MEETING OF THE PARLIAMENT

Wednesday 19 March 2003

Session 1

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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CONTENTS

Wednesday 19 March 2003

Debates

Col.

TIME FOR REFLECTION 16573
BUSINESS MOTIONS 16575
Motion moved—[Patricia Ferguson].
Motion moved—[Euan Robson].
Mr John Swinney (North Tayside) (SNP) 16576
The Minister for Parliamentary Business (Patricia Ferguson) 16577
Donald Gorrie (Central Scotland) (LD) 16583
The Deputy Minister for Parliamentary Business (Euan Robson) 16583
MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) BILL: STAGE 3 16586
INTERNATIONAL SITUATION (CONTINGENCY PLANNING) 16646
Statement—[First Minister].
The First Minister (Mr Jack McConnell) 16647
POINTS OF ORDER 16666
MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) BILL: STAGE 3 16672
PARLIAMENTARY BUREAU MOTIONS 16704
Motions moved—[Euan Robson].
MOTION WITHOUT NOTICE 16704
Motion moved—[Euan Robson].
DECISION TIME 16705
CHARITY LAW REFORM 16706
Motion debated—[Jackie Baillie].
Jackie Baillie (Dumbarton) (Lab) 16706
Tricia Marwick (Mid Scotland and Fife) (SNP) 16709
Lord James Douglas-Hamilton (Lothians) (Con) 16710
Donald Gorrie (Central Scotland) (LD) 16711
Robin Harper (Lothians) (Green) 16713
Johann Lamont (Glasgow Pollok) (Lab) 16714
Linda Fabiani (Central Scotland) (SNP) 16715
Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab) 16717
The Deputy Minister for Justice (Hugh Henry) 16718

Scottish Parliament

Wednesday 19 March 2003

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

Time for Reflection

The Presiding Officer (Sir David Steel): To lead our time for reflection this morning, we welcome the Rev William McFadden, who is the Vice-Rector of Scotus College in Glasgow.

The Rev William McFadden (Vice-Rector of Scotus College, Glasgow): Good morning.

This time last week, I had a simple reflection ready for you about an experience that I had in Dunblane with 31 recently ordained ministers from seven different church denominations in Scotland. Unfortunately, the imminent threat of war with Iraq has meant that I can hardly meet you this morning without referring to that. Instead of offering you my optimism about the standard of leadership among those who are about to take up positions in the church, I will focus directly on an issue that is central to the teaching of the Christian church: the challenge of peace. The gospel of Matthew, chapter 5, tells us:

"Blessed are the peacemakers, for they shall be called children of God."

The Christian scriptures clearly identify the followers of Jesus as those who seek peace. In recent weeks and months, the authority figures in the church have repeatedly implored that a peaceful resolution to the Iraq crisis be found. Now that the situation is so perilous, we cannot ignore those voices.

As a Catholic priest, I have been uplifted by the visionary statements that have been issued by the American bishops conference, by various cardinals from Rome and other parts of Europe, and by Pope John Paul. In those pronouncements, the common thread has been that, for those who have faith in the God of Jesus Christ, there must be a way of living that rejects force, shuns violence, and embraces peace. To be a Christian in today's world requires a commitment to peace and a desire for reconciliation.

A recent document that was issued on behalf of the Vatican's council for inter-religious dialogue in conjunction with the Islamic committee for dialogue between the monotheistic religions highlighted the need for two basic principles to be adopted to ensure good relations between Christianity and Islam. Those principles could help us all to focus more clearly on establishing peace. First, there must be a rejection of generalisations when speaking of each other's religions and communities. Secondly, we must cultivate the ability to be self-critical. Only if those two requirements are met can there be solid ground for tolerance, mutual appreciation and open dialogue.

It seems to me that those two fundamental principles—avoiding generalisations and being open to self-criticism—are essential if an honest exchange of views and opinions is to take place. If progress is to be made in living with one another more peaceably, adherence to each statement is surely a necessity for all in any position of leadership, whether political or ecclesial.

It is my conviction that, if peace is ever to be a tangible experience for our world, we as individuals must make the commitment to practise those principles in our daily lives. It is not only in Iraq that there should be tolerance and understanding, but in Inverness, Irvine and Islay. Choosing to act in a manner that gives witness to our commitment to pursuing peace in daily living can only help to spread the effects of peace more widely.

Today we are united in fearing possible loss of life. Any destruction of life and of property can give rise only to hopelessness and desolation. The God whom Jesus Christ revealed is the God who loves all people, and who challenges us to live in peace and harmony with each other. Our God is one of life, not death. To follow that God requires courage and commitment.

"Blessed are the peacemakers, for they shall be called children of God."

Business Motions

09:34

The Presiding Officer (Sir David Steel): We come to consideration of business motion S1M-4039, in the name of Patricia Ferguson, which sets out a revised business programme.

Motion moved,

That the Parliament agrees—

(a) as a revision to the programme of business agreed on 13 March 2003—

Wednesday 19 March 2003

delete—

"*followed by*	Ministerial Statement"

delete—

"5:00 pm	Decision Time"

and insert—

"6:00 pm	Decision Time"

(b) the following programme of business—

Wednesday 26 March 2003

9:30 am	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Executive Debate on the Scottish Economy
followed by	Members' Business – debate on the subject of S1M-3999 Dennis Canavan: Promotion for First Division Champions
2:30 pm	Parliamentary Bureau Motions
followed by	Stage 3 of Council of Law Society of Scotland Bill
followed by	Stage 3 of Salmon and Freshwater Fisheries (Consolidation) (Scotland) Bill
followed by	Final Stage of National Galleries of Scotland Bill
followed by	Stage 3 of Commissioner for Children and Young People (Scotland) Bill
followed by	Executive's Nominations to the European Economic and Social Committee
followed by	Parliamentary Bureau Motions
5:00 pm	Decision Time
followed by	Members' Business

Thursday 27 March 2003

9:30 am	Executive Debate on Closing the Opportunity Gap for Older People
followed by	Members' Business
2:30 pm	Question Time
3:10 pm	First Minister's Question Time
3:30 pm	Motion of Thanks to the Presiding Officer
4:00 pm	Decision Time

and (c) that the Justice 2 Committee reports to the Justice 1 Committee by 21 March 2003 on the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2003 (SSI 2003/162), the Advice and Assistance (Scotland) Amendment Regulations 2003 (SSI 2003/163), the Police Grant (Scotland) Order 2003 (SSI 2003/172), the Zoo Licensing Act 1981 Amendment (Scotland) Regulations 2003 (SSI 2003/174), and the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003 (SSI 2003/178).—[*Patricia Ferguson*.]

