MEETING OF THE PARLIAMENT

Wednesday 26 February 2003
(*Morning*)

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

Time for Reflection

The Deputy Presiding Officer (Mr Murray Tosh): Good morning. Major Alan Dixon, assistant to the Scotland Secretary of the Salvation Army, will lead our time for reflection.

Major Alan Dixon (Assistant to the Scotland Secretary of the Salvation Army): It hardly seems conceivable that I have been back in Scotland less than a month since my appointment to work here began at the end of January. Since coming to Edinburgh, life has been busy, which is the usual understatement from a person moving from one job to another. We have all been there; we all know what it is like.

Returning to Scotland—returning to anything—causes us to look back and think of the changes that have happened since we were last there. I have found myself thinking about some of those changes, and about the changes still to come in my life. There have been changes in how the Salvation Army in Scotland is administered. There have been changes in our social centres; we have had to become more professional in pursuing our aims.

There have also been changes in this Parliament. When I left Scotland in 1997, a Scottish Parliament was still a dream. People hoped for it, some even prayed for it, but now it is a reality. The ways of working here have changed in the short time that the Parliament has existed, and no doubt they will change further in future.

Change is part and parcel of life. As someone observed, constant change is here to stay. Although some people welcome change, it places us in flux, and for others it is a time of uncertainty.

While I was in Brussels with other Christian and faith leaders last week—we were paying a visit to the European Parliament—I was given a book with the intriguing title "Values, Challenges and Hopes". That could be a summary of what we are about. We all have values that motivate us, challenges that form us, and hopes—and, some would add, dreams—that keep us going. That early-day Christian visionary and leader, St Paul, reminded one of his congregations that was facing change and uncertainty:

"Don't be weary in well doing, for in due season you will reap what you sow".

That was not a pious remark but a challenge to undertake to do and become the best possible, for

"What I am is God's gift to me; what I become is my gift to God".

May our prayer be that everything that we do today is for the good of all.

Business Motion

09:34

The Deputy Presiding Officer (Mr Murray Tosh): The next item of business is the consideration of business motion S1M-3957 in the name of Patricia Ferguson on behalf of the Parliamentary Bureau, which sets out a timetable for the stage 3 consideration of the Title Conditions (Scotland) Bill this afternoon.

Motion moved,

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

Groups 1 to 9—no later than 45 minutes

Groups 10 to 16—no later than 1 hour 45 minutes

Groups 17 to 26—no later than 2 hours 30 minutes

Motion to pass the Bill—no later than 3 hours.—[*Euan Robson.*]

Motion agreed to.

Health

The Deputy Presiding Officer (Mr Murray Tosh): The next item of business is a debate on motion S1M-3944, in the name of Mary Scanlon, on health.

09:34

Mary Scanlon (Highlands and Islands) (Con): First, I should like to comment on the Scottish Executive's amendment to the motion.

Over the past four years, we have been deluged by health motions congratulating the Labour and Liberal Democrat management of the health service. Today, the tone has changed. The amendment includes phrases such as "concerned about waiting times" and "tackling unacceptably long waits"; it also refers to looking forward to further reductions in the number of patients waiting longest for treatment. We all look forward to those reductions. The 107,382 people on the true and deferred waiting list are very much looking forward to a reduction in their wait. At least the failure is admitted; the Executive cannot argue against its own figures.

The Conservatives welcome the fact that the Executive now supports the strengthening of the primary health care sector—better a sinner who repenteth. We also agree with that part of the amendment that congratulates staff throughout the national health service in Scotland on their hard work, dedication and commitment. Providing such a service against the odds and lacking support has to be commended.

However, let us be fair. What has been done? A waiting times database has been set up, which, according to weekend press reports, promised one wait of four weeks, but which takes up to 18 months. That tool to improve patient choice and to drive waiting times down has resulted in one Aberdeen GP saying that most people have looked at the website, fallen about laughing and not looked again. Inventive as ever, our Scottish Executive admitted that it had filled the gaps with what it called "historic information". Historic information, in particular from the Tory years, might be what patients would like to see, but, after six years, it is time for ministers to admit the Executive's figures.

In 1999, Labour promised to cut waiting lists by 10,000; instead they increased by 12,000. It promised to end mixed-sex wards; 36 still exist at the last count. It promised to reduce bureaucracy, but that has increased. It promised to reduce waiting times for in-patient care from 12 to nine months; 6,500 people are still waiting more than nine months for treatment. The average waiting time to see a consultant is up by 12 days.

Last week in Inverness, we heard that a person could wait up to 86 weeks for a diagnosis of diabetes. Some 7 per cent fewer patients are seen within 26 weeks. Bedblocking has increased by more than 1,000, and cancelled operations are up by 4,000. The number of beds has fallen by 637 and the number of administrators has risen by 1,190. The total number of out-patients who are seen is down by 9,000 and more than 15,000 patients were turned away from surgery last year. A recent Audit Scotland report found that 50 per cent of wards were understaffed, and that money spent on bank and agency nurses had risen by £10 million.

Another promise was to increase heart bypass operations by at least 500; the Executive has managed an increase of 67. The Arbuthnott funding was welcomed in the Highlands until it was discovered, as I read last week, that 30 per cent of that funding will pay for financial deficits.

It takes amazing incompetence to spend £2 billion extra and achieve longer waiting lists, longer waiting times, more hospital-acquired infections, more rotten teeth and the worst life expectancy in Europe.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): Does Mary Scanlon agree that the delivery of Arbuthnott, with or without the 30 per cent, is patchy in the Highlands? Some bits of the Highlands are doing better than others, which is a cause for concern for the area that we represent.

Mary Scanlon: The main cause for concern is undoubtedly in the area that the member represents—Caithness and Sutherland—and Arbuthnott is very much needed there. When we read how much it could help, and that 30 per cent of funds has gone into balancing the books, people in the area have a right to feel let down.

All is not lost; things can get better. Indeed, the situation was getting better under the Conservatives—[*Interruption.*] The figures speak for themselves. General practitioner fundholding empowered GPs in the primary care sector to offer more services nearer to the patient's home. More chronic disease management could be carried out for epilepsy, asthma, heart disease and diabetes. The Conservatives would make greater use of Scotland's community hospitals instead of ignoring their potential. We would give GPs the power to respond to the priorities of their patients rather than to centrally imposed targets and directives—not to mention the "initiative of the week".

Only 15 per cent of GPs believe that local health care co-operatives have improved the quality of care; however, small practices or LHCCs could manage budgets and develop services if they were only given the chance. It seems incredible that the primary care team is expected to provide access to a health professional within 48 hours while a six or a 12-month wait for secondary care is deemed acceptable.

Moreover, given that the whole world is online and that IT systems in all businesses are integrated, why does it take four weeks for a consultant to get an asthma patient's discharge letter typed and sent out to the GP? A communications system has to be a priority.

By making more information and choice available, the Scottish Conservatives would empower not only GPs and the primary care team, but the patient. We should tell people that flu and childhood vaccines contain mercury, inform them of potential side effects and the efficacy of the vaccine, and let them make the choice. Empowered patients will soon become the most effective standards of quality. The Conservatives would allow patients to choose the hospital in which they wish to be treated and then let the money follow the patient to reward hard work and patient care. We would also involve NHS staff in the decision-making process.

Furthermore, we would let the independent sector bid to provide health care, as long as the quality and the price were right. However, that approach should not be used as a panic measure two months before an election when the waiting figures become an electoral embarrassment. Instead, we would put out tenders in advance, take advantage of economies of scale and negotiation and allow the independent sector to plan ahead and the patient to plan for surgery—in short, there would be forward planning, not crisis management.

The Scottish Conservatives would introduce greater autonomy for hospitals to apply for foundation status. Quite honestly, if such a step is all right with new Labour in England, why can it not be introduced in Scotland? Such hospitals would continue to be part of the NHS and would operate as not-for-profit companies with their own directors and with far greater freedom to make clinical judgments. They would be able to set their own pay scales, borrow money and keep the proceeds of land sales. Money would follow the patient, which would ensure that well-run hospitals were well-funded hospitals.

The single budget in community care—which is a measure that I supported throughout the passage of the Community Care and Health (Scotland) Act 2002—would ensure that patients were appropriately cared for in accordance with their needs. In the Highlands, the level of bedblocking has risen for the past three months. At every surgery that I hold, I see more cases of families at their wits' end, desperate to fight the bureaucratic system that stops elderly parents receiving care for their needs.

As for drug and alcohol treatments, we need better integration of services and access to detoxification and rehabilitation facilities where needed. There is no point in sending patients away for a few weeks or months and telling them to come back when the NHS is ready. In this case, what should count is when the patient is ready.

Finally, according to the British Medical Association Scotland, Scotland's tradition of training and exporting doctors also seems to be at risk. Funding for better teaching facilities is needed, and more attention must be given to the recruitment and retention of suitably qualified academic staff. Furthermore, we must address the competing demands of NHS work, medical research and teaching commitments. The BMA has said that unless these issues are addressed quickly, the future training of Scotland's doctors and medical advances will be jeopardised.

This devolved Scottish Parliament has always been proud of the country's medical history and faculties. I am pleased to have brought this matter to the minister's attention, and I hope that he will enable doctors to do their job. After all, we have been so proud of that job in the past.

I move,

That the Parliament acknowledges that funding for the NHS in Scotland has continued to increase since the Parliament was established; regrets, however, that this increase in funding has only come about as a result of an increase in the tax burden imposed on everyone in Scotland and that it has not led to an improvement in the service for patients, who have to wait longer for treatment and face the prospect of being forced to go abroad to get the treatment they need in a reasonable time; believes that the Scottish Executive's centralising approach is not working because, despite the best efforts of NHS staff, the current centralised, monopoly system of providing healthcare wastes too much money and therefore does not result in an improvement in front-line patient care, and calls on the Executive to match the extra investment with a sustained and coherent programme of reform that builds on the NHS's fundamental values of high-quality healthcare available to all, irrespective of their ability to pay, and seeks to realise these values by putting the needs and expectations of patients at the heart of the service by ensuring that money follows patients so that they have real choice over the treatment they receive, creating a partnership between the NHS and the independent sector so that all our facilities are used to cut waiting lists and times for NHS patients and devolving power to GPs and local hospitals so that NHS staff have far more say in how the health service is run so that it responds to the real needs of patients.

09:45

The Minister for Health and Community Care (Malcolm Chisholm): I congratulate Mary Scanlon on securing the debate. Indeed, it is the first debate that an Opposition party has called on national health issues in this parliamentary session, although I accept that the SNP secured a debate on health issues in Glasgow.

However, I deplore the wording of Mary Scanlon's motion for at least three reasons. First, the Conservatives have created a fiction in order to have something to attack. For example, they talk about the Executive's centralising approach. If they had listened to anything that I had said about health over the past 15 months, they would know that that was a piece of fiction. Of course, there is a case for having such an approach, for example in relation to national standards. We are the first Government to have introduced national standards and inspections in Scotland, and are proud to have done so.

That said, I have consistently believed in devolving powers to ensure that NHS staff have more say in how the health service is run. That approach has already been well demonstrated by the way in which the cancer strategy has moved forward with some success over the past year. Indeed, the cancer world has admitted as much.

Mary Scanlon said that she now supports the strengthening of the primary health care sector. I refer her to the debate on primary care on 25 April last year, in which every word was about strengthening primary health care and devolving more power and resources to those services. In fact, we will talk about many of those themes tomorrow.

Moreover, Mary Scanlon said that we do not put the needs and expectations of patients at the heart of the service. However, those issues are at the very foundation of our health policy. Indeed, we have already introduced a whole series of initiatives that address patient focus and public involvement. That said, I accept that more needs to be done, and that point will form an absolutely central theme tomorrow.

Mary Scanlon has said that we do not support choice. If she does not listen to what I say in debates, perhaps she should read the detailed interview that I gave in *The Herald* on 31 January, in which I make it absolutely clear that I believe in choice. However, choice is part of a bigger picture, because what patients want at the end of the day are high-quality services.

Finally, Mary Scanlon mentioned the independent sector. Perhaps she should have noticed the announcement that we made last week of £5 million for orthopaedic operations in the private sector. Five hundred and ninety patients will be grateful for that. I should also point out that that is not an about-turn; I was being criticised in my first month in office for my willingness to use the independent sector. Indeed, I can refer her to those sources.

Ben Wallace (North-East Scotland) (Con): Why did the minister not allow patients on the longer waiting list to exercise choice three years

ago and let the NHS purchase on their behalf spaces in independent hospitals or from not-for-profit providers?

Malcolm Chisholm: I have already answered that point. I refer Mr Wallace to what I said in December 2001. [*Interruption.*]

The Deputy Presiding Officer: Order.

Malcolm Chisholm: The second reason why I object to the motion centres on its claim that funding for the NHS

"has not led to an improvement in the service for patients, who have to wait longer for treatment".

The general charge is that the funding has not led to improvements.

Mary Scanlon accused me of changing my tone. I have never changed my tone; I have always said that there are problems, and I have been more willing than most politicians to face up to that fact. However, many good things and improvements are happening in the health service and I object fundamentally to the fact that, in her motion and her speech, Mary Scanlon did not acknowledge any of those. What she said does not accord with the experience of patients; I acknowledge that too many people wait too long, but the majority of patients that one speaks to have a good experience of the health service.

Moreover, the relentless negativity that we have heard once again from Mary Scanlon demoralises staff.

Ben Wallace: Will the minister give way?

Malcolm Chisholm: Not at the moment. [*Interruption.*]

The Deputy Presiding Officer: Order.

Malcolm Chisholm: I want to deal with three things that Mary Scanlon mentioned. Of course we still have problems with delayed discharge, but she knows that the figures are coming down significantly. Frank McAveety will probably say more about that in his closing speech.

Mary Scanlon also repeated an assertion about administration. However, she knows full well that the number of senior administrators is down because we do not have the bureaucracy of the Conservatives' internal market. The administration figures include ambulance staff and people from the blood transfusion service. Does she want to lay those people off as well?

Mary Scanlon also mentioned heart bypass operations. We know that the median waiting time for those operations has fallen from more than 150 days to less than 50 days. Finally, she has the brass neck to criticise an in-patient wait of between six and 12 months when she knows that under the Conservative Government patients waited 15 months for in-patient treatment. Obviously, I will address waiting. We must look at the long waiters. The figures will come out tomorrow and I invite Nicola Sturgeon and others to consider the long waiters, because that is who we are targeting.

I have been willing to admit our failings in relation to waiting. I am the first to admit that we have not adopted radical enough solutions to out-patient waiting. That is why out-patient waiting has been my top priority over the past few months and why the first major task of the centre for change and innovation is the out-patients project, which will examine the problems in a far more radical and fundamental way. We cannot deal with the fundamental problems of waiting unless we are into redesigning services and consider how to deliver them differently. That is precisely what we are doing, but I accept that we have not dealt with the matter radically enough. I have no problem admitting that.

The First Minister made a significant advance on waiting last week when he gave guarantees that go far further than the guarantee on heart surgery that has been given in England, which politicians have referred to in the media. We are saying that, by the end of this year, if someone has waited longer than nine months for their in-patient treatment, we guarantee that they will get the treatment in another hospital or in the private sector or—in extreme circumstances—somewhere else in Europe. That shows that we are confident that we can reach the targets that we have established for ourselves.

There have been problems with the database. We knew that we did not have the information. That is why the system is currently being piloted; it will go fully public when all the information is up to date. The idea of the database is still to support patient choice. It is a major step forward. There are teething problems; we often get bad publicity about teething problems. An example of such problems was a certain group of patients from Glasgow at the Golden Jubilee national hospital, but the reality is that the fundamental story of the Golden Jubilee hospital is a good one. It is exceeding its targets and it is treating thousands of patients who otherwise would have had to wait longer.

I admit freely that there are problems, but we are focused on dealing with them. Let us remember the success stories of the health service and take a balanced approach. Politicians will not do themselves any favours over the next two months if they take a one-sided approach to those issues. It does not surprise me that such an approach is taken by the Conservative party, which has no policies on health except to provide fewer resources and have more people paying for their own health care.

I move amendment S1M-3944.1, to leave out from "acknowledges" to end and insert:

"welcomes the further increases in the Scottish Executive's investment in health and health promotion announced earlier this month; notes that these extra resources must be balanced by reform in the NHS for full benefits to flow to service users; supports the on-going work to put patients at the centre of service planning and quality improvement in the NHS; supports the strengthening of the primary healthcare sector and decentralisation of decision-making; is concerned about waiting times for some out-patients; agrees with the priority given to tackling unacceptably long waits; commends the new maximum hospital waiting times guarantees for NHS patients given by the Executive; looks forward to further reductions in the number of patients waiting longest for treatment; welcomes the recent reduction in the number of delayed discharges from Scottish hospitals and the active collaboration between health and community care services in achieving this, and congratulates staff across the NHS in Scotland on their hard work and dedication to a highly regarded public service."

09:52

Nicola Sturgeon (Glasgow) (SNP): I was beginning to wonder whether I should offer to hold the jackets of the two parties that are united only in their failure to deliver improvements in the national health service.

I find Tory health debates a wee bit difficult to stomach. Frankly, having to listen to the Tory party—that for 18 years underfunded and divided the national health service, cut the service's capacity and sowed the seeds of many of the problems that the service faces today—tell us that it has all the answers is more than anybody should have to face on a fine Wednesday morning.

Behind the cuddly language of the Tory motion lies that party's real intent. The key phrase in the motion is:

"creating a partnership between the NHS and the independent sector".

That is, the private sector. What does that mean? The Tories have a duty to be honest about what it means.

Ben Wallace *rose—*

Nicola Sturgeon: I will not take an intervention just now.

If we are being charitable to the Tories, all it means is using all the spare private capacity to do NHS operations, but to present that as a panacea for the problems in the health service is dishonest. There is limited private capacity in Scotland. There are three times the number of blocked beds than private beds. Staff shortages mean that every time that a consultant does an operation in the private sector, they are not doing one on the NHS. Of course, that is not what the Tories mean by talking about a partnership with the private sector. The real Tory agenda is to expand the role of the private sector in the health service.

Ben Wallace *rose—*

Nicola Sturgeon: Ben Wallace will get his chance; it is his turn to listen to somebody else.

The Tories want to let the private sector run our hospitals. Of course, if the private sector runs our hospitals, it does so for profit. That means an inevitable increase in charging for health care and a two-tier health service. That is the real agenda of the Conservative party. It would be better for the Conservative party to be honest about that and let the Scottish people cast their verdict in a few weeks' time.

If the Tory solution is not the right one—and let us be emphatic that it is not—what is? Things are not getting better. Eighteen years of Tory failure have been followed by six years of Labour failure. In many ways, this is a debate between the Conservative party and the Labour party—with the Liberal Democrats having to take some responsibility—about who has failed most in the health service. Waiting times are 18 days longer than they were in 1999. The Executive insists on tinkering around the edges. The waiting times database, which is tinkering around the edges, is not even accurate.

The central point, which is missed in the Tory motion and is the point that Labour refuses to face up to, is that the problem in the health service is not fundamentally one of structure, although structural changes should be made. For example, I want to see the abolition of trusts, which were created by the Tories and are now redundant to the management of the national health service. The fundamental problem is one of undercapacity. There are too few beds and too few front-line doctors and nurses. There are 600 fewer hospital beds than there were in 1999 and occupancy rates are 85 per cent and above. That is crisis management. The result is that wards are frequently closed and operations are cancelled; 15,500 operations were cancelled last year.

The Minister for Health and Community Care now freely admits that we have an either/or health service. We can have an NHS that can deal with emergency admissions or one that can deal with planned admissions; we cannot have one that can do both to the standard that is required to meet demand. We need a planned approach to beds; that would start with a national review, the kind of exercise that is already carried out in England, the Republic of Ireland and Wales, to name a few.

The Minister for Health and Community Care crows about a record number of nursing posts. He ignores the fact that posts do not treat patients—nurses treat patients. Three per cent of nursing posts are currently vacant.

Malcolm Chisholm *rose—*

Nicola Sturgeon: I am in my last minute.

Vacancies are at an all-time high, but the Executive refuses to deal with the problem. Nurses are leaving the NHS; some 2,500 have left the health service to go to England or further afield since 1997. We need a solution here in Scotland to deal with that. That is why I say that there should be an 11 per cent pay rise for nurses to reward them better and to give Scotland the competitive edge in nurse recruitment that we so badly need.

Let us have less rhetoric from the Tories and fewer excuses from Labour. There must be a focus on the core problems in the health service and some solutions to tackle them. That is what the SNP offers.

09:58

Mrs Margaret Smith (Edinburgh West) (LD): I am pleased that Mary Scanlon at least acknowledges that the Scottish Executive is increasing investment in the NHS and our country's health. The health budget has risen from £4.6 billion in 1998 to £6.7 billion this year. The 1 per cent increase in national insurance that will be levied from April will fund unprecedented spending—£8 billion will be spent on Scotland's health in 2005-06.

I agree that the increased investment must be seen to deliver real and sustained improvement and change. There must be a new emphasis on long-term health improvement, a greater emphasis on patient choice and the patient's voice, an end to restrictive working practices, better use of technology and a streamlined service that is stripped of unnecessary bureaucracy. Decision making should be devolved to front-line staff as much as possible and the service should put the rights and responsibilities of patients at its heart.

The Liberal Democrats believe in increased investment in the NHS and in Scotland's health; it is clear that the Tories do not. The record investment over the next few years would not have been available had the Tories been in power. On health, as on so many other matters, the Tories are out of step with the people of Scotland. Nicola Sturgeon is right that the Tory motion is a Trojan horse. It is not honest about what the Tories really want to do to the health service. They want to privatise it—not to improve patient care, but to increase private profit.

The Liberal Democrats took an honest approach at the last general election. We believe in public services and believe that those services need to be paid for. People care about the NHS. I am happy to defend that position, because we will make a difference to people's health. That is what my constituents and other members' constituents want.

The NHS needs to invest in more than bricks and mortar; it must invest in equipment and staff and it must highlight health in a more general sense. Health improvement and illness prevention are central to Liberal Democrat thinking on health. It is a pity that, in the motion, the Tories are as usual concentrating on short-term results and issues, such as opening up the Scottish health service to the independent sector. The motion does not even mention the need for wider health promotion. I am glad that Mary Scanlon mentioned drug and alcohol treatments, but this country's health suffers as a result of two decades of neglect by the Tory party, which has been more interested in the internal market than in patient care.

The Liberal Democrats believe that the Scottish Executive is right not only to concentrate on the NHS, but to invest in health promotion and in measures to tackle health inequalities. We look forward to focusing on the action to improve health that will be outlined in the white paper that is due out tomorrow.

We applaud the Executive's healthy living campaign, which was launched in January. We also applaud the introduction of nutritional standards for school meals and the scheme for free fruit in schools in particular. Healthy living and a healthy diet are habits and it is important that we give such habits to our children when they are young, particularly if we want to tackle the problem of childhood obesity. The message is clear. If we invest in the diet of our children today, we will save in the long run through reduced levels of coronary heart disease, stroke, cancer and diabetes.

We need to balance investment with reform and we need to target resources. It is important that we invest properly in the NHS so as to reward innovation, to encourage the effective redesign of services—with full clinical and patient input—and to enforce clinical standards.

Yesterday, the Health and Community Care Committee heard that the Scottish intercollegiate guidelines network guidelines on epilepsy are being put into practice in four—

Ben Wallace *rose*—

Mrs Smith: Who are you? I will not take an intervention.

It is obvious that staff are at the heart of an improved service. Recently, there has been a nurses' settlement and there have been deals to begin to tackle low pay. In the past week, an announcement has been made about the new GP contract that has been agreed between the BMA's general medical practitioners committee and the NHS Confederation. If the contract is accepted, it will be accompanied by substantial additional resources for the development of primary care

services. Payment will be linked to the quality of care that is provided to patients—that should go a long way towards ending the current disincentives in the system, whereby those who provide extra clinics and services that improve patient care and ease the burden on the secondary health sector often find themselves penalised for doing so.

It is important that the contract links investment to the specific health needs of local communities rather than involving simple payments to doctors in the old one-size-fits-all approach. We want a scheme that rewards incentive and innovation. The primary care sector delivers 90 per cent of this country's health care and has a similar satisfaction rating. People believe that their GPs and other practice staff are doing a good job. The new contract will assist the primary health care team to expand its role even further and I hope that Scotland's doctors will accept it.

It is right to focus on the wider health picture and the primary care arena, but it is also important that we continue to invest in the acute sector. We agree that the patient should be at the heart of NHS decision making and that what is best for the patient should be the driving force behind investment. The delivery of patient care is more important than who delivers it. Therefore, we welcome the recent announcement that the Executive is putting a further £5 million into an initiative to provide 590 orthopaedic operations for NHS patients in private hospitals. I know that my constituents will welcome the £680,000 that is earmarked for Lothian.

Malcolm Chisholm has been refreshingly frank today about waiting times, as he has been in the past, and we welcome the First Minister's recent comments on the matter. We are not saying that there are no problems in the NHS. However, through the waiting times initiatives, the national waiting times unit, the delayed discharged action plan and other initiatives, we believe that the Scottish Executive is on the right track to improve our country's health care. Many of the approaches that I have outlined will not be delivered overnight, but that does not mean that we are not right to take forward a health agenda that is wide in its scope and focuses increasingly on the patient.

The Deputy Presiding Officer: Eight members wish to speak in the open debate. They may all speak if members are disciplined about sticking to the four minutes that they are allocated.

10:04

Alex Johnstone (North-East Scotland) (Con): It is nice to see a Tory motion again provoking vociferous debate in the Scottish Parliament. It takes the issue of health to get temperatures up in the Parliament and I am delighted that that is again happening, especially when we consider the performance of the Minister for Health and Community Care, who is not in the chamber at the moment.

In dealing with the motion, the minister was on the defensive from start to finish. He admitted his guilt in respect of all Mary Scanlon's accusations and accepted his responsibility for virtually all the bad figures that were quoted. He realises only now—with an election staring him in the face—that the time has come to try to address those figures.

We need to consider seriously what we should do. Mary Scanlon made a positive speech in which she outlined Conservative policy and what the Conservatives would do—many others can be criticised for not outlining their policies on the subject. Her proposals would genuinely increase the performance of the health service.

I am prepared to defend issues such as the internal market as an important part of the Conservatives' contribution to the health service. However, the issue that is most often raised with me is GP fundholding. GPs would like to return to that system, if possible. Local health care co-operatives have resulted in the centralisation of power in larger groups and the removal of powers from individual GPs. Malcolm Chisholm would deny that such centralisation has happened, but it has. GPs want that power back and we want to consider policies that will deliver it.

Mary Scanlon went to great lengths to explain our policy on hospitals, including the establishment of foundation hospitals. What she said is not new, even to the Labour party—I am talking about Labour party policy south of the border. The potential for improving health provision in Scotland and the Labour party's policy in the south have been ignored in the dogmatic pursuit of what we can only describe as a pre-1979 attitude to health care provision.

On policy, we heard something from Malcolm Chisholm and we heard a great deal from Mary Scanlon, but we heard absolutely nothing from the SNP. Nicola Sturgeon criticised our policy and Labour's policy, but she did not say what SNP policy was. The SNP was not even prepared to lodge an amendment to the motion. It makes the naive assumption that mair tax will inevitably result in better provision and that independence will solve all Scotland's ills, but we cannot accept that naivety any longer.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Will the member take an intervention?

Alex Johnstone: I am afraid that I cannot, as I am coming to the end of my speech.

Mr Stone: It would be a friendly intervention.

Alex Johnstone: I cannot accept even a friendly intervention.

It is absolutely essential that we accept the need for greater autonomy for hospitals. We should allow them to apply for foundation status so that they can set their own pay and conditions and plan on their own behalf in response to local demand. That would be particularly helpful in recruiting doctors, nurses and other NHS staff. The minister identified problems in that respect.

We would create a partnership between the NHS and the independent sector so that all our facilities were used to cut waiting lists and waiting times in the NHS. That would not be a desperate response and a desperate measure that resulted simply from the proximity of the forthcoming election.

10:08

Janis Hughes (Glasgow Rutherglen) (Lab): Yet again, I am truly staggered by the fact that the Tories have chosen to debate the health service. I cannot believe that Mary Scanlon and the Conservatives have not realised after four years that they are skating on thin ice. For a representative of a party that almost decimated our health service over 18 years to tell us that the Government's initiatives have not led to an improvement in the service is just gross hypocrisy.

The Conservative motion states that the NHS should have

"far more say in how the health service is run".

When the Conservatives were in power, they thought that NHS staff amounted to doctors and nurses and they forgot that other NHS staff should have had a say in how the service was run. The Conservatives privatised the jobs of those staff and it is hypocritical of them to come to the chamber and say that NHS staff should have

"far more say in how the health service is run".

I worked in the NHS for 18 years under Tory rule—I am fed up with saying that in the chamber—and believe in quality health care for all. I believe in a system that is free at the point of delivery and that caters for everyone in our society, regardless of ability to pay. I believe in the NHS and am proud to belong to a party that believes in it. The Tories do not believe, will not believe and have never believed in the NHS.

I am glad that the motion struck one positive note, in acknowledging that the Executive is investing record amounts in the NHS. Thanks to Labour's sound management of the economy and our commitment to public services, the NHS has never been in better shape financially—in sharp contrast to the lean years under the Tories. However, Nicola Sturgeon is right to say that the issue is not just about money.

Mr David Davidson (North-East Scotland) (Con): Will the member give way?

Janis Hughes: I am sorry, but the Conservative party has nothing to say on this matter. I have heard it all.

I am only too willing to accept that we must ensure that reform takes place. Such reform is necessary because of the mess in which the Tories left us when the people of this country decided that enough was enough.

Mary Scanlon may remember that in last year's debate on the health service we focused on reform of the NHS. The Parliament heard how we are reforming the NHS by improving accountability and governance, working to reduce waiting times and improving choice for patients. Malcolm Chisholm was honest in saying that we have not got things right yet and are still working on them. However, when the Tories were in power, they did not manage to do the things that I have mentioned.

Would the Tories have tried to bring the Health Care International hospital at Clydebank into the NHS? Of course not. It is infinitely more likely that they would have dispatched NHS hospitals to the private sector, which they believe in doing.

We must give credit to the Executive for daring to think outside the box. The decision to purchase the HCI hospital in Clydebank to create a national waiting list centre was bold, but I hope that time will show it to have been correct. Similarly, our commitment to reducing waiting times through the creation of ambulatory care and diagnostic centres or by allowing people to be treated in other health board areas is a welcome step—much more welcome than anything that we have ever heard from the Tories.

I defy anyone to condemn the £700 million investment in Greater Glasgow NHS Board, which will lead to major changes in service provision across Glasgow. Although change is never welcomed by everyone, if we are to modernise and to continue to improve the NHS, change is necessary.

To be fair, the Tories tried to change the NHS. They introduced the internal market, which ushered in the two-tier health service and destroyed staff morale. I was one of the staff whose morale was destroyed during that time. The Tories' current planned reforms are all aimed at bringing about what even Margaret Thatcher could not achieve—the destruction of the NHS and the proliferation of private health care. I will not take any lessons from the Tories on how to reform the NHS.

The Executive has a good story to tell—of eight new hospitals built, of more doctors and of more

nurses. As I have said many times, we are not complacent. Everything in the garden is not rosy, but it is certainly much rosier than it was during the dark Tory years. For that, we should all be thankful.

10:12

Colin Campbell (West of Scotland) (SNP): I am delighted that Malcolm Chisholm's amendment indicates that he is concerned about waiting times for out-patients. Recently, I was involved with the case of one out-patient, Audrey Doig, who has allowed her name to be used in this debate. She wanted to have a minor operation at the Victoria hospital. On arriving there, she—along with eight or nine others—was told that there were no beds and that she would have to be invited back to have the operation. She then wrote a number of letters, including to Malcolm Chisholm, who replied to her.

Audrey Doig was told that there was no guarantee that when she turned up for her next appointment she would be dealt with. Imagine her shock and horror when she was again told that there were no beds. On the third occasion, she was admitted, but she tells me that three or four other people who had operations scheduled for that day were not.

Audrey Doig's experience inspired me to ask the Minister for Health and Community Care how many operations had been cancelled at a day's or a week's notice in Scotland in the past 12 months. In his answer, the minister indicated that, unfortunately,

"Information on the number of operations cancelled by NHSScotland is not available."

That is an interesting piece of information. He continued:

"However, data is collected centrally on the number of planned admissions to hospital for in-patient/day case treatment".—[*Official Report*, *Written Answers*, 18 February 2003; p 3015.]

Up to March last year, more than 16,000 admissions were cancelled. In the Argyll and Clyde NHS Board area, 791 admissions to the Royal Alexandra hospital in Paisley, 121 admissions to the Vale of Leven district general hospital and 173 admissions to Inverclyde royal hospital were cancelled. The problem is a lack of beds. In the case of the Victoria hospital, where Audrey Doig was treated, out-patients were being kept out by emergencies, which must have priority. Every day the hospital deals with an average of nine emergencies. Why is there no provision for that? There are insufficient beds and staff.

The median waiting time for out-patients in the Argyll and Clyde NHS Board area is 45 days. That is five days more than the median out-patient waiting time in the area when the Executive was established in June 1999. The median waiting time for in-patients is 34 days, which is two days more than in 1999. Altogether, the median waiting time for a patient living in the Argyll and Clyde NHS Board area is 79 days, which is seven days more than the median waiting time when the Executive was established in 1999. There are problems with waiting times, which I know the Executive wants to address.

