes about, they can apply the common sense of the law.

Bill Aitken: That is perfectly true. It would be a discretionary matter for the fiscal. However, the legislation is currently in place to cope with such situations. Why create a problem where none exists? That is what the bill would do.

Cathy Peattie (Falkirk East) (Lab): Bill Aitken seems to suggest that we should turn a blind eye to this kind of abuse.

Bill Aitken: I am not for one moment suggesting that we should turn a blind eye to parents assaulting their children. I am saying firmly that I believe, based on experience and on the Justice 2 Committee's study of the case law, that the current law is perfectly adequate to protect children against abuse. I see that Cathy Peattie is shaking her head; we will have to agree to differ on the point.

If the bill goes through with its current provisions, there will be all sorts of difficulties and interesting appeal points. The usual outcome of that is to make judges famous and lawyers rich and to bring the law of Scotland into disrepute.

I move amendment 6.

Mr Hamilton: If this makes lawyers rich, I might support it in my future career.

This is perhaps the most controversial part of the bill. It has had a chequered history throughout the committee process. I return to the position that I held at stage 2, namely that many of the measures that are proposed are not strictly necessary, because the matter is already covered by the law. I accepted the argument that the Executive gave us then, to the effect that if there was nothing to be lost, there was no reason not to bolt it on to the bill. That is a strange way to go about legislating, but in the spirit of consensus we are going down that route.

The first option that is before members is the bill as it stands. I cannot see how that might be

workable, given the problem mentioned by Bill Aitken of defining shaking and the nonsense stance whereby a 15-year-old boy could be treated in the same way under the law as a two-year-old child. That is daft.

To take the second option and remove the section altogether, as Bill Aitken proposes, is equally daft. The committee has accepted that there is nothing to be lost by putting this into statute. Let us build on that position.

Amendment 95, in the name of Roseanna Cunningham, offers the way through this; it aims to do something about the definition of shaking. Her attempt to add the factor of reasonable or unreasonable force strikes me as eminently sensible. It would require the court to look at all the circumstances to decide what is reasonable and what is not.

Brian Fitzpatrick: Has Mr Hamilton conducted an assessment of any medical evidence as to what might comprise reasonable force in the shaking of an infant child? If we want to end shaken baby syndrome, is it not the case that we must stop people shaking infant children?

Mr Hamilton: There are two problems with that. First, Mr Fitzpatrick is right to say that it is difficult to define what is reasonable and unreasonable, but that is a matter that goes right across the Scottish legal system and which is addressed by the courts every day. It is not beyond the wit of mortal man, or the wit of the courts, to decide what is reasonable or unreasonable in all the circumstances of the case. Secondly, it is really not good enough for a legislator to come forward with an emotional case, on which we all agree, and then to say that that somehow sweeps before it all reason and all tempering of legislation. That is not legislation that I would wish to be party to.

Amendment 95, although not perfect in Mr Aitken's view, offers us the way through. It gives us the opportunity to consider a reasonable moderation of the bill. I do not think that the bill as it stands will make for good law, and the last thing that the Parliament needs is more law that could be described as unnecessarily divisive and daft. Section 43 deserves our support overall, but unless we do something about the definition of shaking I am afraid that the section will not carry support throughout the country.

Roseanna Cunningham: I have some sympathy with Bill Aitken's comments and those of my colleague Duncan Hamilton in addressing themselves to the generality of section 43 and to the question whether we should really be having such debates. Once we open up the debate on definitions, we get to precisely the problem that we were all concerned about, arguing about what is in, what is out, how it will be construed and what it will mean in court.

With respect to Brian Fitzpatrick's intervention, the situation that is being cited as the most serious one—the serious shaking of infant children to their severe injury or indeed to their death—is already dealt with in our courts from year to year. It is not entirely fair to use the most extreme, emotive example, particularly when it is one that the current law deals with, when we are trying to consider some of the definitions of what is already in section 43.

Dr Simpson: I am listening carefully to the arguments as they are being put. Would Roseanna Cunningham like to define for members the reasonable shaking of an infant? If she can do that, the Parliament should listen to her, but if she cannot, what she is proposing is not reasonable.

Roseanna Cunningham: With respect to Richard Simpson, that is not what the bill says, nor what the sheriff will be looking at, and it is not what amendment 95 says. Amendment 95 uses the phrase,

"with use of unreasonable force".

Reasonableness is something that will take into account all the facts and circumstances.

I suspect that no reasonable force could be used on a six-month-old child, but that reasonable force might very well be used on a 15-year-old child. There is a difference. The test of reasonableness is used daily in our courts and is a test with which all our judiciary and all those who practise in our courts are comfortable and familiar. It does not come out of left field. What amendment 95 proposes is not particularly unusual. The courts are already completely familiar with the test and will accept it as perfectly legitimate in the legislation, as it means that the test will always be in the face of the facts and circumstances that are before them in particular cases.

I heard the general argument on the issue at an earlier stage in the bill's proceedings and am not entirely sure that there is much point in going down the line that Bill Aitken is going down or indeed that my colleague Duncan Hamilton wants us to go down. We need to focus on specific areas in which there is dubiety and real, concrete concern that has real legitimacy behind it. I commend amendment 95 as a way through such dubiety and concern. I suspect that the vast majority of us wish that we were not having such debates at the moment, as it seems that we are getting into a mire that perhaps the Parliament would have been better not to have got into in the first place. However, as we are debating the issue, let us try to put in the bill something that looks like it has some sense for all sides of the argument.

I wish to press amendment 95.

15:45

The Presiding Officer: I should say that 10 members want to speak on this group of amendments. Members should be as brief as possible.

Scott Barrie (Dunfermline West) (Lab): My views on the subject are well known and it will be no surprise that I rise to speak against all four amendments to the section.

Section 43 seeks to clarify further the existing law—that is not in any doubt and has been constantly stressed at stages 1 and 2. I strongly disagree with what Bill Aitken said about the existing law, as defined by the Children and Young Persons (Scotland) Act 1937, being adequate and applied equally by our courts. I have previously stated that, in my professional experience, I have come across a case of a seven-year-old child who had clear injuries to their bare buttocks that were caused by the buckle end of a belt. There was a prosecution, but the court found that the injuries were incurred in the course of reasonable parental chastisement.

That is the problem with the definition of reasonable—as Brian Fitzpatrick and Richard Simpson mentioned, that problem is at the heart of amendment 95. There is almost a duplication of the difficulty. The court would be asked to define what is reasonable and what is unreasonable. Putting in the bill

"shaking with use of unreasonable force"

presupposes that it is okay to shake with reasonable force. That strikes at the example that Brian Fitzpatrick used in respect of an infant being shaken. We should leave section 43 as it is, as its intention is to clarify the existing law.

Mr Hamilton: The question of reasonableness or unreasonableness will emerge throughout the debate. Why is it that, uniquely, in the area of law in question, Scottish courts would be unable to reach a decision using all the facts of a case as to what was reasonable or unreasonable?

Scott Barrie: As I have indicated, the problem is the existing law. In the 1937 act, there is a problem with reasonable as opposed to unreasonable—that is where the definition of reasonable parental chastisement comes from. Part of the difficulty is that the Executive has listened carefully to the views that a majority of members have expressed and is going for a halfway house. We have got ourselves into difficulties and I do not see the point in compounding such difficulties by agreeing to another amendment to the bill that again uses the definition of what is reasonable as opposed to unreasonable.

Stewart Stevenson: In recent weeks, we have spent a considerable amount of time considering the Land Reform (Scotland) Bill, which secures in statute law rights that we believe that we had. In many ways, to reject putting into statute law through this bill things that we believe already exist out there in another form is entirely misplaced. If today is an opportunity to restate and make it clear where we stand on the physical chastisement of children, we should take that opportunity.

I also have a personal dilemma. As a nurse, I had three people with brain damage in the ward in which I worked. There were different sources for that brain damage, but in two cases the brain damage had resulted from physical trauma. [*Interruption.*]

The Presiding Officer: Order. For some reason, there is too much noise in the Liberal Democrat section of the chamber.

Stewart Stevenson: A practical difficulty is that someone may exercise reasonable force in shaking someone without knowing that the person has a particular vulnerability associated with being shaken. That might happen even to a 15-year-old. A thin skull may crumple under a light tap or after reasonable shaking. Frankly, the only safe way to avoid unreasonable damage to people is to avoid shaking altogether.

I am afraid that, to some extent, I part company with my colleagues on the amendments, as I have reflected more fully on the matter over the considerable period that we have taken for our consideration of the bill and after hearing the evidence, which was coloured by my personal experience.

Phil Gallie: Rather than repeat the points that Bill Aitken made, I want to look back at the reasons why the Parliament was formed. I am told that the Parliament was set up because we wanted to get nearer to the people. I have therefore decided that, in this debate, I will use one or two of the multitude of letters that I have received about the issue.

Members will realise that, as a South of Scotland regional member, my responsibilities go into the realms of constituency MSPs. I make no apologies for picking up on one of Cathy Jamieson's constituents, Helen Muirhead, who wrote:

"This Bill—should it be passed—would see normal loving parents being prosecuted for trivial incidents.

I am a mother of 5 healthy and well-balanced children. If this Bill had been passed when my children had been younger then I would have been prosecuted."

That is typical of many letters that I received.

Another letter that I received was sent to Irene Oldfather by James Davidson, who wrote:

> "It seems to me that if this Bill goes through as it stands it will Criminalise parents … as it takes no account of trivialities."

I also received a letter from Jessie McMahon, who is Karen Gillon's constituent. Mrs McMahon wrote:

> "As the wife of a Church of Scotland minister, mother of 6 grown-up children, and a doctor retired from working for 19 years in Community Child Health"—

I draw Stewart Stevenson's attention to the fact that Mrs McMahon worked in community child health—

> "I believe the proposed legislation would result in harassment and unjust conviction of normal, caring, conscientious parents."

Members need no further words of mine. I will simply stick by the words that I have read out and suggest that Bill Aitken's amendment 41 has got it right.

Robert Brown: There is a touch of disproportionate outrage in the amendments that have been lodged by Ayatollah Aitken and others. Bill Aitken would send out the message that some MSPs believe that it is justifiable to hit children with implements or to shake babies so as to cause brain damage or to bash them across the head.

Following up on Phil Gallie's comments, I also received one or two of those letters. One of the letters indicated that, in the view of a loving parent of the kind that Phil Gallie mentioned, a slipper or a wooden spoon could be described as a benign instrument with which children might be hit. I ask members to bear that in mind.

Mrs Lyndsay McIntosh (Central Scotland) (Con): I do not know how much clearer we need to be, but Conservative members are not in favour of abusing or battering children. There is a distinction to be made. Please do not portray us as thinking that it is all right to batter children. That is not right in anybody's book.

Robert Brown: However, the argument has been whether we should apply certain regulations to parents or whether, to take Bill Aitken's approach to the matter, there is an area of life in which the state should not interfere. I think that the problem of child abuse in society is such that we must use the bill to send out reasonably clear messages about the position.

David McLetchie (Lothians) (Con): Will the member give way?

Robert Brown: Sorry, I have only a short time.

The argument that section 43 will lead to the prosecution of loving parents for gently shaking a child's arm is simply not correct. Section 43 creates no new offences and no new penalties; it simply gives children the same protection against violence as adults have. If there is no criminal intent or recklessness, if the assault is trivial or if there is no public interest in prosecution, the procurator fiscal will not prosecute and the courts will not be entitled to convict.

Parents who abuse or beat their children, hit them with implements or cause lasting damage to infants most assuredly will and should be prosecuted. They will no longer have the benefit of arguing that something that would be a serious assault on an adult is justified by the excuse of reasonable physical chastisement when done to a child. That is the clear message that must go out today. I urge members to reject all the amendments to section 43.

Brian Fitzpatrick: I will concentrate on Duncan Hamilton's and Roseanna Cunningham's amendments—I will not waste time on Bill Aitken's.

I hope that members will reflect seriously on the matter and agree with me, and—more important—with the substantial body of medical evidence, that shaken baby syndrome occurs not only in cases of severe or serious shaking, but also where there has been only minimal shaking. Roseanna Cunningham came close to acknowledging that. The only way in which to stop such minimal shaking is to provide explicitly in legislation that one cannot shake one's baby. Our priority must not be 15-year-old rugby lads, but the circumstances of vulnerable young children and babies.

Phil Gallie: Will the member give way on that point?

Brian Fitzpatrick: In a moment.

In a previous existence, I had a tremendous interest in cases of head and brain injury. I sometimes had to act in the interests of children who had been the victims of what was claimed to be reasonable action when those poor little bundles turned up at Yorkhill hospital and elsewhere. The parents said, "I didn't mean to do that to my baby, doctor," but the child often ended up with lasting head injury and people such as me had to try to put order and organisation back into destroyed young lives. The Parliament can stop such situations today.

We must not listen to the Bible-based nonsense from the far right about implements and the like; we must act responsibly to protect children in Scotland. Every year, 40 or so children in Scotland, 14 of whom are under the age of one, receive non-accidental head injuries. We must do something about that.

Phil Gallie: Will the member give way?

Brian Fitzpatrick: In a minute.

We have heard much about reasonableness. In another place and at another time we could have a discussion about the jurisprudence of

reasonableness. Parliaments around the world have innovated on duties of reasonableness. They have said that there is an absolute duty to comply and they have created duties of reasonable practicability. However, reasonableness is not the be-all and end-all.

Before I sit down, I will let Phil Gallie interrupt.