The Presiding Officer: I have a request to speak against the motion.

09:34

Mr John Swinney (North Tayside) (SNP): I oppose business motion S1M-4039 and, as the Scottish National Party did yesterday in the Parliamentary Bureau, I ask the Executive to make time available for a further debate on the international situation that we face.

Last Thursday, we had a good and thoughtful debate about the international situation, which focused on the dangers that we all fear in the days and weeks to come. A fair assessment of the debate would be that it hinged on the question whether there would be United Nations endorsement for any form of military intervention at the end of the process of inspection by the UN weapons inspectors.

Many members made the point that their support for the Government's position, which was the position that prevailed, was predicated, and depended, on the existence of a second resolution that contained the authorisation for military action in Iraq. In his speech to the Parliament last Thursday, the First Minister said:

"Labour's amendment recognises the efforts of the UK Government to secure another resolution in the UN Security Council in advance of any military action that might be required."—[*Official Report*, 13 March 2003; c 19433.]

His deputy, Cathy Jamieson, said:

"The Labour amendment reflects the view that a peaceful solution is still possible. It also reflects the fact that … there must be scope for continuing negotiations."—[*Official Report*, 13 March 2003; c 19491.]

Last Thursday, there was a very close vote on John McAllion's amendment on the question whether the case for war was proven or unproven. The circumstances that the Scottish Parliament and other Parliaments across the world face today are dramatically different from the circumstances that we faced last Thursday. Since then, diplomacy has been abandoned and an ultimatum for military action has been given, but there has been no United Nations sanction for the military

action that is proposed. The House of Commons has voted on the issue. Last night, although it voted in favour of military action, it did so with the largest rebellion on the Government benches in living memory.

Events have moved on. Given that we now know that the diplomatic route has been abandoned, that the United Nations has been shunned and that the British Government is determined to take the country to war, it is incumbent on the Scottish Parliament to ensure that it holds a debate on that situation.

In the past few days, we have heard about the deep regret that a minister feels for the way in which he exercised his vote last Thursday. Ministers and individuals are perfectly entitled to express their views. As Father McFadden has just explained to us, the threat of war causes fear among us all and puts the onus on us all to argue for peace as purposefully as we can. When it matters—on the eve of military action—it is incumbent on the Parliament to revisit the issue and to change today's business programme. We must guarantee that, before a shot is fired, the Parliament speaks clearly about whether it supports war or whether it argues for peace.

The case has been made for a fresh debate in the Parliament that allows the people of Scotland to hear the positions of the elected representatives in the Scottish Parliament and that gives members a chance, at this very late hour, to argue not for war, but for peace. I oppose the business motion.

The Presiding Officer: Before I called Mr Swinney, I should have informed the chamber that I have accepted a request from the First Minister to make a statement on contingency planning for the current international situation. That statement will be made at half-past 2, after lunch.

09:39

The Minister for Parliamentary Business (Patricia Ferguson): As members know, the Parliament has debated the Iraq situation on three occasions in recent times. The United Kingdom Parliament, which has responsibility for international matters, debated that important and grave issue as recently as last night. Our Scottish representatives at Westminster played their part in that debate and in exercising their votes. That is the right thing for them to have done.

Tommy Sheridan (Glasgow) (SSP): Will the minister take an intervention on that?

Patricia Ferguson: No.

There has been ample time for the democratically elected representatives in the Scottish Parliament to make known their views. As we saw last night, time has also been given in the Westminster Parliament—

Tommy Sheridan: Will the minister take an intervention?

Patricia Ferguson: No, Mr Sheridan.

Tommy Sheridan: Why has further time not—

The Presiding Officer: Order. Mr Sheridan, the member is not giving way, so you must sit down.

Patricia Ferguson: Thank you, Presiding Officer.

The Executive recognises the importance of the matter and the gravity with which the matter is taken by the whole country and by the political parties and their members. Let me be clear that no one in this Parliament or elsewhere wants or supports war. We all want a peaceful solution. That peaceful solution is still possible, but it is up to Saddam Hussein to embrace that solution.

Because of the gravity of the situation, the First Minister has approached the Presiding Officer with a view to making a statement this afternoon on the contingency planning that the Executive is putting in place to cover those matters that lie within our responsibility. That step, which the First Minister will take on behalf of the Scottish Executive, is the correct way to proceed at this time.

Tommy Sheridan: On a point of order, Presiding Officer. Before we vote, will you clarify whether debate will be allowed on the statement that the First Minister has requested to make? It is important that the Parliament should be aware that, of the three debates on the international situation that we have had, two were led by the SNP, one was led by the SSP, but none was led by the Executive. Will debate be allowed on the statement?

The Presiding Officer: The procedure at 2.30 will be that a statement will be made, which will be followed by questions in the normal way.

I must put the question immediately to the chamber. The question is, that motion S1M-4039, on the business programme, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

Margo MacDonald (Lothians) (Ind): On a point of order, Presiding Officer.

The Presiding Officer: You cannot make a point of order during a vote.

Margo MacDonald: My voting card is not working.

The Presiding Officer: Try again.

Margo MacDonald: But I have tried again. Oh, it is working now. That is magic.

FOR

Aitken, Bill (Glasgow) (Con)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (South of Scotland) (Con)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
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)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Mr Kenneth (Glasgow) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Neil, Alex (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)
Sheridan, Tommy (Glasgow) (SSP)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Ullrich, Kay (West of Scotland) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

ABSTENTIONS

Gorrie, Donald (Central Scotland) (LD)

The Presiding Officer: The result of the division is: For 70, Against 34, Abstentions 1.

Motion agreed to.

The Presiding Officer: The next business motion is the timetabling motion for stage 3 of the Mental Health (Care and Treatment) (Scotland) Bill, which we will debate today and tomorrow.

Shona Robison (North-East Scotland) (SNP): On a point of order, Presiding Officer. I have given you notice of my point of order, which is to ask you to reflect on the number of amendments that have been submitted to the bill. We have had over 2,000 amendments in total, with over 500 amendments being submitted on the very last day for amendments at stage 3. I ask you to reflect on whether that is the way for the Parliament to make good legislation.

All the parties, especially those that are represented on the Health and Community Care Committee, have been hugely co-operative in trying to get the bill through, but I feel that it is my responsibility to say that we may not be doing our best with the bill because of the volume of

amendments and the lack of time. I ask the Presiding Officer to reflect on whether the Procedures Committee might not have a role in ensuring that we are never again placed in the position of having to deal with so many amendments in so little time.

The Presiding Officer: I thank the member for giving me notice of the point of order to allow me to consider it.