Two of the 10 national vacancies in paediatrics are in the Argyll and Clyde NHS Board area. A work force shortage prompted the closure of maternity services at the Vale of Leven district general hospital in the Argyll and Clyde NHS Board area. That measure was very contentious, because maternity provision is being reviewed in the whole health board area, and it probably caused a great deal of anxiety.

There are currently 100.3 whole-time equivalent nurse vacancies that have been vacant for more than three months in the Argyll and Clyde NHS Board area. In 1999, there were 78.5 such vacancies. In 1997 there were only 33.3 vacancies that had been vacant for more than three months. The number of such vacancies has increased by 67 per cent since the Labour party came to power in the UK. Last year, Argyll and Clyde NHS Board spent £2.5 million on the whole-time equivalent of 101.5 nurses—presumably agency nurses—which is slightly more than the figure for nurse vacancies. That money would have been far better spent on filling the NHS vacancies.

The problem is one of beds and people. Much of the NHS is excellent. Emergency and acute services are excellent. However, until we solve the bed and staffing problem, there will be unnecessary, uncalled-for and unwanted criticism of the NHS. For the benefit of Conservative members, who think that we are naive, the SNP would increase nurses' pay by 11 per cent.

10:17

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I welcome the debate. Everyone seems to accept that more money than ever is available to the NHS. In particular, I welcome Malcolm Chisholm's pragmatic approach to bringing down unacceptable waiting times in Scotland.

The Tories cannot pretend that more resources are needed for health but at the same time advocate tax cuts. Clearly, that is a dishonest approach. The Tories are completely out of step with the people of Scotland on the NHS.

In the short time that is available to me, I would like to move from the general to the specific. I welcome the pragmatic approach that Malcolm Chisholm and Mary Mulligan have taken to

addressing the major problems of the NHS. However, in the past four years I have pursued two specific issues.

The Deputy Minister for Health and Community Care (Mr Frank McAveety): Arbuthnott.

Mr Rumbles: I am not talking about the Arbuthnott formula. I had a go at the Arbuthnott formula in the previous health debate.

The first issue is audiology. I have with me a letter from Susan Deacon dated 28 April 2000. In it, she stated:

"Digital hearing aids are already available on the NHS in Scotland and we have just widened the choice available to patients by introducing further types of aid as from 1 April this year ... England and Wales ... are taking a rather different approach and have decided to pilot the use of digital aids in certain areas before deciding how to roll out their provision."

I thought that that was interesting. The minister continued:

"we are taking a very pro-active approach to the provision of this kind of equipment for patients in Scotland".

I will also quote from a letter from the chief executive of the Grampian University Hospitals NHS Trust. He states:

"I regret that currently we are not able to fund digital hearing aids ... we in this Health Board area cannot provide the digital aids despite them being available on NHS contract."

That letter was written nearly three years ago, but the situation has not improved, to the extent that patients are still not being given the digital hearing aids that they should be entitled to receive. I accept the points that Mary Mulligan has made in correspondence with me and that the Executive has allocated money for that purpose. After £8 million for digital hearing aids was announced recently, I asked Grampian NHS Board when patients in its area would be able to access the digital hearing technology to which they should be entitled. I have still received no response. I need an answer from the minister; I need to know what the minister will do to ensure that my constituents get the treatment and the facilities that they need and deserve.

In the 60 seconds that I have left, I will flag up the other specific health issue that needs to be examined—access to NHS dentistry. That is a major issue. The situation in the north-east of Scotland is worse than it is almost anywhere else.

Mary Scanlon: What about Highland?

Mr Rumbles: I said "almost anywhere else".

Many of my constituents cannot get access to NHS dentistry. I know that many initiatives have been launched to make money available for improving NHS dental services. There is disagreement about the fundamental problem, which is that, since the closure of the dental school in Edinburgh, not enough dentists are being trained in Scotland. We need a new dental school.

In September, I was the first person in the Parliament to call for a new dental school to be established in the north-east—in Aberdeen, for example. That would attract trained dentists to provide training in the north-east. Those dentists would be able to establish businesses and practices in that area. That is one of the only effective ways of ensuring that we make progress on the issue.

Although the Executive has produced money and initiatives, there are simply not enough dentists. Training 120 a year is not sufficient. As I am running out of time, I will close on that point. I hope that Mr McAveety will address those two issues in his wind-up.

10:21

Mr David Davidson (North-East Scotland) (Con): Malcolm Chisholm accused the Conservatives of a one-sided approach to health care. We are guilty of such an approach—we put the patients first.

There has been a great amnesia over the past six years, not least from members such as Janis Hughes. Time after time, statistics that the NHS and the minister produce demonstrate that life is now worse under Labour. According to the SNP's statistics, life has got even worse since Labour was joined by the Liberal Democrats. We can rest our case. I thank Colin Campbell for his statistics. They were most helpful.

Lots of extra money—£2 billion—has gone into the health service. That is welcome. However, the opportunity has been wasted. Improvement without reform is not possible. There is no point in throwing money at systems that the staff do not like.

Staff morale is low. I spent Monday evening at a state registered nurse hustings. The SRNs told us how it was. The plain fact of life is that it is impossible to recruit and retain anyone in the health service. There is a shortage of GPs and dentists in the north-east. Why cannot they be attracted? The answer is that they are not given good conditions to work under and they are not given control over the health service. Devolution does not go beyond Executive ministers. Devolution does not exist outside the Executive offices.

If we want to set the system free to serve the patients, we should give the health boards

responsibility. They should be accountable. They should design the services that are best suited to their areas. They should flag up where their priorities lie. It is impossible to legislate through targets on this, that and the next thing.

We should look at the health service rationally. We should ask, "Who has the skill? How can we best use that? How will that improve patient care?" Surely it is better to employ an expert nurse in asthma in a doctor's surgery, where she can deal with asthma in the community. Primary care is where the effort has to go. We must also deal with bedblocking. The use of the independent voluntary sector is a good way of doing that.

We would not have poured money into buying the building at HCI; we would have spent the money on commissioning care from the NHS services there. The health service can be a commissioning service. It does not have to own everything and it does not have to be nationalised, as the SNP would have us believe. It is a case of putting the patient first and saying simply, "We have this resource. We want people to be able to access health care wherever they are, according to their need." Let us face it—the most important patient is the patient who next presents. It is nothing to do with who has cancer and who has toothache. Everyone has a right to appropriate treatment in a reasonable time.

The Labour party has had four years in the Executive, plus the two preceding years at Westminster, to get a grip. It has failed to design the right system and to get the people who work in the health service on side. Those people must be consulted, they must be given a career path and they must have access to continuing professional development. In the north-east, for example, there are no facilities for giving dentists their practical training once they have done their degree. There is no money to bring in European Union dentists to give them that training. Such a fund does not exist. Although a new dental school in Aberdeen might be a solution in the long term, we are short of dentists now.

Why are we not playing at golden hellos, as the health authorities in England are? If we cannot get radiographers in Highland or in Aberdeen, why do we not find an efficient way of attracting them? Why do we not break down national pay bargaining and allow the health boards to set the levels of pay that they consider necessary to attract and retain people?

The health service must become accessible throughout Scotland. Access must not be determined by postcode and it most certainly should not be twisted by the Arbuthnott formula. If Glasgow has a problem, the minister should fix it, but he should not take money from the north-east of Scotland to do so.

10:26

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I suppose that the law of averages dictates that, in such a long motion, Mary Scanlon was bound to make a good point sooner or later. She is right that we need to get the record amounts of money that we are spending on health to the front line as quickly as possible. She is right that a modern NHS must, in the words of the motion, respond to

"the real needs of patients"

and, like many of my colleagues and me, she is right not to be convinced that the centralisation of services will deliver that. However, it is beyond me how a Tory could speak to those points with a straight face. The Tories have been unable to keep a straight face this morning.

I wonder whether any other members choked on their cornflakes when they read in yesterday's business bulletin a Tory motion extolling the virtues of

"the NHS's fundamental values of high-quality healthcare available to all, irrespective of their ability to pay".

Although I could go on at length about 18 years of Tory neglect—and would be justified in doing so—attacking the Tories' record on the NHS is like shooting fish in a barrel, as my colleagues Malcolm Chisholm and Janis Hughes showed.

The motion deals with impacts on service delivery. That is a fundamental issue, whether the Tories realise it or not. There are many answers to the question, but I will focus on what affects service delivery in my area.

We have guidelines from the royal colleges, European working time directives and a reduction in junior doctors' hours. The working time directives and the reduction in junior doctors' hours mean that, in the Argyll and Clyde NHS Board area alone, we need to recruit 25 consultants and even more junior doctors.

Alex Johnstone: Will the member take an intervention?

Mr McNeil: The member has had a full morning's debate and I have limited time.

That level of recruitment is necessary not to extend the service, but simply to maintain it. Those major challenges must be addressed.

The guidelines focus on certain disciplines and address risk in very small areas. Striving to reduce such risk means that we constantly chase the impact on the other services, which pushes us towards more centralisation.

In practice, that has meant that, in Argyll and Clyde, we have witnessed the closure of the maternity unit at the Vale of Leven hospital, for the

want of paediatric cover. That closure, which took place without consultation with the local community, has forced mothers and young babies to travel further for care. That has happened in spite of the massive investment that we are injecting.

Like many hospitals outside the cities, the Rankin maternity unit in my constituency has found it difficult to recruit appropriate staff numbers. It has to compete with university-led services in the cities. That is another example of the push towards centralisation that we must resist. Despite the fact that the number of consultants at the Rankin maternity unit has increased, there is once again a shortage of paediatric cover, which has threatened the unit and put it only days away from closure during the past year.

Finally, I want to mention health board boundaries. Lines on a map are not recognised by my constituents or by many others. We do not see a sufficient amount of working together among the health boards. I contend that only by using common sense and by applying flexibility will we ensure that the massive investment that we are putting into the health service improves and is seen to improve patient care.

10:30

Brian Adam (North-East Scotland) (SNP): I do not often agree with Duncan McNeil, but I agree with his analysis of the situation. Large parts of the additional funding are having to be taken up to address matters that are beyond the control of the NHS, and may even be beyond the control of the Executive. That highlights the fact that we cannot expect miracles overnight. Anyone who suggests otherwise is deceiving themselves, let alone the public. A big part of the additional finance will need to go on problems such as those that Duncan McNeil detailed concerning consultant staff and junior medical staff. We will not be able to pour all the additional resources into addressing the problems of patients, because we need to deal with the long-standing problems such as the number of hours that people work.

Mike Rumbles has already highlighted the problems with digital hearing aids and dentists in my local area. David Davidson acknowledged those problems and highlighted the problems associated with the Arbuthnott formula. I want to highlight the fact that waiting times in Grampian, like those for the area that Colin Campbell represents, have increased. The median waiting time for out-patients in Grampian is now 69 days, which is 10 days longer than the national average. Before the Parliament came into existence, our waiting time was below the national average. That change reflects the shift in resources away from Grampian. We used to have services that were among the best in Scotland, but our services are now amongst the poorest in Scotland.

The out-patient waiting time is 18 days longer than it was when the Executive took power in June 1999. The in-patient median waiting time is now 34 days, which is six days longer than was the case in June 1999. The median wait in total for a patient waiting in Grampian is now 103 days. That is nine days higher than the national average and 24 days longer than patients in Grampian waited when the Executive took over in 1999. There has been a significant deterioration in service over the past four years in spite of the additional resource, which is clearly not being spent on addressing patient needs.

In the last quarter, the number of out-patients seen was 82,022. That is the lowest number in any quarter since December 1998. That is also 6,727 fewer patients than were seen when the Executive took over in 1999. Not as many out-patients are being seen. In the last quarter, the number of day cases was 4,811, which is the lowest number since December 1998 and 1,803 fewer than when the Executive took over in June 1999.

Clearly, there are capacity issues in the health service. Yes, the HCI hospital has been bought over, but we are still using sticking-plaster solutions because of the deliberate policy of reducing capacity within the NHS acute sector. Some of that is clearly driven by the Executive's perceived need to deliver all health service improvements through the private finance initiative and public-private partnerships. Capacity reduction is a direct consequence of the PFI/PPP approach to improvements in the quality of bricks and mortar within the NHS.

We have significant nursing vacancies in the north-east. At present, the north-east has 258.1 whole-time equivalent vacancies for nurses, which is an all-time high since 1996. In 1999, Grampian had only 178.6 whole-time equivalent vacancies for nurses. The increase in vacancies has been greater than 30 per cent during that period. Indeed, the problem is not simply that turnover of nurses is being used in the short term as a way of managing an NHS overspend, because 55 nursing posts—a fifth of the vacancies—have been vacant for more than three months. Either Grampian is simply unable to recruit more nurses or the vacancies are being used to manage finances.

There are serious problems that are not being addressed. However, the Tory motion's approach, which says that the private sector is the answer, is not the answer at all. There simply is not the capacity and we need to be realistic about what we can do in the near future.

10:35

Mr John McAllion (Dundee East) (Lab): The Tory motion admits that spending on the NHS has progressively increased since 1999, but it goes on to regret that the extra spending has been brought about by an increase in the tax burden imposed on everyone. The first point to be made is that any increase in the direct tax burden on Scots is certainly not the responsibility of this Parliament or Executive. For the past four years, the Parliament has refused to use the tax-varying power that the voters gave it in the 1991 referendum.

In any case, there are only two ways of increasing spending on the NHS or on any other public service. The first way is through growth in Government revenues that is brought about by rapid economic growth, falling unemployment, increased tax yields, reduced social security benefits and so on. That is the classic trickle-down theory, which President Reagan, Margaret Thatcher and John Major preached for so many years. I know from direct experience of living through that period that that approach has not worked, does not work and will not work.

The only other way of increasing spending on the NHS is through increased taxation. Unlike the Tories, who complain about that at the UK level, my complaint is that we have not sufficiently increased taxation on the rich. We should take more off the rich and spend more on public services. That is the way in which we will get improved public services in this country.

Mr Brian Monteith (Mid Scotland and Fife) (Con): Will the member take an intervention?

Mr McAllion: Sorry, I do not have time, but I will debate with Brian Monteith outside at any time.

My belief is that we do not have enough resources. The yardstick should not be how much we spend on the national health service now as compared with the pre-devolution period—

Mary Scanlon *rose*—

Mr McAllion: Sorry, but I do not have time.

The yardstick should not even be how much we spend now compared to what was spent by the previous Tory Government in those dark days of long ago. The yardstick should be how much we spend compared with what is actually needed to provide patient care at the level that the people of Scotland desire.

For example, the Executive's short-life action group on ME recently produced its report, which makes recommendations. ME is not a new illness. As the "Report of the Short Life Working Group on CFS/ME" diplomatically puts it,

"This burden of illness is not well recognised at present".

In other words, the illness has been ignored for years. There is an appalling lack of provision for ME sufferers in this country.

The SLAG report makes a number of useful recommendations. It calls for needs assessment programmes and for each health board to develop plans for ME sufferers in their area. The report also calls for a tiered approach, so that we have primary care and specialist services and a regional or national service above that. The Executive working group makes some excellent recommendations, but they are just that. The responsibility for delivering the changes in the way that we deal with this illness, which is not new but has at long last been recognised, will be left with the health boards. However, the money that the health boards receive is already fully committed, so the money for implementing the report's recommendations will need to be found by taking it away from other services that are currently being funded.

No Government in a long time has ever spent enough on public services. We need to tell the people of this country the truth. The basic truth is that we do not spend enough on public services because we do not tax people in this country enough. Any party that goes into the election saying that enough money can be spent on public services to meet public demand while at the same time keeping taxes low is being dishonest. The real test of the forthcoming election is the question where we will get the revenues from to increase the spending on public services. The only real place that we can get it from is taxes. I hope that that is taxes on the rich rather than taxes on the ordinary workers.

The Presiding Officer (Sir David Steel): We now come to wind-up speeches.

10:39

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I will start by referring briefly to the main speakers for the four parties.

Quite correctly, Mary Scanlon referred to Arbuthnott. I am gratified that she agreed with me that, despite the best intentions of the Scottish Executive, delivery out there is somewhat patchy. As I mentioned in my intervention, in the Highlands despite the money that is going into the front end, what comes out at the other end varies depending on which part of the Highlands one is in.

Malcolm Chisholm made a robust speech and at one point Nicola Sturgeon said that she was thinking about holding the jackets. He rebutted the accusation that the Scottish Executive is taking a centralising approach and that is amply demonstrated by my own experience. If the

Executive were taking a centralising approach, the minister would have been able to do more to help me with my problems with general practitioners packing up in the far north of Scotland.

The minister also made a point about the redesign of services. That has also been demonstrated in my constituency by the approach that has recently been taken to the accident and emergency service that is currently delivered from Thurso. That will lead me on to a point that I want to make at the conclusion of my speech.

The Thurso accident and emergency service has been reinstated. It is GP led, but the important point is that there is a telelink between Thurso and Aberdeen royal infirmary. The link is the first of its type in the Highlands and it means that the far north of Scotland can connect directly with the best consultancy services in places as far away as Aberdeen. That poses a question about structures and the way in which we do things in the future. It is an interesting and profound question, and one to which I will return.

Nicola Sturgeon rightly pointed out that the Conservative idea of partnership is the fig leaf that disguises an obsession with privatisation. Ultimately, that will always be the Achilles' heel of my good friend Mary Scanlon's argument. I am afraid that it will be pointed out more and more. Privatisation is deeply unpopular with the public and the idea will not sell very well.

Margaret "Matron" Smith was characteristically robust in her attitude. I apologise to Ben Wallace for her rather sharp put-down, but she is obviously on good form this morning. She made two points with which I associate myself: first, that the Conservatives acknowledge that more money is going into the NHS; and, secondly, that health promotion—heading off health problems at the pass—is extremely important.

I will turn to my part of the world in the time that I have left. I have talked about the accident and emergency situation being resolved and that is a good-news story. However, my constituency is still left with the GP problem. I cannot think how many times I have outlined that problem to ministers; the minister is only too well aware of it.

Despite what the British Medical Association announced last week, I had GPs leap at me in Thurso and tell me that I do not understand. Things are great for the central belt or for areas of high population, but the delivery of out-of-hours GP cover in the north is questionable. I do not have the detail on that at the moment, but I shall return to the ministers with the issue.

Yesterday, at the Health and Community Care Committee, we heard about the problem with the Office of Fair Trading report and recommendations on pharmacists. If we are not careful, the proposals coming from down south could wreck community pharmacies. Those points have been made to Frank McAveety and I know that he has taken them on board.

However, that leaves me with questions in my mind. Why is it that, despite the best endeavours of the Scottish Executive, we sometimes see problems out in the real world? Sometimes ministers must feel helpless when they compare what they are trying to do with the outcomes.

Although I support the Executive amendment, and in no way question the minister's commitment to improving the health service, I await the publication of the white paper with great interest. I have flagged up some problems with delivery mechanisms and structures. We all wait with great interest to see what emerges tomorrow.

10:43

Shona Robison (North-East Scotland) (SNP): Today we have had the usual story from the Tories. Everything was okay under them and market forces will deliver for the NHS. Of course, no one believes that, particularly not the public. I wonder whether some Tory members really believe it. Will they ever learn? The answer that we have had today is that it does not look like it.

Alex Johnstone made a rather peculiar speech that highlighted the fact that he needs to take the wax out of his ears and do a little more homework before engaging in debates on health. Clearly, he did not hear what Nicola Sturgeon was saying so, for his benefit, I will say it a second time.

The SNP is the only party that is committed to addressing the core problem in the NHS, which is the lack of capacity. That is why we are going to tackle bed and staff shortages by assessing the real level of acute beds that we require. At the moment, we do not know what that is. Clearly, we do not have enough or we would not have the thousands of cancelled operations that we do. We need to know the right level of acute beds for Scotland.

We then need the staff to ensure that those beds can operate. The only way we can do that is by ensuring that nurses and doctors want to come and work in Scotland. The only way we can do that is by giving the Scottish health service a competitive edge. That is why we are committed to an 11 per cent pay rise for nurses. Only then will we be able to tackle the core problems in the NHS.

If we need any evidence of those problems, we should note that we are falling further behind the English health service. Scotland has over 1,400 people waiting more than 15 months for in-patient treatment, whereas England has only 105. Given

the difference in population, that is quite a stark figure.

Malcolm Chisholm: We agree with the member's point about expanding the capacity of the work force, which is precisely what we are doing, including significant increases in nurses' pay under "Agenda for Change".

On the member's second point—and there will be more about that tomorrow—she knows fine well that no one with a guarantee is waiting longer than guaranteed, and she has to accept that sometimes there are very good reasons why someone has a guarantee exception. The tonsillectomies that had to be postponed earlier in the year for medical reasons is a good example. If that is the line that she is going to take on waiting times tomorrow, I thank her for the advance notice of the nonsense that she is going to speak.

Shona Robison: We look forward to hearing what the minister has to say tomorrow.

The problem is that it is always jam tomorrow, but the facts speak for themselves. The Executive has failed to address the issue of waiting times over the past four years and it cannot get away from that.

Mr McNeil: Will the member give way?

The Presiding Officer: No, the member is in her final minute.

Shona Robison: It is all very well for the Executive to say that it is trying its best and admitting that there is a problem, but that is not good enough. The Executive has failed. Moving on to the other party of failure, I say that the Liberal Democrats cannot have their cake and eat it. That annoys their coalition partners greatly, as we saw at the weekend. It annoys me greatly as well because, if we were to listen to the Liberal Democrats, we would think that it has nothing to do with them. Mike Rumbles was complaining about the situation in Grampian. Yes, it is terrible that people have to wait for digital hearing aids and dental treatment, but the Liberal Democrats' Executive is running the health service and they are as guilty as their Labour coalition partners.

Mr Rumbles: Will the member take an intervention?

Shona Robison: I am in my last minute.

Colin Campbell gave an eloquent example of how the problems that we are talking about today impact on patient care, which is most important. He gave one example out of thousands of someone who has had their operation cancelled time and again. That is the reality of bed and staff shortages.

I will conclude by being magnanimous enough to say that many of the Executive's health policies are well intentioned. However, that is not good enough. Labour's stewardship of the NHS has been a failure and it has failed to use the resources available wisely and effectively. It is time for change. It is time for a new team to lead the NHS and we look forward to starting that on 2 May.

10:48

The Deputy Minister for Health and Community Care (Mr Frank McAveety): I thank the member for her contribution. If it needs a definition, I would say that it was magnanimity qualified. Perhaps the member should have listened to her colleague Brian Adam when he said that there is no overnight cure for the problems in the NHS. Maybe the SNP members require a briefing session.

The Conservatives have been brave enough—if not a bit foolhardy—to submit that they have a solution to NHS problems. That solution was clearly set out during their 18-year custodianship when they did not deliver on many of the issues highlighted in their motion. The Scottish Executive is trying to pursue many of the issues that the Conservatives have highlighted because we want to put patients first—to use David Davidson's words. If the Tories ever did that, it would be the first time.

I say to Mary Scanlon that the voters will not forget. In the words of Santayana,

"Those who cannot remember the past are condemned to repeat it."

All that Mary Scanlon offers is a future with a return to the key issues that exemplified the Tories' approach to the Scottish health service.

In his opening comments, Malcolm Chisholm was being open and transparent with the Parliament about the challenges that we face.

If we go underneath many of the comments that members have made today, we can see that they recognise that there is a capacity issue in the NHS. That applies to the acute sector, but also concerns how we can improve quality and capacity in the primary care sector. I have listened carefully. Many members from other parts of Scotland recognise that many of the issues are about how to build community capacity within the primary care sector to support the work that is done in hospitals. We recognise that, which is why we have identified a whole series of strategies to increase the number of staff in the NHS. We are increasing the number of doctors and nurses who are in training. We have increased the number of accident and emergency consultants. Over the next five years, we will be putting in £3.2 billion of investment.

There is nothing in the Tory motion, and we heard nothing in their speeches, about exactly what they would spend on the NHS. That glaring omission strikes to the heart of the dishonesty in Mary Scanlon's speech. Nye Bevan once said that the importance of the NHS was that it provided security, but also serenity, for the people of the UK that their health needs will be met. How does that match up with Mary Scanlon's comment that people should repent?

Another biblical phrase is, "You shall know them by what they say." Liam Fox was quoted as saying to a private audience of the Conservative Medical Society in April 2002:

"We've got a problem in this country where the NHS and health care have been synonymous. We're here to break that."

That is the Tories' real intention for the health service. Nothing that Mary Scanlon has said today addresses those points.

As I said, there are more nurses and doctors in the Scottish health service than there were in 1999, and £3.2 billion will be going in over the next five years. We recognise the issue of nurse recruitment, which was touched on by colleagues across the chamber, the SNP and other parties. We want to increase the number of nurses who are training. However, as many members behind me have said, the health service is more than just doctors and nurses, because non-medical staff are an integral part of the health team. That is why we are delighted that the agenda that we are moving forward across the UK, which the trade unions have accepted as part of "Agenda for Change", is about improving pay for staff across the NHS. In some cases, that means a 16 per cent hourly rate increase for ancillary staff.

People have asked what we have been doing. Nothing was mentioned in the Conservative motion about the commitment to partnership. It does not recognise that we brought into public ownership the Golden Jubilee hospital, which will result in 3,000 patients being given support. However, that is only one part of the picture. A selective picture was presented by Mary Scanlon and the Tories, because they want people to have a selective memory of what happened in the past. They hope that as each year advances, people will forget the central problem.

I say to Mary Scanlon that people remember the important issue, from which she has not distanced her party. Will her party reintroduce a two-tier internal market? We have not heard anything on that. I ask her to address the fact that her party does not want to invest in primary care modernisation, to which we have committed. There were other commitments that she did not mention. We have committed to addressing cancer and coronary heart disease deaths in Scotland. Those are central commitments of the Executive.

Mary Scanlon: When the Parliament was set up, the commitment to GP fundholding, financing and incentives was taken away. The Executive promised a joint investment fund, which never existed. GPs never had any access to that fund, so in fact it was the Executive that starved GPs and primary care.

The Presiding Officer: Before the minister replies, I say that I should not have allowed that intervention, because the minister is over time. Please wind up.

Mr McAveety: The Executive recognises that there are many challenges, but in terms of staff, investment and partnership, we have the right approach. We recognise that there is an issue with bed capacity, which is why we are committed to the delayed discharge strategy, which is resulting in a substantial reduction in the number of blocked beds in our hospitals.

I conclude on this key point: health in isolation is worthy of debate, but health is connected to the many other strategies that the Executive has developed, which include investment in housing, improvements in education, and opportunities into employment. If we get those three right and match them to our health commitments, Scotland will be a better place. The Executive is committed to that.

10:55

Ben Wallace (North-East Scotland) (Con): It is right and proper that, in the closing days of the session, the Scottish Conservatives should choose to debate the health outcomes of the Executive. Over the six years since Labour came to power, and the four years of the Lib Dem pact, not only have we seen billions of pounds of extra money pumped into the system, but we have seen the abandonment of a Conservative ideology on health care in favour of a pre-Thatcherite NHS system.

That has meant not only that the Executive's and new Labour's manifesto rhetoric has been put to the test, but that the public has seen a failure of the service that they were promised. Nothing speaks louder than the endless list of pledges that the Executive has failed to meet, all the way back to 1997. For example, it is now six years since the pledge to abolish mixed-sex wards was made, but it has yet to be honoured. What about the pledge in 1997 to end waiting for cancer surgery? That has not been done. What about the idea of reducing waiting times from 12 to nine months? That has still not been done.

In fact, the Executive's own secret polling during this session found that the public thought that the

NHS under the Executive was worse than or the same as it was under us, so the idea that people out there do not believe the Conservatives is wrong. All members have to do is spend time at a hospital to realise that people say, "Well, I can't remember it being as bad as this." Outcomes and patients are what matter.

Mr Rumbles: Will the member give way?

Ben Wallace: No, I have to sum up.

What do we get for all the billions of pounds? That is important. John McAllion made a point about investment and the need for more money. There is no point in putting money into systems that do not produce results. I will put more money into any health system that produces tangible results. The head of Tony Blair's own delivery unit, Michael Barber, recognised that the NHS is consistently failing to spend the money in the right places.

Janis Hughes made a point about a two-tier health service. Well, we have one and, in fact, it has expanded under the Executive. Postcode prescribing has increased. Let us remember digital hearing aids. More and more people are opting to go private under the Executive's custodianship of the NHS than they ever did under us. There is already a two-tier NHS caused by the Executive's policies.

Nicola Sturgeon attacked the partnership approach. We want partnership to increase capacity. Interestingly enough, she attacks partnership, but it is partnerships with not-for-profit, profit-making, independent and public sector providers that have created better health services across Europe, where they do not have shortages and waiting time problems. The partnership approach should not just be attacked and thrown away.

Nicola Sturgeon's deputy, Shona Robison, went on to talk about how the SNP was the only party that tackled capacity. We talked about partnerships. She went on to say that we are falling behind the English NHS. The English NHS has embraced the partnership approach, which is why its capacity has been increasing.

Frank McAveety used a quote and made the point that Liam Fox wants to destroy the NHS. In fact, Liam Fox was saying that the NHS should not have and does not have a monopoly on providing health care. I stand by that belief, because the Executive's health care monopoly does not work.

Malcolm Chisholm's amendment shows his misunderstanding of the differences in ideology. We believe that the debate is about ideology, because the Griffiths reforms of the 1980s were about that. Those reforms were the only way to drive forward improvements in health care, by empowering the patient, the GP and the primary care staff, not only with choice, but with funds. We will return to that. Only when patients are able to demand services based on information, assisted choice and need will the NHS become as responsive as any other system in Europe. We do not match Germany and France, which we now top in health care funding. In fact, for years—since way before Labour appeared to rewrite history—Scotland's average health spending has been above that in Europe, yet we have worse outcomes. That should not be justification to carry on writing blank cheques.

In Europe, they learn. They treat public, not-for-profit and independent providers of health care the same, and hold them in high esteem, because the issue is where the patient wants to go. Here, such providers are not utilised because of some old socialist dogma that says, "No, you can't go there, because we don't believe that these people should be able to provide."

In fact, Scotland does not have many profit-making hospitals. I inform those who are ignorant that BUPA is a not-for-profit organisation. Perhaps people should remember that when they attack such health care providers.

The minister's amendment reflects such a misunderstanding clearly. His view is that the patient should be directed to the centre, from where the Executive will dictate the services that will be planned for the patient but will not allow the patient to be the centre of service direction, funds and availability. That is a bit like the difference between a planned economy and a market economy. The planned economies collapsed with the Soviet Union, but the market economies are still here.

In the Conservative manifesto, we will propose ideas for empowering the patient. They might solve some of the previous problems of fundholding, which were by-products of fundholding and not problems of the system itself. We will also ensure that funds are used better and are moved round the system to take advantage of more capacity and more partnerships, so that, in the end, the patient directs services. Under the Executive, patients feel excluded and worried that no one listens to them and that they have no power.

What Duncan McNeil said about health board boundaries is true. Fundholding and other matters meant that health board boundaries did not have to be respected, because the patient and the GP could go where they wanted to buy the services that they needed if they were waiting too long. Under the Executive, such people are being prevented from doing that. That is important.

Malcolm Chisholm: Notwithstanding some initial problems with the waiting times database, Ben Wallace has described the reason for the database. Patients, with the help of their GPs, will have choice—more choice than they had in the internal market, when block contracts did not allow patients such a degree of individual choice.

Ben Wallace: We should examine that. The Executive arrived, vandalised then abandoned the internal market and told patients to go to services only in their areas and to take the choice that was on offer. After a good few years, the Executive realised that that was not working and that patients felt confused, so it produced another firefighting initiative. Instead, it should have considered how to improve fundholding and get rid of some of the bureaucracy. That is what Labour did in England under Alan Milburn, after the disastrous efforts of Mr Dobson. Labour said, "Okay, sometimes practices are too small to fundhold. Let's empower local health care co-operatives or primary care groups to open and commission more services." However, the Executive spent its billions on vandalising an old system under which outcomes and results were better.

Whatever the Executive says, its figures speak for themselves. People vote for shorter waiting times, shorter waiting lists and the treatment of more people. Six years down the line, after more tax has been collected and more billions have been spent, Labour is still not getting it right. The Executive can pretend that the Tories destroyed the health service in 18 years, but the Tories did not. The fact is that the Executive is not imaginative about health care.

Margaret Smith asked who I am. I am a person who does not believe the spin. I listen to patients. Perhaps she should answer this question: what is the difference between the Liberal Democrats' health policy and the Scottish Executive's health policy? Perhaps the answer would show why the Liberal Democrats did not lodge an amendment of their own.

The Presiding Officer: That concludes the health debate. [*Interruption.*] Order. I said that the health debate was concluded. Those who want to continue it should do so outside.

Presiding Officer's Ruling

11:04

The Presiding Officer (Sir David Steel): This is the first convenient moment that I have had to respond, as promised, to the points of order that were raised with the Deputy Presiding Officer on Thursday by Mr Robson, Mr Matheson, Mr Gallie and Ms MacDonald. George Reid was right to say that we would study the *Official Report*. Having done so, we see that it is obvious that Mr Robson's point was not the same as the point that Mr Jim Wallace raised during First Minister's question time, which I ruled was not a point of order.

Mr Robson complained that Mr McLetchie had raised matters for which the First Minister was not responsible. He had a fair point, because Mr McLetchie discussed the policies of another political party, but so did Mr Swinney and Mr McConnell, all of which makes me think that an election might be coming soon. I remind all of those involved and all other members that our standing orders stipulate that First Minister's question time is about the matters for which the First Minister has general responsibility. He is not responsible for the policies of the SNP, the Liberal Democrats or the Conservatives. I hope that that will be borne in mind at the remaining question times in this parliamentary session.