Phil Gallie: I go along with what the member says about young babies—the law does not seem to protect them and there have been tragic deaths in recent times. However, can the member point to the part of the bill that mentions young babies? It deals with children up to the age of 16 and, surely, there is a massive difference. If the provisions on shaking had been confined to young babies, Mr Fitzpatrick might have received some sympathy from the Conservatives.

Brian Fitzpatrick: There is no reason to assume that other matters might not come into play in relation to a 15-year-old hulk. I am concerned about young babies, who will be protected under part 7, which deals with the physical punishment of children who are under 16. I would be delighted to have Mr Gallie's support for the protection of such children.

16:00

Fiona McLeod (West of Scotland) (SNP): I declare an interest as a subscribing member of the Children are Unbeatable! alliance.

Many of us in the chamber, and throughout Scotland, are deeply disappointed by the dilution and diminution of section 43 during the stages of the bill. At this point, we must say, "No further."

I should like to introduce some evidence to the chamber on the effects of shaking on children and young people—I could have produced similar evidence for the other subsections of section 43. I shall give a definition of shaken baby syndrome, although, at this point, given the references that there have been to 15-year-old hulks, I should remind members that only last week a father was convicted in the United States for shaking his 11-year-old boy to death.

Shaken baby syndrome is the leading cause of death in child abuse cases in the United States. The syndrome results from injuries caused by someone shaking an infant, usually for five to 20 seconds. At this point, I will pause for five seconds to make members aware of how short a time that is.

I shall give members some information from the National Institute of Neurological Disorders and Stroke in the USA, which has described shaken baby syndrome. It says that the baby's brain rebounds against his or her skull, which might cause bruising, swelling and bleeding. That damage is intracerebral and might lead to permanent severe brain damage or to death. It states that prognoses for shaken children are poor. Most children will be left with considerable disability, and retinal damage might cause loss of vision. If the child survives, he or she might require lifelong medical care for brain damage injuries, such as mental retardation or cerebral palsy. To address how we prevent the problem, I shall quote from the National Institutes of Health of the United States, which states:

"Never shake a baby or child, whether in play or in anger."

A baby should never be shaken as reasonable chastisement, and a child should never be shaken with reasonable force.

We are duty bound by morality and by our subscription to the United Nations Convention on the Rights of the Child, in particular by articles 2, 3, 19 and 28. I also remind members that we are not lawyers; we are legislators and we set the tone for the judiciary.

I shall finish with a quote from the zero tolerance booklet that we all received today. It states that, in 1800,

"Judge Buller ruled that a man could beat his wife with a stick as long as it was no thicker than his thumb. It was considered acceptable at this time that men would need to use violence to control and punish their wives."

Change is possible; we must make it happen.

Murdo Fraser (Mid Scotland and Fife) (Con): We have heard several passionate speeches and they all dealt with extreme cases. However, it is not extreme cases but trivial cases that concern the people who are writing letters to me and to other members.

I will pose a number of questions to the minister about trivial cases. As Bill Aitken asked, if a mother shakes the arm of her 15-year-old son, will she be committing an offence under section 43(3)? It appears that she will. What will the Deputy Minister for Justice say on the record that will help the courts and procurators fiscal in such cases? Can the minister explain what guidance will be given to procurators fiscal and sheriffs in such cases?

When a parent is prosecuted for assault, the court must consider the circumstances if the assault falls under section 43(1), but if it falls under section 43(3) the courts will be forbidden from considering the circumstances in deciding whether an offence has been committed. Will not that lead to ordinary parents being turned into criminals over trivial incidents?

I would also like to know what constitutes an implement. If a mother throws a pillow at her son, will she be committing a criminal offence in every

case? What about a mother who clips her son with a rolled-up newspaper? Is she committing an offence? There is also a point about the scale of prosecutions. How many prosecutions are envisaged in the first three, four or five years after the bill's enactment? People are not concerned by the extreme cases that we have heard about today, but about the trivial cases that take place in every household in the country every day. Are we going to criminalise loving parents? The minister must tell us.

George Lyon (Argyll and Bute) (LD): Opinion on the issue was polarised in the evidence that the committee received; indeed, opinion on how to proceed was polarised among committee members. I am not going to criticise the point of view that Bill Aitken and Duncan Hamilton argued at stage 2, that current provisions already deal with the matter. Certainly, the ruling in the A versus UK court case gives sufficient clarity in that respect.

Nevertheless, a majority on the committee accepted that there is a case for reducing the number of circumstances in which parents could claim that action that would otherwise be classed as an assault is justified because it represents reasonable chastisement. I really believe that a blow to the head, the use of an implement or shaking a young child does not come into that category, and that parents should therefore be prohibited from such actions.

Murdo Fraser used the example of a pillow. I am sorry, but a pillow that is used by a parent as an implement to hit a young child on the head could cause severe injury and damage. Murdo should not have mentioned the example.

Murdo Fraser: Will the member confirm whether he thinks that a mother who clips her 15-year-old son on the shoulder with a newspaper should be prosecuted for committing a criminal offence?

George Lyon: One could make the same argument if a newspaper were used against a young child. In that case, such an action would cause damage. I do not accept Murdo Fraser's premise.

I supported the majority view of the committee on the matter because I believe that it is the right view. Amendments 6, 94 and 41 should be rejected.

Amendment 95 has an attraction, and Roseanna Cunningham argued persuasively that inclusion of the phrase

"with use of unreasonable force"

was a way of dealing with this serious issue. I listened carefully to what she had to say, but the purpose of the legislation is to give more clarity on the matter. By agreeing to amendment 95, we would make matters less clear. After all, shaking a young child causes damage, so we should give clarity by completely prohibiting such an action. I encourage members to reject amendment 95.

Dr Simpson: The debate has been interesting, and members have raised many points that I will not repeat.

The removal of section 43 in its entirety, or the removal of section 43(3), would send out entirely the wrong message. I appreciate what Roseanna Cunningham and other members have said about the law and the courts. However, health visitors, child support workers, nursery nurses and others who are involved with young parents must give a very clear message that certain things are not allowed. Without that, I can tell Parliament that we will be sitting here next year—at least I hope that some of us will be sitting here—discussing the fact that another 14 children have suffered brain damage. I point out to Roseanna Cunningham that, for every 14 such cases that come to court every year, hundreds of cases involving minor damage never come near the judicial system. Without the total clarity in the law that will be provided by the very modest measure in the bill, there will continue to be a substantial number of cases of children suffering minor damage that will never come to court.

As a junior doctor in a paediatric ward, I saw some really severe cases in this regard. However, as a general practitioner, I saw some of the minor damage that had been done to children—sometimes inadvertently—because parents lacked appreciation of the damage that they could cause. Parliament should send out a very clear message that we should not shake children, hit them on the head or beat them with implements. That will serve Scotland well.

Mr Gil Paterson (Central Scotland) (SNP): I know where the minister is going with the bill on this issue, and I should make it clear that I am on board. After all, we do not want to protect anyone who shakes a child to its detriment. However, I must refer to the bill itself.

Section 43(3) uses the words:

"If what was done included or consisted of—

(a) a blow to the head;

(b) shaking; or

(c) the use of an implement".

I say to the minister that it is clear to what a "blow to the head" and "use of an implement" refer, but I have problems with the word "shaking" because I do not think that it is clear to what that word refers. It worries me that "shaking" does not define anything. I am worried, for example, that mothers and fathers who perhaps take their children on

their knees and dandle them are doing a form of shaking. Furthermore, the act of cuddling a baby and shoogling it backward and forward when putting it to bed is a form of shaking.

I am not a lawyer and I do not want to weaken section 43. I am the last person in the world to defend anyone who damages a child, no matter what the child's age, but I want legal clarity about such acts and I do not think that "shaking" provides such clarity. The word "shaking" would protect some people, but it will frighten other people away from doing pleasurable things with their children. I am worried about that.

Scott Barrie: The member quoted paragraphs (a), (b) and (c) from section 43(3), which refer to a "blow to the head", "shaking" and the "use of an implement". Does Mr Paterson accept that those paragraphs must be read in conjunction with what follows them in section 43—which states that a court must consider the specific acts referred to in paragraphs (a), (b) and (c)—and that together they further clarify the legal position?

Mr Paterson: Mr Barrie has pointed out my problem, which is that that part of section 43 does not clarify the legal position because there is no definition of "shaking" that mentions what damage that would cause a child. It would be better if a word such as "excessive" were included, which would point out the difference between shaking that damaged a child and harmless shaking. It is unfortunate, but "shaking" is the kind of word that tabloids use to describe an act that damages a child. When we merely cuddle or play with a child we are actually shaking them.

Mr Wallace: Perhaps I can resolve Mr Paterson's problem.

Mr Paterson: If Mr Wallace can do so, that will be good. I think that everyone would be pleased with such a resolution.

Mr Wallace: It is clear that, although Gil Paterson has looked at the bill, he has not looked at section 43(1), which begins with the words:

> "Where a person claims that something done to a child was a physical punishment carried out in exercise of a parental right".

Section 43(3) uses the words:

> "If what was done included … shaking".

If such shaking were done as a physical punishment, subsection (3) would be activated. I do not think, by any stretch of the imagination, that rocking a child to sleep could be considered to be a physical punishment.

Mr Paterson: I am trying to illustrate how absurd the use of the word "shaking" is. The minister made the point well that I am trying to make, which is that we must go beyond the use of simple word "shaking", so that we can let people know that they can actually hold their children.

Donald Gorrie (Central Scotland) (LD): It is always unfortunate if our actions cause alarm to decent citizens. It is clear that many people who have written to members are concerned, so it would be helpful if the minister could make it clear to them that section 43 will not mean that people who, for example, grapple with a hysterical teenager to control him or her and accidentally hit them on the head will go to jail. There might be other relevant examples. People are concerned about the issue and need reassurance. If the ministers will say that courts would be guided not to act too literally in interpreting the bill such that every blow to the head had to be prosecuted, that would be helpful.

16:15

Pauline McNeill: There is consensus that the Executive did the sensible thing by removing section 43 as it was drafted. However, it is worth talking through the reasons why the committee chose, on balance, to include the provisions that it did.

In a way, I have to stand up for what the Opposition—apart from Murdo Fraser—is saying because I do not believe for a minute that Duncan Hamilton, Stewart Stevenson or Bill Aitken believe that we should have laws that would provide for injuring children. The difference lies between those who think that the law is adequate and those think that it needs to be strengthened. Murdo Fraser misses the point. The Justice 2 Committee did not want to criminalise innocent parents, which is why we asked for the removal of a complete ban on physical chastisement. The debate is about whether blows to the head, shaking or the use of implements should be mentioned specifically in the act. I think that they should be.

Fiona McLeod talked about a number of sad cases that she has had experience of. Again, however, I must say that I believe that the law of Scotland would allow a prosecution in each of those cases. If it would not allow such prosecution, it should be changed to enable it to do so.

We are not lawyers, but we are legislators and we should approach the bill properly. Subsections (1), (2) and (3) must be read together. It is clear that, in determining whether to prosecute someone for shaking a child, a prosecutor will read subsection (2) and accordingly have regard to

> "the nature of what was done … the circumstances in which it took place … its duration and frequency … any effect (whether physical or mental)"

and "the child's age". What could be clearer than that? Subsection (3) must be read along with

subsection (2), which means that the law will be absolutely crystal clear.

The law is pretty strong when it comes to protecting children. However, I decided for the avoidance of any doubt—there are cases in which there has been doubt—that it is right specifically to mention blows to the head, shaking and the use of implements. The Justice 2 Committee received evidence from people who thought that using a wooden spoon to chastise a child was acceptable and we were concerned about the shaking of young children. Cases in which the use of any such elements must be defended are rarely trivial. We are talking about what parents should be able to say in their defence.

The Scottish Executive should be commended for the sensible position that it has adopted and which the vast majority of people support. We are debating what provisions should be in the act, not which party is most in favour of protecting children—if we were to take that as the subject of the debate, we would have a dishonest debate.

When we come to vote, we should vote on what we think are the most effective provisions. I urge members to support the present provisions, which were agreed by the majority of the Justice 2 Committee.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): We can take it as read that we all abhor violence towards children and that we seek to achieve the same objective, which is to ensure that violence against children is seen as being unacceptable. We are arguing about the best way in which we can word the law to ensure—in so far as we are able—that that happens.

I believe that Roseanna Cunningham's amendment 95 should be supported. As Gil Paterson rightly argued, "shaking" does not have a clear meaning. On the margins, and in relation to trivial incidents in particular, it will be extremely difficult to distinguish between restraint and shaking.

I accept the argument that Pauline McNeill and one or two others have advanced, which is that one must read the section in its entirety. It is perfectly correct to say that the first requirement for prosecution is that something has been done to a child as physical punishment and that the circumstances must be taken into account. That is all correct and good, but what about when a young child has a tantrum in a supermarket and the parent restrains the child by bringing both his arms down to his side, telling him to be quiet and emphasising the point? Is that restraint or shaking?

The problem is compounded by the fact that section 43(3) says that, when shaking is said to have occurred,

"the court must determine that it was not something which … was a justifiable assault".

That seems to remove the element of judgment that is surely best left to the courts. I support Roseanna Cunningham's amendment 95 that would mean that the court would so determine only in cases in which "unreasonable force" was used. To answer Brian Fitzpatrick's question, it seems to me to be perfectly obvious that zero force would be appropriate in the case of a baby that is a few months old but that, in the case of a 10-year-old, a degree of force might be appropriate. Although I understand members' intentions in using examples that we all abhor, such as those that Fiona McLeod used, they are not really relevant to the point that we are discussing.