As members will know, in addition to some 1,200 amendments that were dealt with at stage 2, a total of 755 amendments have been lodged for stage 3. Of those, 480 are Executive amendments that were lodged on Friday, which was the final day for lodging amendments for today. Three other Executive amendments have since been accepted as manuscript amendments—one as late as this morning.

I am grateful to the Minister for Health and Community Care for his letter explaining the circumstances behind the lodging of those amendments. I understand that that letter has been copied to all the members of the Health and Community Care Committee. I accept, for example, that one amendment has resulted in 40 consequential amendments, but I remain concerned that members are being expected to consider a large number of technically complex amendments at such short notice. I have expressed those concerns to the minister.

However, as I said last week about the Agricultural Holdings (Scotland) Bill, there are lessons to be learned from the experience of our first parliamentary session. In the next session, it will be for the new Executive, the new Parliamentary Bureau, the new Scottish Parliamentary Corporate Body and the new Conveners Group to consider how to space legislation through the four years so that we do not have this logjam right at the end. That is the point that Shona Robison seeks to make, and I have some sympathy with it.

While I have the floor, the other point that I would make is that I expect there to be fewer votes on amendments to the bill that we are dealing with today than there were on the Agricultural Holdings (Scotland) Bill. The Mental Health (Care and Treatment) (Scotland) Bill that we are dealing with today is highly technical and complex.

The Presiding Officers will operate in shifts throughout the next two days—the two Deputy Presiding Officers will be on this morning—so I appeal to members to give them the best of order. It is difficult for the Presiding Officers and members to ensure that we do not make any mistakes while the bill is going through, so conversations should take place in the coffee lounge, not in the chamber. Otherwise, we shall get a bit tetchy.

The Minister for Health and Community Care (Malcolm Chisholm): Further to that point of order, Presiding Officer. Let me say briefly that I understand people's concerns about the number of amendments and I accept that, in certain respects, we need to learn lessons and do better. However, to put the matter into context, people ought to realise that many of the amendments are the result of what I would regard as our superior legislative process—I say that as someone who has been at Westminster. Most of the substantive amendments have been lodged in response to points that the committee made, on which we undertook to lodge amendments. Many consequential amendments have had to be lodged because of changes made by the committee at stage 2.

The Presiding Officer has already referred to the fact that the committee changed the name of the bill, which involved 40 consequential amendments. I certainly apologise for the three amendments that were over time. However, one of those amendments was in response to an amendment that was supported by the Scottish Association for Mental Health. By lodging a further late amendment, I have tried to meet the association's concerns, which were reflected in an amendment that had been lodged by a member of the Health and Community Care Committee. I apologise for that, but in each case we tried to be responsive to the committee and the external lobbyists who had concerns about the bill.

I accept that we can do better, but people should also accept that part of the explanation is due to our more responsive and—I would argue, perhaps contentiously—superior legislative process.

The Presiding Officer: I am grateful to the minister, who makes a perfectly fair point. The point that I have made is that, if we were not up against the end of the four-year parliamentary session, we would not need to deal with the bill in quite such the rush that we have today.

I now call on Euan Robson to move the timetabling motion.

Motion moved,

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

Groups 1 to 4 - no later than 1 hour
Groups 5 to 11 - no later than 2 hours
Groups 12 to 18 - no later than 3 hours
Groups 19 to 24 - no later than 4 hours

Groups 25 to 33 - no later than 5 hours
Groups 34 to 45 - no later than 6 hours
Groups 46 to 57 - no later than 7 hours
Groups 58 to 67 - no later than 8 hours
Groups 68 and 69 - no later than 9 hours
Groups 70 to 81 - no later than 10 hours
Motion to pass the Bill - 10 hours and 30 minutes—[*Euan Robson.*]

The Presiding Officer: Donald Gorrie has asked to speak against the motion.

09:48

Donald Gorrie (Central Scotland) (LD): I share the concerns that have been expressed about the rushed timetable and the speed at which the bill is being dealt with. Many people have worked hard on the bill. In an ideal society, we would halt our consideration of the bill now and resume that consideration in better circumstances after the election. However, that is probably not practicable. I propose that we should not accept the timetabling motion, but let the debate run on so that every issue can be properly debated. If necessary, we could find more time next week to cover the issues. To debate 750 amendments in two days is ridiculous. I urge members to vote against the timetabling motion.

09:48

The Deputy Minister for Parliamentary Business (Euan Robson): It is difficult to add to what has already been said by both the Presiding Officer and the minister. The bill is long awaited and widely supported. As members will know, the bill implements the Millan report, which received widespread praise in Scotland and abroad. Bodies such as the Mental Welfare Commission for Scotland, the Law Society of Scotland, the Royal College of Psychiatrists and the National Schizophrenia Fellowship have campaigned long and hard for the legislation. It is important for us to make progress on the bill. The timetable, which gives five hours for consideration, is adequate.

I hope that members will accept the motion.

The Presiding Officer: The question is, that motion S1M-4043, which is the timetabling motion for stage 3 of the Mental Health (Care and Treatment) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Butler, Bill (Glasgow Anniesland) (Lab)
Campbell, Colin (West of Scotland) (SNP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North-East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (South of Scotland) (Con)
Finnie, Ross (West of Scotland) (LD)
Fitzpatrick, Brian (Strathkelvin and Bearsden) (Lab)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
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)
Johnstone, Alex (North-East Scotland) (Con)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North-East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
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)
McAllion, Mr John (Dundee East) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McGugan, Irene (North-East Scotland) (SNP)
McIntosh, Mrs Lyndsay (Central Scotland) (Con)
McLeish, Henry (Central Fife) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Neil, Alex (Central Scotland) (SNP)
Peacock, Peter (Highlands and Islands) (Lab)
Radcliffe, Nora (Gordon) (LD)
Reid, Mr George (Mid Scotland and Fife) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
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)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Thomson, Elaine (Aberdeen North) (Lab)
Tosh, Mr Murray (South of Scotland) (Con)
Ullrich, Kay (West of Scotland) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Canavan, Dennis (Falkirk West)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gorrie, Donald (Central Scotland) (LD)
Mundell, David (South of Scotland) (Con)
Sheridan, Tommy (Glasgow) (SSP)

The Presiding Officer: The result of the division is: For 94, Against 5, Abstentions 0.

Motion agreed to.

Mental Health (Care and Treatment) (Scotland) Bill: Stage 3

09:50

The Deputy Presiding Officer (Mr George Reid): The next item of business is the first part of the stage 3 proceedings on the Mental Health (Care and Treatment) (Scotland) Bill. For the first part of the proceedings, members should have before them SP Bill 64A as amended at stage 2, the first marshalled list and the groupings. We will allow an extended voting period of two minutes for the first division following a debate on a group of amendments; thereafter there will be a voting period of one minute for the first division after a debate on a group. All other divisions will be of 30 seconds duration.