Looked-after Children (Education)

The Presiding Officer (Sir David Steel): The next item of business is the debate on motion S1M-3943, in the name of Cathy Jamieson, on the educational attainment of looked-after children.

11:05

The Minister for Education and Young People (Cathy Jamieson): In January last year, I made a statement to the Parliament on the education of our looked-after children in Scotland. I am pleased to have the opportunity to report to the Parliament on progress and to discuss again this important subject.

In March 2001, we published "Learning with Care", which was the report of a joint inspection by the social work services inspectorate and Her Majesty's inspectors of schools on the educational experiences of looked-after young people. As a result of concerns, Jack McConnell wrote to ask each council leader about their efforts to improve the education of looked-after children. Last year, I reported wide variation in local authorities' performance. Examples of good practice existed, but some authorities could not meet any of the recommendations in full.

Therefore, I set local authorities the challenge of achieving, by the end of last year, three of the recommendations that are fundamental to improving the position of looked-after children. The recommendations were that all looked-after children should receive full-time education; that all looked-after children should have a care plan that adequately addresses their educational needs; and that all schools should designate a teacher to champion the interests of such children.

I have received reports from local authorities on their implementation of those recommendations and the progress that they have made, and I am placing a summary of those responses in the Scottish Parliament information centre today. Overall, all local authorities have improved on their position last year, which is encouraging, but the reports show that authorities could still do better on implementing the recommendations.

Most authorities reported that more than 90 per cent of looked-after children are in full-time education and that alternatives to mainstream schooling are used when needed. Local authorities have also begun to tackle the disproportionate exclusion of looked-after children, but concerns remain. Some authorities have not included children who are looked after at home, as well as those whom they accommodate. It is unacceptable that some still have difficulty in tracking all their looked-after children.

Concerns about children who are looked after at home and about tracking children also apply to care planning for education. Progress on that has been more disappointing, although it is clear that the looked-after children materials have provided a framework that ensures that education is routinely considered in the care planning process. The authorities' responses also raise questions about communication among schools, education departments and social work departments.

All authorities reported that teachers have been designated in their schools, but the role of such teachers and whether they perform it effectively is not always clear. The responses describe good examples of authorities looking beyond the recommendations to make further improvements. For example, Dumfries and Galloway Council has produced comprehensive guidance on the role of the designated teacher, which enables school staff to engage better with the issues and ensures that young people get the most from their education.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I am interested to hear the news that the minister conveys to the chamber. She said that she would leave copies of the information that has been gathered from local authorities in SPICe. Is that information available from the SPICe desk now, so that we can see it while we listen to her speech?

Cathy Jamieson: The information should be available. Several local authorities provided updated information at the last minute, which will be available from SPICe as the day goes on. The information is a result of self-reporting by local authorities and is not in a Parliament publication. I have pulled the responses together and they have been placed in SPICe for information. Later, I will talk about what we will do with that information.

Western Isles Council's education and social work departments jointly started a new project to provide full-time education for children who do not attend mainstream schools. Several local authorities, including Argyll and Bute Council, North Lanarkshire Council and Renfrewshire Council, have said that they are improving data links between the management information systems of social work departments and of education departments. That should ensure that schools are aware of all looked-after children and that the progress of their educational attainment can be followed.

I confirm for Mr Monteith that the Executive will follow up on the returns with local authorities. I want to be able to pick up on the good practice that is out there and share it with others. I will also follow up on those local authorities about which we have concerns. The authorities will be asked to prepare an action plan to progress the issues that require to be addressed.

Last year, I identified a number of other actions that the Executive would take as a result of the "Learning with Care" report. Three seminars, which were held in Edinburgh, Glasgow and Inverness, were attended by more than 200 practitioners and education and social work managers. As a result of the seminars, we have collated material and will produce a range of materials to assist us in developing the agenda. We will consider training materials, a looked-after children education report, and booklets for teachers, social workers and carers. The intention is for those materials to be produced by May of this year.

It is also important to note that the social work services inspectorate has checked on progress in each authority. Inspection teams have found that progress has been achieved on joint policies, audits and training, as well as on children's services plans, particularly on how authorities set targets for educational attainment.

This year, for the first time, we have collected information nationally on the educational attainment of looked-after young people. The information shows that six out of 10 of the 16 and 17-year-olds who leave care do not achieve any qualifications. By contrast, only 5 per cent of all other 16 and 17-years-olds failed to achieve qualifications. The social justice milestone that we have set is that, eventually, all looked-after children should achieve at least standard grade English and maths. At the moment, some 30 per cent achieve that goal.

The social justice milestone is an important continuing test of progress. As we collect better information on educational achievement in the years ahead, I believe that we will be better able to measure improvements, including those that result from the initiatives we have taken following the "Learning with Care" report; from the £10 million that the Executive invested in educational attainment last year and, indeed, the further money that was allocated in the spending review; and from the inspection of schools and local authorities by the social work services inspectorate and Her Majesty's inspectors of schools. However, we must be clear that we are talking not only about inspections, bureaucracies or money but about young people's lives. We must look ahead from the "Learning with Care" report to the practical actions that will continue to improve educational attainment.

Dr Sylvia Jackson (Stirling) (Lab): Does the minister agree that Ballikinrain School in my constituency is not only a model school but one in which an integrated approach to outreach work helps children to get back into mainstream education?

Cathy Jamieson: I visited Ballikinrain School and was impressed by how the school adapts its work to the continuing agenda for change. The school is particularly interested in raising young people's aspirations. That is very important: we must demand such a change of culture and ambition for our looked-after young people—we should not settle for second best on their behalf.

Most important, we need to continue to seek the views of the young people themselves. It is for that reason that we commissioned Who Cares? Scotland to undertake a survey on the educational attainment of looked-after children. We will receive its findings within the next few months and they will tell us about the ambitions of young people. The findings will also tell us where, why and when young people become disengaged from the education system. Crucially, they will also tell us what young people believe will make a difference.

Mrs Lyndsay McIntosh (Central Scotland) (Con): On what we can do to help children, I am interested in the progress and the achievements that are being made in certain areas, but does the minister agree that the one thing that looked-after children desperately miss out on is the support of a family? They miss having somebody who is there for them, to supervise their homework for example. Every parent in the chamber will have sat down with their children, read with them, gone over their homework, helped them to forward plan and so forth. Sadly, the system lacks someone who takes a continuing interest in the children and helps them to plan for the future.

Cathy Jamieson: I agree with Lyndsay McIntosh on that point. I will talk about that important area in a couple of minutes.

It is important to recognise that, as a result of previous work by Who Cares? and the Scottish Throughcare and Aftercare Forum, we know about some of the factors that cause problems for young people. First, frequent placement moves can have a damaging effect on young people, especially if a change of school is also involved. The stability that school can give can be enormously important. Secondly, we know that young people should not leave care at too young an age. At the moment, many young people do so at 16 or 17, which is precisely the time that they need the most support to help them to concentrate on their exams. If we are serious about wanting more young people to move on to higher and further education, we need to get the whole support package right.

We must encourage young people to see education as something that is relevant to them and which will benefit them in future. In response to Lyndsay McIntosh's question, I agree that looked-after children deserve to have somebody who is interested in their education, in the same way that other young people have such a person.

Social workers or carers need to attend parents evenings, read their report cards and take a real interest in their education.

I have many memories of young people who might have moaned at me at the time, but who in later years said that they were grateful to me and others for caring enough to get them out of bed in the morning so that they would go to school. We nagged them about their homework and pushed them to aim for more in exactly the same way as we did and do for our own children. Lyndsay McIntosh recognises the nagging that parents do.

Mrs McIntosh: I am familiar with the concept.

Cathy Jamieson: We should also recognise that young people in the care system might need extra support. Study support groups in schools, for example, are a welcome resource and, for many looked-after young people, a quiet place in the children's home and access to a computer can make all the difference. Art materials or sports equipment, which some other young people take for granted, can motivate young people to stay involved in education, and additional support to help them to catch up if necessary can give confidence. Those are the kinds of things that are made possible by our allocation of £10 million.

I want to mention one innovative new scheme that provides a young person with a personal webspace for study and the storage of personal documents. It is important that looked-after young people have such provision. I recently attended the launch of the virtual schoolbag project, a pilot that is supported by the Association of Directors of Education in Scotland and Microsoft. I look forward to seeing how the pilot develops, as the young people involved are very positive about it.

I spoke earlier about the low number of looked-after young people who move on from school into university. I know that those young people have the capability to move on. I have seen young people who were brought up in the care system successfully make that transition. However, at the moment, less than 1 per cent of looked-after young people go on to university. We must do more to address that.

We are introducing education maintenance allowances across Scotland to help young people to stay on at school or college. Support is also being offered through the Executive's enterprise and lifelong learning department. As part of the lifelong learning strategy, Iain Gray recently announced his commitment to improving access to lifelong learning for particular groups of people whose education has been disrupted. Young people leaving care will be the first group to benefit. That move is very welcome.

My time is now up. I finish by restating my belief that for too long our ambitions for looked-after young people have been far too low. I want to see that culture change. We must ensure that such a change is the responsibility not only of the few people who are directly involved in working with looked-after children, but of everyone involved in education and social work. We must also ensure that everyone in the chamber works alongside local authorities to deliver such change.

I am committed to the partnership approach, which is why I am not in a position to accept the Scottish National Party's amendment. It misses the point about all of us working together, which is where I am coming from. This is not about giving local authorities a hard time, but about working alongside authorities to ensure that we all deliver collectively for our looked-after young people.

I move,

That the Parliament recognises that young people looked after by local authorities require support to enable them to have the best possible educational opportunity; welcomes the use made of the £10 million allocated to local authorities to support educational attainment of looked after children, and notes that, while progress has been made on implementing the recommendations made in *Learning With Care*, continued effort must be made to ensure that every looked after child has an appropriate care plan, including a plan for education, and is in full time education provision appropriate to need and that staff in social work and education work together to support all looked after children to reach their full potential.

11:19

Irene McGugan (North-East Scotland) (SNP): As the minister reminded the chamber, it was more than a year ago that she made a statement to Parliament announcing plans and setting out the minimal requirement that all looked-after children should receive full-time education and have a care plan that addresses their educational needs. Those are the same plans and requirement that are reiterated in the Executive motion today.

The deadline for delivering the targets passed two months ago, but they have not been met. The educational situation of looked-after children remains grim. The most recent statistics confirm the severity of the problem: the majority of young people who leave care—60 per cent—do so without qualifications. Of 16 and 17-year-old care leavers, six out of 10 do not achieve qualifications and only 27 per cent get English and maths at standard grade.

Mr Monteith: Will the member tell me how those statistics compare with the previous statistics?

Irene McGugan: To the best of my knowledge, they have not improved.

Most 16 and 17-year-old care leavers have experience of truancy and exclusion. Less than 1 per cent of them go to university.

Cathy Jamieson: I remind the chamber of the comments I made in my statement: this is the first time that we have collected such statistics.

Irene McGugan: But one year later, are they satisfactory? We must focus on the problem. We heard almost the same thing a year ago—we discussed the same issues and the same problems that looked-after children face. Why do we need to hear the minister restating plans with add-on bits and new initiatives that have so little result?

Dr Jackson: Will the member give way?

Irene McGugan: I would like to move on a little bit.

The minister made it fairly clear in her contribution that she places at least some responsibility for the situation on local authorities. Last year, local authorities were offered no new resources to implement the plans.

Cathy Jamieson: Surely even Irene McGugan accepts that the £10 million was an additional resource for looked-after children.

Irene McGugan: The £10 million was specifically about providing materials and resources to help with homework; it was not specifically about helping children to receive full-time education or to have a care plan that addresses their educational needs. There were entirely separate announcements about entirely separate issues.

It seems that the minister does not accept that local authorities—especially social workers—are understaffed and under-resourced. They are struggling to deliver services.

If members do not believe anything that I have said, I suggest that the "Learning with Care" report to which the minister referred and which was announced in March 2001, has the answer. It stated:

"The majority of social workers said that they did not have sufficient time to address fully the educational needs of looked after children."

They were too busy dealing with other pressures that impact on family life—education was not their priority. With social work under greater staffing pressure than ever before, how can the situation have improved?

Cathy Jamieson: Does the member accept that, as I outlined in my speech, the issue is not simply for social work departments? Looked-after children are the responsibility of the local authority. Therefore, does she accept that they are also the responsibility of the education department and that there is a role for people other than qualified social workers?

Irene McGugan: Absolutely. I have no difficulty with that. However, it remains the case that social workers are generally the lead workers in any group of workers who support looked-after children.

I remind members that local authorities reported to us last year vacancy rates of 50 per cent in child care teams. There are very few applicants for jobs and posts remain unfilled for 18 months. That is not good. Initiatives cannot be delivered if adequately qualified staff are not in place to carry them out.

We also need foster carers. Foster carers look after 4,500 children in Scotland, which might seem a lot, but it is widely accepted that there is an urgent shortage of carers. There are things that the Executive could do to help recruitment and to attract more people to become foster carers. In fact, the Fostering Network suggested in a recent paper 11 action points to bring about those improvements, the most pressing of which was a national allowance scheme to end the variation in payments. In her responses to parliamentary questions on the specifics of those points, the minister has made absolutely no commitment to implementing any of the suggestions, even though one of the points makes specific reference to helping carers to support children better in their education.

Cathy Jamieson: Does the member accept that foster carers were among the people who received additional support through the looked-after children money? Does she also accept that I have already met representatives of the Fostering Network and have asked them to continue to work with us on some of the points they raised so that we can make progress? It is not the case that nothing has happened.

Irene McGugan: I am pleased to know that the minister will continue to meet foster carers, but I know some foster carers who were insulted to receive, as their share of the £10 million, a little pack with pencils and colouring paper. There was wide variation in how the money was used. Some of the carers did not feel that they received the best support they could have received to help the educational attainment of the children in their care.

We know the kind of measures that have a positive impact—the minister alluded to some of them. Children need to live in a care environment where learning is valued, where they have space and quiet and where they get loads of praise and encouragement to motivate them. They need to know that their social worker and their teacher are focused not only on the problems, but have an expectation that the children will achieve and that they can and will go on to higher and further education if they want to. When things go wrong, they need strategies to help to re-engage them.

We know that those simple yet effective measures work. They have been tried and tested and form the basis of delivering progress.

We welcome the specific funding and, indeed, any initiative to improve the attainment of looked-after children. We fully support integrated working.

Cathy Jamieson: Will the member give way?

Irene McGugan: I am in my final seconds.

We recognise that if social workers and teachers work together, they will deliver a better outcome for children. There is an implication in some of the Executive's statements that, somehow, local authorities are wilfully not complying, but I have no doubt that social workers and teachers endorse the principle individually. However, we also need a commitment to resourcing the core statutory services and to supporting fully—with no hint of criticism, bullying or decrying—the staff who deliver them.

I move amendment S1M-3943.1, to leave out from "the use" to end and insert:

"funding and other initiatives to improve attainment of looked after children; regrets, however, that progress has been so slow, particularly as the Scottish Executive has brought this and associated issues with regard to looked after children to debate in the Parliament on no less than four previous occasions; recognises that the issues cannot be resolved without adequate qualified staff in the system; supports wholeheartedly better integrated children's services but suggests that the Executive desist from blaming local authorities and local authority staff for the problems caused by its own and previous governments' policy failures, and therefore urges the Executive to acknowledge and address the financial and staffing pressures that local authorities face every day in attempting to meet their statutory duties."

11:26

Mr Brian Monteith (Mid Scotland and Fife) (Con): As sure as eggs are eggs, the minister will recall that members on the Conservative benches have supported the Executive's efforts where we have thought them to be justifiable. Today is one of those occasions.

If anything, the difficulty with the debate is that it is a tad premature—no doubt because we are moving towards an election and we are running out of time. I admit to feeling a tad uncomfortable about defending the Executive's position. Perhaps that is because of my aching feet or because the SNP amendment is so off-beam. The truth is that there is not enough evidence available for any of us in the chamber, including the Executive, to be able to measure how successful the £10 million has been.

The report, "Learning with Care", produced by Her Majesty's inspectors of schools and the social work services inspectorate, laid the foundation for progress—there is no doubt about that. However, the investment of funds still has to show the direct effect of improving attainment. One might expect it to make a difference, and we are all hopeful that it will.

The key has been the decision to start measuring the attainment of looked-after children as a group. We await the next results so that we might compare them with the horrific revelation that 60 per cent of looked-after children do not achieve any qualifications, and then try to reduce the percentage to 40 per cent or 50 per cent. That is what we are all working for. When the new figures are available, we will be able to decide whether the £10 million has worked and whether any of the other changes have been delivered. Subsequently, I hope that we will be able to move on to further recommendations.

I draw some points from the "Learning with Care" report, about assessment in particular. Paragraph 1.8 states:

"It was unusual for any form of assessment to have been carried out on the 50 sample children at the time they became looked after. It was even more unusual to find an assessment which addressed educational needs."

Although care plans have been a statutory requirement since 1997, they were in place for only a minority of children in two of the authorities that were inspected. Where there were care plans, they did not usually address educational needs and goals in any detail. Schools were not normally supplied with a copy of the care plan.

Cathy Jamieson: There is a danger that consensus might break out between Brian Monteith and me, which is unusual. Does he accept that, despite the fact that we want to work in partnership with local authorities, where they do not meet their statutory requirements for care plans, it is right that I should take strong action?

Mr Monteith: The minister can safely predict that, if strong action is required to be taken with local authorities, she will have the backing of the Conservatives, and my backing in particular. Haud me back.

Will the minister tell me what progress has been made on assessment and on the use of care plans, and whether those are now standard practice? In summing up, will she or the Deputy Minister for Children and Young People say what impact the draft education (additional support for learning) bill will have on the educational aspect of care plans?

Cathy Jamieson: I am happy to reassure Mr Monteith on that issue. The draft proposals on additional support for learning will ensure that a greater number of young people are assessed for the additional support that they require to ensure that they get the best out of their education. That

will be a helpful move for young people who are looked after and accommodated.

Mr Monteith: That response is interesting. There is a worthwhile debate to be had on that topic, but I hope that it will not be rushed and that we will have adequate time to consider all the factors, particularly parents' concerns.

My colleague Murdo Fraser will say more about how partnerships between the public sector and the independent sector, which includes private and charitable schools and voluntary sector organisations such as Barnardo's Scotland and the Church of Scotland, are crucial to improving the service. I, too, have visited Ballikinrain, which is an exemplary model; I only wish that the Church of Scotland had more schools of a similar standard. I have also visited Lecropt, the Barnardo's school in Bridge of Allan, with which I am suitably impressed—so much so that I often take shadow education ministers from down south to show them how things are done in Scotland. It is a lucky school indeed.

Without the help of the independent sector, standards of care and educational attainment would be far worse. By using the independent sector, we can lever in an additional 20 per cent to 30 per cent of resources. That message should be taken on board not only in the education sector, but in the health sector, as my colleagues suggested in the preceding debate.

There is no doubt that every child deserves a quality education and the chance of a positive future, and we commend the Executive for taking action on the issue. We see no partisan gain in disputing what is being done, but we must have the evidence before we analyse progress. There is more to do. Standards in local authorities must be improved, which might involve finance, but there must also be a rigorous inspection regime to provide quality assurance. We look forward to a fuller progress report from the two inspectorates and to a further debate on the matter.

11:32

Ian Jenkins (Tweeddale, Ettrick and Lauderdale) (LD): "Learning with Care" is an important document. Published almost two years ago, it contains a series of recommendations on courses of action to improve the way in which looked-after children are cared for. The report outlined strategies for improving the educational opportunities for, and educational attainment of, such vulnerable youngsters.

When we debated the document previously, I was pleased that the minister picked out three targets as the benchmarks of progress. I believe that those targets are appropriate and attainable, which is not always the case with targets. I am glad to hear that progress is being made on all three, although I agree with the minister and other members that much remains to be done. I am also pleased to hear and read that local authorities are using the £10 million injection of funds in a variety of ways to enhance and enrich educational opportunities for looked-after youngsters, who face serious obstacles in their personal lives and for whom a stable and enriching experience of education is vital.

The minister outlined the benchmark targets. First, we aim to ensure that all looked-after children are in full-time education. Of course, that will be problematic in unique or special cases, but it is absolutely essential that such youngsters have a full-time place in the system. The conventional school environment might be inappropriate in some cases, but the children have a right to full-time educational opportunities. We must provide an environment in which they can grow as individuals, gain confidence and self-respect and develop their talents in the most appropriate direction. We hear about youngsters who leave school without qualifications; to remedy that problem, they must be firmly in the system.

The second aim is for local authorities to designate a teacher in every school to be the overseer of the school's work with looked-after children. Some schools might have no such pupils, but the authorities must recognise the importance of having a leader who is responsible both for the care of the youngsters and for liaison with other professional staff and agencies, such as social workers. Examples of excellent good practice should be highlighted and made available to allow them to be implemented throughout the country.

Central to the issue is the need for a care plan for each pupil, to which Brian Monteith referred and which is outlined in "Learning with Care". A core element of such plans should be consideration of the educational needs and planned provision for that individual. In some circumstances, I am wary when politicians advocate individual learning plans for pupils because I know that producing them can be more complex than it sounds and more difficult than non-teachers might realise. However, such a comprehensive overview is vital if we are to enable looked-after children to maximise their potential.

If we read the documents, we find cases in which the sensitivities surrounding young people's emotional and personal problems have not been handled sensitively. The co-ordinator, guidance teachers and school pastoral system are important in handling joint working in a way that best helps the pupil. There is a real need for training and professional development, and local authorities must continue to promote positive joint working.

The ethos in the new community schools is a good example that should be rolled out further.

The minister referred to the targets for educational attainment as a "social justice milestone". We hear that many looked-after children leave school with no qualifications and that only a tiny percentage of them go to university. I welcome the minister's illustrations of high ambitions and the extending of opportunities for such youngsters. The statistics are sad and serious—I cannot remember the word that Brian Monteith used.

Mr Monteith: Horrific.

Ian Jenkins: The statistics are horrific, but I counsel ministers, and politicians in general, not to become hung up on what can be narrow, paper-based measures of achievement. We should be wary of using such statistics to berate political opponents or to make adverse judgments about particular schools and local authority education systems.

Traumatised youngsters who are taken into care need a safe environment and a domestic situation in which they experience sympathetic care and understanding and are treated with respect and affection as individuals. They need an environment in which they can learn to respect themselves after having traumatic experiences in their young lives. They need a domestic and educational setting that enriches them and allows them to develop socially and personally. They must be equipped with the skills and personal resources to allow them to move into the wider world with confidence.

In truth, our well-intentioned target that all such children should attain standard grade English and mathematics might, rightly or wrongly, not be high on those children's personal agendas. The Who Cares? Scotland review will help to explore that issue. In the meantime, we must resist the temptation to force children into boxes for certificates gained that simply allow us to tick them and say, "Willie's got a foundation award at standard grade English—he's sorted and he won't appear in the statistics as leaving school with no qualifications. Job done." That is not what we are about.

The matter involves complicated situations for individuals who have complex needs, and it is difficult but vital for us to try to meet those needs. Those individuals deserve the best that we can give them. We must ensure that we treat them as individuals and not as statistics, and I know that the minister is committed to that. I support her motion and I look forward to further progress on what is an important issue and to the practical actions that were outlined and promised for the future in the minister's speech.

11:38

Scott Barrie (Dunfermline West) (Lab): I welcome the debate and the opportunity to contribute to it. I am sorry that the amendment in Irene McGugan's name seems to regret that we are having another debate on the educational attainment of looked-after children. I know that Irene McGugan has a commitment to and knowledge of the subject, so I thought that she would welcome the opportunity to advocate on behalf of those in the section of the population who are in child care, who are often the most marginalised and disadvantaged in society. We must be honest: if it were not for the debates that we have had on the issue, particularly those on the poor educational attainment of looked-after children, many members would not know how serious the issue is and would not see it as requiring the political action that it clearly does.

Today and in previous debates we have heard about the poor outcomes for looked-after children. Too few of them leave school with formal qualifications; too many of them do not go on to higher education; and too many end up in young offenders institutions almost immediately after leaving care. We must do better; by increasing educational attainment, we can increase expectations and opportunities in later life.

For too long, our education system tended to discriminate against looked-after children, particularly youngsters who were in physical care. Nothing used to depress me more as a social worker and social work manager than when youngsters were removed from their homes and placed in a residential school—allegedly following the best-interest principle—only to leave at 16 with no formal qualifications, with little to look forward to and with the stigma of not attending a mainstream school. I am not saying that residential care can never work; however, if it does not improve a youngster's educational attainment and life opportunities, what is it about?

That brings us neatly to something that the Conservatives have said in the past. In previous debates, they have expressed in warm words their empathy for looked-after children. I heard such expressions earlier and we will, no doubt, hear them again later. However, in other education debates the Conservatives have berated the Executive for setting targets for reducing the number of school exclusions. Do they not realise that the two issues are interconnected? Looked-after children are disproportionately more likely to be excluded from schools and are especially likely to be excluded temporarily on a semi-regular basis. That disrupts their schooling and makes it more difficult for them to have a continuous education, even if they have been fortunate enough to be able to remain at their catchment school following their placement away from home.

Unfortunately, the same depressing statistics also apply to those under home supervision requirements. We must be clear that we are not talking about one issue or another: the two issues are closely linked. We must be careful not to assume that we can have a debate about looked-after children one day and say positive and warm things about them, and have another debate on another day about the level of school exclusions but not tie the issues up and recognise that they are connected.

However, there is cause for cautious optimism. Proper implementation of the Children (Scotland) Act 1995 means that all looked-after children must have a proper care plan of which education is a key element. Although there is a lack of child and family social workers in some local authorities, I am glad that most local authorities are fulfilling their statutory requirements. It is a tribute to the hard work and dedication of the staff in those local authorities that they are achieving that. The Children (Scotland) Act 1995 did not introduce care plans—we had them before it was passed—but the act made them a statutory requirement. Nevertheless, too often in the past, those care plans did not address the children's educational needs. I was glad to hear the minister say that the situation is improving, and I look forward to further improvement in that area.

I believe that better integration of child and family social work and education, together with other local government services, is necessary if the corporate parenting role that is embedded in the 1995 act is to be achieved. That would be the key to improving the children's educational achievement and, equally important, their personal and social development. The point was previously made that we should not measure the success of our young people just on their educational achievement, but on how they are progressing in other areas, especially in social and personal development. By focusing on those areas too, we will improve the life chances of all looked-after children. That is what some of us were always seeking to do in our professional practice, and I know that it is what most members want to see.

11:43

Kay Ullrich (West of Scotland) (SNP): I ask members to cast their minds back to their childhood. If that is far too long ago, they could cast their minds back to the childhood of their children or grandchildren. Can they remember the paintings that were brought home, sometimes still dripping wet, duly pronounced to be masterpieces and put on the wall for all to see and admire? What about the praise that was given to homework jotters when they were adorned with that very important gold star? I even remember the excitement of bringing home a good report card—although I admit that my report cards could best be described as mixed. I remember trying to convince my parents that the words "Kay creates her own diversions" meant that the teacher thought that I was in some way special. However, mum and dad soon sussed that one out.

Whether my reports were good or bad, my memories are of parents who cared about me. For looked-after children, we should be a society that cares. Sadly, that has not been the case in the past, and we have failed those children miserably. Today we have heard the statistics, which speak for themselves. Less than 1 per cent of looked-after children go on to university, and the figures show that up to 50 per cent of homeless young people were once children in care. I would be interested to learn how many of those children, as adults, find their own children taken into care. I suspect that one of the tragedies of the system has been that generations of young people have left local authority care totally ill equipped for family life and parenthood. Being a parent is a skill that is best learned at one's mother's knee.

I welcome the minister's recognition of our past failures and I will be the first to applaud when the changes take place. We have to start now. Too many young lives have been blighted for far too long. The bottom line is that we must make life for children living in residential care as near as possible to life in a family home.

Johann Lamont (Glasgow Pollok) (Lab): Does the member agree that the problem for a lot of our children is their experience at home, which has led to their being in the care system? She seems to be making a false distinction between the experience of children who are looked after and the experience of those who are not. Some of our most troubled and damaged children are those who are not fortunate enough to have been recognised as having a problem, taken out of their circumstances and put in a system that meets their needs. There is a danger in implying that it is the care system that damages the children—what brought them into the system in the first place is what damaged them.

Kay Ullrich: As an ex-social worker, I agree. We are dealing with children who are received into care because their family circumstances have led to their being damaged children. That is why we have to make life in the residential units as near as possible to life in a family home.

However, no matter how well we succeed—and succeed we must—the problem remains that staff work shifts, need days off and leave for other jobs. It is widely recognised that good child-rearing practice involves the consistency and continuity that can be achieved totally only in a family setting. That is why, today, I am making a plea to

address the shortage of foster carers in Scotland. Only 27 per cent of children who are looked after by local authorities are in foster care.

Cathy Jamieson: I welcome and value the role that foster carers play. However, does the member accept that some young people, especially teenagers, who still have contact with their extended families may choose to be in a residential care setting rather than in a family setting?

Kay Ullrich: I agree with that. However, the vast majority of children who are currently in residential care would benefit greatly if they were placed with a foster family.

A number of things could be done to achieve that. There could be a national recruitment drive for foster carers, and a national allowance for them to end the postcode variations and perhaps attract more people into foster caring. In short, foster parents should be recognised as a vital part of the child care team. It is also essential that we address the drop-out rate among foster carers. In my experience, the pay scale is not the main factor in people giving up fostering: it is the lack of support that they receive from the social work department after a placement has been made.

That brings us back to the recruitment and retention crisis in social work departments throughout Scotland. Like it or not, the reality is that looked-after children—whether they are in residential or foster care—are a low priority in an overworked social worker's case load.

Cathy Jamieson: Will the member give way?

Kay Ullrich: I am just finishing.

I welcome the announcement that has been made today. At the risk of ruining the minister's career, I have to say that, on this issue, we are on the same side. However, let us have no more debates on the subject; let us just get on with doing what needs to be done.

11:49

Donald Gorrie (Central Scotland) (LD): My colleague, Ian Jenkins, dealt well with the school aspect of the looked-after children problem, so I will deal with the out-of-school aspect. I will concentrate on the issues of self-esteem and expectation, including the expectation that a young person has of himself or herself and the expectation that those round them have of the progress that they will make.

We must start earlier. Early intervention must be very early intervention. Our task should be to ensure that nobody becomes a looked-after child, as we will have sorted out the problem at an earlier stage. I understand that there is an almost complete study in Edinburgh on the issue of putting a great deal of resources into tackling the problems of two to four-year-olds within their families by helping the families and the children to sort themselves out. That is a good way to proceed and I hope that more effort, money and other resources can be put into what is a resource-intensive method. If that method turned around two to four-year-old children, it would save an enormous amount of money that otherwise might have been spent later on, and would give the children and their families happier futures. I urge concentration on the issue of the earliest possible intervention.

Johann Lamont pointed out that problems often arise at an early stage in families. The Justice 1 Committee went round listening to people who are involved in alternatives to custody and the phrase that the committee heard most commonly was "chaotic lifestyle". Many families are totally disorganised. In relation to that, we were given the excellent statement that an appointment is a bourgeois concept. To me, that was a revelatory remark. We must help disorganised families to sort themselves out.

We must also consider providing more staff to help such families. There is a shortage of well-trained, specialised social workers. We should consider the analogy of classroom assistants, who have helped greatly in our schools. If there were out-of-classroom assistants who could provide some of the maternal—if that is the right word; it is probably a sexist one—or parental support to which Lyndsay McIntosh referred, that would be helpful.

Cathy Jamieson: I do not disagree with the points that have been made about ensuring that the most vulnerable families get support as early as they need it and I welcome and value the work that social workers do. However, we must stress that the problem, or issue, is not just for social workers in a local authority, but for the local authority as a whole. A range of skills in schools, from those of nursery nurses to those of classroom assistants and support staff, plays a vital role. We can and should make more of those skills.

Donald Gorrie: That is helpful. I agree that a local authority as a whole should tackle the problem of looked-after children because it affects many local authority departments. However, based on the example of classroom assistants, people of the right calibre, who need not necessarily have social workers' extensive technical and professional training, could make a good contribution to providing young people with one-to-one help in their homes or residential accommodation.

We are moving in the right direction. If we could get council departments to co-operate better—in

some cases they do not co-operate—and if we could put more resources into tackling children's problems at the earliest possible age, we would make a huge difference to young people's lives and ultimately save ourselves a huge amount of hassle. I commend the minister and I hope that she will take account of what I have said.

11:54

Colin Campbell (West of Scotland) (SNP): Kay Ullrich's speech has encouraged me to wander down memory lane, as I sometimes do.

The minister wondered at what stage children become disengaged. One of the more depressing experiences of my previous existence was that every year, when I supervised the lunch queue on day 1 of the school session, I found that two or three children just starting secondary 1 would come up to me and say, "When's my leaving date, sir?" They brought that message, or attitude, from primary school, which was a little discouraging all round.

Looked-after children have always been with us. Let me go down the historical route. In the 1950s, my mother-in-law taught briefly as a supply teacher in the Quarriers home in Bridge of Weir, which is no longer a children's home. She came back from that experience rather worried about the attitudes that she saw there. For example, when they went to church, everybody behaved utterly perfectly, with no pins dropped. The other matter that disturbed her was that, when she walked up and down the classroom rows, the children ducked to the left or the right as she passed. There was a strong, implicit message in that.