We all want to send a message to the people of Scotland that violence towards children is unacceptable. Publicity campaigns are the means by which we send messages. When we draft legislation, we must create a form of words that can be enforced objectively and fairly. Above all, we must leave our judges, not our politicians, to be the arbiters of what is or is not a crime in our country.

Mr Wallace: The policy objectives of section 43 are unequivocal: to provide protection to children; to clarify the law for parents on what constitutes reasonable chastisement and, ultimately, to take steps towards reducing violence in society. The Executive is committed to those objectives and I think that all parties would share them.

It is fair to say that section 43 has provoked strong responses. It has, as Phil Gallie said, provoked a large volume of correspondence, much of which is from ordinary parents as well as organisations and lobby groups. It is also clear that views are polarised. We have heard from some that the Executive's proposals do not go far enough and from others that they go too far. It would be unfortunate if the push and pull of those irreconcilable arguments overshadowed the policy objectives that I have set out, and we were unable to take positive steps to ban the most harmful forms of physical punishment of Scotland's children in the 21st century.

The Executive has listened carefully to parents' and members' views on the proposed outright ban on smacking small children. We responded by removing the specific ban on smacking under-threes, but we have promoted age as a factor that should be taken into account in considering whether a punishment that is administered to a child could be deemed to be reasonable.

The Executive is firmly committed to the remaining provisions in section 43 and believes that they are necessary to clarify the law and

protect Scotland's children. The proposed ban on the use of implements, shaking and blows to the head will remove the most harmful forms of punishment. Such actions can be easily misjudged, especially in the emotionally charged circumstances that characterise many physical punishment incidents and cases of serious harm.

We know that the vast majority of parents back the provisions. Phil Gallie talked about parents' good sense, so he might wish to reflect on the fact that, in the System 3 research that was undertaken, 84 per cent of parents agreed that there should be a ban on blows to the head, 79 per cent of parents agreed that there should be a ban on the use of implements and 79 per cent of parents agreed that there should be a ban on shaking. We reflect the good sense of parents that is reflected in those figures.

Phil Gallie: Will the minister say how he will police the bans throughout Scotland?

Mr Wallace: That is clear. I will come in a moment to the ogres that have been raised, such as the trivial tap or the rugby hulk who gets shaken by his 4ft 11in mother. I think that, during one exchange, the mother shrank by 3in and the hulk grew by about 3in.

Mr Brian Monteith (Mid Scotland and Fife) (Con): Will the minister give way?

Mr Wallace: No—I will pick up on the point that Murdo Fraser raised. The Justice 2 Committee's stage 1 report reports what the Crown Office said on the issue.

Paragraph 137 reads:

> "The Crown Office took the view that prosecutors would have to consider whether to prosecute on a case by case basis, taking into account the public interest and sufficiency of evidence. 'Triviality is one of the factors that procurators fiscal are required to consider in the context of any decision to prosecute'. The Crown Agent said that he would be surprised to see any significant increase in the number of prosecutions if section 43 is enacted."

David McLetchie: If the good sense of procurators fiscal and Crown agents is adequate for the purpose of interpreting the proposed legislation, why do not we leave it to the good sense of the prosecuting authorities to determine the entire matter in line with the common laws of assault that have applied for 300 years? Why does the minister want to restrict prosecutors in one area but give them discretion in another? There seems to be no logic in that.

Mr Wallace: On the contrary, there is a considerable amount of logic in that. If discretion is being used as to what is and is not trivial, that is one thing; if discretion is being used when damage has actually been done to a child, that is another. We are trying to protect children; we do not want cases to become a matter of debate in a courtroom when damage has been done, which would be to try to shut the stable door once the horse has bolted.

We have a responsibility to listen to parents in this regard. We have listened, and we have responded. I think that it was Fergus Ewing who said that the matter is more appropriately dealt with by information campaigns than by legislation. I believe that there should be an information campaign on positive parenting and alternative disciplinary tactics, which will be as important as legislation in changing behaviour. However, if we had relied only on information campaigns to stop drink driving, where would we be? We would have had more drink-driving related deaths on our roads. We believe that legislation is necessary.

An information campaign is currently being developed to ensure that parents are informed about the effects of physical punishment, and to guide them towards positive forms of parenting and discipline. As I said, information alone will not suffice. A dual approach of information and legislation is required in order to protect Scotland's children and to clarify the law on what constitutes reasonable chastisement.

Parents told researchers that they did not know what the law was in relation to physical punishment. When parents were asked how much they knew or understood about the current law on smacking, 63 per cent said that they knew not very much and 18 per cent said that they knew nothing about it. Section 43 will make it clear what is acceptable and what is not lawful.

Brian Fitzpatrick: Does the Deputy First Minister agree that we should be reasonably content that most parents—who do not smack or beat their children and do not hit them over the head—are not particularly familiar with the criminal law in relation to such acts, and that we should dispense with the extraordinarily bizarre argument that has been put forward from the Tory benches that, somehow, because ordinary reasonable parents do not take such steps, we should just sit on our hands in relation to parents who do not subscribe to the same sentiments?

Mr Wallace: One of the most amazing comments from Bill Aitken was almost a suggestion that all parents treat their children wonderfully well. We know from the available figures that, regrettably, that is not the case. It is disappointing that, in lodging amendment 6, Bill Aitken has not reflected on the figures about what parents really think. The research that was published last year shows that an overwhelming majority of Scottish parents agree that hitting children on the head, shaking them or using implements on them should be illegal.

However, I admire Mr Aitken's resilience: he has opposed section 43 from the outset and has stuck

doggedly to his opinion throughout. It is unfortunate that the same cannot be said for the amendments that have been lodged on shaking. We are being asked to consider either removing the specific ban on shaking or qualifying it to

"shaking with use of unreasonable force".

No doubt the concerns that have been expressed have been motivated by images of meek mothers shaking great big rugby-playing sons, but such concerns trivialise the issue. At the other end of the spectrum, as was eloquently highlighted by Fiona McLeod and Brian Fitzpatrick, a tired and frustrated mother can with a moderate shake easily damage an infant.

I will quote from the BBC's "Medical notes" web page, which says that shaken baby syndrome

"occurs when an infant is forcibly shaken, usually by the shoulders, causing the child's head to flop back and forward … A baby's head is large and heavy making up about 25% of the infant's total body weight. Its neck muscles are too weak to support such a disproportionately large head.

The force of the head movement can tear blood vessels that bridge the brain and skull, because these are fragile and immature … When shaking occurs, the brain bounces within the skull cavity bruising the brain tissue.

The brain swells, creating pressure and leading to bleeding at the back of the eye."

That was one of the tamer descriptions of shaken baby syndrome. There is a real danger that, by focusing on the trivial, we will lose sight of the critical other end of the spectrum and miss an opportunity in the bill to protect small and vulnerable children from inadvertent but lasting damage that is caused by a forcible shake.

16:30

Mr Monteith: I have no intention of trivialising this matter. However, I pay due regard to what Gil Paterson said about the word "shaking". The minister has tried to address that concern by providing a description of shaken impact syndrome. However, the other evening we saw on television Michael Jackson, a popular celebrity, feeding his child in a strange way that involved incessant shaking—because the shaking is part of feeding the child, it is repeated on a number of occasions. If Michael Jackson were to feed his child in that manner in Scotland after the bill has been enacted, would such bizarre shaking constitute a crime? From the wording of the bill, it is not clear whether it would.

Mr Wallace: Regrettably, Brian Monteith has trivialised the issue. As I said to Gil Paterson, shaking a child will be an offence if it is done as a physical punishment. I did not see the programme to which Brian Monteith refers, so I do not know whether the shaking was a physical punishment or something else. It would not be appropriate for me to comment on something that I have not seen.

As Brian Fitzpatrick stated, each year 40 Scottish children receive non-accidental head injuries and 14 children aged under one receive severe head injuries as a result of shaken impact syndrome. We do not know whether those injuries started out as misjudged physical punishments, but we believe that the law must protect children from shaking. Once the damage is done, there is little consolation in arguing in court about whether the shaking was reasonable.

How are parents to judge where on the spectrum the division lies between shaking that produces lasting damage and a less harmful shake? We cannot know at what age or stage a child's vulnerability to a minor shake recedes. As Yorkhill hospital's Professor Stone advises:

"there is no such thing as safe shaking or reasonable force."

It would be a sorry day if members of the Parliament were unable to support legislation to ban shaking. I do not subscribe to the view that larger children are punished physically by being shaken or that the courts will be clogged by parents accused of trivial shaking offences. I believe that children need protection from the danger of brain damage through misjudged shaking.

Amendment 95 appears to be motivated by the desire to concentrate on the most severe cases of shaking. However, it would add very little to the existing common law and provides the sort of definition that would make the law unclear. For that reason, I ask the Parliament to reject it. Stewart Stevenson came to much the same conclusion—we cannot always tell what degree of force may lead to damage.

We should say clearly that shaking is dangerous and should not be used on children, as it is impossible to judge its effects on developing brains. Our research shows that parents want clarity and that they believe that shaking a child should be unlawful. I hope that Roseanna Cunningham will listen to parents on this matter, reflect on why the Executive is firmly committed to banning shaking and not move her amendment.

I also hope that amendment 94, in the name of Duncan Hamilton, will not be moved or will be resisted. I do not expect Bill Aitken to withdraw amendment 6. However, the important message that we want to send out about protection of our children would be seriously undermined if we followed the Tory route today.

Bill Aitken: This has been a mature and measured debate, in which one or two issues have been stressed repeatedly. The issue of shaking has certainly stirred the Scottish Parliament.

Amendment 6 is an attempt to clarify the law, as the law needs to be clarified. The people who should clarify the law are the people who administer the law—the judges of Scotland. Time and again, I have made the point that in the past there has been no significant problem in this area. I listened to what Scott Barrie had to say, but I am surprised that the case to which he referred was not appealed by the Crown. Along with all reasonable people, I believe that the necessary legislation is in place.

Stewart Stevenson and Brian Fitzpatrick—from a professional perspective—pointed out the real dangers that shaking poses. All members accept that. However, Gil Paterson indicated that shaking need not be punitive.

Children are very robust. Some children are wild and enjoy wild horseplay. In such circumstances, inevitably there will be some shaking. The logic of what the minister is proposing is that shaking in a punitive sense would be illegal but shaking that occurs during the rough and tumble of any family would not be an offence. However, at the end of the day, the damage might be the same.

Pauline McNeill: I am sorry to repeat myself but I go back to the circumstances that the member and others are talking about, and the distinction that they want to draw. Does Bill Aitken not think that the nature, duration and frequency of what was done to a child would allow prosecutors to determine the difference between the situation he describes and when injury is done to a child?

Bill Aitken: I agree. However, there is an undeniable confusion of the issues, which is why the matter should be left alone. No one should be shaking or striking young children on the head. I do not think that anyone in the chamber disagrees with that premise. Time and again, courts have established that that is unacceptable behaviour.

Brian Fitzpatrick: Will the member give way?

Bill Aitken: I am sorry but I must move on, as my time is restricted.

Donald Gorrie raised a genuine point. What happens when someone has to cope with someone else who is hysterical, grabs that person and attempts to shake them? Again, there is confusion. That is not a punitive action yet, arguably, that person could find themselves in court.

Murdo Fraser and George Lyon got themselves into a little dispute over the use of a newspaper. Common sense declares that a newspaper driven hard into the solar plexus of a one-year-old child would clearly be an assault, whereas a whack across the back of a 15-year-old would not be. Again, the courts would arrive at that inescapable conclusion.

We have to ask whether there is a problem of children being abused by their parents. The answer is that it might not be a wholesale problem but it is occurring rather more frequently than most of us are comfortable with. We know that it occurs through high-profile media reporting of some horrific cases. We are all anxious to prevent such cases.

When we read the tragic circumstances of the death of little Chloe Bray, which culminated in a trial at the High Court in Edinburgh last week, does anyone seriously suggest that the proposed legislation would prevent such cases? The fact is that it would not, much as we might like to think it would. On that basis, the proposed provision is not necessary because it will not help anyone in that situation. As they stand, the proposals are flawed and will be shown to be flawed. We should leave the matter to the courts to determine.

The SNP's amendments 94 and 95 about the definition of shaking highlight the issue. I am sure that they are a genuine effort to clarify matters but they simply show how confused the issue is. In time, there will be more and more difficulty with the issue and more and more appeal points—I do not know where it will end.

I keep coming back to the point that the law of Scotland is perfectly adequate to deal with the question of abuse. Let the law of Scotland get on with its job. Mr Wallace slightly misdirected members when he said that I said that there are no problems. The vast majority of parents conduct themselves in a responsible and loving manner. Allow them to get on with it.

The Presiding Officer: The question is, that amendment 6 be agreed to. Are we all agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

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

AGAINST

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)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
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)
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)
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, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
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)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 18, Against 96, Abstentions 0.

Amendment 6 disagreed to.

Mr Hamilton: In order to support Roseanna Cunningham's amendment 95, I will not move amendment 94.

Amendment 94 not moved.

Amendment 95 moved—[Roseanna Cunningham].

The Presiding Officer: The question is, that amendment 95 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)
Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (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)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
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)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harper, Robin (Lothians) (Grn)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (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)
Marwick, Tricia (Mid Scotland and Fife) (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, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Robison, Shona (North-East Scotland) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 35, Against 74, Abstentions 3.