Section A1—Principles for discharging certain functions

The Deputy Presiding Officer: Amendment 31 is grouped with amendments 32 and 33.

The Minister for Health and Community Care (Malcolm Chisholm): These amendments illustrate the point that I made a moment ago. They also show the importance that we attach to involving carers as well as, more fundamentally, users in relation to mental health and other health policies.

The amendments were lodged in response to another amendment that was brought to the Health and Community Care Committee by Adam Ingram. One of the points that Mary Mulligan made at the time was that, in certain situations, there could be conflict between the interests and wishes of users and those of carers. The amendments seek to address those dilemmas.

Amendment 31 will strengthen the bill's duties towards carers. We have lodged it in response to a series of stage 2 amendments by Adam Ingram. Those amendments would have imposed various duties to provide carers with specific information on the mentally disordered person. We were concerned that that might cause problems, particularly where the patient wished to keep certain information private, or where there were difficulties in the relationship between the patient and the carer. We discussed that with the mental health legislation reference group and it was clear that it would be almost impossible to set out in primary legislation all the circumstances where it would be right or not right to provide particular information to carers.

However, the National Schizophrenia Fellowship (Scotland) gave us graphic examples of the

problems that can be caused when professionals forget to involve carers or even deny them the information that they need to help their friend or loved one. Amendment 31 therefore provides that any person exercising functions under the act, such as a doctor or mental health officer, will have to pay particular attention to the importance of providing information to the carer to assist the carer to care for the mentally disordered person. That draws on one aspect of the principle of respect for carers set out in the Millan report.

The bill is not the right place in which to specify the details of how that duty should be fulfilled in each and every case. The code of practice will allow us to set out guidance as to best practice.

Amendments 32 and 33 illustrate the other kind of amendment, to which I referred earlier, because they are technical drafting amendments. They will tidy cross-references in part 1 of the bill. If members want specific details of that, I will give them in response to comments.

I move amendment 31.

Mr Adam Ingram (South of Scotland) (SNP): I thank the minister for taking on board the arguments that we put to the Health and Community Care Committee at stage 2. I welcome the extension of carers' rights. For a long time, weary carers have complained about being excluded from access to information that is of vital interest to them. I can only welcome the minister's response to the issue and the amendments.

Amendment 31 agreed to.

Amendment 32 moved—[Malcolm Chisholm]—and agreed to.

Section B1—Welfare of the child

Amendment 33 moved—[Malcolm Chisholm]—and agreed to.

Section 6—Duty to bring specific matters to attention of Scottish Ministers and others etc

The Deputy Presiding Officer: Amendment 1 is grouped with amendments 2 and 3.

Malcolm Chisholm: Amendments 1 and 2 are further technical amendments about the Mental Welfare Commission's powers under section 6 to bring matters of concern to the attention of various persons. Because of stage 2 changes to the drafting of section 9, the cross-reference to that section is no longer quite right and the amendments would restore the original intention of section 6.

Amendment 3 would add the public guardian, who has functions under the Adults with Incapacity (Scotland) Act 2000, to the list of bodies that might be contacted by the commission under section 6 to take steps to protect a mentally disordered person. That reflects the fact that some of the commission's powers under the Adults with Incapacity (Scotland) Act 2000 have been consolidated into provisions in this bill.

I move amendment 1.

Amendment 1 agreed to.

Amendments 2 and 3 moved—[Malcolm Chisholm]—and agreed to.

Section 7—Duty to give advice

The Deputy Presiding Officer: Amendment 4 is grouped with amendments 5 and 6.

Malcolm Chisholm: Amendments 4 and 5 are purely drafting amendments that pave the way for amendment 6.

Amendment 6 would simplify the drafting of section 8 by inserting a cross-reference to section 7.

I move amendment 4.

Amendment 4 agreed to.

Amendment 5 moved—[Malcolm Chisholm]—and agreed to.

Section 8—Publishing information, guidance etc

Amendment 6 moved—[Malcolm Chisholm]—and agreed to.

Section 9—Investigations

The Deputy Presiding Officer: Amendment 273 is grouped with amendments 274, 8, 275 and 276.

Malcolm Chisholm: Amendments 273, 274, 275 and 276 are further technical amendments. Sections 9 and 11 impose duties on the commission to investigate concerns about and to visit people who are subject to compulsory measures. As it stands, the draft bill refers to people who are detained. However, a person who is subject to various forms of detention, such as short-term detention, may have that detention suspended. It is currently called leave of absence. The amendments seek to make sure that that does not prevent the commission from carrying out its duties as intended.

Amendment 8 is also a technical amendment to ensure that the commission may make payments to any person who chairs a formal inquiry on its behalf. It retains the effect of a provision in the Mental Health (Scotland) Act 1984.

I move amendment 273.

Amendment 273 agreed to.

Amendment 274 moved—[Malcolm Chisholm]—and agreed to.

Section 10—Investigations: further provision

Amendment 8 moved—[Malcolm Chisholm]—and agreed to.

Section 11—Visits in relation to patients

Amendments 275 and 276 moved—[Malcolm Chisholm]—and agreed to.

After section 19

The Deputy Presiding Officer: Amendment 34 is grouped with amendment 106.

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): Amendment 34 in my name came about because of the lack of service provision for young people across Scotland.

At stage 1, we heard evidence from the Royal College of Psychiatrists, which stated:

"we have admitted adolescent in-patients to adult wards … We think that that is a frightening and distressing experience … A very disturbed adult unit, often with violent and aggressive male patients, is not the place to be at that point in time."—[*Official Report*, *Health and Community Care Committee*, 25 September 2002; c 3096.]

The Health and Community Care Committee's stage 1 report drew that evidence to the Executive's attention.

At stage 2, the Executive responded by giving assurances that the Scottish needs assessment programme—SNAP—report on child and adolescent mental health services would take account of those concerns. While the Executive could not give a specific date of publication, the minister stated that it would be available shortly. Some 10 weeks later, an executive summary was placed in the Scottish Parliament information centre for members, less than 24 hours before we debate amendment 34 this morning.

Every young person in Scotland who has a mental disorder deserves appropriate care. The SNAP executive summary does not provide sufficient detail for the young person who does not require secure care but who requires in-patient hospital care. Those are the circumstances that amendment 34 addresses. The emphasis on mental health services in Scotland has not been shared by local NHS systems, as they currently have only 35 adolescent beds and nine children's beds throughout Scotland. I urge the minister to accept amendment 34 and to give young people with a mental disorder appropriate services.