However, I know that all sorts of people with all sorts of talents came from that place. For example, an Edinburgh minister and a leading educational light came from there, as did a man I know who did not want just an ordinary job when he left, which was guaranteed in those days. He went out and negotiated an apprenticeship for himself. There were people there who, despite the worst circumstances, did the best that they could for their lives. Ian Jenkins was right when he talked about the need to discuss and remember the individual, which is why I gave those individual examples. Of course, many others fell by the wayside or were exported to Canada to work on farms, which was by no means an ideal solution.

I agree with Ian Jenkins that we must keep the individuals in mind. We talk about looked-after children as a body of people, but within that body are people who have a life and they are entitled to make the best of it. They need stability and a great deal of encouragement.

It is unfortunate that the problem is increasing. For example, in 2001-02, there were 10,960 admissions to residential establishments, which was a 13 per cent increase on the previous year. That is not good news for anyone.

Cathy Jamieson: If we consider only the figures, we are in danger of not seeing the lives that are behind them. Individual children could have needed each of the admissions to residential care to which Mr Campbell referred.

Colin Campbell: That probably takes us back to Johann Lamont's point, which was that many problems could be dealt with before children reach the point of having to go into residential care.

Another factor is that a third of looked-after children experienced four or more placement moves during their most recent care episode. What hope does that statistic hold for continuity of supervision and care, and for building relationships between staff and a child so that the child feels that they matter a great deal? Studies into such areas give the results that one would expect. For example, one study found that looked-after children with more standard grades were likely to have experienced fewer placement moves. However, statistics on placement numbers are not held centrally.

On foster carers, there are 4,500 foster children in Scotland and there is a shortage of 650 foster families. In Edinburgh, a foster parent gets £59.80 a week, but in East Renfrewshire they get £116.16. We need a standard rate throughout the country. A survey by the Fostering Network, to which half of Scottish local authorities responded, found that 94 per cent of foster carers were paid below the recommended minimum weekly allowance. That issue must be addressed.

We all know that there is a shortage of social work staff. For example, in 1996, there were 38,300 social work staff but, in 2001, there were 34,600. That is a 9.5 per cent fall in staffing levels.

Cathy Jamieson: Would Mr Campbell accept that the number of qualified social work staff and the number of people applying to get into social work training are rising? There is no doubt that there is an increased demand for social work staff. However, the number of qualified workers is rising.

Colin Campbell: If it is rising, it is not rising quickly enough to deal with the individual problems that we care about. The number of whole-time-equivalent social work services fieldwork staff has fallen by 6 per cent from 9,530 in 1998 to 8,979 in 2001. The number of day care staff in services for children has also fallen, from 703 in 1996 to 600 in 2001, which a 15 per cent fall.

The critical aspects that must be addressed are continuity in payment for foster parents and the problem of social work recruitment. The Executive

is trying to address those issues, but it is too little, too late. Looked-after children merit, and must have, as much support as possible. We do not want another 40 or 50 years to pass and this problem to go with them.

The Deputy Presiding Officer (Mr George Reid): We have time in hand, therefore members may treat themselves to an extra minute if they so wish in their winding-up speeches.

12:00

Karen Gillon (Clydesdale) (Lab): I welcome the opportunity to continue to examine this issue and to consider how to make improvements.

I will begin by reference to a person I know. Sarah came to live with her foster carers at the age of 12. By the time that she was placed, she had been in residential care with her two brothers for six years. There had been numerous residential care placements that ended in a large residential care home. Before Sarah went into care, she lived with her mother and various "uncles" or "dads", and was subjected to physical and mental abuse. The abuse took varied forms, one of which was having cigarettes stubbed out on her body. Mental abuse included watching her brothers being abused.

It is little wonder that when Sarah came to stay with her foster carers, she could not write her name, count or read the most basic words. For her, the care system was to keep her alive; education was somewhere much further down the spectrum of needs. She had very complex needs. She had little if any self-confidence and had severe behavioural problems, as did her brothers.

However, Sarah was lucky, because as a result of her placement and of her foster home setting, she went to a small secondary school. She was able to receive the support she needed from a dedicated member of staff who liaised with the family and with the school and provided support at difficult times. The member of staff drew up a learning plan that was relevant to Sarah's needs, which did not fit in with the five-to-14 curriculum because when she got to S1, the first secondary school class, she would not have qualified for P1, the first primary class.

By the time that Sarah left school, she could read, count, write and had some basic Scottish Vocational Education Council modules. She has gone on to find a job and to set up home for herself.

Sarah's experience is an example of the complex needs of children in care. For many of those children, education is not seen to be important. Therefore, we need to begin to work hard at a starting point for those children.

Kay Ullrich is right; for many children in care, a foster care placement would be a good thing, but that brings with it other challenges. For someone who has only ever had a negative experience of family, fitting into a family environment is not easy and the process sometimes causes problems for the foster care family and their children. That results in a much more serious situation, because the children are then returned to residential care, having lost their belief in families and foster care. That is why it is important that, in placing for a foster care setting, foster carers are aware of the situation that they will be involved in and are fully briefed about the child who is coming to them. Foster carers must be supported in meeting the needs of that individual child.

In residential care, continuity of placement is important but is not always easy. Individuals are complex and sometimes they do not fit into the care situation in which they find themselves. We need to explore how to maintain their education, even when they move from one residential care placement to another. That is possible and can be beneficial.

We must study why the aftercare from school is not as effective as it should be. We need to examine why children and young people who are in care are not given the support that they need to do their homework, to find the space that they need or to be involved in extra-curricular activities that would help to improve their educational attainment and self-confidence. If they do not have self-confidence, they will not learn to the best of their ability.

The situation is complex, but I welcome the progress that has been made, particularly by my own local authority, South Lanarkshire Council, which has made progressive steps. All schools in that area now have dedicated staff members and home link workers who work in the community to try to bridge some of the gaps. Those are the kind of examples that we need to continue to develop. At the heart of the debate, however, we must always remember that we are talking not about statistics or about a group, but about individuals with complex and often difficult needs. For those individuals, the system up till now has failed them and the people whom they trusted most have failed them. The system that we put in place must not continue to fail them.

12:06

Murdo Fraser (Mid Scotland and Fife) (Con): This has been a good debate, and we have heard some well-informed speeches from all sides of the chamber. The Conservatives will support the Executive's motion today, and we agree with much of what has been said by the minister—which I am sure will disturb her. However, I echo what my colleague Brian Monteith said: that it is perhaps

premature to be holding this debate on the basis of the information that is before us. We will not support the SNP's rather carping amendment, because there is not really enough evidence at the moment to support what the SNP is saying. Perhaps if we have a debate on the subject in a year's time, that will be the time to make the points that Irene McGugan made today.

As the minister acknowledged in her speech, educational attainment among looked-after children is poor; six out of 10 of those children leave school with no qualifications, compared with a national figure of around one in 20. That is not good enough, and I am pleased that the minister has acknowledged that. Looked-after children need stability; constant changes in their circumstances lead to low attainment levels, as Colin Campbell said in his speech.

Fewer than one in seven looked-after children live in residential care accommodation. Most are with relatives or friends. Of those who live away from home, a quarter have had more than three placements. That cannot be good, and the figures suggest that there is a link between poor attainment levels and instability in the home environment. We must do more to provide stability.

I want to respond to what Scott Barrie said in his rather bizarre argument about school exclusions. I am sure that we can debate school exclusions in more detail on another occasion, but there has been a sevenfold increase in violent incidents in the classroom since 1997. We would argue, and have argued, that that is a direct result of the policy of having targets to reduce school exclusions. If discipline in school is breaking down, as it seems to be, it is rather strange to suggest that we should tolerate violence in the classroom just because it is being carried out by looked-after children.

Scott Barrie: That is not what I was saying. My point was that, disproportionately, looked-after children face a series of short exclusions. That is a matter of fact and it contributes to their education being disrupted. We cannot dissociate children's poor educational attainment when they are looked after and the fact that they are also, disproportionately, excluded from school.

Murdo Fraser: I am obliged to Mr Barrie for clarifying his remarks. That was not what I took him to be saying earlier, but what he is saying is not necessarily an argument for changing the exclusion policy. His argument may, in fact, suggest that, if looked-after children have a series of temporary exclusions, they may perhaps be in the wrong environment to start with. Perhaps there are other, more appropriate, school settings for them to be placed in, rather than those in which they have that series of temporary exclusions.

I want to make two specific points on other issues, the first of which concerns the use of schools in the independent sector. A number of local authorities, for reasons of scale, do not have the necessary provision within their area. They are happy to buy into provision from the independent sector, which provides a combination of pastoral care and an holistic approach to teaching that is not always reflected in local authority schools. I can think of two schools where there is such provision. One is the new school at Butterstone in Perthshire; the other, to which Sylvia Jackson and Brian Monteith referred, is Ballikinrain school near Balfron, which is run by the Church of Scotland's board of social responsibility—the largest provider of care in Scotland outside the state. Those schools are run not for profit, but by charitable bodies to a high standard of service. I hope that the Scottish Executive will reaffirm its support for such institutions and the standard of care that they provide.

Cathy Jamieson: When members are referring to specific schools or facilities, it is important to remember that we should work to ensure that the best facilities are provided for all young people. The Executive has always made it clear that for young people with complex needs, there will be a continued requirement for specialist provision.

Murdo Fraser: I am obliged to the minister for that clarification.

Secondly, we must address why we need a debate about looked-after children in society. We cannot have the debate without considering the primary causes, one of which is family breakdown. My colleague Lyndsay McIntosh referred to the importance of the family unit. Government, in its broadest form—I am referring not only to the Scottish Executive, but to the Government at Westminster and local authorities—must ensure that we have policies that promote family life and try to keep families together. That means promoting marriage. We know that children who are brought up by married couples are nine times more likely to be with that couple at the age of 16 than those who are brought up by a couple who are not married to each another. Politicians must recognise that statistic. We should shy away from policies and stances that undermine family life and parental rights—we saw some of that during the consideration of the Criminal Justice (Scotland) Bill last week.

We shall support the Executive's motion, and we shall await developments and new statistics with interest. We look forward to revisiting the subject in the future.

12:12

Michael Russell (South of Scotland) (SNP): There has been an outbreak of consensus in the

chamber this morning, in particular between Mr Monteith, Mr Fraser and the minister. Although I am always happy to welcome consensus, we should wait to see what the consensus is.

The consensus seems to be based—I shall put it charitably—on mistaking concern for action. The consensus in the chamber should be one of anger and outrage at the situation that exists in Scotland today, and about which we have heard. It should also be based on taking action and making progress.

This debate shows, as previous debates and reports have shown, that it is possible to have consensus as long as we recognise the key elements of the problem. In all those debates and statements—there have been five, plus one that we introduced last year that dealt partially with the issue—concern should have been expressed about the crisis in social work and the inability to build the social work profession in a way that makes a difference. That was the burden of the speeches from Irene McGugan and Kay Ullrich, both of whom have considerable experience, and it should focus where we are going.

Cathy Jamieson: Will the member give way?

Michael Russell: No; I shall finish what I have to say. The minister intervened on every speech and I do not doubt her genuineness for a moment, but her actions are lacking. We have to draw attention to that. The reality is that actions are lacking throughout the policy.

The Parliament could have agreed to make major progress on the matter, but it has not. One of the problems is that we do not have the statistics. I do not regard it as sufficient for a Government to say that, four years into its term, it does not know the nature of the problem. Such a comment is, however, marginally better than what Mr Jenkins said. He seemed to think that it did not matter whether we had the statistics; he just agreed that we still do not know the nature of the problem.

However, we know how awful the problem is because the statistics are in every report and statement. For example, we know that this Government said in its programme for government that it would reduce the take-up of residential accommodation by 10 per cent. However, we know that between 2000 and 2002 the figure fell by half of one per cent. In fact, the number of admissions actually rose. We know that two thirds of those leaving care had no standard grades, whereas the equivalent figure for those who are not in care is 4 per cent. We know that 83 per cent of looked-after children had experience of truancy and 71 per cent had experience of exclusion. We know that less than 1 per cent of looked-after children go to university. Finally, we know that 45 per cent of young offenders in custody in 2000 had spent some time in residential care. That is probably the most worrying statistic of all. Although we have known all those things for some time, apparently we do not know whether we are making any progress on them.

We have some other figures. For example, the number of social work staff has fallen by 9.5 per cent since the Tories left office. As Colin Campbell pointed out, the number of day care staff is down by 15 per cent.

Cathy Jamieson: Will the member give way?

Michael Russell: No.

Cathy Jamieson: The member should let me explain.

Michael Russell: The minister can explain it to the voters.

We know that some child care teams have 50 per cent vacancy rates; that there are vacancy rates of 10 per cent in children's services; and that there are vacancy rates of 12 per cent in residential services.

The minister has not just dropped in from Mars on this issue; in fact, she has a long and distinguished history of working on it. She has been an MSP since 1999; she was briefly a member of the Education, Culture and Sport Committee; she is the deputy leader of the Labour party; and she has been the Minister for Education and Young people since November 2001. Indeed, since 1997, she has been the fifth minister in this and the previous Administration with responsibility for this issue. However, we know that the statistics that I mentioned are true.

Johann Lamont: What would Mike Russell do?

Michael Russell: I will tell members what I will do. The pressure is on for us to take action, not to have words. The pressure is on for us to recognise the problem, which my colleagues have outlined. For example, we have problems with the existing social work situation and with retaining and recruiting social workers. The pressure is on for us to ensure that we get the statistics and that there is delivery.

There is consensus in the chamber for something effective to be done.

Cathy Jamieson: Will the member give way?

Michael Russell: No, I will not.

Although I think that such consensus exists throughout the chamber, it is not enough to mistake concern for action. Unfortunately, most of the debate has centred on expressing legitimate and deeply felt concerns that I have no doubt exist and on highlighting the feelings of outrage that we

have such a situation in Scotland. However, we have still had no progress on this matter. We need that progress; after all, we have had five debates on this issue and people are depressed by the lack of progress. All we have are words. They might be warm words and they might be words of concern, but they simply fail those who have been failed for generations and are still being failed.

12:18

The Deputy Minister for Education and Young People (Nicol Stephen): Despite making some very personal remarks against the minister, Mike Russell failed to take a single intervention from her, even though she repeatedly asked him to give way. Moreover, he failed to make a single constructive suggestion about what he or his party would do to tackle the problems in question. Until that speech, the debate had been genuinely constructive and had contained some pertinent and knowledgeable speeches from members who care deeply about the issue. I regret the fact that we went so far off track during the shadow spokesperson's winding-up speech.

Cathy Jamieson highlighted the current position and the work that is going on to improve unacceptable outcomes for many of our young people. I will pick out some examples from the work that has been done to improve the situation over the past year and a bit and show how young people believe that it has made a difference to them. The work should not be seen as a one-off exercise. Instead, it is about putting in place principles of good practice and continuing to improve the situation year after year. We have a long journey ahead if we are to turn round the situation in Scotland.

The poor outcomes for young people show that we must start to provide good-quality help, support and care early and that we must continue to provide support right through their education. There must be a way of ensuring early support and, when necessary, early intervention so that young people do not lose faith in education and in the system and do not become lost in bureaucracy and inadequate management. When, as is the case, some local authorities have difficulty telling us basic information about the number and location of the looked-after children in their areas, what hope is there for the care of those children?

Some of the statistics that have been quoted by Brian Monteith, Irene McGugan, Cathy Jamieson and others are—as has been said repeatedly—unacceptable. It has been made clear that we will take action if local authorities are not delivering. The next step will be to meet the local authorities that are failing, in order to discuss their shortcomings and ensure that an action plan is in place.

We will not let up or let go on this matter. If it takes a fifth, sixth, seventh or eighth debate in the Parliament, we will hold those debates. Surely there is not a member of the Scottish Parliament who believes that the issue would have received elsewhere the scale of attention and focus that we have been able to bring to it over the four years of this new Parliament.

We know the statistics, because we are now gathering them—some of them for the first time. We are gathering the statistics not only to have them and publish them for a debate in Parliament, but because we are determined to take action and turn the situation round.

Colin Campbell and Mike Russell should not exaggerate the situation—they do not need to do so, as some of the statistics are bad enough. However, there have been improvements. If members read the report that has been put in SPICe today, they will see that there have been some improvements in local authority areas. From 1999 to 2001, the number of fieldwork staff for children and families has risen in Scotland by 30 per cent. There were 200 more new social work students in 2002 than there were in 1998.

The investment of £10 million that we made to improve the educational attainment of looked-after children was designed to kick-start the process. The young people who have benefited from that money have told us that it has worked for them. When a young person is given the tools that are necessary to learn, their focus changes and their ambition can grow. Many local authorities chose to purchase, for example, computers and educational software for their looked-after young people. Young people have said that they have found that equipment very helpful; it encourages them to do their homework and to continue course work out of school. Clackmannanshire Council used part of the money to provide an educationally rich environment in their residential unit. The importance of making access to books and quiet working areas a natural part of growing up cannot be underestimated and the new environment has proved popular with young people.

Cathy Jamieson said that the issue was about more than academic achievement. Some councils looked to boost young people's self-confidence and self-esteem, in the way that Ian Jenkins mentioned, to enhance life skills. Aberdeen Council paid for theatre and cultural events and paid coaching fees for dancing and swimming. The sadness is that looked-after children do not get some of those things already as a matter of course.

We said on publication of the report that local authorities had invested the money wisely to benefit children who are being cared for and, in the main, I believe that to be the case. If the

examples that Irene McGugan gave of the disappointment in some areas are accurate, I would share that disappointment and join the criticism, and take action in the future.

Local authorities recognised that different age groups have different needs and targeted the money where they believed that it would be most effective. Midlothian Council provided every looked-after child with a schoolbag pack so that they could go to school properly equipped. In the older age range, Perth and Kinross Council bought equipment to help a young person attend a further education course. Those are things that should be happening, but have not been happening in the past few years. They can make a real difference and—allied to the "Learning with Care" recommendations—should lead to real improvements in educational outcomes for young people in Scotland.

To achieve real improvements, we need to ensure that all the recommendations in "Learning with Care" are implemented, not only the three that Cathy Jamieson mentioned and on which the document that is now in SPICe reports. The examples that have been mentioned show that some councils are taking practical steps to implement the recommendations, but more should follow. Early support and early intervention in tracking the education status of young people are vital if those young people are not to fall by the wayside. We will keep a close interest in progress in all authorities and we expect year-on-year improvements, which we will report on to the Parliament. That there have been four debates on the matter already is a great advantage of having the Parliament; today's debate is the fifth. There is a real determination to achieve results. Prior to 1999, we would not have devoted the attention to the subject that we are devoting now.

As Cathy Jamieson said, our ambitions for looked-after young people have been too low for too long. Looked-after young people have been viewed as young people with problems from whom not much can be expected. That is simply the wrong approach and grows the problem. Every young person has potential, abilities, skills and a spirit that requires encouragement and nurturing. Every child deserves the best in education and life. Currently, we are not doing enough.

This morning, we have debated stark statistics that should force us to think hard when we use phrases such as "every child matters." In Scotland in 2003, do we really and truly mean that? To mean it really and truly is the challenge.

12:27

Meeting suspended until 14:00.

14:00

On resuming—

Title Conditions (Scotland) Bill: Stage 3

The Deputy Presiding Officer (Mr George Reid): The first item of business this afternoon is the stage 3 proceedings on the Title Conditions (Scotland) Bill. For the first part of the stage 3 proceedings, members should have with them the bill as amended at stage 2, the marshalled list, which contains all the amendments for debate, and the groupings list.

Before we start, I draw members' attention to an error in amendment 171, which is on page 34 of the marshalled list. The first line of the amendment reads:

"In schedule 12, page 92, line 2, at end insert".

However, it should read: "In schedule 12, page 91, line 40, at end insert".

I will allow an extended voting period of two minutes for the first division following the debate on the first group of amendments. Thereafter, I will allow a voting period of one minute for the first division after a debate on a group. All other divisions will be 30 seconds.

Section 1—The expression "real burden"

The Deputy Presiding Officer: Group 1 is on personal real burdens. Amendment 1 is grouped with amendments 85, 13 to 15, 17, 30, 31, 60, 95, 104, 110, 209, 114 to 117, 122, 211, 212, 123 to 125, 76, 130, 134 and 135.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): Amendment 1 paves the way for a large number of amendments that are designed to make the text of the bill more coherent and accessible. The amendments will give a formal recognition to a category of burdens, to be called "personal real burdens". Those are burdens that are held in a personal capacity rather than in relation to benefited land. For example, they include conservation burdens, which are to be held by a designated conservation body. The number of personal real burdens has increased since the bill was introduced—indeed, some of the subsequent amendments this afternoon devise more of them—and many sections contain unwieldy lists of each of the burden types. Defining them under the umbrella term "personal real burdens" will make the bill easier to understand—although I accept that the word "easier" is used in a relative sense.

Amendment 14 will ensure that a personal real burden holder will be notified of an application to

discharge burdens under the sunset rule. Amendments 211 and 212 simply reflect the fact that there might be no benefited property owned by an objector to a compulsory purchase order under the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947.

As I have indicated, the other amendments implement the basic point of having a category of personal real burdens.

I move amendment 1.

Lord James Douglas-Hamilton (Lothians) (Con): I should register my interests, as I am an unpaid executor, an unpaid trustee and an unpaid director of a small family company and I am a non-practising Queen's counsel.

I thank the minister for alerting me to the purpose and effect of the Government's amendments. We consider that the clarity of the bill will be much enhanced by the use of the generic term "personal real burden".

In relation to section 110, I have concerns about whether the term "maintenance" will cover the fees of architects, quantity surveyors and solicitors. If the minister is not able to give his view on that now, it would be helpful if he could write to me with the answer in due course.

Mr Wallace: I am grateful for the support that Lord James has given to the amendments. I understand what he says about maintenance costs and will try to get a response to him either in writing or when we discuss another amendment today, if I have the answer by then.

Amendment 1 agreed to.

The Deputy Presiding Officer: Group 2 is on rural housing burdens. Amendment 2 is grouped with amendments 10, 11, 183, 94, 197, 198, 97, 77 and 215 to 217.

Mr Wallace: Amendment 2 is designed to create a new personal real burden. In this case, the burden is a personal pre-emption burden, to be called a rural housing burden.

The amendments in this group have been lodged in response to amendments that Maureen Macmillan lodged at stage 2. She proposed that certain housing bodies that sell land in the interests of providing local community housing at affordable prices should be allowed to control the subsequent sale of the land by creating a burden over the property.

I am keen to support the work of such bodies and decided, following consultation, that the best way forward would be through the creation of a new personal pre-emption burden that would allow such housing bodies the first opportunity to buy back a property when it is to be sold. However, the use of the pre-emption will be limited to bodies on a list designated by the Scottish ministers under subordinate legislation. The main purpose of those bodies will have to be the provision of housing in rural areas.

Personal pre-emption burdens that are held by rural housing bodies will be treated differently from other pre-emptions in two respects. First, instead of having 21 days in which to accept an offer, a body would have 42 days. As the Parliament will recognise, it can at times be difficult for such bodies to put together a financial package, so the 42 days will allow them additional leeway. Secondly, the body will not lose the right of pre-emption if it is not exercised. It will be available for later sales so that the body can step in if the land is being sold at a high value for private gain rather than for affordable local housing.

The pre-emption will be freely negotiated with the purchaser and could detail the terms under which, and price at which, the property could be bought back. It is possible, in the creation of a pre-emption, to specify the price at which the property can be repurchased. That provision could be used in these circumstances to allow the rural housing body to buy back the property at a similar price to that of the original sale. Clearly, it would be inequitable to force a body that had sold property at a deflated price, such as £30,000, to pay a market value of perhaps up to £80,000 for using the pre-emption.

I am confident that the new category of personal burden will facilitate the provision of affordable rural housing and address the concerns that Maureen Macmillan expressed at stage 2.

Amendments 10, 11, 77, 94, 97, 197, 198 and 215 to 217 make technical and consequential changes that arise from the main amendment, which is amendment 183.

I move amendment 2.

Michael Matheson (Central Scotland) (SNP): I welcome the amendments. I have one question for clarification. Will the minister outline how he intends to compile the list of prescribed bodies that will be entitled to create rural housing burdens? Will those organisations have to apply to ministers directly, or will ministers send out some type of notification to interested parties so that they can flag up whether they wish to be on the order that the minister plans to lay at a later date?

Lord James Douglas-Hamilton: A rural housing burden will give the rural housing body a pre-emption right when selling land. We welcome the provision. It is a step forward and is altogether reasonable.

Some of the amendments in the group meet the points that the Law Society of Scotland made. I place on record my gratitude to the minister for

meeting the Law Society to go through some of the details about which it was concerned. As a result of that meeting, the amendments will greatly improve the bill. I express my thanks to the minister for having lodged them.

Maureen Macmillan (Highlands and Islands) (Lab): I add my support to amendment 2. I am grateful to the Executive for taking on board my concern. It was raised as a result of the Highlands Small Communities Housing Trust asking me whether I could help it to keep its right to control what happens to land that it has banked in remote areas with a view to giving that land to people who will get a rural grant to build a house. The trust was concerned that, if it was not able to impose a feudal condition, such houses could be sold off outside the community. The object of the trust is to keep housing in remote communities for people who live there permanently.

I am grateful to the Executive for considering the matter and finding a way forward. I was on the phone to the Highlands Small Communities Housing Trust only a few minutes ago and it asked me to express its appreciation.

Mr Wallace: I welcome the general support expressed by Michael Matheson, Lord James Douglas-Hamilton and Maureen Macmillan. Amendment 183 is an illustration of how the Parliament works—and works well. A genuine point was raised with an MSP by a group with an interest. The matter was brought to the Parliament and there was a willingness on the part of Justice 1 Committee members and the Executive to identify a way in which to meet what the committee recognised at stage 2 to be a genuine concern.

Michael Matheson asked how the list of prescribed bodies would be compiled. We intend to publish a draft list before the appointed day, so people will be able to make applications. It is important to hold proper consultation with the Scottish Federation of Housing Associations and with the trust that, with Maureen Macmillan, initiated the amendment.

Subsection (6) of the new section that amendment 183 will introduce states:

> "The power … may be exercised in relation to a body only if the object, or function, of the body … is to provide housing on rural land or to provide rural land for housing."

I hope that that will satisfy Mr Matheson.

Amendment 2 agreed to.

The Deputy Presiding Officer: Group 3 is on health care burdens. Amendment 3 is grouped with amendments 29, 64, 214, 75, 150, 151, 153, 155 to 158, 220, 159, 162, 168 and 171.

Mr Wallace: This group of amendments includes amendment 171, which, as you intimated at the start of proceedings, Presiding Officer, has been revised to take account of an error.

Amendment 3 will introduce a health care burden as one of the exceptions to the general rule that burdens must benefit other land. The health care burdens are similar to the economic development value burdens that are available for local authorities.

Amendment 29 is the main amendment in the group and introduces a new section. That new section provides for a new category of personal burdens on land, which will require no benefited property. National health service trusts will be able to create health care burdens in circumstances where they wish to sell land while ensuring that that land continues to be used for the purposes of health care. That could apply, for example, where land is being sold to a developer to build accommodation for hospital staff and nurses. The new health care burden should allow the health body to ensure that the land is developed for that purpose and to secure compensation if another type of development occurs. That could be achieved by imposing a burden, including a clawback condition, if there is likely to be a windfall increase in the value of the land as a result of the change in use. The new section specifically provides that the burden may comprise or include an obligation to pay money.

It is intended that health care burdens will also be available for the Scottish ministers to use in their property ownership role in relation to health boards. It will be possible for a body other than a health trust or the Scottish ministers to create a health care burden, but it would be necessary for that body first to obtain the consent of the trust or the ministers whom they intend to have the right to enforce the burden.

Amendment 214 builds on amendment 29 by allowing a feudal burden that was imposed in the past for the same purposes and that is enforceable by a health trust or the Scottish ministers to be converted into a health care burden. The remaining amendments in the group are consequential on amendments 29 and 214.

There is a strong public interest in the protection of public funds. The amendments in this group are motivated by the compelling argument that, when the public sector is selling or giving land for health care purposes, there should be the means of protecting the purpose of the transfer of the land and the public funds involved.

I move amendment 3.

Lord James Douglas-Hamilton: We support the amendments. The measure clearly favours NHS trusts or the Scottish ministers and the burdens would be available only for the purpose of promoting the provision of health care facilities.

That would be to the benefit of the NHS and we are glad to support the amendments.

Amendment 3 agreed to.

Section 3—Other characteristics

The Deputy Presiding Officer: Group 4 is on community burdens. Amendment 4 is grouped with amendments 177, 178, 19 to 22, 179, 25, 26, 180 to 182, 63, 202 and 139 to 146.

14:15

Mr Wallace: This group contains technical amendments to the provisions relating to community burdens. Amendment 4 clarifies that, where a deed of variation or discharge is granted under section 32, there is no need for each and every person with the right to enforce a title condition to sign a deed of variation for that variation to take effect.

Amendments 177, 178 and 202 will ensure that a majority can impose a new burden in addition to being able to vary or discharge community burdens. That reflects no change in policy.

Amendments 19, 20, 22, 25 and 26 relate to provisions on the variation and discharge of community burdens by the owners of units within a community. The amendments simply make it clear that the units in question are units in a community of mutually enforceable community burdens, which are subject to the rules on variation and discharge under part 2 of the bill. Amendment 21 is a drafting change.

On amendments 179 to 182, section 32 allows a majority to vary or discharge burdens applying to the community as a whole. However, a dissenting owner can apply to the Lands Tribunal for Scotland to stop the change. A successful objection would mean that the burden would be varied or discharged only by the owners who signed the deed trying to make the change—that is, the majority. Those who did not sign should not be affected. The bill already provides for that in respect of a minority owner's right to enforce a burden, but it is possible that the language used means that a modified burden could be enforced against them. That is not desirable and amendments 179 to 182 remove that possibility.

Amendment 63 will allow the granters of a deed of variation or discharge under section 34 to register the relevant deed. Amendments 139 to 145 are largely technical drafting amendments to simplify the notes for schedule 4, which sets out the form of notice to be used to intimate a proposal to register a deed of variation or discharge under section 33 of the bill.

I move amendment 4.

Amendment 4 agreed to.

Section 4—Creation

The Deputy Presiding Officer: Group 5 is on the development management scheme. Amendment 5 is grouped with amendments 62, 87 to 93, 192, 204, 208, 127 and 73.

Mr Wallace: Members will recall that the development management scheme, which was introduced at stage 2, is an optional example of good practice that owners will be able to adopt or adapt. The scheme was originally recommended by the Scottish Law Commission as a set of general principles. It can therefore be fine tuned to allow for circumstances of particular developments.

This group of amendments clarifies the operation of the application of the development management scheme. The amendments make it clear that the scheme, which will be set out in an order under section 104 of the Scotland Act 1998, will be the only scheme to be applied by deed of application under section 65A. That will avoid the possibility that rules may be applied by reference to a document that was not registered in the property registers. The amendments will mean that any additional rules to form part of the scheme—permitting only residential use or prohibiting alterations or the parking of commercial vehicles, for example—must be set out in the deed of application.

Amendment 88 makes it clear that the deed of application may vary the scheme as specified in the deed, but only in so far as the terms of the section 104 order permit. Amendment 90 is the principal amendment in the group. It will add a new subsection that specifically relates the development management scheme to the section 104 order to be made in consequence of section 65A.

Amendments 62 and 92 are intended to confirm that the default rules in section 59, on the appointment and dismissal of a manager, do not apply to a manager appointed under a development management scheme. The scheme may be disapplied by registration of a deed of disapplication. It is possible for such a deed to create new burdens for the management of the development in future.

Amendment 192 ensures that new burdens will not be imposed if there is an outstanding application to the Lands Tribunal for preservation of the scheme. Amendment 204 is largely technical, relating to the acquisition of land by agreement in circumstances in which it could have been acquired compulsorily.

Amendment 208 provides in section 93 that an order of the Lands Tribunal preserving a development management scheme may be registered in the property registers. The remaining amendments in the group are consequential.

I move amendment 5.

Lord James Douglas-Hamilton: Most of the amendments in the group clarify that the development management scheme, and not any other scheme, will benefit from the provisions of the bill. That is entirely appropriate and we welcome the amendments.

Dr Sylvia Jackson (Stirling) (Lab): I welcome the development management scheme. The Sheltered and Retirement Housing Owners Confederation, with which I have been closely associated, has long been concerned about the issue. It is most welcome that transparency is to be brought to the accounting system and management of sheltered and retirement housing.

I would like the minister to confirm that owners of units will be responsible, possibly under the contract arrangements for the managing company, for using the new scheme or framework, which Westminster will develop and which will not be mandatory.

Mr Wallace: I do not want to anticipate every detail, but it would certainly be the case that the owners of a unit would require unanimity to get a development management scheme. However, even without a development management scheme, it would still be possible under an employment contract for accounting to be transparent, because the owners employ the manager. I know how important transparency in the accounts of such schemes is to the owners. I hope that Sylvia Jackson will be assured that the transparency that she seeks should be facilitated not only by the development management scheme, but by provisions in the bill as a whole. I welcome Lord James Douglas-Hamilton's support.

Amendment 5 agreed to.

Section 5—Further provision as respects constitutive deed

The Deputy Presiding Officer: Group 6 relates to specification of the amount payable in respect of an obligation. Amendment 6 is grouped with amendments 173 and 174.

Mr Wallace: Amendment 6 is intended to clarify the operation of section 5(1). It distinguishes between an obligation to pay the whole cost of, for example, maintenance or repair and an obligation to contribute only a share or proportion of the cost.