Amendment 95 disagreed to.

The Presiding Officer: The next question is on amendment 41.

Bill Aitken: The amendment relates to the current operation of the children’s hearings system—

The Presiding Officer: No, Mr Aitken. Amendment 41 has already been debated. Are you moving it?

Amendment 41 moved—[Bill Aitken].

The Presiding Officer: The question is, that amendment 41 be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

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

AGAINST

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)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
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)
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)
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, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
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)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
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Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinney, Mr John (North Tayside) (SNP)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 17, Against 92, Abstentions 0.

Amendment 41 disagreed to.

After section 43A

The Presiding Officer: Amendment 97 is in a group on its own.

Bill Aitken: Having jumped the gun somewhat, I move to amendment 97, which relates to the operation of the children's hearings system. The system was set up by the Social Work (Scotland) Act 1968, on the basis of a report prepared under the chairmanship of Lord Kilbrandon, the research for which was carried out some years earlier. The 1968 act introduced a welfare-based system of justice for under-16s.

The issue is that times have moved on. A 15-year-old today is very different—in attitude and physical maturity, for example—from the youngsters of 40 years ago. We have a serious problem with 14 and 15-year-olds in particular, in that those who offend—of course, it is always worth stressing that they are a small minority—have the degree of street wisdom to know that there is little or nothing that can be done to inhibit anti-social behaviour. Indeed, a not infrequent and deliberate ploy is to ensure that when aged 15 and three quarters, they obtain a 12-month supervision order from the children's hearings system, thus staying out of the court process until they are almost 17 or, in some cases, 18.

The fast-track youth courts that are proposed by the Executive have some attractions. A confrontation with a sheriff who has the power to order meaningful but, above all, tough, community disposals will benefit the offender and, more important, society. Our suggestion is that we reduce the age at which offenders go to the panel system, and send 14 and 15-year-olds to the youth courts. Undoubtedly, that would inhibit hard-core offenders.

It is often said in the chamber, and I freely concede, that, sometimes, the difference between a child offender and a child who has been offended against is small, but amendment 97 acknowledges that. By the age of 15, one has a degree of personal responsibility that is not expected of an eight-year-old or a 10-year-old, for example.

It is time to acknowledge that the facts of life are such that it is essential to get tough, and not cosmetically, with the hard core of young offenders who make life a misery for a significant number of people in all parts of Scotland. I say to the Executive that it is time to get real. Despite what has been said and the platitudes that have been offered, nothing that has happened is likely to have a meaningful effect.

16:45

Scott Barrie: Is Mr Aitken suggesting in amendment 97 that the age should be reduced to 14 only for referrals on the grounds of offences or for references on all 21 grounds on which people can be referred to a children's hearing, which include being the victim of sexual offences?

Bill Aitken: As Mr Barrie knows better than I do—I often listen to what he says on such issues with considerable interest—the children's hearings system is intended to deal with offenders and the offended against. Victims should receive the appropriate assistance that society is geared up to offer. The distinction between offenders and victims is clear by the time that those involved reach the age of 14. Offenders should be dealt with under the proposal in amendment 97. The fact is that victims of sexual abuse would be dealt with differently.

I move amendment 97.

Hugh Henry: I will take up Bill Aitken's response to Scott Barrie's question. Bill Aitken's amendment 97 would reduce the age of young people whom the children's hearings system could deal with, whether they were referred on care and protection grounds or on offence grounds. Bill Aitken offered no alternative for children who are referred to children's hearings because they are victims. It is all very well for him to say that they will be dealt with in some other way, but he offered no other solution. He diminishes and demeans the children's hearings system's valuable work in providing a service to many 15 and 16-year-olds.

I welcome Bill Aitken's suggestion that youth court pilots will have an effect. We are confident that the youth courts will have an impact. Testing the scheme through pilots is the right approach and any developments will be based on evidence. The youth court pilots will not deal with 14-year-olds. It was said at the launch that youth courts will deal primarily with 16 and 17-year-olds who persistently offend and sometimes with 15-year-olds who would otherwise go through the adult courts system.

If youth court pilots are to be effective, they will be so because of the measures and procedures that we put in place. They will involve special training and procedures for dealing with that age group, with the court keeping an eye on progress through review appearances and the provision of supported programmes to engage the young person in dealing with his or her offending behaviour.

All those measures are central to the fast-track hearing pilots that are operating in three areas. Bill Aitken's amendment 97 identifies only one strand of the Executive's approach to persistent offending. I hope that, if the fast-track hearings show comparable success in dealing with young people, he will extend similar support to their development.

The Executive is committing significant resources to the pilots because we want them to have a lasting impact on young people. We expect fast-track hearings, by targeting the 8 per cent of young people who offend persistently, to tackle those who commit one third of the crime in communities.

The fast-track hearing pilots will seek to show what the system can achieve with targeted and dedicated resources and the aim of changing young people's offending behaviour.

We need to show how the pilots work in practice. Bill Aitken's amendment 97 deals with one part of the equation. Even if we consider the intention behind and not the wording of the amendment, it is premature and does a disservice to the children's hearings system. I ask Bill Aitken to withdraw his amendment. If he does not do so, the Executive will oppose it.

Bill Aitken: It is not so much the terms of the equation that concern us today but the question of the likely outcome. We all wish to stop, or at least to reduce, youth offending and, quite frankly, what the Executive has on offer is not likely to do that.

Without the additional powers that the Conservatives seek to give to the children's hearings system, as I said last week, the system is on a fast track to nowhere. As it is presently constituted, the children's hearings system is totally and utterly impotent when it comes to dealing with juvenile offenders and that is why I lodged amendment 97.

I ask Scott Barrie or the minister whether they are seriously suggesting that, in Labour-Liberal controlled Scotland, the social work agencies are not able to pick up and deal with those who might

fall by the wayside because they cannot be dealt with when they are at risk. Of course the agencies must be able to deal with them.

In saying that I criticise those who spend a lot of time working for the children's hearings system, Hugh Henry again deliberately misunderstood what I said. The fact of the matter is that one third of those who are involved in the children's hearings system vote with their feet every year when they resign from the system. It is inevitable that those resignations are the result of the frustrations that they incur in trying to do that work. If anyone is letting those people down, it is the Scottish Executive. There must be a major problem if there is such a large drop-out rate in the membership of the children's panel. It is clear that there is a problem with the system if those people, all of whom give so willingly of their time and effort, feel disposed to walk away from the system.

Robin Harper (Lothians) (Green): Does Bill Aitken concede that the general length of time that people are taken on to serve on a children's panel is three years, which can be followed by two further terms of three years? Except in exceptional cases, people are not expected to serve for longer than nine years. Of course there is a turnaround in children's panel members.

Bill Aitken: That highlights another difficulty. If that is the accepted norm, why is it that we frequently see expensive, well-publicised campaigns for more panel members? We should either encourage people to serve for longer periods of time or recognise that the reality of the situation is that many people join up to serve on panels before realising that the frustrations of the service are such that they no longer wish to serve.

Amendment 97 seeks to introduce a degree of realism. For far too long, the good that the children's panel system undoubtedly does in many areas has been subsumed by the fact that 14 and 15-year olds cause much of the trouble that takes place. That problem is not being addressed. It is time to wake up and wise up. I press amendment 97.

The Presiding Officer: The question is, that amendment 97 be agreed to. Are we agreed?

Members: No

The Presiding Officer: There will be a division.

FOR

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

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
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Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
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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)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (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)
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, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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Neil, Alex (Central Scotland) (SNP)

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Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
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)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Presiding Officer: The result of the division is: For 15, Against 87, Abstentions 0.

Amendment 97 disagreed to.

Section 43B—Provision by Principal Reporter of information to victims

The Presiding Officer: Amendment 46 is grouped with amendment 47. I am getting a little concerned about the time that we have left for debate.

Bill Aitken: On a point of order, Presiding Officer. It may help if I intimate that the Conservatives have no objection to any of the amendments in group 15.

The Presiding Officer: I do not think that that is a point of order, although it may be a point of helpfulness.

Mr Wallace: It is very helpful. My explanation of the amendments will be brief.

Amendment 46 follows up an amendment that we introduced at stage 2 to ensure the provision of information to victims and the parents of child victims at key stages and at the outcome of the children's hearings process when offence cases are involved. We indicated that further thinking was being done as to how best to accommodate other appropriate parties who have a legitimate requirement to receive the same information.

We have explored the matter with representatives of the system and with Victim Support Scotland, and I am introducing the power for ministers to designate by order those parties who should be entitled to receive the relevant information. I am also seeking to provide that ministers may attach conditions to the release of the information—for example, an additional obligation to treat the information in the strictest confidence and to use it only for the purposes for which it has been given.

Amendment 47 is of a technical nature.

I hope that the amendments will further enhance victims' interests in the hearings system.

I move amendment 46.

Amendment 46 agreed to.

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

Section 47—Retaining sample or relevant physical data where given voluntarily

The Presiding Officer: Amendment 98 is grouped on its own.

Roseanna Cunningham: The effect of amendment 98 would be to establish the information on rights that would be provided to persons volunteering samples for retention in an investigation under section 47. The SNP supports the principles of section 47. However, giving police a sample—especially a DNA sample—is a substantial incursion into the liberty of the individual, particularly when the sample might be retained and used in any subsequent investigation.

When a police officer asks for a sample, it would take a brave person to say no, even if they did not really want to give one. It is not clear in section 47 that people who give samples will even be informed that the samples are to be retained. When people are arrested, they have a common-law right to be informed of their rights, and when a person is detained, he or she has rights to information about detention. I am looking for an assurance from the minister on police procedures for providing information on rights to persons who provide samples.

I move amendment 98.

Bill Aitken: There is a civil liberties issue here, which we acknowledge. However, I am uncertain about instances in which problems could arise because nothing was forthcoming in writing. Ms Cunningham might have a specific situation in mind, but I am not quite sure how such a situation could arise. How would it be practicable for police officers to provide the information in writing to a person in custody? Would there be a handout at the police office?

Roseanna Cunningham: Yes. There would simply be a pre-prepared written statement.

Bill Aitken: Thank you. That clarifies the matter.

Dr Simpson: I understand exactly what Roseanna Cunningham is getting at, and I recognise the concerns. Individuals should be clear about what the sample is, when it is to be used and when they have a right to withdraw it. Under section 47(3),

"the person consents in writing to the sample, data or information being so held and used",

and is told at that time that they may elect to confine it to the particular offence. The guidance that will be issued will be clear and a signature will require to be given below a clear consent. Therefore, amendment 98 is unnecessary.

Hugh Henry: I fully understand and support the intention behind amendment 98, which is that the police service should be accountable for its use of voluntary screening. At present, there are no statutory powers authorising the police to conduct voluntary screenings of sections of the population in respect of specific offences—for example, mass screenings of particular communities following a crime such as a sex attack on a child.

I appreciate what the amendment seeks to achieve but, as Richard Simpson indicated, it is already clear under section 47 that the police can use samples derived from such exercises only if the person provides written consent to the process. For the consent required under the bill to be regarded as fully informed, and therefore valid, the police will require to provide information to the person as part of the process of obtaining written consent.

We will also issue formal guidance to the police that sets out the procedures that will need to be put in place to meet the requirements of the provision in a robust and consistent way in forces across Scotland. The police forces will be required to comply fully with the requirements and to ensure that those involved have the necessary information, because otherwise the consent to use the sample will not be valid in law.

On those grounds, I believe that—as Richard Simpson said—the amendment is unnecessary.

17:00

Roseanna Cunningham: I am content with the assurances that have been given. I seek leave to withdraw the amendment.

Amendment 98, by agreement, withdrawn.

After section 53A

The Presiding Officer: Amendment 57 is in a group on its own.

Mr Wallace: Amendment 57 is substantial and lengthy. The amendments that it will make to the Criminal Procedure (Scotland) Act 1995 set out a new right for the Crown to be heard when a judge is considering an application by a person, convicted on indictment, for bail pending appeal. The changes also provide that where the initial application for bail is refused and the convicted person applies to the full court for a determination of his application, the Crown has a right to be heard at that further hearing before three judges. They give the Crown a right to appeal against the grant of bail—technically, to ask the full High Court to reach a final determination on grant of bail. When the Crown so appeals, bail will be suspended until the High Court has made its final ruling on whether bail should be granted.

Members will be familiar with the background to amendment 57. A high-profile case highlighted the fact that when a convicted person who is in prison seeks bail pending an appeal the judge hears defence arguments in favour of bail, but the Crown has no right to be heard. Ministers agreed that while bail should remain at the discretion of the court, it is vital to ensure that the court has the information that it needs to reach a balanced decision on the advisability of bail. Concern has focused on the most serious cases, and Crown efforts should be focused on cases of an application for bail following conviction on indictment. Ministers indicated on 14 November that they would change the law to give the Crown a right to be heard when someone convicted on indictment seeks bail pending an appeal.

The amendments to the 1995 act look complex, because the law into which they are being inserted is quite complex, but they merely provide for those new Crown rights and ensure that they can be exercised effectively. For example, they ensure that the person who seeks bail must notify his application to the Crown and that the hearing before a judge must take place no earlier than seven days after the date of intimation, so that the Crown has a reasonable time to prepare.