I move amendment 34.

10:00

Bill Butler (Glasgow Anniesland) (Lab): Amendment 106 in my name seeks to place a statutory duty on health boards to work in a collaborative fashion to whatever extent is necessary to provide mother-and-baby units, so that a mother suffering from post-natal depression may be jointly admitted with her child in order to undergo appropriate treatment in a sympathetic and suitable environment.

I first became aware of the total lack of such provision within NHS Scotland when one of my constituents, Lyn McLeod of Yoker, came to my surgery early in October last year. When she fell ill with post-natal depression, she was separated from her daughter, Heather, because of the total lack of provision within NHS Scotland for joint admission. In fact, Lyn found herself in a psychiatric ward, which I expect everyone will agree was not the appropriate ward for her to be placed in. Indeed, if Lyn had not had family to look after Heather while she was in hospital, her baby would have been fostered.

I was genuinely shocked that such a gap in NHS provision existed in Scotland. I was fortunate enough to be given the chance to bring the matter to the notice of the chamber when my members' business motion was chosen for debate on 4 December last year. At that time, I was extremely encouraged by the positive comments of the Minister for Health and Community Care, Malcolm Chisholm, who said that the Executive agrees

"that there should be a spectrum of care and support for the mother, the baby and the wider family. We accept, and shall promote, the merits of joint admission arrangements."—[*Official Report*, 4 December 2002; c 16049.]

I am also pleased that Greater Glasgow Primary Care NHS Trust agreed earlier this year to invest £500,000 to set up on the Southern general hospital site an in-patient, six-bed, mother-and-baby unit for women suffering from post-natal depression. That is progress, but with amendment 106 I ask the Executive to go a step further and make it a statutory obligation for health boards collaboratively to provide joint admission in such units.

I am aware that the Executive has concerns about including a specific treatment in statute—I am told that that is because no mental health or physical health treatment has ever been put in statute. When the minister replies to the debate, I would like her to explain the Executive's reservations. I will—as will the rest of the chamber—listen carefully to her concerns. I want her to offer real and significant comfort to the chamber and to me in that contribution, which I await with interest.

Shona Robison (North-East Scotland) (SNP): I wish to make a brief speech in support of Margaret Jamieson's amendment 34. She has pursued the provision of services for children and young people throughout our consideration of the bill. The placing of a SNAP report in the Scottish Parliament information centre the day before we debate the issue is not a substitute for amendment 34. It is not appropriate for young people to be put in the care of adult psychiatric services. As we heard time and again, that can do more harm than good.

The SNAP report will not provide the necessary impetus for health boards to provide the services for young people that are so badly required. I know that the minister will say that the problem with putting something in statute is that it gives priority to a group of health service users, but I cannot think of any group of health service users other than young people suffering mental health problems who should be given priority in statute.

I urge the minister to set aside the concerns about precedence and legal issues, because we have already accepted the principle in the bill's provisions on appeals against excessive security for people in Carstairs. There is a case to be made for making a group of vulnerable young people an exception to the rule. We should support amendment 34.

Mrs Margaret Smith (Edinburgh West) (LD): I support Margaret Jamieson's amendment 34, which has the support of all members of the Health and Community Care Committee.

The SNAP report that was published in part yesterday stated that

"All NHS Boards who responded … report rising rates of mental health problems"

among children and adolescents.

The report shows that, at the moment, services are patchy across the country. It also states that it is difficult at present to find out how much money is being spent by NHS boards on child and adolescent mental health, and that only half of the boards are engaged in health promotion and illness prevention.

I quote from the evidence that the Health and Community Care Committee took on that issue at stage 1 from Children in Scotland, the representatives of which quoted from a young woman who had spoken to Childline Scotland. She phoned the telephone line and said:

"I was raped a year ago. I started cutting myself to try and cope with the pain. My GP referred me to a psychiatrist ages ago, but I haven't heard a thing. She said it could be a while, but I don't know how I can keep going on."—[*Official Report*, *Health and Community Care Committee*, 6 November 2002; c 3308.]

That quotation reminds us, as Children in Scotland said, of the bill's context and the huge dearth of children's services in Scotland.

Across Scotland, young people must wait on average 12 weeks before they can meet a psychiatrist, and there are only 35 in-patient beds for children, whereas the Royal College of Psychiatrists told the Health and Community Care Committee that we actually need 80 beds. The royal college called that "a national disgrace." We agree.

Last year, seven out of 10 young people who were admitted to hospital on a compulsory basis were admitted to an adult ward. When members of the Health and Community Care Committee visited Parkhead hospital, we heard from staff that that was unacceptable. It is unacceptable to put a disturbed child or youngster into an adult ward, where they come up against people who are disturbed and possibly violent. It is totally unacceptable for this Parliament to allow such a situation to continue.

The minister will give us some legalese reason why we cannot address the matter. Sometimes something is right and sometimes something is wrong, and it is wrong for us to continue to do anything to perpetuate the situation. We have heard from staff, service users and children, through the SNAP report, that the services out there either are not available or are unacceptable. Shona Robison was right to tackle the view that we cannot address the issue because precedence says that we do not give priority in the health service to one set of patients. Does anybody in the chamber believe that we should not give priority to youngsters who are suffering the most appalling mental health difficulties and whom we are shoving into adult psychiatric wards?

Youngsters are not getting the services that they require. This is not just about bricks and mortar; it is about ensuring that there are staff who can look after them properly and that they have access to proper education services. Come on—if this Parliament was meant to be about anything, it was meant to be about addressing such issues. I support Margaret Jamieson's amendment 34.

Mary Scanlon (Highlands and Islands) (Con): I support Margaret Jamieson's amendment 34. My colleagues on the Health and Community Care Committee have made most of the points that I wished to raise.

The main point in Margaret Jamieson's amendment is its reference to

"such services and accommodation as are sufficient for the particular needs of that child or young person."

We heard in evidence to the Health and Community Care Committee that we need

services that are appropriate to the needs of children, and that the services that children currently get are detrimental to their needs—they actually frighten children and make them worse. Existing services are not even adequate, sufficient or beneficial; they are detrimental to the needs of children. We have to make that absolutely clear.

Margaret Jamieson raised the points that were made by the Royal College of Psychiatrists. I have only one other point to make. A submission from Children in Scotland states:

"Scotland has only 35 psychiatric beds for adolescents, after 12 beds in Fife were recently closed."

Therefore, not only is the number of children and young people suffering from mental health problems increasing, as Margaret Smith said, but the number of psychiatric beds for adolescents is decreasing. We have an increasing demand and a decreasing supply. I ask every member to take on board the points that have been made by supporters of amendment 34 and to vote for it.