If a real burden imposes an obligation to pay for the maintenance of a facility, the cost cannot be specified in the burden because it is impossible to know what the cost of maintenance will be at any point in the future. Some deeds may stipulate that the obligation is to pay for a specific share of the maintenance cost. Others may base the obligation to bear a share of the cost on feu duty or rateable value. In such cases, the burden sets out the way in which the proportion of the costs payable is to be arrived at.

The intention behind section 5(1) was to remove doubt in the existing law that it should not be necessary to specify an amount payable towards an obligation to pay some cost, as long as some method is provided for calculating liability.

Amendment 6 clarifies the distinction between a situation in which a real burden imposes an obligation to pay the whole of a cost and a situation in which the burden imposes an obligation to pay only a proportion or share of the cost. It distinguishes between the expressions "defray" and "contribute towards" to make it clear that an obligation to defray relates to paying the whole cost of an obligation, whereas an obligation to contribute towards relates only to an obligation to pay a share or proportion.

Amendment 6 also makes it clear that a share or proportion of the cost can be arrived at in a way specified in the deed. By contrast, where an obligation is to pay the whole amount, there is no need to refer to the way specified in the deed by which a proportion can be arrived at.

I propose not to move amendments 173 and 174. Having considered the matter with the benefit of advice from the Scottish Law Commission, we believe that the amendments are unnecessary. The common law already allows for rights of pre-emption as set out in the amendments. If the amendments were agreed to, that might cast doubt on deeds that are already extant and operating normally.

I move amendment 6.

Amendment 6 agreed to.

Amendments 173 and 174 not moved.

Section 6—Further provision as respects creation

The Deputy Presiding Officer: Group 7 relates to the right of ownership held pro indiviso and the right of pre-emption. Amendment 175 is in a group on its own.

Lord James Douglas-Hamilton: I have lodged amendment 175 on behalf of the Scottish Law Agents Society as a probing amendment. The amendment is intended to support part-owners.

At present, real burdens, including rights of pre-emption, are incompetent in relation to pro indiviso shares. Section 4(6) of the bill restates the existing law. It has been recognised that rights of pre-emption continue to serve a useful purpose and should be retained. A right of first refusal is to be conferred on one owner over the property of another. If it is useful for one owner to have that

right over another property, it could be even more useful for a pro indiviso owner to have it over the other pro indiviso shares.

Where title is taken in joint names, such a device could be usefully employed to prevent one owner from selling his share to a third party. I gave the minister notice of the case of Smith v MacKintosh, which appears on page 148 of *The Scots Law Times* of 1989. In that case, a daughter sold her property to live with and nurse her mother on the understanding that the mother's house would be put into joint names. However, while the mother and daughter were living together, the mother made over her share to a son and defeated the daughter's reasonable expectations.

Communities Scotland and its predecessor, Scottish Homes, have promoted shared ownership for many years. The complex shared ownership agreements that are necessary might be simplified by permitting pre-emption rights between owners. Amendment 175 could benefit arm's-length, pro indiviso proprietors. It might also be of use in time-share developments, although those are usually intermediated through trusts. Time-shares of salmon fishing, where titles are taken directly, might also benefit. I look forward to hearing what the minister has to say on the issue.

I move amendment 175.

Mr Wallace: I thank Lord James Douglas-Hamilton for explaining the intention behind amendment 175. It appears that he seeks to allow the creation of rights of pre-emption over pro indiviso shares of property. As he indicated, the principal effect of that would be to give one pro indiviso owner the first option to buy the other share in the event that it came up for sale.

I have no objection in principle to the concept, although the cases in which the proposed provision might be necessary are few and far between. It is not clear whether a mother and daughter, or a husband and wife, for example, would want to put such an arrangement into a deed when everything was going swimmingly.

The difficulty with amendment 175—and the reason why I ask Lord James Douglas-Hamilton to consider withdrawing it—is that it is technically flawed. Section 6 does not appear to be the appropriate part of the bill for amendment 175 to seek to amend. Section 6 refers to the creation of burdens by importing them from a deed of conditions, which would have to have been registered before the appointed day. That means that any right of pre-emption that was caught by amendment 175 would have to have been set out in a deed of conditions that had been registered before the appointed day.

It is unlikely that many such pre-emptions exist, not least because it is unclear whether it is possible to create them under current law. Because of that uncertainty, the Scottish Law Commission recommended that it should be made clear that burdens could not be created over pro indiviso rights. I do not believe that it was Lord James Douglas-Hamilton's intention to restrict pre-emption rights to those that were created after the appointed day by reference to pre-appointed day deeds of condition.

Amendment 175 is also flawed in the language that it uses. The insertion that it proposes would mean that the pre-emption would be treated as a right of ownership that was held pro indiviso. That cannot be the intention. The right of pre-emption is the burden, not the burdened property. The pro indiviso share would be the burdened property and the pre-emption would be created against that land.

Although there is some merit in the principle of Lord James's proposal, amendment 175 cannot be supported for serious technical reasons. At some stage in the future, legislation might be introduced that would allow the issue to be dealt with but, at present, I do not see how the proposal could work as intended. Therefore, I ask Lord James to withdraw amendment 175.

Lord James Douglas-Hamilton: If we assume that amendment 116 will be agreed to, the minister will have the power to make incidental or transitional provisions and to amend the bill. Therefore, it would be appropriate for me to withdraw amendment 175. If there is considerable demand in future, I hope that the minister will note that I have put down a marker and that the matter will be returned to in due course.

Amendment 175, by agreement, withdrawn.

Section 8—Right to enforce

Amendment 85 moved—[Mr Jim Wallace]—and agreed to.

Section 16—Acquiescence

The Deputy Presiding Officer: Amendment 7 is grouped with amendments 8, 9 and 80.

Mr Wallace: The amendments in this group seek to alter the rules on acquiescence in section 16. They arise from concerns that were expressed during the first two stages of the bill's progress. In his evidence to the Justice 1 Committee at stage 1, the solicitor Mr Bruce Merchant raised such concerns. Maureen Macmillan and Lord James Douglas-Hamilton took up those concerns and Lord James asked me to meet the Law Society of Scotland to discuss them. I can confirm that a productive meeting took place and that amendments 7, 8, 9 and 80 are the result of it.

The effect of the changes will be that, where the owners of benefited properties give consent to a

breach of a burden, there will be no requirement for the consent of any tenant, any non-entitled spouse or proper life-renter.

14:30

The amendments will also clarify that only those who would actually be able to enforce the burden are required to give their consent. That means, for example, that consent is not needed from owners of a distant property who, in spite of having a title to enforce, would not have any interest in doing so because the particular breach would not be to the detriment of their property. In this case, a burden could be extinguished, but only to the extent of the actual breach, without the consent of that distant owner.

Amendment 80 is a technical amendment to the provisions of section 111(1)(a). The amendment will mean that the meaning of the expression "owner" is applied to section 16, which deals with acquiescence. That means that "owner" will be defined for the purposes of a section 16 consent in the same way as it is for a section 15 discharge.

I move amendment 7.

Lord James Douglas-Hamilton: We welcome the amendments. I thank the minister for meeting the Law Society and for dealing with the matters so effectively.

I want to ask one question about amendment 9. If I may say so, it is not entirely clear what would happen to a burden in the event of the death of the person who has the interest to enforce. For example, is it envisaged that executors will, on the death of the person, be vested with an automatic interest to enforce? If the minister does not have the reply now, I would be most grateful if he could write in due course.

Maureen Macmillan: I am not sure that I ever understood quite what was going on in this bit of the bill, but I know that solicitors in Inverness were extremely anxious that changes should be made. They felt that the bill would complicate conveyancing in a small number of cases if somebody had breached a burden. The solicitors were worried that the bill would mean more expense for their clients. I am pleased that the issue has been brought to a satisfactory conclusion and I thank the Executive for its interest in the matter.

Mr Wallace: I thank Lord James and Maureen Macmillan for their support. Maureen Macmillan said that she was never quite sure of all the detail that lay behind the solicitors' concerns, which, it would be fair to say, were forcibly and firmly pressed. I can confirm that our meeting with Mr Merchant and with other members of the Law Society's conveyancing committee was stimulating. Alasdair Morgan's laugh suggests that he does not believe that, but I can assure him that it was quite a good joust. We tried to tease out some of these difficult technical issues. I know that the concerns were motivated by the need to deal with the practicalities of the issues.

The Executive's policy is based on the principle of equal treatment for property owners. Although it may have been simple to operate, the old system of obtaining consent from a feudal superior to the breach of a burden had fallen into widespread disrepute. It is self-evidently more equitable to allow those with the most immediate interest in title conditions to enforce them.

The Executive's proposals will simply put communities with limited enforcement rights in the same position as those that already have full neighbour enforcement. It is worth emphasising that those schemes work perfectly well at the moment and that we are not aware that there is any problem with them. We are now extending that principle to other schemes. We expect the system to continue to operate satisfactorily in all communities.

In response to Lord James's question, title and interest in these real burdens—as distinguished from the personal real burdens that we discussed earlier—rest in the property rather than with the individual. Therefore, the real burden does not extinguish with the death of any owner. Those who, on the owner's death, step into the owner's shoes would certainly have a title. The interest would obviously depend on the particular circumstances of the case.

Amendment 7 agreed to.

Amendment 8 moved—[Mr Jim Wallace]—and agreed to.

After section 16

Amendment 9 moved—[Mr Jim Wallace]—and agreed to.

Section 17—Negative prescription

Amendments 10 and 11 moved—[Mr Jim Wallace]—and agreed to.

Section 19—Notice of termination

The Deputy Presiding Officer: Amendment 12 is grouped with amendments 16, 203, 107, 108, 118, 119, 128, 129, 133, 136, 137 and 138.

Mr Wallace: At stage 2, the bill was amended to allow applicants to the Lands Tribunal for Scotland to apply to vary a burden as well as to apply for discharge or renewal. As a result, the amendments in the group make consequential changes to various parts of the bill.

Amendments 107 and 108 are technical drafting amendments that will help to clarify the operation of sections 87 and 88.

Amendment 138 relates to schedule 4, which sets out the form of notice to be used to intimate a proposal to register a deed of variation or discharge under section 33. It is intended to amend the heading of one part of the notice to give further clarification.

I move amendment 12.

Amendment 12 agreed to.

Section 20—Intimation

Amendments 13 to 16 moved—[Mr Jim Wallace]—and agreed to.

Section 23—Effect of registration of notice of termination

Amendment 17 moved—[Mr Jim Wallace]—and agreed to.

Section 25—Creation of community burdens: supplementary provision

The Deputy Presiding Officer: Amendment 18 is grouped with amendments 24, 43 to 47, 61, 109 and 78.

Mr Wallace: At stage 2, Sylvia Jackson lodged an amendment that added to the definition of sheltered housing in section 50(3) the words

"and includes retirement housing and retirement accommodation."

The Executive accepts that retirement housing should be expressly defined in the bill. We have accepted that there might be a danger that some developers might try to avoid or ignore the provisions of the bill by trying to persuade residents in developments that are described as retirement housing that, because there was no express reference to retirement housing in the bill, it did not apply to those developments. As a result of what we intend to do to the bill, I hope that that scenario will not now arise.

I hope that members will be satisfied that the Executive has responded positively to representations that it has received on the definition of sheltered and retirement housing, as well as on other aspects of the bill that impact on forms of sheltered and retirement accommodation. In other amendments to be considered today, we are seeking to reduce the maximum period of manager burdens in sheltered housing to three years, and to introduce a requirement of prior consultation before burdens are varied or discharged. In addition to the other provisions of the bill—particularly the introduction of majority voting rights—we intend to introduce a substantial package of help for people who live in sheltered housing.

In conjunction with the Abolition of Feudal Tenure etc (Scotland) Act 2000, the bill will make a substantial change to prevailing arrangements for the management of such complexes. That will allow residents in sheltered and retirement housing to exercise a much greater degree of control over the developments in which they live.

The purpose of amendment 18 is therefore to revise the words that were inserted at stage 2, and to give effect to them.

I move amendment 18.

Michael Matheson: I particularly welcome amendment 18, which introduces the term "retirement". The minister will be aware that, at stage 1, the Justice 1 Committee was persuaded by the Executive's argument that the term "sheltered housing" would suffice to ensure that retirement accommodation was included.

However, at stage 2 it became clear that concern remained about whether there was a possible loophole to be addressed. There was always the possibility that unscrupulous property managers or developers might try to use the term "sheltered housing" as a loophole, by saying that the bill did not apply to retirement accommodation. Amendment 18 closes the loophole and reduces the possibility of someone exploiting it.

Lord James Douglas-Hamilton: The clarification is important for those in sheltered and retirement housing. It is a response to legitimate representations and we welcome the amendments.

Donald Gorrie (Central Scotland) (LD): The section in the bill that deals with sheltered housing has been greatly improved. It is welcome that the minister has improved it and made certain concessions. There are a couple of relatively minor issues coming up on which there is some dispute, but, as a package, the amended bill benefits the community in sheltered and retirement housing and is to be welcomed.

Brian Adam (North-East Scotland) (SNP): It is comforting to see that the Executive has moved on the issue, in spite of the fact that it took the initial view that the word "retirement" did not need to be inserted. The Executive has recognised that that is a significant wish and has seen the merit in it, and it is to the great credit of the Executive that it has lodged amendments 18, 24, 43 to 47, 61, 109 and 78. The changes that they will make will go a long way—if not almost all the way—to satisfying the wishes of those who have made representations on the matter. I commend the Executive for doing so.

Mr Wallace: I thank members for the welcome that they have given to the changes. It is right to say that we have changed, which is a tribute to those who identified an issue, persisted with it and persuaded ministers that to put the matter beyond doubt and to give reassurance—which clearly was not given by the initial wording—we needed amendments, which were initially introduced by Sylvia Jackson, and which are now clarified by the amendments in the group. It is an example of how what has sometimes been seen as a technical piece of legal legislation can bring some practical benefit to an important section of our community.

I pay tribute to the efforts that were made by the Sheltered and Retirement Housing Owners Confederation, and I also thank Age Concern Scotland for the advice that was provided to the Executive on this area.

Amendment 18 agreed to.

Section 28—Power of majority to instruct common maintenance

The Deputy Presiding Officer: Amendment 176 is in a group on its own.

Mr Kenneth Macintosh (Eastwood) (Lab): I lodged amendment 176 to highlight the situation that faces pensioners who might enjoy only shared ownership of their flat in a retirement complex. The Executive clarified at stages 1 and 2 that the majority owner of a flat can exercise the unit's voting rights. However, my colleague Sylvia Jackson, through the Sheltered and Retirement Housing Owners Confederation, has highlighted that although some shared owners might own only 70 per cent or less of the equity, they are invariably responsible for 100 per cent of the maintenance and service charges. It would seem to be only fair that co-owners should divide the bill according to their share of the property. I would welcome clarification on that point from the Executive.

I move amendment 176.

Mr Wallace: We do not believe that amendment 176 is necessary, because payments from co-proprietors are already dealt with in the bill. Section 11(5) contains a similar provision on the situation in which property is owned by more than one person. That section states:

"If two or more persons own in common a burdened property as respects which an affirmative burden is created then, unless the constitutive deed otherwise provides—

(a) they are severally liable in respect of the burden; and

(b) as between (or among) themselves, they are liable in the proportions in which they own the property."

If the title deeds, however, provide for a different split, the title deeds are given precedence. I think that Parliament would agree that it would not be appropriate to impose a mandatory rule across the board. It seems to be preferable to allow individuals to agree specialist arrangements for particular circumstances.

Section 11 also provides for several liability in respect of burdens for payment, the advantage of which is that where neighbours seek payment in contribution of some common repair, they need not hunt down all the absent owners of a particular unit, or try to obtain information, or settle disputes as to each co-proprietor's share.

Dr Jackson: I suppose that this is the same issue that I asked about previously, which is how the bill will be implemented. How would owners of a unit move so that 30 per cent of the maintenance were paid by the manager?

Mr Wallace: The presumption is that the manager is liable for 30 per cent, or at least that the division is a 70:30 split. That is the first requirement. The second requirement is that there is nothing in the title deeds or contract between the parties that would declare otherwise. If, having voluntarily entered into an agreement, the title deeds reflect a figure of 100 per cent, the provisions in section 11(5) would not apply. That is, in some respects, the default position. If nothing else is said, and the parties have not reached an agreement, they will be liable in the proportions in which they own the property. Sylvia Jackson's example was a 70:30 split.

One would hope that in such circumstances, where the liability was clear, the manager or the person with the 30 per cent liability would pay up, because the alternative would be court action to recover the sum. That would be a further waste of time and money if it were evident that the sum was due.

14:45

If a party has no liability under the community burdens, section 28(2)(b) cannot require them to deposit any money. If the deeds set out the respective liabilities of the common owners, the owners can be required to deposit only the share that is specified in the deeds. Co-proprietors should settle that among themselves. When a formal shared equity arrangement has been made, the matter is likely to have been provided for in the contract. As section 11 makes more comprehensive provision, I hope that Kenneth Macintosh is prepared to withdraw amendment 176.

Mr Macintosh: I welcome that clarification. I understand that, unless co-owners sign a deed that binds them to pay 100 per cent of the maintenance and service charges, the default position is that they are liable for their own share. I welcome that and seek agreement to withdraw amendment 176.

Amendment 176, by agreement, withdrawn.

Section 31—The expressions "affected unit" and "adjacent unit"

Amendment 177 moved—[Mr Jim Wallace]—and agreed to.

Section 32—Majority etc variation and discharge of community burdens

Amendments 178 and 19 to 21 moved—[Mr Jim Wallace]—and agreed to.

Section 33—Variation or discharge under section 32: intimation

Amendments 22 and 179 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Presiding Officer: Amendment 23 is grouped with amendments 50, 86, 58, 59 and 147.

Mr Wallace: Amendments 23 and 59 will make drafting changes. Amendment 50 will amend a reference to section 32 so that no change to a restriction on age in a sheltered housing development may be made either by a manager who is authorised by the majority to vary community burdens, or by majority voting.

Amendment 86 will provide for prior consultation of all owners of sheltered housing before a burden can be varied or discharged under section 32. Consultation will take place by prior notification to all owners of sheltered housing before a deed of variation or discharge can be granted. The notification will be called a community consultation notice. Amendment 86 will have a similar effect to that which an amendment that Kenneth Macintosh lodged at stage 2 would have had. At stage 2, the Executive agreed to consider the points that were made in the debate on that amendment, so I am happy to have lodged an Executive amendment that reflects that debate.

Amendment 147 will provide for the form of notice that is to be given to invite comments on proposals to vary or discharge community burdens in sheltered housing developments.

Amendment 58 aims to reduce from five years to three years the maximum time that is allowed for a manager burden for sheltered housing only. At stage 2, we agreed to lodge an amendment on that—I have pleasure in implementing that undertaking.

I move amendment 23.

Michael Matheson: I welcome the amendments, because concern was expressed at stage 2 about the process for consulting all owners in a sheltered housing complex or retirement home accommodation. The amendments will provide for consultation before a deed is granted under section 32. That is to be welcomed because it will give residents notice that variation or discharge of a community burden is being sought. In combination with amendment 147, which outlines the form of the notice that will be provided to residents, amendment 86 will enhance the bill and will ensure that those who have an interest are notified when a request to change, vary or discharge a community burden has been made.

Mr Macintosh: I welcome the Executive's lodging of an amendment to reduce the manager burden so that it will expire after three years. Does that mean that, for the majority of current residents in retirement complexes, the manager burden will expire when the bill is implemented in November 2004?

Mr Wallace: I would love to give a definite answer to that. I think that I am right in saying that the three years run from introduction and that therefore a burden would expire by 2004, but I will confirm that when I speak to subsequent amendments on sheltered housing.

Amendment 23 agreed to.

Section 34—Variation and discharge of community burdens by owners of adjacent units

Amendment 24 moved—[Mr Jim Wallace]—and agreed to.

Section 35—Variation and discharge under section 34: intimation

Amendment 25 moved—[Mr Jim Wallace]—and agreed to.

Section 36—Preservation of community burden in respect of which deed of variation or discharge has been granted as mentioned in section 34(1)

Amendments 26 and 180 to 182 moved—[Mr Jim Wallace]—and agreed to.

After section 41

Amendment 183 moved—[Mr Jim Wallace]—and agreed to.

Section 42A—Economic development burdens

The Deputy Presiding Officer: We move to group 13. Amendment 184 is grouped with amendments 28, 213, 67 and 74.

Lord James Douglas-Hamilton: Amendment 184 is a probing amendment, which was also lodged on behalf of the Scottish Law Agents Society as a result of the local authorities' plea for

a special case to be made for them to be allowed to have development value burdens as economic development burdens. That category of burden was created and is to be found under section 42A of the bill. Typically it will permit an uplift in the price on the occurrence of a subsequent event, which one suspects will be the grant of planning consent for a particular development.

The view of the Scottish Law Agents Society is that that is a type of pecuniary real burden, which would more appropriately be dealt with by way of a standard security. However, the point at issue is that, at common law, pecuniary real burdens are ranked according to their recording date. Section 42A, however, is silent as to ranking.

The proposals that are set out in amendment 184 make explicit the ranking rules between an economic development burden and a standard security or floating charge. In respect of floating charges, we have anticipated the reform of the time of creation of a floating charge, which is presently the date of execution. The Scottish Law Commission's discussion paper "Registration of Rights in Security by Companies" proposes a change to the date of registration, which is consistent with Scottish theories of the creation of real rights by registration and publication.

I lodged amendment 184 as a marker to allow the issue to be examined before legislation on floating charges is introduced and before the Scottish Law Commission has examined rights in security. I look forward to hearing what the minister has to say on the subject.

I move amendment 184.

Mr Wallace: I am grateful to Lord James Douglas-Hamilton for airing the issue. Amendment 184 seeks to treat a clawback arrangement that is set out in the economic development burden as if it is a debt that is secured by standard security. The payment that may become due under the economic development burden is not heritably secured on the land. It is therefore not appropriate to attempt to arrange a ranking between it and a standard security, which is a heritable security.

One of the purposes behind section 42A(3) is to allow local authorities to put in place clawback provisions without having to resort to standard securities. The ability of a local authority to tie to the land the personal obligation to pay, rather than to rely on a personal contract backed by a standard security, is exactly what is represented by the innovation in the law that has been made under the provisions of the bill.

It is therefore no accident that there are no provisions to rank the obligations that are set out in the burden with obligations that are secured by standard securities. Amendment 184 seeks to equate two types of obligation, which are—and are intended to be—quite different types of legal obligation.

Furthermore, amendment 184 is both unnecessary and unlikely to achieve its aims. It is unnecessary because only one party, which will be the local authority or the Scottish ministers, will ever be entitled to payment in terms of the economic development burden. That is because section 42A(4) prohibits assignation of an economic development burden, which means that it is possible for the creditor to enter with complete confidence into contractual relations with the local authority in order to regulate what is to happen in particular circumstances and on occasions when the local authority would be obliged to discharge the burden. There is no need for a provision in the bill to allow the local authority to enter into such contracts.

Amendment 184 is unlikely to achieve its aims, because the debt constituted by the economic development burden runs with the land and will not be extinguished on the sale of a burdened property by heritable creditor. It is therefore of little use to the creditor to have a security ranked ahead of the obligation to pay the local authority, because no purchaser is likely to accept the continuing obligation to pay the local authority unless that obligation is reflected in the price. I hope that that explanation will allow Lord James Douglas-Hamilton to seek to withdraw amendment 184.

The other amendments in the group are technical amendments. The purpose of amendment 38 is to make it possible for the holder of an economic development burden to discharge the burden, even in circumstances in which the holder has not completed the title to the burden in the property registers.

Amendment 213 makes it clear that a local authority or the Scottish ministers will have title to enforce, and will be presumed to have interest to enforce, a converted economic development burden that has been the subject of a notice registered in the property registers.

Amendment 67 will incorporate the terms of sections 41 and 42 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 on registration of a notice to convert an appropriate feudal burden into an economic development burden. Section 41 of that act requires the superior to give notice to the burdened proprietor of the proposal to re-allot the burden. Section 42 of that act stipulates that, where the superior has a choice of the procedures under the 2000 act that may be used to save a burden, the various courses open to the superior are mutually exclusive.

Amendment 74 clarifies the definition of economic development burdens in section 110 to

the effect that the provisions of subsections (1) to (3) of section 42A are not applied to converted economic development burdens.

Lord James Douglas-Hamilton: I am delighted with the explanation and I am glad to seek to withdraw amendment 184.

Amendment 184, by agreement, withdrawn.

Amendment 28 moved—[Mr Jim Wallace]—and agreed to.

After section 42A

Amendment 29 moved—[Mr Jim Wallace]—and agreed to.

Section 43—Interest to enforce

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

Section 44—Discharge

Amendment 31 moved—[Mr Jim Wallace]—and agreed to.

Section 45—Extinction

The Deputy Presiding Officer: Amendment 32 is grouped with amendments 34 to 38, 40, 42, 52, 69 and 70.

Mr Wallace: People who look at the amendments in the group will see that the word "constitutive" is repeated many times. The amendments will rectify a technical problem in the current wording of some sections in part 4. In order that they will apply, the sections require burdens to be imposed in a constitutive deed. It is now thought that the word "constitutive" might be too restrictive and that it might exclude some cases where the so-called constitutive deed—in this case, typically a deed of conditions—does not impose the burdens, but instead sets out the terms of the burdens that are subsequently imposed by a conveyance that refers to the constitutive deed. The amendments will remove that problem.

Amendment 42 will make a technical change to section 50 and amendments 69 and 70 will make similar technical changes.

I move amendment 32.

Amendment 32 agreed to.

Section 47—Duties of Keeper: amendments relating to unenforceable real burdens

The Deputy Presiding Officer: Amendment 33 is grouped with amendments 71, 126, 72, 79, 131, 132, 148, 149, 152, 154, 160, 161, 164, 165, 167, 169 and 170.

Mr Wallace: Amendments 71, 72, 79, 126 and 161 will make technical adjustments to definitions.

Amendments 33 and 160 will bring section 47(3) of the Title Conditions (Scotland) Bill and section 46(2) of the Abolition of Feudal Tenure etc (Scotland) Act 2000 into line with section 6(1)(e) of the Amendment of Land Registration (Scotland) Act 1979.

Amendments 131 and 132 are technical amendments that are consequential on the insertion of section 19(6).

Amendments 148, 149, 152, 154, 160, 161, 164, 165, 167, 169 and 170 will introduce further enhancements to the Abolition of Feudal Tenure etc (Scotland) Act 2000 and amendments 152 and 167 will add certain rights of enforcement to the list of exceptions in section 17(3) and section 54(3) respectively of the 2000 act. That will ensure that, in relation to a right to enforce a burden or other right that is preserved under that act, it will be possible to continue to enforce those rights by using an existing court order or without having to recommence proceedings after the appointed day in November 2004. Amendments 148, 149, 164 and 165 are consequential amendments.

Paragraph 4 of schedule 12 will remove from the Scottish ministers a power to prescribe a period during which applications to the Scottish Lands Tribunal by superiors to re-allot real burdens are competent. Amendment 154 makes it clear that such applications will have to be made before the appointed day.

Amendments 169 and 170 will simply change the date of commencement of section 63 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 from the appointed day to a day to be prescribed by the Scottish ministers.

I move amendment 33.

Amendment 33 agreed to.

Section 48—Common schemes: general

Amendments 34 to 38 moved—[Mr Jim Wallace]—and agreed to.

15:00

The Deputy Presiding Officer: That takes us to group 16, which is on related properties in common schemes. Amendment 39 is grouped with amendments 41, 185, 51, 53, 190, 190A, 55, 55A, 56 and 57.

Mr Wallace: The Executive's policy is that all common schemes should receive equal treatment under the bill and that the drafting language that is used by individual conveyancers should not result in identical estates having completely different enforcement rights. The underlying aim is to have a consistent and coherent pattern of enforcement rights for common scheme burdens.

Amendment 190 will further that principle and make some technical changes that will ensure that every scheme in which it has been attempted to impose burdens will, in the future, be a community for the purposes of the bill. That will be achieved by breathing life into burdens that the original seller tried but failed to create because of deficiencies in the technical conveyancing language that was used in the deed. A burden will be treated as having been imposed and a property will be treated as being subject to a common scheme if that would have been the case had a benefited property been expressly nominated.

Amendments 190, 55 and 56 will ensure that rights will not be created accidentally in respect of breaches that occur before the appointed day. Amendments 39, 41 and 57 are consequential amendments.

A burden that gives a power to appoint a manager can be considered to be a facility burden in that it regulates the management of facilities that are of benefit to other land. Amendment 53 will exclude manager burdens from the category of facility burdens for the purposes of section 51. That is because a manager burden confers on a specified person the power to act as, or to appoint, a manager—it is a personal real burden. The effect of section 51 is to give rights of enforcement of facility burdens to all owners of land whose property benefits from the facility or constitutes that facility.

Lord James Douglas-Hamilton seeks to delete section 48A, the purpose of which is to ensure that amenity burdens in all housing estates or tenements should be mutually enforceable by the owners of houses in the estate or flats in the tenement. A large majority of respondents to the consultation were in favour of amenity burdens' being treated in the same way, irrespective of whether rights had been granted expressly to owners in the original deeds, or had arisen by implication under existing law. Section 48A also creates rights for neighbours in schemes where at present only the feudal superior can enforce.

The law in this area is exceptionally difficult and complicated and the question whether neighbours can enforce burdens in common schemes often relates to the particular legal language that an individual solicitor adopted. When the feudal system is abolished, there might be many estates where there could be burdens but no one to enforce them. The conditions play a valuable role in protecting the amenity of housing; without them, the quality of the housing stock might be eroded. That is a particular issue in mixed-tenure estates, where council tenants have expressed their right to buy. The Executive regards as highly unattractive the prospect of housing estates in which none of the amenity burdens are enforceable. It is important to remember that many so-called amenity burdens impose a duty to maintain properties.

Because of the uncertainty of the existing law, the almost arbitrarily different treatment of similar schemes and the danger of having schemes in which there are no enforcement rights, we decided to treat in the same way all properties that are related to one another and that are subject to a common scheme. The idea is to allow each neighbour in a scheme of related properties to enforce the conditions that affect the community, regardless of the particular conveyancing language that was used at the time of sale. That is what section 48A will achieve.

Amendment 185 would remove section 48A, which would perpetuate some of the inadequacies of the existing law. The amendment would continue the confusion over whether, and by whom, burdens in a scheme are enforceable and it would result in there being communities in which nobody could enforce the title conditions. The arguments behind amendment 185 concentrate too much on the perspective of an owner trying to avoid a burden that affects his or her property—from that point of view, burdens might be regarded as a nuisance that should be made easy to remove. That is one reason why some people argue against an extension of enforcement rights to all owners in common schemes.

Our position is that those obligations can play a valuable role in protecting the amenity of housing estates. It is dangerous to assume that a benefited proprietor trying to enforce a burden is always acting unreasonably. In fact, the burdened proprietor agreed to the burden when the property was purchased. The bill therefore adopts a balance between treating burdens as useful rights and allowing ways for them to be removed if appropriate. It is not difficult to think of circumstances in which neighbours would have a real interest in enforcing burdens that, if they were breached, might have a seriously detrimental effect on the value and enjoyment of their property.

Section 48A simply applies the position for the large number of schemes where rights already exist to the minority of communities where there will be no rights following feudal abolition. Those schemes will be put in the same position as the majority of housing estates; I cannot readily see why that should pose a problem. It is not as if the burdens do not already exist; it is just that enforcement lies solely with the superior. It is clear to me that neighbours are the most appropriate custodians of those rights.

As a corollary to the extension of rights, the bill will introduce a wide variety of tools to assist in the legitimate discharge of unnecessary burdens.

Amendments 7, 8, 9 and 80 will also simplify the obtaining of consents in relation to breaches. I remain committed to the policy of treating amenity burdens in housing estates in the same way, irrespective of how they came into being. I fail to see how the alternative that is proposed by amendment 185—a patchwork of housing schemes, some with amenity burdens and some without—is in any way preferable.

I conclude by pointing out that amendment 185 would have a particularly unfortunate effect on tenements and sheltered housing complexes. From its inception, the bill has provided that, in those cases, the rights of a feudal superior should pass to the neighbours. If section 48A were deleted, the owners of many flats in tenements and of some units in sheltered housing would find that there was no one to enforce the amenity burdens from which their properties benefited. I am fairly confident that that is not the intention of amendment 185. I hope that, in speaking to the amendment, Lord James will reflect on what I have said and be prepared not to move it.

I move amendment 39.

Lord James Douglas-Hamilton: Presiding Officer, I had prepared a substantial speech. However, in view of the minister's having replied before I gave the speech, it is unnecessary for me to go into detail. This is an area in which even the specialist practitioners are not certain as to the interpretation. On the basis of the decision in the case of Pepper v Hart—that authoritative statements made by a minister can be relied on in court and by practitioners in practice—will the minister please confirm that everything that he has just said can be relied on as being entirely authoritative and that practitioners will be absolutely safe if they stick to the guidance and the interpretation that he has just given?

Mr Wallace: That is a challenge. I confirm that what has been said has been said in good faith and to the best of my ability on the advice received. It is my interpretation of what is proposed not only by the bill as it stands, but by the amendments to which I have spoken. I repeat one statement that I made in the context of amendment 190, which was that a burden will be treated as having been imposed and a property will be treated as being subject to a common scheme if that would have been the case had a benefited property been expressly nominated. For the benefit of the Parliament, I advise members that my briefing note says, in block capitals and in parenthesis:

"NB WE WOULD LIKE THE NEXT SENTENCE TO BE INCLUDED AS A PEPPER V HART STATEMENT".

On that note, I hope that Lord James Douglas-Hamilton will be reassured.

Amendment 39 agreed to.