The amendments to the 1995 act also seek to strike a proper balance between the importance of providing full information to the court at all stages, and the rights of the convicted person. In particular, they make it clear that, when the Crown appeals against the grant of bail, the further hearing before the full three-judge court must be heard within seven days. That minimises the time for which a convicted person who has provisionally been granted bail must remain in custody pending a final determination of his case.

Amendment 57 gives effect to a commitment made to the Parliament. I hope that it will be widely welcomed.

I move amendment 57.

Lord James Douglas-Hamilton: I am glad that the Executive has lodged an appropriate

amendment, which arises from the case of Richard Crawford, a convicted murderer who killed an elderly woman in her eighties and absconded while on bail. The police indicated that he was a grave danger to the public. The fact that he was given bail when he had been convicted of murder was extraordinary.

The Deputy First Minister wrote to me on 13 August. The letter stated:

"The matter is entirely within the discretion of the High Court, the prosecutor having no statutory right to be heard when the High Court is considering an application for bail from an appellant pending the determination of his appeal."

It continued:

"I believe that the law provides sufficient safeguards at present."

That struck me as showing an astonishing degree of ostrich-like complacency. I am glad that the Deputy First Minister has been coaxed out of that position, and I thank him for lodging an extremely important amendment. It was clear that if the man was a danger to the public immediately after he absconded, he was also a danger to the public before he did so.

Amendment 57 gives the prosecution the right to be heard and the right to appeal against bail being given. Those are major reforms, which we have called for. I believe that those greater protections for the public will serve Scotland well.

Stewart Stevenson: I do not want to speak to the amendment; on the basis of what I have been told, I am reasonably happy with it. I simply posit that it is disappointing to get such substantial and complex amendments at a stage in proceedings when it is difficult for committees and individuals to go through the detail and assess whether the minister is delivering on the intent.

Brian Fitzpatrick: Notwithstanding Stewart Stevenson's important point, it would be regrettable if procedural objections stood in the way of important measures to provide equality of arms. The measure is important for equality of arms for the prosecution and for the proper administration of justice.

I welcome the amendment on two counts. First, the applicant should not be liberated. That is an important safeguard for communities. Secondly, the matter should be dealt with by due dispatch. In that way, if there is a good reason for the application to be granted, the applicant is not unduly delayed, but the public interest in establishing whether that is the position is maintained.

Lord James Douglas-Hamilton referred to the Deputy First Minister as being ostrich-like. On the contrary, I think that on this issue, he is to be commended for the steps that he has taken. This is a major reform. It may have been called for, but during 18 long years under the mob opposite, few steps were taken to secure it.

Lord James Douglas-Hamilton: I have the Deputy First Minister's letter with me. The member is welcome to have a copy, as the facts are beyond doubt. Nevertheless, I am grateful to the Deputy First Minister for yet another U-turn.

Mr Wallace: To address Stewart Stevenson's important point, I think that it is fair to say that the amendment was not unheralded. We hoped that we might get it through at stage 2, which would have been preferable, but its terms show its complexity, and it was not physically possible to do it then, although we did flag up the issue.

Brian Fitzpatrick makes important points about the balances that we have tried to reach.

In the spirit in which Lord James Douglas-Hamilton referred to me with regard to the amendment, I respond that it is a great pleasure to amend legislation taken through the House of Commons only eight years ago by Lord James Douglas-Hamilton.

Amendment 57 agreed to.

Amendment 58 moved—[Mr Jim Wallace]—and agreed to.

Section 56—Registration for criminal records purposes

The Presiding Officer: We now come to group 18. We have very little time. I call the minister to move amendment 59, which is grouped with amendments 60 to 63.

Mr Wallace: Amendment 59 will have the effect of bringing prospective adoptive parents and others in a household within the scope of the enhanced criminal record certificate arrangements under part V of the Police Act 1997. Amendment 60 will bring Her Majesty's inspectors and others involved in the inspection of educational provision within the scope of the enhanced arrangements.

We announced our intention to introduce amendments for those purposes at stage 2, when several other categories of person were brought within the scope of the enhanced criminal record certificate arrangements. That was agreed on the basis that, because such persons will occupy positions that give them access to children or vulnerable adults, or to sensitive information about such vulnerable people, they should be checked to the fullest extent possible, which means that the enhanced criminal record certificate should be available for them. That applies equally to those who propose to adopt a child and others in the household as it does to those who will be involved in inspecting educational provision.

Amendment 61 is a minor drafting amendment. Amendments 62 and 63 are also minor amendments that are intended to clarify a provision that is being inserted into part V of the Police Act 1997. That provision is concerned with regulations that ministers are enabled to make under section 120 of the 1997 act with regard to the countersigning of criminal record certificates. Amendments 62 and 63 remove existing duplication and ensure that the provision is easier to read, because it now makes express reference to the corporate bodies and office holders who can make nominations.

I move amendment 59.

Amendment 59 agreed to.

Amendments 60 to 63 moved—[Mr Jim Wallace]—and agreed to.

After section 56

The Presiding Officer: We come now to group 19, on access to certain reports where sexual offences are alleged. Amendment 99 is grouped with amendment 110.

Dennis Canavan (Falkirk West): The purpose of amendment 99 is to prevent the unnecessary and undesirable restriction of access to any police report that has been suppressed on the ground that access could lead to the identification of people who were abused during their childhood.

Recently, attention has been drawn to a police report about Thomas Hamilton, who was the perpetrator of the Dunblane massacre. The report is subject to a non-disclosure period of 100 years and was compiled by Detective Sergeant Paul Hughes of Central Scotland police. Extracts from it were revealed during the Cullen inquiry, including the following statement by Detective Sergeant Hughes:

> "I am firmly of the opinion that Hamilton is an unsavoury character and unstable personality … I would contend that Mr Hamilton will be a risk to children whenever he has access to them and that he appears to me to be an unsuitable person to possess a firearms certificate."

He added:

> "it is my opinion that he is a scheming, devious and deceitful individual who is not to be trusted."

That was in 1991—five years before the Dunblane massacre. Unfortunately, Detective Sergeant Hughes's superiors did not act on the report. If it had been acted on, the Dunblane tragedy might not have happened.

The same report is said to contain the names of children who were abused by Thomas Hamilton and the names of prominent public figures who had contact in some way with him. I understand the need to protect children, but I fail to see why children should be used as a shield to suppress an entire report for 100 years, in case it might embarrass some prominent public figure or figures.

I welcome Lord Harry Ewing's call for the report to be brought into the public domain in order to prevent a witch hunt and the First Minister's statement that the Lord Advocate is considering what access can be made available to the report. However, the matter is so important that it should not be left simply to the discretion of the Lord Advocate. There ought to be statutory provision for the release of such information to prevent accusations of a cover-up. Amendment 99 would make such statutory provision for access to reports and information that apparently do not fall within the provisions of the Freedom of Information (Scotland) Act 2002. It would also ensure the protection of children and adults who were abused when they were children, as any information that could lead to the identification of children would be deleted from reports before they were released.

The Scottish Executive is committed to freedom of information and the Deputy First Minister has declared his enthusiastic public support many times for freedom of information. Therefore, I hope that the Executive and the Parliament will support the amendment.

I move amendment 99.

Bill Aitken: I listened carefully to what Dennis Canavan said and it appears to us that there is considerable merit in his proposals.

The release of reports must be governed by a number of factors. No one would suggest for one moment that a report of the type that we are discussing should be issued unamended, without the names of the children who were involved being deleted. Unless there is any pressing reason—possibly relating to national security, or some other reason—for such papers not to be issued, we agree that in general terms, they should be issued. Amendment 99 might be unnecessary in the light of undertakings that the Lord Advocate gave last week that the report in question will be released suitably edited, which addresses the issue of those children who were allegedly subject to abuse. However, we require to be satisfied about the matter by the minister. I shall listen to what he says with particular interest.

We all agree that things should not unnecessarily be kept secret. We can agree that there are certain instances in which there should be confidentiality, but it is difficult to see in issues such as that which we are considering why things should be kept secret in general terms, apart from to protect vulnerable children.

Brian Fitzpatrick: I have some sympathy with what amendment 99 proposes. I do not think that any member thinks that there should be a hiding

place for anyone who has used a position of public responsibility to suppress information that might have a bearing on our view of the terrible events in Dunblane. However, I have concerns about the use of general legislation to address such a specific problem, not least in these circumstances, given the Lord Advocate's undertaking on that specific case.

17:15

I am unable to support amendment 99 because I do not think that subsection (2) of the proposed section goes far enough. Under subsection (2), only such information as could lead to the identification—that is, the naming—of any person would be excerpted. In my respectful view, any such provision would need to go much further than that, by also excerpting identifying circumstances and all the res gestae that touch upon identification. We must remember that, in the circumstances of the Hamilton case, the young children who were affected will today be young men. That may also be the case in other situations in which the provisions might apply. We need to consider carefully whether there are circumstances that might identify individuals.

As it stands, subsection (2) would allow an application for such information to be made by "any person", rather than any person having an interest or any person having cause for complaint. If we accept "any person", that could allow any person who had a prurient interest to make such an application. I regret that we have to deal with amendment 99 in the terms in which it currently stands, so I cannot support the amendment.

Lord James Douglas-Hamilton: I am sympathetic to amendment 99. We believe in the principle—which Dennis Canavan, in his own words, actually set out very fairly—that the victims should not be further distressed by disclosures that could reveal their identity.

It goes without saying that I agree with Mr Canavan that ministers should not be protected. Indeed, during the 10 years in which I was a minister, the rule that I always applied was never to take any action on anything that would be unacceptable to the House of Commons. Whenever I was in doubt, the civil servants always had a great deal more work to do.

In my view, the First Minister was absolutely right to confirm that the matter is for Lord Cullen, who is now Lord Justice General and Lord President of the Court of Session, and for the Crown Office. I repeat that we are sympathetic to Dennis Canavan's amendment, which is extremely fair.

Hugh Henry: Like Brian Fitzpatrick, I understand and sympathise with Dennis Canavan's intentions and motives in introducing amendment 99. I do not think that anyone would support a system that is bound in secrecy and which wrongly protects people who do not want to face up to their responsibilities.

Although Dennis Canavan's amendment is understandable as a hasty response to recent events, the proposed section would be a rather crude implement, which would not necessarily achieve his aims. Indeed, amendment 99 could cause significant damage in a range of areas. As Brian Fitzpatrick highlighted, not least of the problems is that subsection (2) would allow the Thomas Hamiltons and other such unsavoury characters of this world to have access to that information.

In addition, although the personal references to the children could be deleted, there might be general circumstances about the cases that might attract some of these undesirable individuals, who would take some strange and perverse pleasure from reading about personal tragedies. We must therefore be very careful about what we are doing.

Another reason why we must be careful is that much of the information that is held by the police comes from people who are involved with the criminal justice system unwittingly. For example, they may be involved as informants or as victims or, indeed, as witnesses. Their evidence is often given in good faith, on the understanding that it would be used appropriately, including in a trial. Of necessity, some of that information is of a personal nature such that, if it were disclosed outwith the court process, it could cause real distress and embarrassment to those affected, especially the victims or the alleged victims and their families. Even though we might give the assurance that individuals would not be identified, the circumstances might nevertheless mean that those people could become open to investigation by others for whatever motive.

Amendment 99 might result in that evidence being disclosed, possibly to criminals such as paedophiles and possibly before a trial took place. Even if reports were to be made completely anonymous, with detective work and persistence—which such people often have—it might be possible to deduce identities or, perhaps even worse, wrongly to deduce identities. It is not difficult to foresee cases in which the amendment might not only damage those who are affected, but undermine the criminal justice system and the confidence of ordinary people in that system.

The existing statutory arrangements and other arrangements, bolstered by the Freedom of Information (Scotland) Act 2002, are sufficient. The assurances that the First Minister has given in the past week go some way to addressing the other concerns that have been articulated. We all

sympathise with Dennis Canavan's point but, to put it crudely, Parliament would make a major mistake if it tried to use amendment 99 as the means to achieve his intention.

Dennis Canavan: I listened carefully to what the minister and other contributors to the debate said. The only serious point of opposition to amendment 99 was that some prurient people or undesirable elements would have access to such a report. We either believe in freedom of information or we do not. If the Lord Advocate decides—I hope that he will—to put the report on Thomas Hamilton into the public domain, will there be anything to stop a prurient person or undesirable element accessing it? As I understand the existing procedures, the Lord Advocate has the discretion to delete from the report names or other information that might lead to the identification of children or adults who were children when they were the victims of abuse.

Brian Fitzpatrick: The issue is serious and I genuinely acknowledge the motives that underlie Dennis Canavan's amendment. Does he agree that his amendment would allow any person to apply and that in those circumstances a chief constable would have no locus to refuse the application?

I will give an extreme example to test amendment 99. If I am in a sexual offenders unit somewhere in Scotland, I might apply for the information even though I have no interest in it or, at best, a prurient interest, unlike the people who suffered as a result of the Dunblane massacre. Amendment 99 would allow me to apply for the information and the chief constable would not be entitled to refuse the application.

Does Dennis Canavan agree that we must find another way to respond sensibly to the legitimate concerns that have been raised as a result of the Dunblane case without creating other dangers? Amendment 99 might create dangers but, as far as I can tell, Dennis Canavan has not addressed that. Will he put my mind at rest on that matter?

Dennis Canavan: The chief constable would have the discretion—indeed, an obligation—to remove from the report or other information any material that might lead to the identification of the child or the adult who had been a victim during his or her childhood. At present, there is no obligation on the Lord Advocate to do that because his powers are discretionary.