I support Bill Butler's amendment 106, as I supported his members' business debate. Like amendment 34, it also calls for the provision of appropriate services. As a member for the Highlands and Islands, I am aware that women do not want to be separated from their newborn child and that the least restrictive alternative principle must apply. It might not be appropriate to build more buildings and so on if people from Wick and Thurso have to be hospitalised in Inverness, away from their family and children. I emphasise the fact that psychiatric services are just that—services.

During my research for Bill Butler's members' business debate, I found out some frightening things about post-natal depression. It affects not only the woman but the family. If it remains untreated, it can have a prolonged, damaging effect on the relationship between mother and baby and a detrimental effect on the child's psychological, social and educational development. A shocking figure is that 10 to 15 per cent—undoubtedly, a gross underestimate—of mothers suffer from post-natal depression. The other frightening statistic that I discovered during my research is that many women who are given anti-depressants after the birth of a child are still taking them decades later.

There has never been a better time or a better opportunity for this Parliament to support mothers and children in relation to the services that are available, such as community psychiatric services, and which are essential for their future. I support both amendments.

Scott Barrie (Dunfermline West) (Lab): I also support both amendments. As Mary Scanlon said, last summer, the only in-patient psychiatric unit in Fife for young people, Playfield House in Stratheden hospital, closed. The unit closed abruptly, in a matter of days, and young people who were resident there had to be either returned to the community—inappropriately, presumably—or accommodated in inappropriate psychiatric accommodation. The main reason for the closure of the unit was a lack of specialist nursing staff. That is one of the cruxes of the problem that we face: because there are few psychiatric children's units, few people go into that specialism. That means that we do not have a pool of trained staff to enable us to offer an adequate service, which means in turn that the service does not expand and that we cannot offer appropriate support. Only by taking action of the sort that amendment 34 proposes can we address that serious deficiency and put the necessary resources into this key area.

Far too many people do not get the appropriate service at a young enough age. We have discussed that in relation to other areas, which suggests that it is time for some joined-up thinking. Early intervention is as important in the area of psychiatric care as it is in other areas. Those young people might not need to be psychiatric in-patients, but they need access to psychiatric services. However, if the services are not there, there is delay after delay, and it is only when the person suffers an acute psychiatric episode that we have to accommodate them somewhere. Far too often, that accommodation has to be in an inappropriate adult institution. Amendment 34 addresses that problem, which is why I hope that the chamber will support it.

Bill Butler is right to highlight the lack of specialist resources for women with post-natal depression. It is a scandal that someone who is diagnosed with that condition cannot be given appropriate help without being separated from their child. That flies in the face of bonding theory and we must consider the matter seriously.

We are discussing a bill that deals with mental health treatment, and the matters that the amendments deal with go to the heart of the services that should be provided for children, adolescents and women.

10:15

Mr David Davidson (North-East Scotland) (Con): I support Margaret Jamieson's amendment 34, particularly because I am a parent of a young child who suffered the indignity and insecurity of being provided with inappropriate accommodation.

When my daughter was admitted to hospital, she was at her wits' end. She had no resilience left and had given up on herself, and being put into a ward that was totally inappropriate almost turned her mind over. I do not mention that to flaunt my

first-hand experience, because I would not wish that experience on anyone.

I beg the chamber to listen to the cries of the individuals, the carers, the families and those who have come through the experience of dealing with mental health problems. It is important that people get the right support and assessment early. Further, when that has happened, they must, as a right, receive the correct care. There is a duty on ministers to deliver that and I hope that both ministers—whom I know care about this issue—get away from the system and examine the core problems that the bill is trying to address.

Amendment 34 deals with but one aspect of the bill, and all the bill's provisions are equally important. I do not wish to be party political, but it is a fact that, over the past two or three years, the Scottish Executive has failed to address the needs of those young people and the special care that they require. The issue is not to do with building bigger establishments—the same number of bricks are needed regardless of how wards are divided—but it is about building into the bill a culture of care and recognising that, if we agree to amendment 34, the bill will be able to give those young people a sense of hope and a base from which they can get effective treatment and on which they can build their lives.

I beg the chamber to support amendment 34 and Bill Butler's amendment 106, which deals with the same principle: that accommodation that is provided by health services should be appropriate to the needs of the individual.

Janis Hughes (Glasgow Rutherglen) (Lab): I support all the comments that have been made in relation to amendments 34 and 106.

The health service has long accepted the need for age-appropriate services in the acute sector for children. As a former paediatric nurse, I realise the value of treating children in facilities that are appropriate to their age. In the recent past, that sometimes involved closing paediatric wards in general hospitals to centralise those services in paediatric facilities. I fully support such action because, for various reasons, it is much more appropriate for children and young people to be treated in facilities that are specific to them.

The recently published SNAP report talks about buildings, which amendment 34 does not. It was never the Health and Community Care Committee's intention that we should be building new hospitals and facilities to house children and young people with mental health problems. We talked about the need for children and young people to be given a separate area in a ward to ensure that they were not in beds beside people who had severe mental health problems, which could cause them severe distress.

As we heard in David Davidson's poignant contribution, young people—for example, those with eating disorders—can be kept in beds in acute wards. That contributes nothing to their long-term treatment. If the bill is to improve the situation for people in our communities who have mental health problems, we must remember that we are talking about children and young people as well as adults. There is a great need to recognise the fact that children and young people suffer from mental health problems. Today, we aim to have that fact recognised in legislation and to enable an improvement in the facilities that they currently have to endure.

I support amendment 34.

David Mundell (South of Scotland) (Con): I had the privilege of speaking in Bill Butler's members' business debate on post-natal depression, when we talked about mothers and babies being split up. Bill Butler spoke eloquently, as ever, about the circumstances that one of his constituents had endured. Anyone who heard him could not have been other than persuaded of the need for the services that his amendment 106 would provide.

Many other members who spoke in the debate reflected on the experiences of their constituents or their own personal experience. When we consider health services, and mental health services in particular, in the 21st century, it cannot be acceptable that we are still faced with the prospect of mothers and babies being split up. Surely we have the wherewithal in the great scheme of things to provide the necessary accommodation and services that would allow mothers with post-natal depression and their babies to be cared for together.

As Janis Hughes said, Margaret Jamieson's amendment 34 is not about building new facilities or spending a lot of extra money; it is about addressing a serious issue. Given what the Minister for Health and Community Care said in Bill Butler's members' business debate, I am surprised that the Executive will not accept amendment 106, as the tone of that debate suggested that the Executive had accepted the need for its important provisions. Even at this late hour, I hope that the minister will agree to amendment 106.