Section 48A—Common schemes: related properties

Amendments 40 and 41 moved—[Mr Jim Wallace]—and agreed to.

Amendment 185 not moved.

Section 50—Sheltered housing

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

The Deputy Presiding Officer: Amendment 186 is grouped with amendments 48, 187, 188, 49 and 189. If amendment 186 is agreed to, I cannot call amendments 48 and 187 because of pre-emption; however, amendment 48 does not pre-empt amendment 187. If amendment 188 is agreed to, I cannot call amendments 49 and 189 for reasons of pre-emption; however, amendment 49 does not pre-empt amendment 189.

Dennis Canavan (Falkirk West): I will speak to and move amendment 186 and will also speak to amendment 188, which is in my name.

Under the bill as drafted, there seems to me to be an element of double standards because the rules for the owners of sheltered housing units are different from the rules for the owners of other units in a community. If the latter want to appoint a manager or seek a variation or discharge of community burdens, a simple majority in favour will be required. However, the owners of sheltered housing units will require a two-thirds majority. I would be grateful if the minister would explain those double standards.

I would also be grateful if the minister would explain exactly how a simple majority or a two-thirds majority are to be measured. Would that be done through a secret ballot? Alternatively, would it require the written consent in the case of a simple majority of more than half the owners or, in the case of a two-thirds majority, of at least two thirds of the owners? Could it be calculated by simply counting heads at a public meeting that was specifically called to decide the matter? If a majority is to be measured by a ballot, would a two-thirds majority be calculated as two thirds of the valid ballot papers that were returned, or would it be calculated as two thirds of ballot papers issued, which would mean that the measurement would be of two thirds of those who were eligible to vote?

All that reminds me of Roseanna Cunningham's dreadful namesake—but not relation—George Cunningham, the former MP, who successfully rigged the 1979 referendum under the Scotland Act 1978 by stipulating that at least 40 per cent of those who were eligible to vote would have to vote

for the proposed Scottish assembly before it could be set up. In the event, a majority of those who voted in the referendum supported the proposal, but the 40 per cent hurdle was not overcome. The consequence was that the people of Scotland were robbed and had to wait 20 years for a Scottish Parliament to end the democratic deficit that we had to suffer.

I want sheltered housing residents to have the maximum say in the running of their own affairs, including the appointment and, if necessary, dismissal of a manager. In some cases, a two-thirds threshold might be difficult to achieve if a high proportion of sheltered housing residents were unable to vote because of illness or other circumstances. I understand that the bill as drafted required a three-quarters majority and that the Executive was persuaded to lower the threshold to two thirds. I welcome that step, but I ask the Executive to consider my amendments 186 and 188, which would require a simple majority rather than a two-thirds majority.

I move amendment 186.

Michael Matheson (Central Scotland) (SNP): I have some sympathy with Dennis Canavan's amendments 186 and 188. The minister will be aware that the committee considered the issue carefully at stages 1 and 2 and acknowledged that the threshold of 75 per cent, which the bill as drafted set, was too high. However, I acknowledge that core burdens play a fundamental part in the service that is provided within sheltered and retirement accommodation.

The committee received evidence from SHOC, which detailed a case in which a complex had been able to achieve, with considerable effort, a majority of 74 per cent in favour of change. That example illustrated clearly that the threshold of 75 per cent was too high. If my recollection is correct, at stage 2, Kenneth Macintosh lodged an amendment that sought to reduce the threshold to 60 per cent, whereas I lodged an amendment to reduce the threshold for changing core burdens to a two-thirds majority. The Lord Advocate, who represented the Executive that day, accepted my amendment. I believe that the two-thirds majority strikes the right balance, given that core burdens affect fundamental services within an establishment. Those burdens are different from other burdens that have been referred to. The two-thirds majority is in line with what the committee broadly recommended at stage 1 and I hope members continue to support that position.

15:15

Mr Macintosh: I will speak to amendments 187 and 189.

The background to the amendments and to discussion of the issue at stage 2 is the inappropriate behaviour of certain property developers who exercise control over retirement complexes against the wishes of the residents. The bill introduces several safeguards to try to prevent that from happening in future, but there remain concerns, particularly over voting rights. In many cases, developers retain flats within a complex specifically to benefit from the votes conferred by those units.

At stage 2, the committee voted unanimously to support one amendment—there was one abstention in the vote on another amendment—on preventing the developer from exercising votes against the wishes of retirement home owners. It is fair to say that members of the committee endorsed the principle that retirement complexes should be run in the homeowners' interests, not as income-generators for property companies. Of course, what happens in practice is not that the developers own half of a complex—they need only to control half a dozen or so votes effectively to dominate the complex.

Older people living in retirement flats are looking for security. They do not want to battle with the management company or to make a fuss—they want to agree, not to challenge. In the words of one resident, "Some will sook up to the warden and keep in their good books"—in other words, they will not complain because they do not want to think that when they pull the alarm cord, the warden might be a little slow in responding.

I do not wish to imply that most management companies or wardens do not do an excellent job or that they do not go out of their way to look after residents, because they do. However, we should not delude ourselves that the more unscrupulous will not, and do not, take advantage of this vulnerable group. Recently, I have discovered that certain companies are going round my constituency, buying up flats in retirement complexes and subletting them. Their motives for doing so are unclear, but I believe that residents have every right to be suspicious. Not only does that practice turn the complex into a source of income for the very people who will be running it, but we know from past and present experience that it will be used as a back-door method of retaining control and preventing home owners from making decisions in their own interests.

I certainly do not wish any discriminatory provisions to scupper the benefits that would flow from the bill. However, I want to hear how the Executive intends to tackle the real anxieties and concerns of retirement home owners throughout Scotland and to empower them further to take full control of their own affairs.

Donald Gorrie: Section 50 was the one section on which there was a lot of argument. That argument was not along party lines but was about

how we addressed the specific issue of introducing real democracy into sheltered housing. Dennis Canavan has a strong argument for pure democracy, with his proposal of a majority based on 51 per cent of those voting. On the whole, the committee felt that, as Michael Matheson argued, because the provision refers to the core burdens, the threshold should be slightly above half of those voting if such vital changes in the essential running of the complex are being made. Democracy involves a bit of protecting minorities as well as giving free range to the voice of the majority. Like other members of the committee, I settled—arbitrarily, I suppose—on two thirds as a reasonable majority.

I have considerable sympathy with Kenneth Macintosh's arguments. Some awful tales were given to the committee—I had previously heard tales from pressure groups as, I am sure, other members have done—of the bad behaviour of some management companies and managers. There is a serious concern about preventing the owner of a whole block from dominating the proceedings by subletting and using those tenants' votes. I would be interested in the minister's response as to why he does not accept that point. It is perhaps one of the few points on which there is still a need to put pressure on the Executive to make a concession.

Brian Adam: I have considerable sympathy with the position that Dennis Canavan has spoken of today. Having attended a number of meetings at which people who live in sheltered and retirement housing complexes were also present, I can say that that position has been expressed forcefully by those people.

The Cunningham amendment to the Scotland Act 1978 ensured that everyone who was eligible to vote was counted as part of the result. Achieving 51 per cent under such a system is quite difficult, as those who do not bother to take part will be counted as voting against the proposal. I cannot picture a situation in which hordes of militant retired people would try to overturn the core burdens brought in to protect their rights.

I fully support Kenneth Macintosh's amendments 187 and 189. I, too, expressed concerns during stage 2 about managers or other interested parties buying up a small number of units in a complex to maintain control over the complex from a minority position. I am grateful for the fact that the minister recognised those concerns and reduced the threshold from 75 per cent to 66 per cent. However, as Donald Gorrie said, although the offer of a 66 per cent threshold was gratefully accepted, it does not go far enough. The 66 per cent threshold is too high, especially given that everyone who is eligible to vote will be counted in the final result.

Mr Wallace: The policy that underlies the criteria behind the voting percentage that we are discussing is, as Donald Gorrie, Kenneth Macintosh and Michael Matheson have indicated, to do with the fact that there are certain elements to sheltered housing that are so fundamental to the operation of that kind of housing that they should not be removed or changed merely by a simple majority. That proposition was put forward and strongly supported during the consultation stage.

The Justice 1 Committee also considered the matter and concluded that a 50 per cent majority was not enough but that a 75 per cent majority was too high. Indeed, paragraph 29 of the stage 1 report says:

"The Committee believes that certain burdens regulating a sheltered housing development are so fundamental that they require a higher level of protection than simple majority voting to ensure the development does not wholly lose its character as a sheltered housing development. However, it is not clear to us that a 75% majority is the appropriate majority.**"**

The Executive gave an assurance that we were prepared to revise the 75 per cent majority downwards. I believe that, to that end, an amendment in the name of Michael Matheson was accepted at stage 2 by the Lord Advocate on behalf of the Executive.

As has been indicated, the bill as drafted stipulated a three-quarters majority. As a result of the consultation process, I believe that the two-thirds majority is appropriate. Amendment 186 aims to reduce that to a simple majority and amendment 188 would allow a simple majority of owners to vary or completely remove some of the most important aspects of sheltered housing. Many people buy into sheltered housing for some specific services that give that accommodation its character, such as alarms, intercoms, medical rooms and wardens' flats. I do not see why it would be in the interests of owners to alter those rights except in exceptional circumstances. If a change were felt necessary, it would seem to be a sensible precaution to provide for a special majority to ensure that there was a sufficient body of owners in favour of that change. That is why—to answer Dennis Canavan's direct question—there is a difference between the provisions for sheltered housing and those for other housing developments.

Our proposal is not a matter of treating the owners of sheltered housing in a patronising way; rather, it is a way of ensuring that people who have bought into a complex specifically because of the special facilities that it offers do not see those features removed except in circumstances in which there is substantial support for change.

As the Justice 1 Committee considered those provisions fully and supported the amendments that introduced them, I hope that Dennis Canavan will accept that the matters have been gone into in detail, that an effort has been made to strike the right balance and that that balance is at two thirds. The special majority provisions apply to core burdens. There are no such provisions for the appointment of managers.

With regard to how the votes are to be counted, section 50(5) sets out that the majority shall

"be construed as a reference to the owners of at least two thirds of the units in the development".

The majority is two thirds of the units, not of those who vote.

On procedures, the bill is not prescriptive. It would be for those in the development to come to their own arrangements as to what kind of procedures they wish to pursue.

Amendments 48 and 49 seek to reverse Kenneth Macintosh's amendments 23 and 24, which were agreed to at stage 2. As we have heard, those amendments essentially remove the rights attached to units that a developer owns in respect of decisions about conferred powers of a manager or about the variation or discharge of a core burden in sheltered housing. I recognise the intention that lay behind the provisions of stage 2 amendments 23 and 24, but after considerable consideration, I believe that they cannot remain in the bill.

The provisions do not comply with the principle of majority rule. Within a majority decision-making process, the legitimacy of a decision derives from the fact that everyone has a say and that the will of the owners of a majority of properties within a community prevails in deciding what is best for that community. It does not seem fair to exclude some owners or to allow for the possibility of a minority deciding what is best for the community as a whole.

However, the main reason for seeking the removal of the provisions is the Executive's view that they are incompatible with the European convention on human rights. To deny a developer who owns units in a complex rights while other owners retain theirs is to interfere unfairly with the developer's property rights and to discriminate. The bill cannot be left as it stands because of that failure to comply with the ECHR.

I listened to what Kenneth Macintosh said and I understand that he has addressed the ECHR problem by lodging amendments 187 and 189, which also attempt to remove the relevant provisions. However, having considered his replacement proposals, I regret that they, too, are highly likely to be incompatible with the convention.

I readily acknowledge that Kenneth Macintosh is trying to devise the best scheme for residents in sheltered housing accommodation, but I am unable to support his alternative proposal. It seeks to deny a particular group of people their property rights without sufficient reason. The mere fact of an owner having rented a property out does not remove their interests. The provisions of amendments 187 and 189 seem to be designed to catch not only developer landlords but others who buy into retirement accommodation that, for example, they may let out to their parents. Such owners would be treated less favourably than owner-occupiers for very little reason.

I never like to rest cases on the drafting of amendments, but there are other drafting problems with amendments 187 and 189 because of the use of the term "sublet". Its use means that the amendments do not catch all units that are let out to tenants, as only units that are sublet would be affected. By definition, a property cannot be sublet until it is first let, but the developer who retained units or bought them back to let would not be subletting them; he would be letting them and therefore entitled to a vote. It would seem odd to treat someone who was letting property differently from someone who was subletting it.

That does not mean that I do not sympathise with the concerns expressed by Kenneth Macintosh that a developer who has retained a large number of units might seek to abuse that position. I stress, however, that the bill provides extensive safeguards for the minority in any majority decision making. Indeed, at the committee's request, amendment 86 inserts a new section on the requirement for prior consultation.

As I have indicated, the bill will represent a major change for owners of sheltered accommodation, who will have much more say in their own affairs. We have tried to listen to the points that have been made to us and have further strengthened the position of those who live in sheltered homes at each stage of the bill's progress.

However, in acknowledging the particular concerns that have been raised in the debate and which underlie Kenneth Macintosh's amendments, we believe that it is right and proper for the Scottish Executive to examine the issues further on the basis of the evidence and for that examination to inform the development of policy. On that basis, I inform members that the Executive will commission a study into the issues that Ken Macintosh has raised. We will be happy to consult him on the terms of reference for that study, and my officials and I will be happy to meet him to begin that process as soon as possible. Therefore, I hope that he will be prepared not to move amendments 187 and 189

15:30

Dennis Canavan: I listened carefully to what the minister and other members said, particularly Michael Matheson and Donald Gorrie. Having heard the arguments, I accept that there is a case for a two-thirds majority in the matter of a variation or discharge of core burdens.

However, I do not accept that the same argument applies in the case of the appointment of a manager. The minister has said that a two-thirds majority is not required for the appointment of a manager. He may correct me if I am wrong, but my reading of the bill is that it is. Section 50(5) begins:

"In relation to a sheltered housing development … section 27 of this Act applies with the following modifications".

It then specifies

"a majority … of at least two thirds".

Section 27 is headed "Power of majority to appoint manager etc." Unless the minister can tell me that my interpretation of the bill is wrong, I am inclined to push amendment 186 to a vote. As I said, I accept that there is a case for a two-thirds majority in the event of a variation or discharge of core burdens.

Mr Macintosh: Perhaps I can be of help. Only paragraphs (b) and (c) of section 27(1) apply under section 50(5). The appointment and dismissal provisions, which are specified under paragraphs (a) and (d), do not apply in this instance, which is why a simple majority will decide on the appointment or sacking of a manager.

Dennis Canavan: I invite the minister to intervene to confirm that that is the correct interpretation.

Mr Wallace: I am grateful to Ken Macintosh—what he says is the case. I refer Dennis Canavan to section 50(5), which he is trying to amend through amendment 186. The subsection says:

"section 27 of this Act applies with the following modifications … in subsection (1), the reference to the owners of a majority of the units in a community shall, for the purposes of paragraphs (b) and (c) of that subsection,"

require a two-thirds majority.

Section 27 makes an exception. Under paragraphs (b) and (c) of section 27(1),

"Subject to section 50(5)(a) … the owners of a majority of the units in a community may … confer on any such manager the right to exercise such of their powers as they may specify"

and

"revoke, or vary, the right to exercise such of the powers conferred under paragraph (b) above as they may specify".

Paragraph (a), which covers the power of appointment of a manager, and paragraph (d), which covers the dismissal of a manager, are not covered by the special majority arrangements. Rather, they are covered by a simple majority.

With the Presiding Officer's indulgence, I will, while I am on my feet, confirm what I said earlier that I would confirm. My memory was indeed correct: the manager burden will cease to be exercisable either once the developer in whose favour it is constituted does not own a unit in the development or after three years. Therefore, a manager burden created before November 2001 will be extinguished on the appointed day.

Dennis Canavan: I am grateful to the minister for that explanation. I now see that there is a distinction between the appointment of the manager, and the conferring on that manager of the right to exercise certain powers and the revocation of those powers. However, the minister has still not given an explanation as to why a two-thirds majority is required in order to confer the powers on the manager or to revoke the exercise of such powers on the part of the manager.

Mr Wallace: Section 50 in effect amends the operation of section 27 in the way that Dennis Canavan describes, with the result that powers can be conferred on a manager only under the terms of section 27(1)(b), or revoked or varied under the terms of paragraph (c) with a majority of at least two thirds. It is not possible, even under section 27(1), for such a two-thirds majority to confer a power on a manager to sign a deed under section 32 that could vary or discharge core burdens. Any such power could only be to sign a deed to vary non-core burdens. That takes us back to the important point about ensuring that what people have bought into—including the special nature of the accommodation and all that goes with that—is not diluted by a simple majority decision. Rather, given the nature of the accommodation, the higher threshold has to be passed before there can be a change. The arrangement has been arrived at to protect those people's interests.

Dennis Canavan: We could have a situation where the owners of the units in a sheltered housing complex were dissatisfied with the way in which the manager was exercising certain powers that they had given them and, as a result, wanted to revoke the powers. If as many as 65 per cent of the owners want a revocation of the powers from the management and 35 per cent want the management to retain the powers, why on earth should the 35 per cent be dictating to the 65 per cent? I think that I should push amendment 186 to a vote, but I am prepared not to move amendment 188, because I accept that there is a case for a two-thirds majority regarding variation or discharge of core burdens.

The Deputy Presiding Officer: The question is, that amendment 186 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division. Given that this is the first division of the afternoon, I shall allow two minutes for the vote.

FOR

Adam, Brian (North-East Scotland) (SNP)
Canavan, Dennis (Falkirk West)

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)
Campbell, Colin (West of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
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)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
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)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
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)
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)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Russell, Michael (South of Scotland) (SNP)
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)
Stevenson, Stewart (Banff and Buchan) (SNP)
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)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer (Mr Murray Tosh): The result of the division is: For 2, Against 96, Abstentions 0.

Amendment 186 disagreed to.

Amendment 48 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Presiding Officer: Amendment 187 is in the name of Kenneth Macintosh. Are you moving the amendment, Mr Macintosh?

Mr Macintosh: I will not move amendment 187. I welcome the assurances that the minister has given me on this point. The amendment concerns the fact that property developers can use property rights to assert their controls, but asserting the interests of residents runs into discriminatory problems. I welcome the assurance that there will be an on-going study.

Amendments 187 and 188 not moved.

Amendment 49 moved—[Mr Jim Wallace]—and agreed to.

Amendment 189 not moved.

Amendments 50 and 51 moved—[Mr Jim Wallace]—and agreed to.

After section 50

Amendment 86 moved—[Mr Jim Wallace]—and agreed to.

Section 51—Facility burdens and service burdens

Amendments 52 and 53 moved—[Mr Jim Wallace]—and agreed to.

Section 52—Further provision as respects implied rights of enforcement

Amendment 190 moved—[Mr Jim Wallace.]

Amendment 190A not moved.

Amendment 190 agreed to.

Amendment 55 moved—[Mr Jim Wallace.]

Amendment 55A not moved.

Amendment 55 agreed to.

Amendments 56 and 57 moved—[Mr Jim Wallace]—and agreed to.

Section 58—Manager burdens

Amendments 58 to 60 moved—[Mr Jim Wallace]—and agreed to.

Section 59—Overriding power to dismiss and appoint manager

The Deputy Presiding Officer: Group 18 concerns the power to dismiss the manager. Amendment 191 is in a group on its own.

Dennis Canavan: I will be brief, because the principles of amendment 191 are very similar to those of amendment 186. If the residents of a sheltered housing complex are not satisfied with the standard of service that a manager provides, they should have the power to sack that manager and to appoint someone else. Under the bill, as many as 65 per cent of the residents might want to change the manager, but they would be powerless to do so because the other 35 per cent wanted no change. The 35 per cent minority might be pals of the manager or might have been intimidated by them, but why should 35 per cent of residents be able to dictate to 65 per cent?

I move amendment 191.

Mr Wallace: I will try to be equally brief. Where the title deeds make no provision for the dismissal of a manager, a simple majority of 51 per cent may dismiss them under section 27(1)(d). However, where the title deeds specifically make provision for the dismissal of a manager, the Executive does not in general propose to disturb an arrangement into which parties have entered freely. However, the Executive accepts that it would be unreasonable for developers to include in title deeds a provision that required a very large majority—for example, of 80 per cent—to seek a manager's dismissal. In that case, the manager could not be dismissed if 79 per cent of residents were opposed to and only 21 per cent were supportive of him. If such a large majority were required, it might be impossible to dismiss a manager.

For that reason, the bill contains a provision that—quite exceptionally—will override the provisions in the title deeds. Section 59 provides that, irrespective of what the title deeds say, a two-thirds majority of residents will be able to dismiss their manager. A two-thirds majority is given as the highest acceptable limit for the dismissal of a manager; it is not the routine requirement. If there is no such provision in the title deeds, the simple 51 per cent majority will apply.

Dennis Canavan: I am not at all impressed by the minister's argument. Sometimes people have no choice about title deeds: things are done on a take-it-or-leave-it basis. The Parliament ought to ensure higher standards of justice than those that are in the title deeds. The minister has already accepted that principle by including section 59 in the bill.

As we have accepted the principle of having higher standards than those that are in the title deeds, I hope that we will accept the provision for a simple majority. Otherwise, the will of the minority may prevail over that of a substantial majority of residents. For example, an incompetent, crooked management could continue to hold sway simply with the votes of a 35 per cent or so minority.

Mr Wallace: Section 59 does not provide that there must always be a two-thirds majority, even when there are title deeds. It overrides the title deeds to impose an upper limit of two thirds. Therefore it limits what the developers can put into the title deeds. The limit can be lower if they choose, but it cannot go beyond two thirds.

Dennis Canavan: I still think that there is a case for having a simple rather than a two-thirds majority. Will the minister explain what happens in the case of existing title deeds? Will the provision be retrospective? Will existing title deeds be overridden? The minister is nodding his head.

15:45

Mr Wallace: The intention is to put a ceiling on the majority that is required. I am fairly confident that the provision applies retrospectively.

Dennis Canavan: I am grateful to the minister for that explanation. However, I still think that if a

simple majority of the owners of units in a sheltered housing complex are very dissatisfied with the management, they ought to be able to do something about it. We should remember that we are talking about reasonable people who will not just hire and fire managers at will. The proposed dismissal stage is a last resort, which will apply only if a manager has proven to be so incompetent that the majority of the people who live in that sheltered housing complex want a change of management. They ought to have maximum opportunity to bring about such a change. Therefore, I intend to press amendment 191.

The Deputy Presiding Officer: The question is, that amendment 191 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Canavan, Dennis (Falkirk West)

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)
Campbell, Colin (West of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
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)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
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)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Grant, Rhoda (Highlands and Islands) (Lab)
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)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
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)
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)
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)
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)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)
Wilson, Andrew (Central Scotland) (SNP)

The Deputy Presiding Officer: The result of the division is: For 1, Against 93, Abstentions 0.

Amendment 191 disagreed to.

Section 61—The expression "related properties"

Amendments 61 and 62 moved—[Mr Jim Wallace]—and agreed to.

Section 64—Further provision as respects deeds of variation and of discharge

Amendment 63 moved—[Mr Jim Wallace]—and agreed to.

Section 65A—Development management scheme

Amendments 87 to 90 moved—[Mr Jim Wallace]—and agreed to.

Section 65B—Application of other provisions of this Act to rules of scheme

Amendments 91 to 93 moved—[Mr Jim Wallace]—and agreed to.

Section 65C—Disapplication

Amendment 192 moved—[Mr Jim Wallace]—and agreed to.

Section 69—Discharge of positive servitude

The Deputy Presiding Officer: Group 19 is on servitudes. Amendment 193 is grouped with amendments 194, 195, 196, 113, 65 and 66.

Mr Wallace: Amendments 193 to 196 seek to make it clear that the provisions of sections 69 and 71(3) will apply to servitudes that have been registered in the property registers, that have been noted as overriding interests or that otherwise appear on the title sheet of property that has been registered in the Land Register of Scotland.

Amendments 113, 65 and 66 will require the Keeper of the Registers of Scotland to identify the benefited and burdened property where negative servitudes become real burdens through the operation of section 71.

I move amendment 193.

Amendment 193 agreed to.

Amendments 194 and 195 moved—[Mr Jim Wallace]—and agreed to.

Section 71—Negative servitudes to become real burdens

Amendment 196 moved—[Mr Jim Wallace]—and agreed to.

Section 73—Application and interpretation of sections 74 and 75

Amendment 94 moved—[Mr Jim Wallace]—and agreed to.

Section 74—Extinction following pre-sale undertaking

Amendments 197 and 95 moved—[Mr Jim Wallace]—and agreed to.

Section 75—Extinction following offer to sell

Amendments 198 and 97 moved—[Mr Jim Wallace]—and agreed to.

Section 77—Reversions under School Sites Act 1841

The Deputy Presiding Officer: Amendment 98 is grouped with amendments 199, 200, 99 and 201.

Mr Wallace: Amendment 98 and the other amendments in the group have not been lodged specifically for the benefit of the convener of the Justice 1 Committee. I know that Christine Grahame—if I can catch her attention—would feel that this stage of the bill would not be complete without a consideration of the School Sites Act 1841.

Christine Grahame (South of Scotland) (SNP): I am all ears.

Mr Wallace: I am delighted that she will not be disappointed.

The amendments are purely technical amendments to tidy up the bill. Amendment 201 will make a minor but important change to ensure that, when a reversion holder has already accepted compensation, he cannot expect to get a second bite of the cherry by claiming compensation from the education authority. The other amendments are consequential.

I move amendment 98.

Amendment 98 agreed to.

Amendments 199, 200, 99 and 201 moved—[Mr Jim Wallace]—and agreed to.

Section 78—Right to petition under section 7 of Entail Sites Act 1840

The Deputy Presiding Officer: Amendment 100 is grouped with amendments 101 to 103.

Mr Wallace: This group of technical amendments will help to tidy up the bill.

Amendment 103 delivers the main purpose, which is to bring the Entail Sites Act 1840 into line with the revisions of the School Sites Act 1841 that were made at stage 2. The amendment provides that, if land has been sold to a third party and the reversion holder seeks to recover that land, the reversion holder should be paid compensation instead. The other amendments are consequential.

I move amendment 100.

Amendment 100 agreed to.

Amendments 101 to 103 moved—[Mr Jim Wallace]—and agreed to.

Section 81—Powers of Lands Tribunal as respects title conditions

Amendment 104 moved—[Mr Jim Wallace]—and agreed to.

Section 82—Special provision as to variation or discharge of community burdens

Amendment 202 moved—[Mr Jim Wallace]—and agreed to.

Section 85—Content of notice

Amendment 203 moved—[Mr Jim Wallace]—and agreed to.

Section 87—Representations

The Deputy Presiding Officer: Amendment 105 is grouped with amendments 106, 111, 112, 205, 206 and 207.

Mr Wallace: Amendments 105 to 108 inclusive are technical drafting amendments to clarify the operation of sections 87 and 88.

Amendment 111 will adjust the existing powers of the Scottish ministers so that, under the bill, they will be able to make rules to regulate applications to the Lands Tribunal for Scotland. In particular, the amendment will allow ministers to make rules relating to evidence.

Amendment 112 will bring the bill's provisions on the referrals of disputes that arise from notices registered under the bill into line with the equivalent provision in the Abolition of Feudal Tenure etc (Scotland) Act 2000.

Amendment 205 will make it clear that the discretion of the Lands Tribunal to award expenses under section 92 is subject to the provision in section 89A(3) that an owners' association may be ordered to pay the expenses, or a proportion thereof, of an applicant who has applied to preserve a development management scheme.

Amendment 206 takes into account the possibility that an application to the Lands Tribunal to renew or vary a title condition or to preserve a community burden may be refused. In those circumstances, the tribunal would issue an appropriate order. Amendment 206 makes it clear that that may itself be registered.

Amendment 207 will replace the word "extinguished" with "discharged", which—as members well know—is more appropriate in the context of applications to the Lands Tribunal.

Amendment 208 provides that in section 93 an order of the Lands Tribunal preserving a development management scheme may be registered in the property registers in the same way that an order to preserve a community burden may be registered under section 93(2).

I move amendment 105.

Amendment 105 agreed to.

Amendment 106 moved—[Mr Jim Wallace]—and agreed to.

Section 88—Granting unopposed application for discharge or renewal of real burden

Amendments 107 to 110 moved—[Mr Jim Wallace]—and agreed to.

Section 89A—Granting applications as respects development management schemes

Amendment 204 moved—[Mr Jim Wallace]—and agreed to.

After section 90

Amendment 111 moved—[Mr Jim Wallace]—and agreed to.

Section 91—Referral to Lands Tribunal of notice dispute

Amendment 112 moved—[Mr Jim Wallace]—and agreed to.]

Section 92—Expenses

Amendment 205 moved—[Mr Jim Wallace]—and agreed to.

Section 93—Taking effect of orders of Lands Tribunal etc

Amendments 206 to 208 moved—[Mr Jim Wallace]—and agreed to.

Section 94—Alterations to Land Register consequential upon registering certain deeds

Amendment 113 moved—[Mr Jim Wallace]—and agreed to.

Section 95—Extinction of real burdens and servitudes etc on compulsory acquisition of land

Amendments 209 and 114 moved—[Mr Jim Wallace]—and agreed to.

Section 96—Extinction of real burdens and servitudes etc where land acquired by agreement

Amendments 115 to 119 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Presiding Officer: Amendment 120 is grouped with amendments 210, 218 and 219.

Mr Wallace: Amendment 120 seeks to remove "general vesting declaration" from the definition of conveyance in section 96. A general vesting declaration is used only where land has been acquired by means of a compulsory purchase

order. Section 96 relates to the extinction of burdens where land is acquired by agreement.

Schedule 11 is introduced by section 96(11) and relates to land that is acquired by agreement in circumstances where it could have been acquired compulsorily. A conveyance in such circumstances will extinguish a title condition only if it is registered together with a relevant certificate from the Lands Tribunal. A certificate might, for example, certify that there is no outstanding application to renew the title condition.

The effect of amendments 218 and 219 would be to make clear that the form of application for the relevant certificate must specify the date by which the owner of the benefited property or the holder of the personal burden must have applied to the Lands Tribunal for renewal of the burden.

Amendment 210 seeks simply to bring the wording of section 96(10) into line with the equivalent provisions of section 22, and to make it clear that the certificate issued by the Lands Tribunal will cover all applications received for the renewal of the burden.

I move amendment 120.

Amendment 120 agreed to.

Amendment 210 moved—[Mr Jim Wallace]—and agreed to.

Section 96A—Amendment of Church of Scotland (Property and Endowments) (Amendment) Act 1933

The Deputy Presiding Officer: Amendment 121 is grouped with amendment 172.

Mr Wallace: As my colleague Mr Finnie said, 121 is an appropriate number for an amendment that deals with the Church of Scotland.

The subject matter of amendment 121 underwent some discussion at stage 2, particularly in amendments lodged by Maureen Macmillan and Donald Gorrie. It was agreed that officials would meet Church of Scotland representatives to discuss the application of section 9 of the Church of Scotland (Property and Endowments) (Amendment) Act 1993. Amendment 121 is a product of those discussions.

The Church of Scotland was concerned about possible situations where more than one person was eligible for the right of pre-emption when a church or manse was sold. It was also concerned about how the price of a property was to be fixed.

Amendment 121 seeks to allow the Scottish ministers to provide by order a mechanism for fixing the price of the property. They would also be able to provide a mechanism for choosing the person who is given the opportunity to buy back the church or manse where more than one person is entitled to enforce the right.

Amendment 172 is consequential. The amendments address the problems that Maureen Macmillan, Donald Gorrie and the Church of Scotland raised. The church has told us that it is satisfied with what is proposed and we will be discussing with it the terms of the statutory instruments that are to follow.

Lord James Douglas-Hamilton: Is the minister absolutely certain that all the Church of Scotland's concerns have been addressed and that all relevant matters can be dealt with by statutory instrument?

Maureen Macmillan: I thank the Executive for responding to the concerns of the Church of Scotland General Trustees over the problems they experienced when trying to sell redundant parliamentary churches that were built about 200 years ago with public money. The title deeds for those churches were granted by the heritors who gave land at the time. Those deeds gave adjoining landowners the right of pre-emption over the church when it fell out of use.

The negotiated price was usually in the landowner's favour and discussions about when the deal would be concluded were open ended. That meant that there were times—as still happens today—when churches remained in a state of disrepair for many months while negotiations took place.

The conditions were therefore out of date for a long time. As the Deputy First Minister said, there could now be more than one adjoining proprietor and fairness would dictate that the price paid should reflect the market value. The church should be able to indicate a closing date for offers rather than have negotiations drag on for as long as two years, as they did in a recent case.

A letter that I received today from the Church of Scotland General Trustees said that they appreciated that the Executive had dealt with the matter to their satisfaction and I add my thanks to theirs.

16:00

Donald Gorrie: One of the great attractions of politics is that one is always learning new things. As a result of the Church of Scotland approaching Maureen Macmillan and me on this issue, I discovered all about parliamentary churches, which I knew nothing about before. I will not bore members with that now. There is an issue, and the minister has addressed it reasonably. The issues are complex, and they cannot all be adjusted on the face of the bill, but what is in the bill, plus some regulations by statutory instrument, will

address the small but important point for a few churches in the Highlands.