I hope that the Lord Advocate will put the report on Thomas Hamilton into the public domain for the reasons that I outlined previously. Of course, there is a risk that a prurient person or undesirable element might go to the Crown Office and demand access to the report. I suppose that there is such a risk in any freedom of information provision. However, the amendment stipulates that any material that would identify the victim is to be deleted. We should be on the side of freedom of information rather than on that of protecting people who are not victims but who might be named in the report because of a connection with the accused.

I ask members to support amendment 99.

The Deputy Presiding Officer (Mr Murray Tosh): The question is, that amendment 99 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
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)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
McLetchie, David (Lothians) (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)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)

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)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)

Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
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)
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)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 42, Against 65, Abstentions 0.

Amendment 99 disagreed to.

Section 57—Advice, guidance and assistance to persons arrested or on whom sentence deferred

The Deputy Presiding Officer: Amendment 64 is grouped with amendments 65 to 70.

Scott Barrie: The purpose of amendment 64 is broadly the same as what I attempted to achieve at stage 2 with amendments 117 and 118.

During discussions on amendments 117 and 118, the Deputy Minister for Justice accepted that the intention of the amendments was to support the recommendations made in the tripartite group's report on prison throughcare. The tripartite group was set up by Iain Gray during his tenure of the justice portfolio, and comprised members of the Executive, the Scottish Prison Service and local authorities. However, the minister felt that the amendments that I lodged at stage 2 went further than the recommendations of the tripartite group, and he wanted to consult the Association of Directors of Social Work and the Scottish Prison Service further on the legislative provision to support the policy on throughcare. The purpose of amendment 64 is to amend section 27 of the Social Work (Scotland) Act 1968 to provide a statutory service to prisoners. The lack of an existing statutory requirement, other than the general duty to promote social welfare that is contained in section 12 of the 1968 act, is at odds with the policy intentions outlined in the national objectives and standards for throughcare.

At the moment, some prisoners, in some circumstances, in some penal establishments receive a service from some local authorities. The system is far from uniform or equitable. Because throughcare services to serving prisoners are not defined as a statutory function of local authorities, arrangements for the delivery of those services tend to be fragmented, which is counterproductive to the concept of throughcare.

The amendment will entitle those prisoners who are subject to supervision following their release, and those who are not subject to supervision but who have requested such help, to receive appropriate advice, guidance and assistance during imprisonment from a supervising officer appointed by the relevant local authority. The amendment will also provide a mechanism whereby more than one local authority may be responsible for sorting out such an arrangement between the relevant authorities.

The amendment will contribute to public protection by providing a clear statutory basis for the service provision to prisoners, enabling a joined-up approach to throughcare services by assisting the process of rehabilitation and by preventing further offending after release.

I move amendment 64.

17:30

Hugh Henry: Section 57 deals with the functions of local authorities in respect of arrested persons and persons on whom sentence has been deferred in their area, and the functions of local authorities in respect of the supervision and care of persons put on probation or released from prisons.

Amendment 64 provides local authorities with statutory powers to deliver strengthened throughcare services to prisoners from the point of imprisonment and following release. It seeks to clarify that local authorities can provide services to prisoners who are required to be under supervision on release during their term of imprisonment and to ensure that other prisoners who are not required to be under supervision can benefit from those local authority services on request.

At stage 2, the Justice 2 Committee stressed that the development of throughcare services for prisoners must be taken forward in equal partnership between local authorities and the Scottish Prison Service. I undertook to ensure that any amendment to the provision met with the intention behind the recommendations of the tripartite group's report and with the agreement of the agencies involved. I am pleased to inform the committee that that is the case in both instances. I thank Scott Barrie for his work on the issue, and the Association of Directors of Social Work and the Scottish Prison Service for their contribution to ensuring that the policy can be progressed. Because of amendment 64, prisoners will soon be able to benefit from improved services that are delivered in partnership.

Amendments 65 to 70 recognise that, although the initial engagement by the arrest referral worker will be in the police cell, the worker might have an on-going involvement with the accused for a follow-up period. As drafted, the bill allows for a service to be provided only during the period of detention. The amendments seek to change the existing provisions to enable services to be provided following a person's release from police custody. However, we have set a limit of 12 months on the service to ensure that schemes have the capacity to deal with new referrals. Amendment 68 seeks to clarify that the local authority's responsibility for providing services on arrest is confined to those who are arrested or detained within its area and who remain in that area following their release from custody.

Amendment 69 seeks to make a minor adjustment to the bill's provisions on deferred sentence to clarify that the duty on the local authority to provide services in respect of offenders who are subject to deferred sentence lasts only as long as the period of deferment and while that person is in its area.

The extension and clarification of the functions under section 57 through amendments 65 to 70 are important in increasing the range of assistance that is available to the accused and to offenders, particularly those with drug misuse problems. We are anxious to see the wider development of arrest referral schemes across Scotland and the amendments will ensure that the scheme works effectively.

I support amendment 64.

Scott Barrie: I thank the deputy minister for his comments and for his assistance in this matter. I am gratified to find that we have been able to work on an issue that was not clearly stated in the bill at stage 2 and to come back to the chamber with firm proposals at stage 3. I also pay tribute to the ADSW, the Scottish Prison Service and those involved in the tripartite group for all their work over the past two years to ensure that we put throughcare services on a statutory footing. By doing so, we will ensure that the whole prison service is more joined up and that it puts the element of rehabilitation that we want it to achieve more at the forefront than it perhaps has in the past.

Amendment 64 agreed to.

Amendments 65 to 70 moved—[Hugh Henry]—and agreed to.

Section 59A—Offences aggravated by religious prejudice

The Deputy Presiding Officer: Amendment 10 is grouped with amendments 7, 1, 9 and 2. If amendment 9 is agreed to, amendment 2 will be pre-empted.

Donald Gorrie: Amendment 10 seeks to amend section 59A, which was itself proposed in an amendment that I lodged at stage 2, in a way that was proposed by the Government lawyers. It suggests that the court should make clear the extent to which the penalty reflects the aggravation of the offence by religious or sectarian hatred. As the whole idea behind the section is to send out a message that sectarian and religious violence is not acceptable in this country, it seemed like a good idea to include the text that is proposed in amendment 10. Amendment 10 is a refinement by Government lawyers of their own wording to make it more clear what a court must do to clarify the extent of and the reasons for the additional penalty.

I want to defend section 59A because Bill Aitken has an amendment that proposes to demolish it. I do not claim that section 59A is a magic wand that will make Scotland a better place overnight. However, it could be a modest but useful help in dealing with the vexed issue of sectarian and religious hatred by sending out the message that

sectarian and religious violence is unacceptable. I think that almost everyone accepts that sectarian and religious hatred and prejudice exist in Scotland and that they are bad aspects of our society. Most people would accept that people in all parts of our society are prejudiced and bigoted and that sectarian violence exists. Figures clearly show that to be the case.

Sectarian violence often arises because of football matches between Rangers and Celtic, but that is not the only sphere for such violence. For example, because the police feared that there would be violence, they had to recommend that a march through Wishaw that was planned by Irish republican groups should not take place. Sectarian violence is a serious issue. In addition, since 11 September 2001, Muslims, Jews and other groups have suffered increased harassment and, in some cases, violence.

Sectarian violence is caused by a cocktail of drink, religious traditions, Irish history and politics, racism and excessive football-club patriotism. All those contribute to the violence, but the sectarianism is a key part of it. When I intended to promote a member's bill on sectarian violence, I consulted widely. I sent out a substantial pamphlet to 500 organisations and got 100 responses. A majority of the responses supported the idea of aggravation, which would mean an increased penalty for an existing offence.

Karen Gillon (Clydesdale) (Lab): Can Mr Gorrie explain, by giving examples, what he means and does not mean by

"members of a religious group, or of a social or cultural group with a perceived religious affiliation"?

Can he give an example of a group that has a "perceived religious affiliation" and an example of one that does not, so that members can be clear about what they are voting for?

Donald Gorrie: As I said, there is a mixture of sectarianism, Irish politics and so on. I would have thought that the republican march that was perceived as going to cause a problem would come under section 59A as a sectarian issue. If people hit each other after a football match between Celtic and Rangers, that is violence that is motivated by sectarianism because the two clubs are regarded as promoting sectarianism.

Johann Lamont: I want clarification of the issues around, for example, a march that might attract violence. Does that mean that if a group said that it would disrupt a march and cause bother, such a march would have to be banned because it would be perceived as being part of the problem? That would be a troubling road to go down in relation to these sensitive issues.

Donald Gorrie: What Johann Lamont referred to happens already. The march to which I referred was cancelled under the existing law. If members will let me, I will explain what it is that I propose. Section 59A will not create any new offence, but will merely provide for a bigger penalty for an existing offence. I am not proposing to create any new offence.

Mr John McAllion (Dundee East) (Lab): Because I come from Dundee, I do not know of the circumstances of the ban to which Mr Gorrie referred. However, I know that James Connolly, who was a figure in Irish and socialist history, is well known as a socialist and is supported by people across political parties and that he and his supporters are the last people who could be called sectarian.

Donald Gorrie: Unfortunately, a person who is not sectarian can be supported by sectarian people. Many supporters of Jesus Christ act in an extremely bad manner, but that does not mean that he was bad in any way. Mr Connolly is not responsible for the aberrations of some of his followers.

My proposal is supported by faith groups, almost all the churches, unions, councils, colleges, universities and other organisations. There is wide support for the idea of aggravation.

As I have said repeatedly—although it seems that people have difficulty understanding my point—my proposal creates no new offence. It creates a bigger penalty, if the court so decides, for an existing offence. The policeman charges a person with a breach of the peace, an assault or whatever and reports that. If, on the basis of what the policeman has said and other evidence, the procurator fiscal thinks that there is a religious hatred element, he or she will put that into the charge and it will either be proved or not. I am not proposing that thousands of football supporters should be arrested or that there should be a ban on free speech or action. The normal law applies in that two witnesses will be required to prove the offence and, in line with similar legislation, one witness suffices in relation to the aggravation element.

The opposition to the proposal stems from two views. One is that we do all of what I am proposing already and the other is that it would be impossible to enforce. It is reasonable to support one argument or the other, but not to support both.

The Solicitor General for Scotland who, with her background as a procurator fiscal, is peculiarly well qualified to comment, explained to the committee for an hour that the proposal was quite manageable and enforceable and said that she supported it.

There is an argument that we cannot prove how many incidents happen at the moment and that, therefore, we should not go ahead. The fact is that

nobody has hitherto taken the issue sufficiently seriously to collect information and that both sides of the argument are therefore reduced to using anecdotal information. If the situation were clearly stated in statute, we would know the extent of sectarian violence for the first time.

We should not leave the decision to the whim of each sheriff or magistrate. I am sure that many of them take account of sectarian motivations but, from what many witnesses told us, we can see that others do not. One does not set a speed limit and say that it would be nice if people went slightly slower; one says that people should not drive at speeds that break the speed limit. Similarly, we should say that an offence caused by religious hatred should be treated more seriously than one that is not.

Almost all the arguments that are advanced against this proposal were advanced a few years ago against legislation on racial hostility. That legislation has worked perfectly well. There has been a great increase in the reporting of racial hostility, which brings the issue into the open. That is surely a good thing.

I am proposing that sending out a message that religious bigotry and the violence arising from it are not acceptable will help to change people's attitudes. If we do not do that, we are saying that we will do nothing about the problem but will leave the responsibility for doing so up to education and so on. If we are to have a full range of educational measures to change the attitudes of adults and children, we must state in the law that sectarian violence is not acceptable.

I move amendment 10.

17:45

Bill Aitken: Amendment 10 is a classic case of how the road to hell can be paved with good intentions. It is important to make one thing clear: sectarianism and racism have no place in contemporary Scottish life. No one condemns more than I do the way in which they have permeated some sections of west of Scotland society in particular over the past 75 to 100 years.

In recognition of that, sheriffs, magistrates and judges have long made every effort to stamp out such behaviour. The courts have always viewed any breach of the peace, assault or any other crime in which there has been a sectarian element much more severely than if the crime had no such element.

Donald Gorrie referred to the Solicitor General for Scotland's evidence to the Justice 2 Committee. To be frank, I found her contribution to that debate disappointing. As an experienced procurator fiscal, the Solicitor General must have had to deal with many such cases in her day. Surely she must have seen that judges deal with them much more severely than they would deal with a conventional breach of the peace.

There is no need for amendment 10. The police say that it is not workable. Lawyers know that it is unworkable. The Sheriffs Association expressed concern, as I recall. Indeed, anyone who has the remotest connection with the legal system knows that amendment 10 is unnecessary and runs a real risk of complicating matters to the extent that what we are trying to achieve—namely, a reduction in sectarianism—will simply not be achieved.

The Executive and Donald Gorrie have to think again. The dangers of overcomplicating matters cannot be overemphasised. I can well imagine that prosecutions that would otherwise have been successful would be lost as a result of amendment 10.

Robin Harper's amendment 1 is, as ever, well intentioned. The problem is that, when we seek to include in those likely to suffer prejudice such a wide number of groups, we have to be very careful indeed. In proposed subsection (7) of the section that amendment 1 would introduce, Robin Harper defines what he means by "social group" as one defined

"by reference to gender, sexual orientation, disability or age."

If religious and racial prejudice are already included, it is difficult to imagine any section of society that would be excluded—or is it to be open season on middle-aged, heterosexual, fully fit men who are white atheists? Basically, that is what amendment 1 says.