The Deputy Minister for Health and Community Care (Mrs Mary Mulligan): I am grateful to Margaret Jamieson and Bill Butler for lodging amendments 34 and 106. As many members have said, the amendments deal with vital areas that are of concern to us all. I hope that members will bear with me as I address a number of the points that have been raised.

Amendment 34 concerns services for children and young people who are admitted to hospital for

treatment of mental disorder. In providing care and treatment for mental distress and disorder, we must take account of the distinctive needs of individual children and young people. Their care and treatment must encompass their needs for health care, education and social support. It must also take account of the importance of family contact and relationships.

NHS boards are responsible for ensuring that such planning is in place and that NHS trusts provide appropriate care and facilities. In doing so, NHS boards take account of national priorities. For example, Greater Glasgow NHS Board has plans for the expansion of services in the west of Scotland, which we welcome.

Tricia Marwick (Mid Scotland and Fife) (SNP): The situation at present is not working. There are not enough facilities for young people. The health boards have had a responsibility for meeting the needs of young people with mental disorders for a long time and they have not fulfilled that responsibility. Unless amendment 34 is agreed to, the health boards will continue to act as they have done in the past. It is vital that all members support amendment 34. Even at this late stage, I would like to hear the minister say that she will support it, too.

Mrs Mulligan: If Tricia Marwick would like to listen to the comments that I am going to make, she will hear that I intend to lay out the way in which we can ensure that health boards do not ignore the very real needs that we see in our communities.

The intention behind Margaret Jamieson's amendment 34 is to ensure that children and adolescents are provided with appropriate care and treatment in an environment that is appropriate for them. I fully support her intention, but unfortunately the wording of the amendment makes it difficult for me to support it.

The whole basis on which the NHS is organised is to provide a comprehensive health service with no provision in legislation for prioritising particular types of health care or particular types of patient. To follow that path might result in a disproportionate focus, no matter how deserving those who are mentioned in statute are, to the detriment of those who are not mentioned. Shona Robison referred to that issue.

Amendment 34 would place a duty on NHS boards that would perhaps result in a focus in planning on, and in the allocation of resources to, in-patient treatment, which could reduce the wider and perhaps more important priority for early diagnosis and community treatment. I am sure that that was not Margaret Jamieson's intention in lodging the amendment.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Will the minister give way?

Mrs Mulligan: No, not at the moment.

Amendment 34 does not specify exactly what NHS boards would have to do to fulfil the duty satisfactorily. Children and adolescents present a diverse and wide range of needs, which might change over time. I cannot see how those can be sufficiently covered in primary legislation.

Mr Rumbles: Will the minister give way?

Mrs Mulligan: No, not at the moment, but let us see how I get on—I might be able to let Mr Rumbles in later.

In short, amendment 34 would not succeed in improving child and adolescent mental health services as Margaret Jamieson intends. I believe that there are much more effective ways of achieving that goal.

I totally accept that the current arrangements are not satisfactory. Our starting point has to be credible information, which is why we commissioned the Scottish needs assessment programme review of need and provision for child and adolescent mental health. The Public Health Institute of Scotland plans to publish the full final report of the review as one of the first publications from the new NHS health Scotland organisation. The executive summary of the report was made available this week. I had spoken to the Health and Community Care Committee about trying to make it available earlier, so I apologise that it was published late—unfortunately, that was beyond my control.

The summary highlights key themes for improvement and investment in services through a focus on the rights of young people and a concentration on mental health and emotional well-being, health promotion, early detection, research and strengthening the local, regional and national responses to care. I say to Margaret Smith that the review is about more than buildings; it is about providing the service.

Mr Rumbles: The minister says that the review is about providing the service. Ministers give instructions or directions to health boards on many issues, but the boards simply do not carry them out. We have had that discussion in relation to digital hearing aids. The minister's argument in opposing amendment 34 is: "We do not do it this way and so we are not going to do it." Surely we have to do things in a better way.

Mrs Mulligan: I welcome the review and its findings. The instructions and information will provide a way forward for NHS boards. I will come on to address how we will monitor what happens and how we will ensure that the Parliament—and not only the Executive—is involved in ensuring that the instructions are followed.

I am committed to ensuring that the SNAP recommendations for improvement are tackled in

full by all concerned. The health department's child health support group will consider how we take forward that pressing agenda. It will also provide leadership for the development work, which will involve all the key stakeholders and build on current multi-organisational and integrated care approaches. A spectrum of care is of course required. We are committed to addressing the issue and have proposals in train to develop a range of specialist provision in secure health and social care sectors. We will also support the regional commissioning of in-patient provision in order to ensure efficacy and good access.

I hope that Margaret Jamieson and other members will accept why the Executive is unable to support amendment 34 as drafted. However, I am happy to give an assurance that, in order to maintain the momentum, the Executive will act to ensure a positive response from the NHS and its partners.

I recognise that members may be sceptical about the general assurances that all those matters are being looked at—we have heard that concern from members this morning. To ensure that progress is real and that it is maintained, the child health support group will report quarterly to ministers on progress. I am more than happy to share those reports with the Health and Community Care Committee.

We will require all health boards to include their response to the SNAP recommendations within the performance assessment framework in child health. That will keep the pressure up for real improvements to all services, including in-patient care.

10:30

Robert Brown (Glasgow) (LD): Will the minister give way?

Mrs Mulligan: Not at the moment.

On amendment 106, I am grateful to Bill Butler for the strong personal interest that he has shown in the issue of post-natal depression on behalf of his constituents and the people of Scotland. He has drawn to the Parliament's attention the real difficulties that exist in the care and treatment of mothers who suffer in such a way. I reassure him that he is not alone; expert opinion has identified the importance of jointly admitting mother and child where it is safe and appropriate to do so and the need for appropriate facilities to support joint admissions.

The Scottish intercollegiate guidelines network guidelines that were issued in 2002 made recommendations to that effect. Following Malcolm Chisholm's response to Bill Butler's members' business debate, the health department has written to all NHS boards to ask them to undertake, in light of last year's SIGN guidelines, a regional review of in-patient services for mothers who are suffering from post-natal depression, as the treatment needs of individual board areas are unlikely to justify dedicated facilities within each board.

Bill Butler: The minister said that, if amendments 34 and 106 are put into statute, that might result in a disproportionate focus to the detriment of people who need other services. Surely boards should be able to manage their resources to ensure that such a disproportionate effect does not occur. [*Interruption.*]

The Deputy Presiding Officer: Before the minister replies, I remind members of Sir David Steel's caution this morning. There is a lot of extraneous noise in the chamber. There is a perfectly adequate coffee bar that members can use for discussions if they wish. I ask them not to have those discussions in the chamber.