Mr Wallace: I welcome the fact that members recognise that we have been able to address the concerns that were expressed at stage 2. Lord James Douglas-Hamilton asked whether the Church of Scotland is wholly satisfied. The church had sought a statutory direction to identify one property as that which benefited from the reversion. It has not been possible to allow that, because it would remove without compensation the property rights of other proprietors. However, as we heard from the letter to which Maureen Macmillan referred, we have been able to provide a mechanism to facilitate the identification of one property and to fix a price for the land. In the procedure, it is likely that each possible pre-emption holder will be allowed to make a bid, with the right going to the highest bidder. The Church of Scotland has indicated that it is content with that proposal. As I have indicated, we will discuss with the church the terms of the statutory instrument to follow.

Amendment 121 agreed to.

Section 97—Amendment of Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947

Amendments 122, 211, 212 and 123 moved—[Mr Jim Wallace]—and agreed to.

Section 98—Amendment of Forestry Act 1967

Amendments 124 and 125 moved—[Mr Jim Wallace]—and agreed to.

Section 100—Amendment of Land Registration (Scotland) Act 1979

Amendments 64 to 66 moved—[Mr Jim Wallace]—and agreed to.

Section 102—Amendment of Abolition of Feudal Tenure etc (Scotland) Act 2000

Amendments 213, 67 and 214 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Presiding Officer: Amendment 68 is grouped with amendments 163 and 166.

Mr Wallace: Amendment 68 is a technical, consequential change, which seeks to remove a reference that is unnecessary, because the provision is being repealed. Amendments 163 and 166 will ensure that sporting rights are, unless saved under section 65A, extinguished by section 54 of the Abolition of Feudal Tenure etc (Scotland) Act 2000, and cannot be saved under part 4 of that act.

I move amendment 68.

Amendment 68 agreed to.

Section 107—Savings and transitional provisions etc

Amendments 69 and 70 moved—[Mr Jim Wallace]—and agreed to.

Section 110—Interpretation

Amendments 71, 126, 72, 127 and 73 to 79 moved—[Mr Jim Wallace]—and agreed to.

Section 111—The expression "owner"

Amendment 80 moved—[Mr Jim Wallace]—and agreed to.

Section 116—Minor and consequential amendments, repeals and power to amend forms

The Deputy Presiding Officer: Amendment 81 is grouped with amendments 82 to 84.

Mr Wallace: It will be widely recognised in the chamber that the bill contains a number of complicated and technical issues. I pay tribute not only to my officials, but to the work of the Scottish Law Commission, which has pored over the bill at every stage to try to ensure that all points are picked up and that there is consistency throughout, but inevitably there is a risk that some small drafting faults have been overlooked, which could have unintended consequences. A small deficiency in language may create major problems in interpreting legislation.

The bill will create a new system of land regulation in a post-feudal Scotland, and is likely to be used daily by conveyancers. It is important, therefore, that any problems that are identified should be resolved quickly. As a result, amendments 81, 82, 83 and 84 will allow the Scottish ministers to make consequential and corrective amendments by subordinate legislation to the bill once it becomes an act. That power, of course, is intended only for minor, technical amendments. The proposed changes build upon a provision that was made at stage 2 to allow ministers to make necessary changes to other legislation as a consequence of the bill. Such a power has been taken in other acts. Parliaments should be cautious about such a power, so any change under it would be subject to an affirmative resolution of the Parliament.

I move amendment 81.

Lord James Douglas-Hamilton: The amendments are necessary. They provide a power for the Scottish ministers to make corrective amendments. Because of the enormous complexity of some of the issues that are involved, it is conceivable that matters might come to light that the bill does not properly cover. In such circumstances, it is justified that the minister proceeds as proposed.

Donald Gorrie: Any parliamentarian must be cautious about giving powers to ministers to mess about with bills that they are passing, but, as the minister said, the bill is complex and enters new territory in trying to unscramble and reconfigure the feudal system in Scotland. It is possible that errors will need to be put right. Despite having a suspicious mind, I see no ways in which some evil future minister, unlike the excellent existing ministers, might misuse the power, to the detriment of the public as a whole or individuals. We should support the amendments, but that support should not create a precedent.

Mr Wallace: I welcome those comments. If Donald Gorrie—with his rightly suspicious mind—is reassured, I am reassured.

Amendment 81 agreed to.

The Deputy Presiding Officer: Amendments 82 to 84, 128 to 147, 215 to 219, 148 to 158, 220 and 159 to 172 are to be moved formally. I remind members of the change that was announced at the beginning of this afternoon's proceedings to the line of the bill that amendment 171 will affect. Does any member object to a single question being put on those 54 amendments?

Members *indicated disagreement.*

The Deputy Presiding Officer: No member was brave enough to object.

Amendments 82 and 83 moved—[Mr Jim Wallace]—and agreed to.

Section 117—Short title and commencement

Amendment 84 moved—[Mr Jim Wallace]—and agreed to.

Schedule 2

FORM OF NOTICE OF TERMINATION

Amendments 128 to 135 moved—[Mr Jim Wallace]—and agreed to.

Schedule 3

FORM OF AFFIXED NOTICE RELATING TO TERMINATION

Amendments 136 and 137 moved—[Mr Jim Wallace]—and agreed to.

Schedule 4

FORM OF NOTICE OF PROPOSAL TO REGISTER DEED OF VARIATION OR DISCHARGE

Amendments 138 to 142 moved—[Mr Jim Wallace]—and agreed to.

Schedule 5

FURTHER FORM OF NOTICE OF PROPOSAL TO REGISTER DEED OF VARIATION OR DISCHARGE OF COMMUNITY BURDEN: SENT VERSION

Amendments 143 to 146 moved—[Mr Jim Wallace]—and agreed to.

After schedule 7

Amendment 147 moved—[Mr Jim Wallace]—and agreed to.

Schedule 9

FORM OF UNDERTAKING

Amendments 215 to 217 moved—[Mr Jim Wallace]—and agreed to.

Schedule 11

FORM OF APPLICATION FOR RELEVANT CERTIFICATE

Amendments 218 and 219 moved—[Mr Jim Wallace]—and agreed to.

Schedule 12

AMENDMENT OF ABOLITION OF FEUDAL TENURE ETC (SCOTLAND) ACT 2000

Amendments 148 to 158, 220 and 159 to 171 moved—[Mr Jim Wallace]—and agreed to.

Schedule 14

REPEALS

Amendment 172 moved—[Mr Jim Wallace]—and agreed to.

The Deputy Presiding Officer: That ends consideration of amendments.

Title Conditions (Scotland) Bill

The Deputy Presiding Officer (Mr Murray Tosh): The next item of business is the debate on motion S1M-3777, in the name of Jim Wallace, that the Title Conditions (Scotland) Bill be passed.

16:08

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): As was said when we discussed the last group of amendments, the bill is highly technical. It deals with complicated terms in the title deeds of property and uses detailed legal language. Despite that, the bill will be an important piece of legislation that has a striking impact on the way in which property in Scotland is treated.

From 28 November 2004, Scotland will have a completely new system of land tenure. The feudal system will be abolished, and the bill makes a major contribution to that new system. It will be a modern system that will replace an outdated and discredited system. It is worth dwelling on that for a moment, because the bill is not glamorous; it has not hit the headlines. However, it is a classic piece of law reform. It has examined the common law with a cool eye. Where the law was sensible and useful, it has been reproduced in the codes that are set out in the bill's opening sections. Where the law was uncertain, it has been clarified. Where the law was poor, it is being replaced.

Often, the Parliament takes criticism, but it would have been difficult for any Administration to find the time to pass such a bill at Westminster. The bill will be a piece of sensible, measured legislation that will affect most of Scotland's citizens and have a wide-ranging effect on how people live for many years.

As is obvious, it has taken some time to craft the bill. The issues are complicated and the Executive is grateful for the comments and suggestions that it received. The bill was proposed by the Scottish Law Commission in 2000 and was amended before introduction in response to the Executive's consultation exercise in 2001.

The delay between stage 3 of the Abolition of Feudal Tenure etc (Scotland) Act 2000 and today is the result of the need to consider every aspect of the legislation in painstaking detail. I recall the suggestion that was made in the stage 1 debate that the two bills should have been combined. However, I think that that would have resulted in a monstrously enlarged and complex piece of legislation.

Taking each bill separately has allowed us to distinguish between the removal of feudal tenure and the creation of replacement rules. Once the appointed day is passed, the Abolition of Feudal Tenure etc (Scotland) Act 2000 will have served its purpose and the Title Conditions (Scotland) Bill will be the legislation that conveyancers use on a day-to-day basis.

The Executive endeavoured to respond to comments that were made by interested parties and to accommodate their concerns. We amended the bill at stage 2 to reflect several recommendations from the Justice 1 Committee. The recommendations were primarily concerned with time limits in general and, specifically, with the voting threshold for changing fundamental characteristics in sheltered housing. We included provisions to allow for the introduction of a development management scheme to act as a best-practice tool for developers in creating housing communities. We also provided for local authorities to protect land that they sell cheaply for economic development.

Further amendments have been agreed today. We have introduced a health care burden to assist national health service trusts when selling land. Following consultation with the Law Society of Scotland, we have simplified the process of obtaining acquiescence to a breach of a burden. We have introduced a new type of burden to assist the providers of affordable rural housing. A large number of technical amendments were also lodged, and I express my gratitude to members for their forbearance as we have gone through each of those amendments.

Quite properly, a number of amendments were lodged on the issue of sheltered housing. Although the bill is not the appropriate vehicle for a general reform of the law on sheltered housing, I am confident that the bill should facilitate greater accountability and empower owners of sheltered housing complexes to take their own management decisions if they so wish.

The continued and detailed additions to the bill as it has progressed reflect the tremendous effort that has gone into its passage. With that in mind, I pay tribute to the Justice 1 Committee. The committee may have been somewhat daunted at the size and technical nature of the bill, but it dealt tirelessly with a large number of technical amendments at stage 2 and, having taken evidence, produced an excellent report at stage 1, as a result of which we were able to make further amendments to the bill.

I also record our appreciation of and thanks to the Scottish Law Commission. The commission, some of whose representatives may be in the public gallery, conducted a comprehensive review of Scots property law over the past decade. The Scottish Law Commission's involvement continued beyond the submission of its reports. During the passage of this bill and the Abolition of Feudal Tenure etc (Scotland) Act 2000, the commission

continued to provide detailed advice and support to my officials and me, which we valued greatly. The Scottish Law Commission's efforts have led directly to the abolition and replacement of the feudal system. The commission has also proposed reforms to the law of the tenement, upon which the Executive intends to consult as soon as possible.

I express my gratitude to all others who made suggestions. I very much believe that the wide array of changes that have been made as a result have resulted in an improved bill, which will fill the vacuum of feudal abolition, remove defects in the current law and provide a firm foundation for a modern system of property law in Scotland. I am grateful in particular not only, as I said, to members of the Justice 1 Committee and its officials and advisers, but to the officials in my department. From the volume and technicality of the amendments that we have seen today, it is obvious that officials made considerable and strenuous efforts to ensure that the bill is a piece of legislation on which we can lay solid foundations for a modern future system of property law in Scotland.

I move,

That the Parliament agrees that the Title Conditions (Scotland) Bill be passed.

16:14

Michael Matheson (Central Scotland) (SNP): I will be brief. The bill proved to be one of the most complex pieces of legislation that we have dealt with in my three and a half years on the Justice 1 Committee and its predecessor committee, the Justice and Home Affairs Committee. I am particularly grateful that my colleague Roseanna Cunningham gave me the opportunity to take responsibility for the bill on behalf of the Scottish National Party. I have thoroughly enjoyed monitoring its progress through the committee stages and in the chamber today.

I agree with the minister that the bill is a complex piece of legislation that will have a significant impact on property law in Scotland. To those who say that the bills that the Parliament passes do not affect them in their daily lives, I say that this is a bill that will affect the many people who purchase property throughout Scotland.

I, too, place on record my gratitude to the clerks to the committee, who, as ever, have been first class in preparing papers for members. I give particular recognition to Scott Wortley, who was special adviser on the bill to the committee. He has considerable expertise in the field and I am amazed that he can be so enthusiastic about such a complex subject. His support, assistance and guidance to committee members, where appropriate, were invaluable.

As the Deputy First Minister stated, along with the Abolition of Feudal Tenure etc (Scotland) Act 2000, the bill is one in a series of pieces of legislation to reform property law. A number of changes were made to the bill at stage 2, as well as this afternoon—I mention in particular changes to the provisions for sheltered and retired accommodation, which enhance the bill considerably.

The bill is a good illustration of the process. Organisations made representations to the Justice 1 Committee and to members directly, and the Executive was prepared to listen, acted accordingly and changed the bill, which was to organisations' benefit. I warmly welcome that action.

Members might be interested to note that, if we pass the bill this afternoon, we will repeal several enactments. One of those is the Registrations Act 1617. It will be repealed only in part, but the Redemptions Act 1661 will be repealed completely. Those must have been some pieces of legislation, because they have lasted so long, but one would expect that, coming as they did from a time when Scotland was formulating acts as an independent nation. I am sure that none of us will be around to find out whether the bill lasts as long as those two acts have.

I hope that members will support the Executive and pass the bill this afternoon.

16:17

Lord James Douglas-Hamilton (Lothians) (Con): I, too, thank the clerks to the Justice 1 Committee and Scott Wortley for the excellence of their work.

We welcome the bill for a number of reasons. We believe that it will achieve far greater clarity in the law. It will reduce the number of outdated conditions. At the same time, it will have the benefit of enabling solicitors acting for clients in land transactions to ascertain the law relating to real burdens from a single source.

For those who wish to alter the conditions relating to the ownership of their property—such as a burden that obliges the owner to maintain or contribute to the maintenance of a common facility, conveyancing will be much simpler.

The overall purpose has been to achieve clarity in the law and to restate the law in codified form. That has been welcomed in general by the Scottish Law Agents Society. It considers that redefining the perimeters of real burdens and servitudes is a welcome and sensible proposal.

Similarly, the Law Society of Scotland's working group has welcomed the bill, and considers that when it is enacted, there will be significant

improvements to the law of real burdens in Scotland. It considers that clarification of the law of real burdens is helpful, since the area is currently, in many respects, uncertain and complex. The bill seeks to make substantial improvements.

Members have received a number of complaints about the management of owner-occupied sheltered housing developments, primarily relating to owners not being consulted on proposals for the maintenance of properties, service charges and the appointment of wardens. The general effect of the bill is to remove control from the developer and give it to the owners. That is a welcome change.

The only omission from the bill is the reform of the law on tenements, although I note the intention to consult on that. I hope that legislation will be introduced in the next session of Parliament.

I have one reservation about the bill. The subject is enormously complex and is reminiscent of dusty documents, wigs and gowns. In the process of modernisation, the Executive saw fit to lodge more than 100 amendments for Parliament to consider within a limited time scale. As I mentioned earlier, the issues are so complex that even specialist lawyers are less than totally certain in every case about the possible interpretations.

I would like to put down a marker: if the act turns out to be deficient in a number of detailed respects, the Parliament and the Executive—which is accountable to the Parliament—should revisit the subject. We have no second chamber and it will be some time before all the implications are known, which is why we have not opposed what I would describe as the Henry VIII provisions in section 116, which gives ministers enormous powers. If I may say so, the measures are illiberal ones for a Liberal Democrat minister to introduce, but they are justified in this case because they give us the certain knowledge that the bill will not be the final word if there is specialist evidence that it should be amended in the public interest.

We are content and, indeed, happy that the bill should proceed.

16:20

Ms Wendy Alexander (Paisley North) (Lab): As others have said, the bill is certainly the most technical bill with which many members of the Justice 1 Committee have been involved, which is why we are rather glad to have got through it. I echo the congratulations and thanks that Michael Matheson, Lord James Douglas-Hamilton and the minister offered to the various people, including the clerks and advisers, who assisted us in trying to make sense of the bill's complex detail.

Members will be glad to know that I will not rehearse any of that detail. Instead, I will use my time to commend the Executive for the way in which it has responded to the issues that back benchers raised at every stage, of which I will give a couple of examples. Considerable safeguards for sheltered housing tenants have been sought and won by, among others, Ken Macintosh and Sylvia Jackson. Although neither of them are members of the committee, they took up the interests of their constituents and, even though the European convention on human rights intervened at the last moment, progress has been made.

Maureen Macmillan and Lord James Douglas-Hamilton doggedly pursued the issues about acquiescence that were raised at the committee, and, ultimately, the Executive listened. Maureen Macmillan sought to ensure that bodies that sell land to provide affordable social housing do not find that those houses are subsequently sold on, which might threaten small communities. Finally, Donald Gorrie and Maureen Macmillan championed the concerns of the Church of Scotland and tackled the issue of rights of pre-emption over the sale of parliamentary churches and manses. The list goes on.

In the area of health care burdens, the Executive's decision to make it possible for health boards to decide on appropriate sites for future buildings—whether on an existing health board site or elsewhere—is a welcome step. I also want to mention the Executive's decision to create the illiberal powers to which Lord James Douglas-Hamilton referred. I do not say this out of self-interest, but although those powers might be illiberal, the decision takes the matter away from the Justice 1 Committee's agenda and sends it back to the Subordinate Legislation Committee. If members of that committee want to receive some hints and tips, we would be happy to oblige.

As members have said, the bill is detailed, but the big picture is that it will create a new system of land regulation for the post-feudal Scotland that the Parliament has inaugurated. Whatever the dryness of the legal language, the bill will be used daily by conveyancers up and down the country.

There is one outstanding big-picture issue that members of the committee from all parties want to leave with the Executive to tackle. Away back in the 15th, 16th or 17th century, when some of the laws that we are updating were first conceived, perhaps by a former Scottish Parliament, the purpose was no doubt to identify people's obligations to their neighbours in relation to the property in which they lived. The committee felt that the bill does not address fully our obligations to our neighbours, particularly those that relate to shared services and common grounds. Although the bill is a huge step in the right direction, there was a universal desire among committee members to take the next step in rebuilding

communities, and to consider, through the housing improvement task force, how mixed-tenure estates might be better managed. We must also consider how, in the 21st century, we can take our obligations to our neighbours as seriously as they were taken when the issue was first debated more than 400 years ago.

I end by simply commending the Executive for listening. The bill process has been everything that the consultative steering group hoped for from the Parliament. It is a huge step forward in modernising property and land legislation in Scotland.

16:25

Donald Gorrie (Central Scotland) (LD): Other members have covered the ground well. It is interesting to hear from what Wendy Alexander said that what appears to be a dry and technical bill is all about creating communities. We still need such things as the law of the tenement, but the bill is a major step towards the creation of real communities. It should also encourage members of future committees that are landed with very technical bills. Most of the committee members started knowing nil about the subject, but by bringing together ministers' explanations, the useful lobbying by particular groups with specific problems, the advice of our excellent adviser, who understood the subject very well, and negotiation with the minister, we have produced a good bill.

I am sure that changes will be made to the bill in due course. Nonetheless, it shows that the committee system can work even in dealing with a very technical bill that people might think a bunch of politicians would not be skilled enough to deal with. The minister deserves great credit, as do the other people who have been mentioned. I hope that we have done a good day's work today.

16:26

Dr Sylvia Jackson (Stirling) (Lab): I begin by reiterating the comments that I made at stage 1. I whole-heartedly welcome the bill, especially as it addresses the issues that were raised with me by my constituents and through the Sheltered and Retirement Housing Owners Confederation. In particular, I thank Marie Galbraith, who was in the public gallery earlier with some of the SHOC members, and John McCormick, who among others met a cross-party group of MSPs at the Parliament during the passage of the bill.

Since the stage 1 debate, substantial steps have been taken to address the issues that SHOC raised. Those include the extension of the definition of sheltered housing to include retirement housing; the reduction of the maximum five-year duration for manager burdens to three years; the introduction of majority decision making with respect to real burdens; special two-thirds protection for burdens that provide sheltered housing with its special character; and an undertaking to consider the question of prior consultation before burdens are altered. Today, we also talked about shared equity regarding maintenance charges.

The only outstanding issue, which we have not been able to address today for reasons relating to the European convention on human rights, is the issue that was raised by Ken Macintosh regarding the letting of property by developers, whose powers could increase if that was taken to excess. We will need to keep an eye on that issue, and I welcome the on-going study that the minister mentioned.

Another matter that was raised at stage 1 was the development management scheme, which we whole-heartedly support. We are working with the Westminster Government on that scheme, which will be a good step forward in providing accounting systems for owners. I asked the minister for clarification of the scheme and its implementation. As the Lord Advocate indicated at stage 2, when the development management scheme is applied, it will bind all the properties in the development. Therefore, the terms of the scheme will be binding on each of the owners, regardless of how many properties they own. A manager's—or a management company's—responsibility will be outlined in the terms of appointment, and the scheme will provide terms for his or her appointment and duties. That is good news.

Finally, I thank all the MSPs, including Ken Macintosh, Dennis Canavan, Brian Adam, David Davidson, Margaret Smith and John Young, who came along to the meetings that we had with SHOC throughout the passage of the bill. I also thank the minister for being so receptive to the recommendations that we made. As he said, the bill is more a property law reform measure than a bill about sheltered housing, but I hope that the approval of the bill will please SHOC members. I am sure that it will. The bill will give them a much greater say in their affairs and will empower them as owners. The bill is important.

16:30

Dennis Canavan (Falkirk West): I welcome the bill, especially the added protection that it will give to owner-occupiers in sheltered housing developments. However, I have specific questions about the proposed development management schemes for sheltered housing developments. I understand that the schemes will be introduced by secondary legislation at Westminster, under section 104 of the Scotland Act 1998 and that that will be the first application of that section.

Therefore, the matter is important. The Executive has apparently indicated that the secondary legislation that Westminster will pass will have a commencement date that will coincide with the Title Conditions (Scotland) Act 2003's commencement. However, questions must be asked to clarify certain aspects of that procedure, particularly because it will be used for the first time.

What consultation will there be in respect of the development management schemes and the secondary legislation that will introduce them? What input will there be from the Scottish Parliament? Will we leave the matter entirely to Westminster? What input will there be from interested parties, especially those such as residents of sheltered housing accommodation and the organisations that represent them? What status will the development management schemes have? Will they be mandatory or will they be left to the discretion of the managers? In other words, will they be optional rather than mandatory? What details will be included in the schemes in respect of accountability and reporting mechanisms?

It is essential that, in order to ensure adequate accountability, the status of the management schemes should be mandatory rather than optional. There is currently no obligation on sheltered housing managers to provide a report on how residents' moneys have been used. I had correspondence from constituents from the Springbank Gardens complex in my constituency on a referendum that was organised not just at that particular complex but in a total of seven different developments that are—or are supposed to be—managed by a company called Sheltered Housing Management Ltd.

I will read to the minister the wording of the referendum:

"Do you, as owner, consider that it is both unacceptable and impracticable for SHM Ltd to manage your complex, without consultation to budget for services, changes to services provided, and without the provision of annual accounts to explain how your monies are being disbursed, and to verify that sufficient funds have been properly set aside to meet ongoing commitments such as repairs, refurbishment etc? If you are in agreement with these aims, please append your signature below."

I am informed that there was a 78 per cent response to the referendum, with 83 per cent of respondents in favour of mandatory accountability. However, the referendum result was ignored by the arrogant people who are in charge of SHM Ltd. Such arrogance must be stopped—by legislation, if necessary. I hope that the proposed development management schemes will address the important concerns to which I referred and that they will lead in time to better, more efficient and more accountable management for the benefit of sheltered housing residents.

16:34

Mr Kenneth Macintosh (Eastwood) (Lab): The bill, when enacted, will improve the quality of life for many people throughout the country and will allow people of all ages to take greater control of their own property.

I want to mention one particular group, which is people who live in retirement housing. Several factors might provoke the decision to buy into a retirement complex, but many people are influenced by the prospect of security and peace of mind. That is how such flats are marketed, so it is easy to assume that the developer, the factor or the manager who runs the complex will have the residents' best interests at heart and will look out for them. Unfortunately, and as far too many people have discovered for themselves, all too often that is not the case. Examples show that instead of security, at worst, residents face a culture of bullying and intimidation and, at best, are in the unacceptable situation of owning their own homes and paying additional costs for services, but are not consulted on those services, have no power to control them and have no method of holding management companies to account.

The bill addresses those concerns. In simple terms, it will remove control from the developer and give it to the owners. The owners will be able to appoint or dismiss a manager and to vary regulations that govern the complex. In the future, a retirement housing complex will be treated as one community. The owners of a complex will be able to control what happens to it and they will be able to do so by majority rule, counting one vote for each unit within the complex.

The bill is primarily about property rights, rather than the rights of individual retirement homeowners. It is very welcome, but it does not address all the concerns that affect that strong-minded but potentially vulnerable group of older people. I welcome the minister's commitment to further research and study into the anxieties that have been highlighted, and his recognition that despite the progress we are making today, the issue remains live. I also pay tribute to the work of Mrs Galbraith, Mrs Reid and the other members of SHOC. They have not only opened my eyes and those of many of my colleagues to the dubious practices that go on in some retirement complexes, but have persuaded and convinced the Executive to radically redraft a section of the bill to address specifically the concerns of retirement homeowners. I thank them for their work. I also thank the members of the Justice 1 Committee, my colleagues Sylvia Jackson, Brian Adam, Margaret Smith and others. I also commend the efforts and patience of Joyce Lugton and the Executive bill team.

The bill, coupled with the abolition of feudal superiority and the forthcoming development management scheme, offers retirement home owners the opportunity to take control of their own affairs. I commend the bill to members.

16:37

Christine Grahame (South of Scotland) (SNP): The Scottish Parliament information centre's overview of the bill states:

"The Bill represents an important piece of property law reform and is arguably of greater practical significance than the Feudal Act that preceded it."

That is certainly true. The next sentence goes on to say:

"Yet it is also a complicated and technical Bill that can appear daunting for the layperson to tackle."

How very true. The jury is out on whether it is more daunting than the Leasehold Casualties (Scotland) Act 2001, but I thank the expert advisers and witnesses who came before the committee and led us through the legal maze. That is important when there is such confusion about what burdens exist, what they mean and who can enforce them.

When I get lost, I think of my own extant title deeds, which prohibit me from keeping pigs, sheep and other farm animals, but allow me to bleach linen. I have found the latter quite useful. I think that those title conditions were breached during the war, when somebody kept hens and ducks for food. Unfortunately, we did not know who could take me to court if I breached the conditions and kept a few pigs at 6 Baronscourt Road; however, I found out that it was the Earl of Willowbrae. I do not know whether he still exists, but he is on my title deeds. To be serious, the previous situation meant that no one knew who could enforce burdens against whom.

The Title Conditions (Scotland) Bill was therefore essential when we got rid of feudal superiority; people know where they are now. They know what a burden is and the bill tells them who can enforce a title condition and what rights they have. It represents a modernising of the Scottish legal system, in keeping with the fact that we now have planning regulations to prevent people like me from setting up little farms.

However, the issue of sheltered accommodation is important and has been highlighted by several members. I am delighted that the minister will monitor what happens with regard to title that is still retained by developers. That is a good example in support of the argument for having post-legislative scrutiny by the Justice Committees. If we can envisage a problem like that, we should be able to examine whether an act is doing what it was intended to do when it has been running for some time.

16:39

Maureen Macmillan (Highlands and Islands) (Lab): Christine Grahame's account of what she is not allowed to do under her feudal conditions reminds me of my feudal conditions. I live in a former manse of the Church of Scotland and am not allowed to sell strong drink. If that burden were converted to a neighbour burden, my neighbours might quite like my selling strong drink because the nearest pub is three miles away. I might pursue that later.

I thank the clerks and the adviser to the committee for the help that they gave me in drafting the amendments that I lodged for stage 3. Not having any legal training, I had no idea how to write amendments that would reflect the concerns of the people and organisations that had approached me. On one occasion, Scott Wortley had to phone the secretary of the Highland Small Communities Housing Trust to find out from him what he wanted an amendment to be about. I am pleased that the amendments were well enough drafted to be accepted by the Executive, and that they have been included in the bill today.

One of the daunting aspects of the bill was the number of organisations and people whom the bill would affect. As time went on, those people came out of the woodwork to voice their concerns about what was happening; I commend the Executive on the extent to which it was able to address those concerns.

I thank everyone who was involved in the process for making it a worthwhile experience, if one with a steep learning curve.

16:41

Mr Wallace: I thank members who have taken part in the debate for the warm welcome that they have given to the bill which, as Michael Matheson said, will have an impact on the daily lives of the people of Scotland.

I share with Maureen Macmillan a provision in the title deeds of the old manse in which I live that bars me from selling drink for profit. I feel compelled to add that we are probably not allowed to sell it for no profit, either.

Dennis Canavan: Is the minister allowed to consume drink in his house?

Mr Wallace: I hope that I am, otherwise I have been in breach of the title conditions for some time.

Such examples underline the way in which title conditions impact on people. As technical as the bill might be, it will have an effect on people's lives and it is right to recognise the impact that it will have on sheltered housing. Being a technical property-law reform measure, the bill's primary

function was not to deal with the law on sheltered housing. However, as many members have said, it will contribute significantly to allowing those who live in sheltered housing to have more say over their housing arrangements, and to more transparency, including transparency in relation to accounting and charges.

Dennis Canavan asked whether the development management schemes would be consulted on. It is perhaps worth rehearsing that the development management scheme was in the original Scottish Law Commission draft bill and the draft bill that we consulted on before presenting it to Parliament. There has, therefore, already been quite extensive consultation on the scheme. We were unable to proceed in that regard at stage 1 because of a technical problem with regard to the nature of a development management scheme, which would almost certainly have put the matter beyond the competence of the Scottish Parliament. That is why we went down the road of using a section 104 order, which allows to be brought into effect a provision that everyone accepted was good. It is worth putting on record the co-operation that we received from United Kingdom Government ministers in doing that. I understand that there is no formal procedure for the presentation of a section 104 order—it is a normal Westminster order. However, I hope that the fact that the order has already been consulted on and that members will have been able to have sight of it before it is debated at Westminster will satisfy them.

The development management scheme is not mandatory, nor should it be mandatory: it is a provision to which the people in a development can sign up. However, it is widely acknowledged as being a helpful tool in—as Wendy Alexander said—trying to ensure that there is an obligation on residents to respect their neighbours' property, in developments in which there is a large number of individual units. Such mutual obligation is—as are rights—necessary. That will also be the theme of the third leg of the property law reform in reform of the law of the tenement, on which we hope to consult soon.

I welcome the fact that all parties in the Parliament support the bill.

Mr John Home Robertson (East Lothian) (Lab): Will the minister spare a thought for an absent friend who would have loved the debate? It was often said that Donald Dewar's idea of heaven would have been a law reform (miscellaneous provisions) (Scotland) bill committee stage without limit of time. Am I right in thinking that he would have approved of the bill?

Mr Wallace: He would undoubtedly have approved of the bill. It is a lawyer's paradise, not only in its debating, but possibly in its application. I am sure that Donald Dewar would have approved of the bill, not least because it has shown the Parliament working at its best, setting in train for Scotland a modern system of law reform and consigning the feudal system to history.

Parliamentary Bureau Motion

16:46

The Presiding Officer (Sir David Steel): The next item of business is consideration of Parliamentary Bureau motion S1M-3952, on the designation of lead a committee.

Motion moved,

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Births, Deaths, Marriages and Divorces (Fees) (Scotland) Amendment Regulations 2003 (SSI 2003/89).—[*Euan Robson.*]

Business Motion

16:46

The Presiding Officer (Sir David Steel): The next item of business is consideration motion S1M-3963, which sets out a revised business programme.

Motion moved,

That the Parliament agrees—

(a) as a revision to the programme of business agreed on 20 February 2003—

Thursday 27 February 2003

delete—

9:30 am	Preliminary Stage Debate on National Galleries of Scotland Bill

and insert—

9:30 am	Ministerial Statement on Partnership for Care Scotland's Health White Paper
followed by	Preliminary Stage Debate on National Galleries of Scotland Bill

(b) the following programme of business—

Wednesday 5 March 2003

9:30 am	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Debate on The Fishing Vessels (Decommissioning) (Scotland) Scheme 2003 and on The Sea Fishing (Transitional Support) No.2 (Scotland) Scheme 2003
11:30 am	Ministerial Statement
12:00 pm	Procedures Committee Debate on its 1st Report 2003: Report on Changes to Standing Orders Concerning Legislative Matters, Motions and Lodging Written Questions, on its 2nd Report 2003: Report on Changes to Standing Orders Concerning Elections to the Scottish Parliamentary Corporate Body, on its 4th Report 2002, Changes to Standing Orders Concerning the Scottish Parliamentary Standards Commissioner, European Committee remit, Private Legislation, Temporary Conveners and the Journal of the Scottish Parliament
2:30 pm	Parliamentary Bureau Motions
followed by	Stage 3 of Homelessness (Scotland) Bill
5:00 pm	Decision Time
followed by	Members' Business – debate on the subject of S1M-3830 Margo MacDonald: European Commission Directive on Food Supplements

Thursday 6 March 2003

9:30 am	Scottish Conservative and Unionist Party Business

followed by	Business Motion
2:30 pm	Question Time
3:10 pm	First Minister's Question Time
3:30 pm	Stage 1 on Gaelic Language (Scotland) Bill
followed by	Parliamentary Bureau Motions
5:00 pm	Decision Time
followed by	Members' Business – debate on the subject of S1M-3691 Linda Fabiani: Scotland's Fair Trade Towns
Wednesday 12 March 2003	
9:30 am	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Stage 3 of Agricultural Holdings (Scotland) Bill
2:30 pm	Continuation of Stage 3 of Agricultural Holdings (Scotland) Bill
followed by	Parliamentary Bureau Motions
5:00 pm	Decision Time
followed by	Members' Business
Thursday 13 March 2003	
9:30 am	Scottish National Party Business
followed by	Business Motion
2:30 pm	Question Time
3:10 pm	First Minister's Question Time
followed by	Parliamentary Bureau Motions
3:30 pm	Stage 3 of Dog Fouling (Scotland) Bill
followed by	Parliamentary Bureau Motions
5:00 pm	Decision Time
followed by	Members' Business

(c) that the Justice 1 Committee reports to the Justice 2 Committee by 10 March 2003 on the Births, Deaths, Marriages and Divorces (Fees) (Scotland) Amendment Regulations 2003 (SSI 2003/89)

and (d) that Stage 1 of the Gaelic Language (Scotland) Bill be completed by 6 March 2003.—[*Euan Robson.*]

Motion agreed to.