I do not for a moment doubt Robin Harper's good intentions, but what he suggests is simply not workable.

I return to the principal point: I stress to the Parliament the real dangers of Donald Gorrie's amendment 10. We all want to combat sectarianism, and many initiatives could be taken in that direction. The criminal justice system has historically taken and takes a robust attitude against sectarianism. It is playing its part to combat it. Not only is amendment 10 unnecessary, it is a dangerous overcomplication of the existing situation. The Parliament should have no truck with it.

Robin Harper: Amendments 1 and 2 are an extension of the principle of section 59A, which makes malice and ill will based on religious prejudice a statutory aggravation of any offence. Amendments 1 and 2 extend that to malice and ill will based on the other grounds on which people most commonly face harassment and prejudice—gender, sexual orientation, disability and age.

Amendment 1 covers those four grounds because there is no doubt that many people are at a significantly increased risk of crime because of their gender, sexual orientation, disability or age. That crime ranges from breach of the peace, through vandalism, to serious assault and murder.

For the information of Bill Aitken, European Union laws to address prejudice cover exactly those same four grounds, together with racial prejudice and religious prejudice. New UK legislation on discrimination in employment and training will cover the same six grounds. It makes sense for our law on aggravated offences to cover the same grounds as those other laws on prejudice and discrimination, and amendment 1 would ensure that.

Amendment 1 is supported by organisations working in the four areas that it covers. Those include Capability Scotland, the Scottish Association for Mental Health, Engender, Age Concern Scotland and the Equality Network. Those organisations are all too aware of the reality of crime motivated by prejudice. Research published only yesterday by the Glasgow-based Beyond Barriers organisation found that two thirds of lesbian, gay and bisexual people have been abused or threatened, and that one quarter of them have been physically assaulted, because of their sexual orientation.

A study carried out by the National Schizophrenia Fellowship (Scotland) in 2002 found that people with mental health problems reported twice as much harassment as the general population, and that a third of the people who experience that harassment have been forced out of their homes as a result. We know that far too many women face gender-based abuse and violence, and abuse of people because of their age is equally unacceptable.

During evidence to the Justice 2 Committee at stage 2, the Solicitor General said that the introduction of a statutory aggravation of religious prejudice would enable the Crown Office and Procurator Fiscal Service to start to monitor the extent of crime motivated by religious or sectarian malice, which is not being done at present. Amendment 1 would simply allow that monitoring to be extended to all groups suffering routine prejudice and harassment.

I have had indications that, although the Executive is sympathetic to extending the law in the way that I propose, it might want more time to consult and to explore such a proposal, possibly by setting up a working group with a view to reintroducing the measures in amendment 1 in the next parliamentary session.

The Minister for Justice has kindly indicated a willingness to set up that working group and, if he can confirm that to Parliament today, I will not press amendment 1, on the ground that that group's work might give us the best opportunity for good legislation to be drafted in the future.

The Deputy Presiding Officer: The list of members wishing to speak on this group of amendments is quite long, but we should still have time for everyone.

Roseanna Cunningham: I have considerable sympathy with many of the points made by Bill Aitken—and, I suspect, with some of the points that were being made by members on the Labour back benches, judging from the activity that seemed to be going on while Bill Aitken and Donald Gorrie were speaking.

To be honest, I am getting a little tired of banging my head against a brick wall on this issue. It is my view that section 59A will deliver fewer prosecutions and fewer convictions than there are at present. The minister seems to be content with that. We have dragged the debate on for so long now that the SNP will simply go along with what the Executive appears to want, although I do not think that the measures will achieve it. [MEMBERS: "What?"] Conservatives may look askance at that, but the debate has gone on for too long. If the minister's view is such, so be it. I will simply go along with it.

Robin Harper's amendment 1 is precisely where we start to get into difficulty. Paul Martin has an amendment on offences against firefighters and ambulance personnel in pursuance of their duty, which we will support if it goes to the vote, as the amendment is very clear. However, I am starting to think that what we need is a piece of legislation that defines who can simply be assaulted in an ordinary fashion. There are now so many exceptions and groups who are to be the subject of aggravations in assaults that there will be hardly anyone left.

Robin Harper makes a persuasive case for some of the people that he has mentioned, but equally, there are other groups of people who might ask, "Why am I being left out?" At some stage, we have to say that enough is enough.

Robin Harper: Does the member think that the people who draft European law have made a big mistake?

Roseanna Cunningham: The SNP is a great supporter of the European Union, but even we would never say that everything that emanates from the European Union is right and should not be argued against. We must take a few steps back. The SNP will not support amendment 1, because it would extend the provisions for aggravation in assault cases to too many groups. At the current rate, there will be no ordinary assault left. We must question the way in which we are dealing with Scottish criminal law.

Mr John Home Robertson (East Lothian) (Lab): I will offer an example of a demonstrably inflammatory statement that was as inaccurate as it was malevolent and that could easily have given rise to sectarian aggravation. I will quote from the *Sunday Herald* of 11 March 2001. I want to know whether the statement—by no less a person than Donald Gorrie—could be subject to prosecution under section 59A of the bill.

Donald Gorrie stated:

"Less intellectual Catholic organisations have a grip on the party. Many Labour politicians have told me that they have to make a Faustus-like pact with the devil to get elected".

He continued:

"There is a predominance within the Labour Party of Catholics. I'm amazed more hasn't been made of this relationship. We have to ask, 'Is it good for politics, democracy and society?' I'm not saying Labour is in the Church's pocket but the Catholic Church has permeated and heavily penetrated the party. In some areas it seems every Labour member you meet is a lapsed Catholic. In East Lothian, for example"—

there is the rub, as he is talking about my constituency—

"Catholics are in a minority, yet they have a grip on the Labour Party."

Donald Gorrie concluded:

"At a local level, Labour is profoundly corrupt in terms of its relationship with the Catholic Church. In some cases, to even get a position as a school janitor you have to scratch the right backs, and that means that going to the right church helps you get on."

That is a load of dangerous and offensive nonsense. I have been a member of the East Lothian Labour party for almost 30 years and I was flabbergasted by Mr Gorrie's comments—as were people from all parties and none in the county that I represent. We in East Lothian have never paid any attention to people's denominational background, so I challenged Donald Gorrie to substantiate his allegations or to withdraw them. In response to his comments, we undertook some research for the first time into the present and past composition of my constituency Labour party and the local authority. Surprise, surprise—it emerged that the minority proportion of Catholics in the party is and has been in line with the minority Catholic population of East Lothian. Until Mr Gorrie saw fit to make his extraordinary accusation, no one had known or cared who was from a particular denominational background.

Donald Gorrie's public accusation that there is sectarianism in East Lothian was offensive, inflammatory and rubbish. In a letter to me, he withdrew the accusation, but I am afraid that the damage had been done. The allegations had been publicised—the word was out and people were whispering. I submit that that sort of aggravation, which was likely to stir up sectarian suspicions where none previously existed, should be subject to any serious legislation against sectarianism. We all deprecate sectarianism in all its forms, but there is a whiff of hypocrisy in some quarters in this debate. My question is this: under the terms of section 59A of the bill, could Donald Gorrie be prosecuted for making such an aggravating statement? I hope so.

Lord James Douglas-Hamilton: John Home Robertson puts his finger on the weakness in section 59A that has given rise to our amendment. Regardless of whether what Donald Gorrie said constituted sectarianism—on the balance of probabilities, I believe that it did not—it would take the police a disproportionate amount of time to work out whether that was the case. I do not believe that that is fully in the public interest.

I had the privilege to serve with Donald Gorrie on the cross-party working group on religious hatred, under the excellent chairmanship of Richard Wilkinson. I pay tribute to his work, which was continued by Hugh Henry. [MEMBERS: "Richard Simpson."] I am so sorry. Richard Simpson was the chair of the group. That was a slip of the tongue, or a Freudian slip.

18:00

I sympathise with Donald Gorrie's purposes and endorse the aim of promoting a tolerant society that is free from religious hatred. Indeed, I agreed to all the working group's numerous recommendations, with the exception of one, which was on the subject of legislation. The police had substantial reservations because of the very obvious point that has just been made by John Home Robertson. The Crown Office also had reservations about the enforceability of statutory provisions. When someone commits an offence, it is not always easy to determine exactly what was in that person's mind at the time.

As it is, sectarian elements in criminal actions are already rightly treated as an aggravating circumstance under common law. Making sectarianism a statutory offence would mean that other crimes of violence would be given less priority. I will give two examples; if a police officer is assaulted or if football supporters seriously injure supporters of another team, it might be that there was no element of sectarianism to those crimes and that the offenders were merely giving expression to tribal loyalties. However, the effect of the crime could be just the same. Why should such crimes be downgraded because no sectarianism is involved?

The common law works well at present. Judges take into account all the circumstances of cases

and rightly take a serious view of sectarianism. Adding a statutory offence could take up an disproportionate amount of police time, which could be accompanied by definitional problems relating to free speech. John Home Robertson would defend Donald Gorrie's right to freedom of expression, even if he would seriously question whether Mr Gorrie was going beyond the bounds of what is permissible.

We believe that the case for statutory intervention remains not proven and, in any case, the police and Crown Office have—as I said—substantial reservations. We all abhor those who use religious faith as a reason for hating other people and we want to rid our country of bigotry in all its forms. However, we should not leap to the automatic conclusion that more laws are necessary in order to achieve that.

Although I whole-heartedly applaud Donald Gorrie's aim, I believe it would be best achieved under common law and without further statutory legislation.

Pauline McNeill: I would like to speak about Robin Harper's amendment and specifically about sexual orientation discrimination, which is a real and serious form of prejudice that takes its form in violence and physical abuse.

In yesterday's *The Herald*, a Mr Cowan from Edinburgh said:

> "I have yet to hear a politician in Scotland stand up and insist that something is done".

I know that there are politicians in the chamber who have said that something should be done about sexual orientation prejudice. Robin Harper, Kate Maclean and others on the Equal Opportunities Committee have consistently argued that something should be done, so what should we do?

In a recent survey of 920 lesbian, gay, transgender and bisexual people, 79 per cent had suffered verbal or physical abuse and 20 per cent had suffered physical abuse. Those are quite staggering figures. One of the problems is that the community is afraid to report crime in our criminal justice system—many serious incidents are still not reported. Parliament must consider the nature of that discrimination and not merely pass a resolution today that will bring a law into force. Each of the prejudices and discriminations that are mentioned in Robin Harper's amendment contains its own peculiar and distinct issues. Parliament should not overlook that when it considers the types of prejudice that people face.

Robin Harper is right to call for the Executive to look into the distinct problem. Before we think about passing laws, we should strengthen our resolve to tackle the lack of confidence that lesbian, gay, transgender and bisexual people have in reporting crime. If we do that, I think we will have done something worthwhile. I support the Executive's position.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I want to speak against Bill Aitken's amendment, which aims to take out section 59A. The Tories normally call for greater sentences for criminal offences, so I am a little bit surprised to see that they oppose such a measure. They normally call for just such a thing to be done.

In a way, however, I am not so surprised, because in my view the Conservatives are completely out of touch with the people of Scotland, especially on this issue. Victims of violent crime are often targeted simply because of their religious beliefs or affiliation—we see it reported in the press frequently. Section 59A will not create a new crime and it will not create a new offence; rather, it will bring our law into line with current law relating to racial intolerance and bigotry. Violent crime is not acceptable and, in my view, violent crime that is motivated by religious prejudice needs to be stamped out completely.

It is rare to be able to bring to bear experiences from my past, having spent most of my adult life in the army, but in the army we have what is called a prevalent offence—some sort of illegal activity that needs to be stamped out. The commanding officer of any military unit can declare a prevalent offence—in other words, it carries a heavier than normal penalty—to eradicate the activity about which the commanding officer of the unit is concerned. That system works in the services. The idea is that there is a desire to eradicate an offence, so minds and attention are focused on it by creating a heavier penalty. That is what section 59A of the bill is all about. I find it incredible that the Tories want to remove it.

The clear message in section 59A is that offences that are aggravated by religious prejudice are not acceptable. I disagree with Roseanna Cunningham; I think that the bill will help to stamp out religious bigotry, but I do not think that it is helpful to try to belittle the whole concept of aggravated offences, because I know from experience that they work.

I heard clearly what John Home Robertson said, but I ask him not to confuse the issue of allegations of religious bigotry—from whatever source they come—with the issue that we are dealing with, which is offences that are aggravated by religious prejudice. We need to remove that. Section 59A is a progressive measure, which should be supported. I hope that Parliament will do that today.

Karen Gillon: I have genuine concerns about section 59A, but not because I condone in any

way, shape or form sectarianism or any other form of religious prejudice. I think that—whatever faith we follow, or whether we follow no faith—I speak for everyone on the Labour benches when I say that.

Sectarianism is a complex issue and it was clear to me from Donald Gorrie's speech that he simply fails to understand the complexities of it. He could not explain what was meant by section 59A, or what

"a social or cultural group with a perceived religious affiliation"

is or is not. That is a significant failing.

I address my comments to the minister, because the minister has an obligation, having supported section 59A, to explain what it means. He must explain that the section is not about someone who is beaten up after a Rangers versus Celtic game being treated better than someone who is beaten up after an Aberdeen versus Dundee United game, and that it is about a far more complex issue. The section is about people who, unfairly, experience prejudice because of their religion.