Point of Order

16:47

Phil Gallie (South of Scotland) (Con): On a point of order, Presiding Officer. I thank you for the reply that you gave to the points of order that were raised on Thursday on First Minister's question time. I acknowledge your judgment on the raft of points of order that were raised about First Minister's question time, but will you determine whether, during question time, the First Minister responds for the Executive or for the Labour party? If, as I suspect, he responds on the Executive's behalf, does not he therefore respond on behalf of his Liberal Democrat colleagues who form part of that Executive? On that basis, do you consider that your words—that the First Minister does not comment on

"the policies of the SNP, the Liberal Democrats or the Conservatives"—

are perhaps just a little wide of the mark?

The Presiding Officer (Sir David Steel): I am grateful to Mr Gallie for giving me notice of the question, but I am surprised that he needs to ask it at all. It is clear to me that the First Minister is responsible for the entire Executive, including its Liberal Democrat members—that is obvious. However, the First Minister is not responsible for policy statements by the other political parties—including policy statements on Iraq, for example. I am sure that he is relieved to hear that. He is certainly not responsible for Liberal Democrat policy on that or anything else. That was the point of my ruling this morning.

Motion without Notice

16:49

The Presiding Officer (Sir David Steel): I am prepared to consider a motion without notice to bring forward decision time to 4.49.

Motion moved,

That the Parliament agrees under rule 11.2.4 of Standing Orders that Decision Time on Wednesday 26 February 2003 be taken at 4.49.—[*Euan Robson.*]

Motion agreed to.

Decision Time

16:49

The Presiding Officer (Sir David Steel): There are six questions to be put as a result of today's business.

The first question is, that amendment S1M-3944.1, in the name of Malcolm Chisholm, which seeks to amend Mary Scanlon's motion on health, be agreed to. Are we all 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)
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)
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)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
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)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
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)
McNulty, Des (Clydebank and Milngavie) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
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, Ben (North-East Scotland) (Con)
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)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North-East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fabiani, Linda (Central Scotland) (SNP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
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)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 64, Against 45, Abstentions 0.

Amendment agreed to.

The Presiding Officer: The next question is, that motion S1M-3944, in the name of Mary Scanlon, on health, as amended, be agreed to. Are we all 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)
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)
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)
Grant, Rhoda (Highlands and Islands) (Lab)
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)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
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)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (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)

AGAINST

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)
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)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
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)
Russell, Michael (South of Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Ben (North-East Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)
Young, John (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 67, Against 44, Abstentions 0.

Motion, as amended, agreed to.

Resolved,

That the Parliament welcomes the further increases in the Scottish Executive's investment in health and health promotion announced earlier this month; notes that these extra resources must be balanced by reform in the NHS for full benefits to flow to service users; supports the on-going work to put patients at the centre of service planning and quality improvement in the NHS; supports the strengthening of the primary healthcare sector and decentralisation of decision-making; is concerned about waiting times for some out-patients; agrees with the priority given to tackling unacceptably long waits; commends the new maximum hospital waiting times guarantees for NHS patients given by the Executive; looks forward to further reductions in the number of patients waiting longest for treatment; welcomes the recent reduction in the number of delayed discharges from Scottish hospitals and the active collaboration between health and community care services in achieving this, and congratulates staff across the NHS in Scotland on their hard work and dedication to a highly regarded public service.

The Presiding Officer: The next question is, that amendment S1M-3943.1, in the name of Irene McGugan, which seeks to amend Cathy Jamieson's motion on educational attainment for looked-after children, be agreed to. Are we all 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)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Grn)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of 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)
Russell, Michael (South of Scotland) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
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)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)

Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grant, Rhoda (Highlands and Islands) (Lab)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Johnstone, Alex (North-East Scotland) (Con)
Lamont, Johann (Glasgow Pollok) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McIntosh, Mrs Lyndsay (Central Scotland) (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)
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)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Ben (North-East 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)

The Presiding Officer: The result of the division is: For 30, Against 82, Abstentions 0.

Amendment disagreed to.

The Presiding Officer: The next question is, that motion S1M-3943, in the name of Cathy Jamieson, on educational attainment for looked-after children, be agreed to.

Motion agreed to.

That the Parliament recognises that young people looked after by local authorities require support to enable them to have the best possible educational opportunity; welcomes the use made of the £10 million allocated to local authorities to support educational attainment of looked after children, and notes that, while progress has been made on implementing the recommendations made in *Learning With Care*, continued effort must be made to ensure that every looked after child has an appropriate care plan, including a plan for education, and is in full time education provision appropriate to need and that staff in social work and education work together to support all looked after children to reach their full potential.

The Presiding Officer: The next question is, that motion S1M-3777, in the name of Jim Wallace, that the Title Conditions (Scotland) Bill be passed, be agreed to.

Motion agreed to.

That the Parliament agrees that the Title Conditions (Scotland) Bill be passed.

The Presiding Officer: I declare that the Title Conditions (Scotland) Bill is now passed. [*Applause.*]

The final question is, that motion S1M-3952, in the name of Patricia Ferguson, on the designation of a lead committee, be agreed to.

Motion agreed to.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Births, Deaths, Marriages and Divorces (Fees) (Scotland) Amendment Regulations 2003 (SSI 2003/89).

Ethical Investment

The Deputy Presiding Officer (Mr George Reid): We come to our members' business debate, on motion S1M-3723, in the name of Angus MacKay, on ethical investment.

Motion debated,

That the Parliament notes the work of Edinburgh University People and Planet group and the decision of the Edinburgh University Students' Association to endorse overwhelmingly a motion on ethical investment during its general meeting; congratulates students that have chosen to highlight the issue on the university campus by campaigning that the University of Edinburgh's investments of £160 million should be invested only in ethical companies that do not flout human rights, exploit workers, pollute heavily or irresponsibly sell armaments; welcomes the decision of the University Court to make available previously confidential information about investments as a first step in achieving these aims but considers that the University of Edinburgh should go further by developing a fully accountable ethical investment policy, and believes that other universities in the United Kingdom should develop similar policies based on the shared values of their staff and students.

16:54

Angus MacKay (Edinburgh South) (Lab): I am delighted to have the opportunity to raise the issue of ethical investment in the chamber today. The fact that I am able to do so is testimony to the hard work and perseverance of the People & Planet group at the University of Edinburgh. I put on record my thanks to it for the work that it has done in campaigning in and around the university on ethical investment.

The University of Edinburgh faces a number of important challenges. We should congratulate Professor Tim O'Shea on the work that he has done recently and on his recent announcement on opening up the university to ensure that those who have the capacity to take advantage of educational opportunities will not fail to find them because anything is found wanting on the part of the university.

The University of Edinburgh faces a further challenge in regard to its funding position compared with its main UK counterparts now that we have had the decision at Westminster on student fees, which will bring additional funding to its competitor universities.

The university's investment policy is the third leg to the challenges that it faces. It is an important issue not only for the students but for the academic staff and people of Edinburgh, for whom that academic institution is so much a part of Edinburgh life.

In February 2002, the student association's annual general meeting took place. It had unprecedented attendance, as around 550 people took part. They passed a motion from the People & Planet group to lobby for ethical investment on the part of the university. The level of participation in that meeting was unique in the university's many-year history.

By the time we reached November 2002, the university announced that it would make its investment portfolio public, for which we should commend it. The university agreed to publish a list of the companies in which it invested, and its board of finance agreed to that.

It is right that, as the university said, it decided to pursue issues around socially responsible investment through engagement with companies in which the university's funds were invested by the fund managers. That was certainly a step forward, but more work has to be done.

By February 2003, the ethical investment policy document had been produced by the People & Planet group. It takes political and social aspirations a step further and starts to document how an institution with a substantial investment portfolio can genuinely adopt ethical investment practices and can genuinely reflect the wishes of the people working in and around that institution.

The main points of the strategy document are quite clear. It calls for a properly established and written ethical investment policy. It states that the university should seek to use its social and economic status to influence positively public policy and corporate social behaviour. It goes on to say that the university's behaviour must be consistent with those values. It is difficult for anyone to disagree with that.

The document goes on to say that the university should actively lobby companies in the investment field. For example, the pension fund for university staff throughout the UK is already an ethical investor. There are certainly opportunities for the university's £160 million of investment funds to be used alongside the funds of other organisations in discussing and agreeing corporately what the investment strategy should be, to secure not just ethical investment with the university's funds but a degree of leverage on the major companies that other pension and investment funds use as investment vehicles. A number of companies have been singled out, such as tobacco and oil companies or those operating in the tobacco or oil sector, as companies that the People & Planet group wants to encourage to operate in a more socially responsible manner.

The next demand is that the university should establish a committee that would include student participants as well as those who could give expert advice, to help guide the ethical investment policy and to examine closely the investments and exclusions about which decisions will have to be taken as part of the policy.

The University of Edinburgh's image and reputation are at stake. It faces tough competition from its main UK competitors and from abroad and there is no doubt that that competition is about not just admissions policy and investment but the reputation and image of the university.

Although the university is trying to ensure that that it is not seen as an elitist institution and attempting genuinely to build on the success of the Lothians equal access programme for schools to broaden its access base, ethical investment and being seen to invest ethically are an important part of developing and upholding that reputation. There is no doubt that ethical investment can be as profitable as regular investment. The Ethical Investment Co-operative has produced five indices of ethical investments that exclude companies involved in a range of activities—for example, tobacco, gambling and alcohol.

Those indices have shown that it is possible for ethical investments to match the performance of the FTSE all-share index over a period of time. Since 1996, the FTSE4Good index—an index of companies that are defined as socially responsible on environmental development and human rights issues—has risen in value and has matched the performance of the all-share index. Even in the current investment climate, ethical investments have fared no worse than have general investments.

In the context of a university that is seeking a return on its investments to fund investment in infrastructure and research and to attract staff, it would be difficult to argue the case for ethical investment if it were not demonstrably possible to secure very good returns on such investment as compared with traditional investment vehicles. However, it is possible to show that such returns can be secured.

The University Superannuation Scheme, which is the investment fund for all UK university pensions, has already committed itself publicly to an ethical investment policy. It examines major oil, gas and pharmaceutical companies and has discussed issues with those companies, as well as with non-governmental organisations, the International Labour Organisation and the United Nations. All have endorsed the scheme's approach and have agreed that it is ethically sound and is producing good yields on investment.

I realise that I have overstepped slightly the time allocated to me. In conclusion, I emphasise that both the motion that we are debating and the policy that People & Planet is pursuing at the University of Edinburgh have widespread support from across the political spectrum. I hope that the university's approach of continuing dialogue with People & Planet and those who are concerned to secure an ethical investment strategy will continue. I hope that it will yield a written policy that makes clear the university's commitment not just to ethical investment of its funds but to being socially responsible in an interventionist way in the marketplace alongside other ethically motivated investment funds.

The Deputy Presiding Officer: Six members have indicated that they would like to take part in the debate. That will allow speeches of about four minutes.

17:03

Robin Harper (Lothians) (Green): I must declare two interests. First, I am rector of the University of Edinburgh and will be for another 10 days. Secondly, my entire investment portfolio, such as it is, is in ethical investments.

I was glad when People & Planet asked me whether I would back it in this campaign. As chair of the university court, I am supposed to stay clear of university issues and to be as objective as possible, but this is one of three or four issues about which I was happy to make my support very clear. I also took part in a debate in the university with the then principal, Lord Sutherland of Houndwood, on this very subject.

People & Planet is one of the most successful and best-attended societies in the entire university. In fact, I owe my position as rector to that society because it supported my candidature three years ago.

The importance of this matter goes beyond universities. Members may recollect that in the early days of the Parliament I lodged a motion calling on the Executive to investigate the possibility of the Executive and local authorities with surplus money investing it in ethical investment. However, it fell on stony ground at the time and never made it to the chamber. Therefore, I am even gladder about the debate and congratulate Angus MacKay on bringing this motion on the same subject to the chamber.

I cannot guess what the Executive's response to the debate might be. I hope that it recognises that not just universities can benefit from a policy of ethical investment. Encouraging such a policy would have a knock-on effect throughout the world.

Nearly four years ago, I said that the colour of politics of this century must be green, whatever one's party. There is no doubt that ethical investment can be described as a green policy. I sometimes think that, when I speak in favour of renewables or recycling, I should also state my interest in ethical investments. I hope that much of that money is invested in recycling and renewable energy companies.

The Deputy Presiding Officer: You have one minute.

Robin Harper: I will not need even one minute, Presiding Officer.

I congratulate Angus MacKay on his motion, I congratulate the People & Planet group and I congratulate the University of Edinburgh on taking on the issue in the way that it has.

17:06

Sarah Boyack (Edinburgh Central) (Lab): I congratulate Angus MacKay on his success in securing the debate. At this stage of the parliamentary session, it is increasingly difficult to get a motion on the evening's agenda.

The motion is an excellent example of grass-roots campaigning by People & Planet. I want to add my support for the work that it has already carried out in raising awareness of the power of the major institutions in our society to make a statement about their values and principles and to use their investment powers wisely. The People & Planet group has encouraged the deliberate use of such power, in a way that influences the financial sector and business.

It is appropriate that Angus MacKay has brought the issue to the Parliament. As parliamentarians, we can add our weight and our voices to the issues that have been raised at the University of Edinburgh.

The motion raises vital issues, such as the transparency of the way in which firms and major institutions conduct their business. It is appropriate for major institutions such as the University of Edinburgh to ask questions about firms' records on human rights, on the exploitation of workers and on pollution or irresponsible arms sales. If they get the wrong answers to those questions, they have the power not to invest in those companies. However, they need to obtain that information in the first place.

I hope that the debate will help to progress matters. We should encourage companies to adopt positive, proactive policies and to have a positive investment strategy. Angus MacKay highlighted the benefits that firms and companies that work towards socially responsible investment can gain. Such institutions attract investors. They have attracted the investments of individuals, as Robin Harper has said, and of major organisations that have serious financial clout.

Adopting a more ethical or socially responsible approach to the environment or to human rights can be good for business. It is good for a company's public relations and its reputation. Companies' adoption of such policies can help to shape the investment strategies of more conventional and mainstream companies.

I am particularly glad that the debate is being held tonight, as the European Committee is considering corporate social responsibility. We have looked at how we in Scotland can encourage companies and major public sector institutions to develop the concept of corporate social responsibility. Although the committee is near the end of its inquiry, I would like to make members aware of why it took up the issue in the first place. I suspect that there are similarities between our approach and what generated the interest of People & Planet.

The European Committee investigated the issue because it is highly conscious of the impact of global restructuring and the price that Scottish workers have paid for that. The inquiry was also inspired by our visit to the European Commission in Brussels last year. The Commission asked us to look at Scotland's contribution to generating employment, to consider issues such as equal opportunities, women's rights and access to the labour market for disadvantaged groups and to think about whether there was a Scottish approach to corporate social responsibility.

We started our inquiry against the backdrop of the work that was being done in Johannesburg at the world summit on sustainable development. The need for the environmental accountability of firms was highlighted, as was the need for firms to report annually on how they impacted locally and globally on the environment. We also highlighted how firms should try to say what steps they are taking to lessen the adverse impact of their company's work on the environment. One key issue that the European Committee considered is the role of major public sector organisations, such as the Scottish Executive or the University of Edinburgh, and how such organisations can lead the way.

I am glad to be able to support Angus MacKay's motion, and I am glad that he has brought the issue to the Parliament. I hope that by debating tonight's motion we can learn the lessons that have been learned at the University of Edinburgh and encourage other institutions to take a similar view. We need champions; we need people who are prepared to do their homework; and we need people who are prepared to raise the issue and campaign on it. I support Angus MacKay's motion and I hope that others will take the issue further, beyond the University of Edinburgh.

In his summation, I hope that Lewis Macdonald will give us some insight into how the Executive can further promote the debate.

17:11

Fiona Hyslop (Lothians) (SNP): I also congratulate Angus MacKay on securing tonight's

debate. In addition, we should extend our congratulations to People & Planet on its campaign and we should welcome the University of Edinburgh's decision to embrace and participate in the dialogue and debate to ensure that there is ethical investment. The Deputy Minister for Enterprise, Transport and Lifelong Learning may find some challenge in responding to tonight's debate given the great deal of consensus about the importance of ethical investment and what has been achieved. I await his comments with interest.

I want to touch on several points. The fact that 500 students turned out at a meeting shows that the idea that young people do not care about the things that matter, such as human rights, is misplaced. It is clear that people care and that it is important that they be given a forum and an opportunity so that they can do something practical. The success of that meeting shows that campaigning of whatever form—whether it be political with a small p or otherwise—can achieve results. People & Planet provides a good example of how well-informed grass-roots campaigning can achieve a response, and a very positive response at that.

When, in a former life many years ago, I worked in financial services, ethical investment and green funds were seen as being something that only those who fitted a certain stereotype would want to take part in. However, over the years, ethical investment issues have increasingly become part and parcel of the fabric of investment. As Angus MacKay pointed out, just because money is ethically invested does not necessarily mean second-class investment returns. Indeed, ethical investment is becoming part and parcel of modern investment practices.

The point that was made about leverage is important. The days when investment was just about profit and when no interest was taken in whether the investment conflicted with human rights or promoted arms sales have long gone. Corporate governance, in whatever shape or form, is here to stay. Ethical investment is not just about consumer choice; it is now part of the fabric of our investment choices. Such investments are no longer simply a nice charitable thing to do but are very much something that is here to stay.

It is vital that we raise the issue of ethical investment, and perhaps especially at this time, when we reflect on the importance of human rights and on what is happening in countries such as Iraq. We must also consider what the Government itself has done and whether its ethical foreign policy has perhaps disappeared from sight.

Whenever we pontificate, congratulate, comment on or debate the policies of other bodies and organisations such as the University of Edinburgh, we also need to look at ourselves and consider the policies of the Scottish Parliament and the Westminster Parliament. I therefore ask the Presiding Officer that the Scottish Parliamentary Corporate Body consider what the Parliament itself is doing, to ensure that it makes ethical investments and promotes corporate social responsibility, so that we are not simply commenting on others in isolation.

One offshoot that might come from People & Planet's achievement is that it might make us all look more closely at what we do. I hope that we can ensure that this worthy and important debate continues. The debate is not only about how people can use their right to demonstrate to achieve change at the University of Edinburgh but about how we need to highlight the importance of fulfilling our global responsibilities. We can do that by starting at home.

17:14

Mr David Davidson (North-East Scotland) (Con): The normal custom is to congratulate the member who has secured the debate, but tonight I would rather congratulate People & Planet, which obviously has tremendous political clout if it got Robin Harper elected. I may be accused of being cynical, but I wonder how many members from the Edinburgh area are seeking the student vote by attending the debate.

I congratulate the University of Edinburgh on its openness. However, a debate is about questioning and expressing different views. I do not think that anyone can argue against ethical investment, as we all have a conscience and the responsibility to know, as a deliberate policy, how our money is being spent.

The University of Edinburgh court has a duty to get a return on its fund. It uses professional fund managers, so presumably merely gives an indication of the area and type of investment that it would like to make and leaves the matter to the fund managers.

I take issue with Angus MacKay. I do not think that the University of Edinburgh's international reputation will be greatly affected by its ethical policy for a fund of £160 million. More important for the university's reputation is the quality of the education that it gives to those people, young and older, who study there. It is important that the university receives support so that it can continue to be a world-class centre for education.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): Will the member take an intervention?

Mr Davidson: One moment, please.

I came to the chamber with a blank sheet of paper just to listen, because I am puzzled about what the minister will say when he sums up. The

policy area is not quite one for the Executive—unless it is internal. Moreover, I do not think that the Parliament has enough money to invest in the stock markets—it all seems to be going down the road into a new building.

I know the oil industry well. It is important to get across the message that the oil and chemical industries are keen on pursuing environmental and people-based activities with part of their profits and on encouraging their staff to propose such projects. Oil and chemical companies, particularly those that are based in the United Kingdom, are becoming more ethical. They are concerned about the environment and about doing good for the local population by setting up medical projects, for example. It is important that members acknowledge that many multinational corporations take that side of life very seriously.

Did Mr Fitzpatrick want to say something?

Brian Fitzpatrick: The member seems to subscribe to the old paradigm that an ethical investment policy is contradictory and that the only ambition of the university should be to produce good graduates. Is it not possible to do both?

Mr Davidson: Both can be done together quite successfully. However, the international reputation of the University of Edinburgh—or the decision of a student who is desperate to get a high-quality education in a particular subject to go to that university—will not be based on whether it has an ethical investment policy. Such a policy is an add-on; it is not the major issue. I was just responding to a comment made by Mr MacKay.

I welcome the fact that student movements are being recognised. Young people should be concerned about the state of the world and they should be prepared to campaign, to give their views and to open minds—theirs and ours—because we can get into ruts of behaviour. It is vital that we recognise the work that People & Planet and student bodies do around the country. Some groups are political and some are social and so it goes on. University life is about young people coming together to work for a common goal. If that goal can benefit society, that is all to the good.

17:18

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I will return to the convention of congratulating the member who has secured the debate, not least because constituency members are lobbied about issues and bombarded with demands and it is significant when one of us brings such an issue into the heart of the chamber. Angus MacKay is to be congratulated on bringing the issue to the fore.

I also congratulate People & Planet and my alma mater, the University of Edinburgh, on their progressive stance. Whether we are in the Parliament or in our leading higher education institutions, it is vital that, as well as focusing on our day-to-day activities, we think about the world in which we live and take actions that will influence the world for the better. The efforts that the University of Edinburgh has made in that regard are genuinely to be congratulated.

It is worth stating why the principle of ethical investment is important. To use a much maligned phrase, I will go back to basics. It is important to remember that much of what we do in our lives—arguably all of it—is governed by a set of values and beliefs; if it is not, it ought to be. How much more important is it that decisions about money are governed by values and beliefs, whether those decisions are for us as individuals or for corporate entities? Money can and does talk and money makes a difference. When a major corporate entity such as the University of Edinburgh, with its £160 million wealth, decides to direct that resource in a way that is driven by a particular value base, that makes a difference.

I say to those who are involved in campaigning about ethical investment that I am conscious that sometimes much of what we all do in politics and more widely can feel like a thankless task—sometimes it can feel as though our actions do not make a difference. However, some members can remember being involved in comparable campaigns and activities 20-odd years ago. In my case, at the University of Edinburgh, we campaigned with some success for the university to take investment decisions based on values and beliefs. The aim was to avoid companies that invested in the apartheid regime in South Africa. That regime is no more. I believe that the campaigns and investment decisions of the time played a part in delivering that result, albeit along with myriad other small activities across the country and the world. Those who are involved in the current campaign should be encouraged. I hope that the experiences that some of us had in the past—I am starting to feel old—will provide encouragement for the work that they are doing.

I wish to say a few words about the wider issue of ethical investment, which is an idea whose time has come. It is growing in popularity. In the brief research that I did for the debate, I was struck to read that in the UK there are now more than 40 unit and investment trusts with ethical criteria and that those trusts are valued at more than £2 billion. The graphs show that there has been steady growth in the demand for ethical investment over the past decade.

I am also struck that the demand for ethical investment products is now such that it is unmet. That is encouraging. It shows that, in a world where materialism undoubtedly speaks loudly and has great influence, many individuals and

corporate entities are prepared to think beyond simple financial criteria about values and beliefs. The work that the University of Edinburgh is doing in that regard is to be encouraged and welcomed and I am happy to give it my support tonight.

17:23

Donald Gorrie (Central Scotland) (LD): Those who have pricked our conscience with the motion are to be congratulated. We could all examine our own activities. I have modest, ethical individual savings accounts that have actually gone down marginally less than most of the stock exchange recently. That shows that ethical investments need not be worse.

Most investment is made by pension funds. I could never understand why people who invested money from their pay in the pension fund had so little say in what happened with it. When I was a regional councillor, I was involved in the committee that oversaw our pension fund. We managed with great difficulty to get the pension fund managers to cast a vote on a motion that expressed concern about the way in which some of the companies that they invested in paid extortionate sums to their top brass. The fund managers were reluctant to do that, but we got it done. Several council pension funds took the same action, which created quite a satisfying stushie. We should consider taking such action far more often.

We subscribe to a pension fund, but what is it invested in? At Westminster and in this Parliament, an additional voluntary pension fund can be subscribed to. Each fund was cunningly invested in Equitable Life, which shows that the financial acumen that is around is not always great.

We should examine our situation and encourage other people—whether they are teachers, bus drivers or whoever—to examine what their pension contributions are invested in, because many people would be horrified at some of the investments that are made.

The fund managers say that they must obtain the highest possible return. I do not doubt that that is legally correct, but ethical companies offer just as many good options as do non-ethical companies. It would be reasonable for the people who have ownership of a pension fund to put more pressure on fund managers to invest ethically.

Ethical investment might be a reserved matter—I am not sure—but the debate should spark some interest. We should pursue how we can have our pensions and other funds in which we are involved invested ethically. Success will be achieved if we can create momentum in that direction. I congratulate the people who started off the debate.

17:26

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): I, too, congratulate Angus MacKay on lodging the motion, which I am happy to support. I suppose that I should get the niceties out of the way and refer to my entry in the register of members' interests. I confess that I am a graduate of the University of Glasgow, but it is always nice to see a younger institution doing well.

I am pleased that David Davidson introduced some politics into the debate, because the issue involves political differences. Sometimes, members' business debates end up being nicey-nicey and do not get to the point. In listening to David Davidson, I was reassured that I still have to wonder sometimes what planet some people are on.

Angus MacKay is to be congratulated on raising ethical investing, because that is not just do-goodery or an add-on. It is a different way of doing business and of living in the world and in society. It represents a different way of making use of one's funds and involves our saying as citizens or consumers, "I'm sorry—I don't want you to do that. I would rather that you did this."

Choices must be made. For Labour members, poverty and exploitation are a zero-sum game. We are against that game and think that a better game can be played. Ethical investment can be good business. It can make sense for the community, the country and the investor.

Susan Deacon was right to mention the fact that, throughout the student movement in the 1970s, 1980s and 1990s, campaigns were undertaken—matching campaigns in the trade union movement—about what was done with people's money and with universities' funds. I remember that we were told, "You can't do anything about South Africa. Don't think that you can change a powerful country such as South Africa." In Glasgow, Edinburgh and other places, we wanted to aid the African National Congress. We stood with the ANC, said that we would do something and campaigned. We should be proud of and celebrate that. That process has not ended; it continues wherever there is injustice in the world. That is why some of us entered politics. We aim not only to interpret the world, but to change it.

Ethical stances mean that some political leadership is required. We cannot tell the developing nations of Africa, Asia or Latin America to change, build their markets, develop their services and increase their products if we maintain our trade barriers and use public subsidy to keep out their products or to distort or destroy their markets. We cannot say one thing and do another. An advocacy role in how investments are made is an important aspect of keeping the debate going.

Fiona Hyslop mentioned the interface of ethics and foreign policy, which is the subject of a legitimate, if sometimes difficult, debate. Politicians can find it difficult to look beyond their local or national interest towards a global interest.

I think that some particularly brave steps have been taken in that respect. I am sure that politicians around the chamber could work together to support the millennium goals, which are probably the most ambitious global development goals that we will see in our lifetime. By our actions we can inform decisions and support the making of different decisions.

As I said earlier, we can change the world rather than simply interpret it. I do not accept that the subject that we are debating is just a reserved matter. The minister can tell us what the Scottish Executive will do in some small way to change the world.

The Deputy Presiding Officer: Indeed he can. To respond to the debate, I call Lewis Macdonald.

17:30

The Deputy Minister for Enterprise, Transport and Lifelong Learning (Lewis Macdonald): I am pleased to join those who have welcomed the lodging of the motion and who have congratulated Angus MacKay on securing the debate.

Ethical investment is rising up the agenda and, as members have said, is part of the wider corporate social responsibility agenda. It is moving up the agenda for private business as well as for other institutions, which is to be welcomed.

Clearly, Scotland's universities are autonomous bodies, and it is up to them to take decisions about how to spend and invest their money. Ministers cannot tell universities what to do or how to do it, and we would not seek to have that power. That said, universities make an important contribution to the delivery of the Executive's priorities. They provide key services in education and training, which underpin our skills base. As Angus MacKay rightly said, the universities help us to close the opportunity gap. University research generates new knowledge and is key to our economic strategy of generating wealth on the basis of skills, excellence and the knowledge economy.

In return, the universities receive significant public funds. By 2005-06, higher education in Scotland will receive more than £800 million in public funds, which is around 60 per cent of their income. That represents a huge public investment by any standard, so it is right and proper that there should be public interest in what the universities do with their money—I am talking about public interest as opposed to Government direction.

The Scottish Higher Education Funding Council is required to encourage universities to maintain or develop funding from other sources. Indeed, our universities have a good track record in competing for research funding from both the United Kingdom research councils and the private sector as well as in winning money in the wider marketplace. However, tonight's motion refers to funds that are principally the universities' endowment funds. Those are funds that have been donated by benefactors over many years, and they are of particular importance to all of Scotland's older universities—even the youngest of Scotland's older universities. Like other universities, the University of Edinburgh must maximise the returns on those funds to ensure that the income generated meets the aims of the endowments.

On the face of it, a tension could be seen to exist between maximising those investment returns and circumscribing the areas in which funds can be invested. However, the co-operative movement, for one, has shown over many years that there is no contradiction between the pursuit of a policy of ethical investment and making money to reinvest in local communities or, indeed, in education and research.

The University of Edinburgh is not alone among universities in grappling with the issues and in seeking to address them. My own university, the University of Aberdeen, has followed a policy that it should not invest in any company that is substantially involved in the tobacco industry or in companies whose activities are known to be conducted in an environmentally unsound way.

Like others, I will mention the origins of that policy. They go back to my student days when many of us campaigned against investments in companies that were linked to the apartheid regime in South Africa. There is clear evidence that making one's views known can make a difference not only in the short term, but in the longer term. Like the University of Edinburgh and others, the University of Glasgow has decided on an ethical investment policy that concentrates in particular on avoiding investment in tobacco-related companies.

It is clear that it is up to individual universities to take decisions on such matters, including decisions on whether to put details of their investment portfolios into the public domain. All universities already publish a considerable amount of information. One example is their annual reports, which give details of what they have done over the year and how their income has been distributed. Indeed, in the era of electronic information, it is remarkable just how much information can be gleaned from universities' websites about their governance, their court, committee proceedings and financial policies. The information that we are discussing relates to universities' private income as opposed to the

public funding that they receive, and that is a matter for each university court to decide for itself.

As others have done, I welcome the decision by the University of Edinburgh court to pay heed to the concerns of the People & Planet group and of the wider student body. The court has decided to publish details of its investment portfolio in the interests of transparency and of providing a channel of communication for views on investment policy. I know that other institutions will observe with interest, and I will watch with interest to discover how universities respond.

Ethical investment is not an issue for universities alone. I have mentioned the long-standing and outstanding example of the Scottish Co-operative Society and other co-ops. I am delighted to report that such an approach increasingly attracts support from the private sector. Corporate social responsibility has been embraced by many businesses and essentially addresses issues of corporate behaviour and standards. The Department of Trade and Industry has lead responsibility for the matter at Whitehall. It already has a comprehensive framework for corporate social responsibility and the Scottish ministers are happy to work with the DTI in that area.

We have been thinking about what more needs to happen in Scotland, over and above what is going on in Whitehall, Europe and the wider international community. In the Executive, as in the Parliament's European Committee, we have been thinking about the characteristics of a socially responsible business or public body. Ethical investment is part of that, but it is only one strand. Responsiveness to a range of stakeholders, to staff, to investors and to the general public is another strand, as is being good to work for—encouraging and not exploiting the work force—and working in partnership with trade unions instead of opposing trade unionism. Those are features of a responsible corporate approach.

Brian Fitzpatrick: Does the minister accept that he and his ministerial colleagues have their hands on a number of key policy drivers? They can support some of the largest employers in Scotland, as well as the further and higher education sectors, by way of the prompts that they may give to the funding councils and, indeed, to the tentative lifelong learning advisory forum that is to be created. Those are ways in which ministers can give support and encouragement to those making efforts around these aims.

Lewis Macdonald: Absolutely. I want to emphasise that, in developing our approach to corporate social responsibility and continuing to promote it, we already have a number of instruments to hand, such as regional selective assistance, public-private partnerships, local economic forums and the promotion of community planning, which we are also undertaking. We will seek to promote corporate social responsibility via existing programmes in higher education as well as in the other areas that I have mentioned, and to take a co-ordinated approach to how we proceed. I expect that my colleagues will have more to say about how we make that progress.

The students of the University of Edinburgh have done a service to their university as well as to the wider Scottish public by drawing attention once again—as has been done several times over the years—to the desirability of ethical investment, to the desirability of greater openness about the accounts of public and other bodies and by raising debate about such important matters.

The Executive welcomes the University of Edinburgh court's decision to place information about the investment portfolio of the university in the public domain. That is very much in keeping with our general approach of supporting openness and transparency, and is in line with the emerging approach to corporate social responsibility. I look forward to others choosing to follow that good example.

Meeting closed at 17:39.

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