I have feelings that are similar to those of Roseanna Cunningham, in that I feel that we have now reached a point from which we cannot go back—we must accept section 59A because of that. However, I do not believe that section 59A will deal with sectarianism; it will deal with a few offences. The underlying root causes of sectarianism have still to be tackled. Sectarianism must be tackled whether it is to do with football or the complex issues that prevent people from progressing in their jobs because of the religion that they follow. Sectarianism is real and it is alive, and we as a Parliament have an obligation to deal with it, but not to trivialise it. I am afraid that despite Mr Gorrie's good intentions, his speech this afternoon trivialised the matter.

Elaine Smith (Coatbridge and Chryston) (Lab): On a point of order, Presiding Officer. Will you clarify whether amendment 10, which relates to section 59A, and amendment 1 have been deemed competent in terms of the Scotland Act 1998? The amendments seem to deal with issues that fall under section L2 of schedule 5 to that act, which covers equal opportunities. I am curious to know whether the amendments have been deemed competent.

The Deputy Presiding Officer: The amendments were selected according to the normal criteria. They are within the competence of the Scottish Parliament.

Mr Wallace: Amendment 10, which Donald Gorrie moved, is a technical amendment that the Executive supports. It is intended to put beyond doubt the requirement for the courts to state the extra element of a sentence that is attributable to an aggravation of religious prejudice.

The Executive does not support amendments 7 and 9, which would remove from the bill the provisions on offences that have been aggravated by religious prejudice. It is well known that those provisions were debated at some length at stage 2. I will reflect on some of those debates and some of the background to the provisions.

The cross-party working group that examined possible legislation to tackle religious hatred concluded that such legislation was desirable not on its own, but in concert with a package of other measures to combat religious hatred. When the First Minister and I published the working group's report on 5 December, we announced the Executive's intention to support such legislation and put out for consultation a range of other measures that must accompany the legislation.

Lord James Douglas-Hamilton: Is the minister aware that I reserved the position of the Scottish Conservative and Unionist Party on legislation? I did not agree to legislation on the working group. I made that clear and I made a telephone call about that as soon as I saw the publication, because I felt that it did not make our position sufficiently clear.

Mr Wallace: I acknowledge that. Lord James summarised his position and that of his party, which I accept was his position.

Section 59A puts beyond doubt the principle of penalising people who use religious or sectarian differences as a motive, pretext or excuse for committing an offence. I will deal with some of the detailed points that have been made. Karen Gillon asked—fairly—about the words

"social or cultural group with a perceived religious affiliation".

Section 59A(2)(b) says that an offence is aggravated by religious prejudice if it is

"motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group."

That might refer to an arson attack or other attack of vandalism not on a religious building such as a church, but on a social club or a building that was used by a group that was perceived to have a religious affiliation, such as the Orange order.

Another important point is that a crime must have been committed. If the victim of the crime belongs to a social group that might be perceived to have a religious affiliation, that can stack up to create an aggravated offence under section 59A.

An offence must have been committed. When Lord James Douglas-Hamilton picked up on John

Home Robertson's comments, perhaps he missed the point. In no way do I endorse the quotations that John Home Robertson read out. I know that Donald Gorrie apologised for them, as he said. However, in the circumstances that John Home Robertson described, no offence was committed under existing law, so there was no question of incitement, which the working group rejected. No offence such as assault or arson was committed with religious aggravation.

An original offence, such as an assault or an attack on a mosque or a synagogue, which, regrettably, has occurred, must have been committed and aggravated by a religious dimension. That is why I cannot readily accept what Roseanna Cunningham said. She seemed to throw up her hands in despair and said that fewer convictions would be secured. The important point is that there would still be an offence—it is not as if the police have got to go away and tackle new offences. The offence would be one that was aggravated by a religious overtone or motivation, with evidence of malice or ill-will being evinced by the perpetrator of the offence because of the religious affiliation of the victim.

18:15

Section 59A provides transparency for the victim and the wider community about how the criminal justice system should deal with that type of prejudice. Much has been said about sectarianism, but it is important to recognise that the provisions will apply to attacks on other faiths as well. Reports from some of the Muslim communities say that, in this time of tension, the international attention on their community makes them feel vulnerable. We will not accept or in any way condone attacks on people because of their religion. If such attacks happen, the fact that they are made because of someone's religion aggravates what in any event is a serious offence.

Lord James Douglas-Hamilton argued that, because of the existence of the common law, we should leave the offence to the common law. Similar arguments could have been brought—indeed, I understand that they were brought—when it was sought to codify racial aggravations in the Crime and Disorder Act 1998, yet that legislation has allowed us to track the incidence of racial aggravation through the criminal justice system. The legislation has been shown to work and to work well in practice. It allows fiscals to identify easily the incidence of racial aggravations in an accused's previous convictions in order to decide whether, for example, a case should be dealt with under summary or solemn procedure.

Mr Hamilton: Will the minister confirm that it was not only Lord James Douglas-Hamilton who said that the current law was adequate but that that view was also expressed by the Sheriffs Association?

Mr Wallace: I know that the Sheriffs Association asserted that the offence was covered by the common law. Under the current system, however, it is up to the sentencer to reflect any perceived aggravation in the sentence. Concerns were, and are, expressed that it is not possible to ascertain how often that is done in practice. Section 59A changes that: it will require the sentencer to show how aggravation is reflected in the sentence. Although the courts have held that it is proper and not unlawful for a sheriff to reflect aggravation in a sentence, there is no consistency in knowing whether that happens in practice. Section 59A should help to build confidence that the criminal justice system treats religious aggravations seriously.

Having examined the case for racial aggravations so that we are able to track cases, fiscals can decide whether a case should be heard under summary or solemn procedure. We ought to extend that provision to cases in which religious hatred is involved.

We would not recommend lightly codifying any element of the common law, which after all has a number of admirable features. However, the considerable work that has been undertaken on the subject of religious hatred persuades us that such an intervention is justified in this case. It is simply not good enough to say that we are against sectarianism and against religious prejudice: people expect something to be done about sectarianism and religious prejudice.

Although a range of issues has been put out for consultation as a result of the working group's report, I believe that section 59A sends a very clear signal that we do not tolerate religious hatred. It will be a valuable weapon in our armoury in dealing with offences that involve religious prejudice.

As Mr Harper indicated, the groups that are covered by his amendment 1 are based on the European anti-discrimination framework, which is designed to prevent people from discriminating against each other on certain grounds and provides for civil remedies for such discrimination in certain circumstances. However, it is not quite so simple to transpose that framework into the criminal law—indeed, it may not be appropriate to do so. The four groups that are covered in amendment 1 might not all be in need of the protection in quite the same way.

People in those different groups should be safe and should feel safe. No one is suggesting that it is somehow all right for those groups to be subjected to crime, but hate crime is a crime and such assaults and abusive behaviour are dealt

with day in, day out in our criminal justice system. People who are defined by age, including the elderly, and by disability may arguably be subject to attacks simply because they are vulnerable rather than because of some provable motive of ill-will or malice against them because they are elderly or have a disability.

Amendment 1 does not deal with those groups' vulnerability; it deals only with social prejudice. The common law deals with a broader spectrum of aggravations in respect of those groups than does amendment 1. That is not to say that the underlying principle that Robin Harper has offered for debate is not worthy of further consideration. However, we believe that much more work needs to be done to determine the place of different groups in respect of aggravations.

During stage 2, we said that we would look into the matter further and, after discussions with Robin Harper and equality representatives, we are persuaded that such issues would best be examined by an Executive working group. Accordingly, I announce our intention to have further suitable consultations with the equality groups and to convene such a working group. Although we will not support amendments 1 and 2, I welcome the fact that Robin Harper has raised this important issue. I hope that he believes that it has been dealt with sensibly.

Donald Gorrie: Jim Wallace has covered the ground well. I agree entirely with Karen Gillon that section 59A does not deal with the root causes of sectarianism. However, I believe that it makes a small step towards changing people's attitudes, which is what it is all about. It sends out a message that, for the first time, the law is taking seriously religious and sectarian hatred and the crimes that are committed because of that hatred, which are not currently on the statute book.

I appreciate the fact that members are concerned about the section. I have lived with the proposition for two years and I think that I understand it. However, some members are new to this curiously worded section, which, like all laws, is not really in English but in legalese. The proposition does not create any new offences. It takes existing offences—not words that may have been foolishly written or said—and treats them more seriously. That is a modest and reasonable approach towards a very complicated problem that I do not claim to understand any better than anyone else. I urge members to support the Solicitor General for Scotland and Jim Wallace, who have set the matter out very well, and I press amendment 10.

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

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
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)
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, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)

Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
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)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
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)
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)
Young, John (West of Scotland) (Con)

ABSTENTIONS

Hamilton, Mr Duncan (Highlands and Islands) (SNP)

The Deputy Presiding Officer: The result of the division is: For 95, Against 15, Abstentions 1.

Amendment 10 agreed to.

Amendment 7 moved—[Bill Aitken].

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

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

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

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
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)
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, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Paterson, Mr Gil (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

ABSTENTIONS

Hamilton, Mr Duncan (Highlands and Islands) (SNP)

The Deputy Presiding Officer: The result of the division is: For 17, Against 95, Abstentions 1.

Amendment 7 disagreed to.

After section 59A

Robin Harper: In the light of the commitment that has been made by the minister, I will not move amendment 1.

Amendment 1 not moved.

The Deputy Presiding Officer: I bring the discussion of amendments to a close; it will resume tomorrow.

Parliamentary Bureau Motions

18:25

The Deputy Presiding Officer (Mr Murray Tosh): The next item of business is consideration of two Parliamentary Bureau motions. I ask Euan Robson to move motions S1M-3918 and S1M-3919 on the designation of lead committees.

Motions moved,

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the draft Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the draft General Commissioners of Income Tax (Expenses) (Scotland) Regulations 2003.—[*Euan Robson.*]

Motion without Notice

18:25

The Deputy Presiding Officer (Mr Murray Tosh): At this stage I am minded to accept a motion without notice to bring forward decision time. Is it agreed that we take such a motion?

Members *indicated agreement.*

Motion moved,

That the Parliament agrees under rule 11.2.4 of Standing Orders that Decision Time on Wednesday 19 February 2003 be taken at 6.25 pm.—[*Euan Robson.*]

Motion agreed to.

Decision Time

18:25

The Presiding Officer (Sir David Steel): Before I put the five questions to members, I remind them that the Electoral Commission is making a presentation—accompanied, I am glad to say, by refreshments—in committee room 1 at 6.30 pm.

The first question is, that amendment S1M-3914.1, in the name of Richard Lochhead, which seeks to amend motion S1M-3914, in the name of Ross Finnie, on fisheries, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Margo (Lothians) (Ind)
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)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Scott, Tavish (Shetland) (LD)
Sheridan, Tommy (Glasgow) (SSP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (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)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (South of Scotland) (Con)
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)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McLetchie, David (Lothians) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
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)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Young, John (West of Scotland) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Grn)

The Presiding Officer: The result of the division is: For 32, Against 80, Abstentions 1.

Amendment disagreed to.

The Presiding Officer: The second question is, that amendment S1M-3914.2, in the name of Mr Jamie McGrigor, which seeks to amend motion S1M-3914, in the name of Ross Finnie, on fisheries, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Johnstone, Alex (North-East Scotland) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLetchie, David (Lothians) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Mr Murray (South of Scotland) (Con)
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)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
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)
Harper, Robin (Lothians) (Grn)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
Sheridan, Tommy (Glasgow) (SSP)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Margo (Lothians) (Ind)
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)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

The Presiding Officer: The result of the division

is: For 17, Against 70, Abstentions 28.

Amendment disagreed to.

The Presiding Officer: The third question is, that motion S1M-3914, in the name of Ross Finnie, on fisheries, be agreed to. Are we agreed?

Members: No.

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

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Margo (Lothians) (Ind)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
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)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Sheridan, Tommy (Glasgow) (SSP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

ABSTENTIONS

Harper, Robin (Lothians) (Grn)

The Presiding Officer: The result of the division is: For 66, Against 49, Abstentions 1.

Motion agreed to.

That the Parliament welcomes the Executive's commitment of up to £50 million in aid to assist fishermen,

on-shore fisheries businesses and fishing communities throughout Scotland as a very substantial response to the outcome of the EU Fisheries Council in December 2002; welcomes the result of quota negotiations in the nephrops fishery and the progress made in reforms to the Common Fisheries Policy at that Council; endorses the need for sustainable economic development of Scotland's fishing industry and communities; recognises this can best be achieved through healthier fish stocks; acknowledges this implies further restructuring of the white fish sector; welcomes the provision of up to £40 million for further decommissioning; welcomes the provision of up to £10 million in transitional support to facilitate rational economic planning and adjustment by those who wish to remain in the sector; notes that such transitional support will be conditional upon, for example, non-diversification into other valuable fisheries, such as the west coast and North Sea nephrops fisheries, and supports the Executive in its negotiations to secure a more economically realistic EU legal framework initially through amendment to the current interim EU regulation and thereafter through a successor regime.

The Presiding Officer: I will put the next two questions together, unless anyone objects. The question is, that motions S1M-3918 and S1M-3919, in the name of Patricia Ferguson, on the designation of lead committees, be agreed to.

Motions agreed to.

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the draft Rehabilitation of Offenders Act 1974 (Exclusions and Exceptions) (Scotland) Order 2003.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the draft General Commissioners of Income Tax (Expenses) (Scotland) Regulations 2003.

The Presiding Officer: That concludes decision time and our business for today.

Meeting closed at 18:29.

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