Mrs Mulligan: I appreciate Bill Butler's point. It is up to health boards to decide their priorities and manage their resources. However, we must allow them the flexibility to do so. Putting such a stipulation into statute might hinder that process.

It is entirely right to ensure that facilities are available for mothers who require in-patient treatment to be admitted with their babies. I hope that my following comments on guidance will convince Bill Butler that we will be able to take the matter forward without resorting to legislation at this stage.

We must give the service time to undertake the necessary work to plan and develop schemes and staffing models. Clearly, as Bill Butler pointed out, good progress is being made in Glasgow. However, other good developments in the diagnosis, care and treatment of post-natal depression are happening in other NHS board areas and are not necessarily linked to in-patient treatment. We are committed to the same aims as Bill Butler is and we are taking the necessary steps to turn those aims into reality. However, although amendment 106 represents an important means of highlighting such a crucial issue, we do not think that it would be right to include its provisions in the bill.

We must also be mindful that any consideration of joint admission is and always should be determined by the child's best interests. The Children (Scotland) Act 1995 makes it clear that the welfare of the child should be paramount in any decisions that are made by public bodies and the appropriateness of joint admission might be a matter for more than the mother and her clinician. As a result, although we must ensure that

provision is made, we should not enshrine a particular option as the preferred one in every case. Our legislation should be empowering rather than restrictive.

Given all those circumstances, the Executive is unable to accept amendment 106. However, I am happy to assure Bill Butler that the Executive will continue to follow up progress with the implementation of the SIGN guidelines, including on the provision of facilities for mother and baby admissions.

Dr Richard Simpson (Ochil) (Lab): I declare an interest, which I will do once only. As a psychiatrist and general practitioner, I am a member of the Royal College of Psychiatrists, the British Medical Association and the Scottish Association for Mental Health.

In responding to amendments 34 and 106, the minister has twice referred to the performance assessment framework, which I think is excellent. However, as Mike Rumbles and others have asked, what will she do if the health board does not comply? The Executive must have some teeth to intervene in cases where mothers are repeatedly refused admission with their child because the health board repeatedly fails to prioritise the matter.

Mrs Mulligan: Members will understand that the performance assessment framework ensures that health boards respond to instructions, directions, guidelines and other assistance that they are given. We must enable the boards to have the flexibility to respond according to local circumstances while instructing them on the priorities that clearly concern members. The processes that are already in place will ensure that that happens.

Tricia Marwick: Will the minister give way?

Mrs Mulligan: Not just now.

The best way of dealing with the situation in relation to mothers and babies is through the SIGN implementation process and Executive oversight of NHS board plans rather than through legislation.

I should point out that the bill is not totally silent on the relationship between parents and children. Bill Butler would do well to consider the fact that the bill contains certain coverage that ensures that the spirit of his proposal will be carried forward. For example, section 190 provides that, where either a parent or a child is subject to compulsory measures, any person or body exercising functions under the legislation must take whatever steps

"are practicable and appropriate to mitigate the impairment"

of the relationship between the parent and child. We will give guidance on that provision in the code of practice. Moreover, I am happy to undertake that we will take account of the points that members have made this morning when we prepare the code. I can also confirm that I have asked Dr Sandra Grant to take account of the issue as part of her assessment of mental health services prior to the implementation of the legislation.

In light of those comments, I ask Bill Butler to consider not moving amendment 106.

Margaret Jamieson: I have listened to the minister's comments. She indicated that people might well be sceptical of what NHS local systems deliver. I would not say that I was sceptical; I just do not trust them. Throughout the Health and Community Care Committee's consultation and evidence sessions on the bill, reference was made to the 1997 framework for mental health, which was supposed to be a priority for the Parliament. It has not been a priority for local health systems. For that reason, I will press amendment 34.

The assurances that I have been given bear no resemblance to what is happening out there. For example, I am a member of the Parliament's Audit Committee and have examined the performance of NHS systems year after year. As we have heard, the performance assessment framework has no teeth and does not empower ministers—except in financial terms—to take any account of what is happening out there. There are disproportionate emphases within the NHS, which has placed mental health service provision at the bottom of the ladder. It is not a key priority in the local services that our constituents—particularly our young ones—deserve and expect. On that basis, I will press amendment 34.

Amendment 34 agreed to.

The Deputy Presiding Officer: Amendment 69 is grouped with amendments 70 to 73.

Shona Robison: The amendments relate to the principle of reciprocity. Their purpose is to give effect to the principle, which the Millan committee recommended. The Millan definition of reciprocity is:

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

As the bill stands, it requires only that those exercising functions under the bill

"have regard to the importance of the provision of appropriate services".

Although that important principle should stay in the bill, it is not enough in itself to ensure that

reciprocity is truly enshrined in the bill. My amendments would ensure that a duty to provide appropriate services falls on health boards and local authorities, as Millan intended.

The Health and Community Care Committee supported the inclusion in the bill of all the Millan principles and felt that reciprocity was a key principle, as did all the mental health organisations that gave evidence.

The Executive expressed concerns about the wording of an amendment that was lodged at stage 2. Those concerns have been taken on board in my amendment, because it would ensure that the duty falls on health boards and local authorities, rather than on individuals. On that basis, I hope that the Executive will support my amendment.

I move amendment 69.

Mary Scanlon: I support Shona Robison's amendment on reciprocity. The Health and Community Care Committee supported the inclusion in the bill of all 10 Millan principles and, in the course of its discussions, singled out reciprocity as being particularly important.

Reciprocity is not separate from the debate that we have just had on the provision of services and accommodation. However, it is totally vague and meaningless to include in the bill the words

"have regard to the importance of the provision of appropriate services".

As has just been said, the Scottish Parliament may pass legislation with the best of intentions, but if health boards and local authorities decide not to comply, it is meaningless.

As a member for the Highlands and Islands, I note that Highland Council is already trying to change the eligibility criteria for free personal care—a local authority has tried to rewrite an act of the Scottish Parliament. It is fortunate that there were enough sensible councillors to vote down the change. I go along with Margaret Jamieson's point that we cannot make vague and meaningless statements in Parliament and in legislation under the assumption that health boards and local authorities will comply.

We are dealing with one of the most vulnerable groups in Scotland. The mental health service is undoubtedly a cinderella service. Amendment 69 would place a duty on health boards and local authorities rather than on individuals.

I ask members to support amendment 69. It is not only crucial, but reflects what should be a basic principle of the Mental Health (Care and Treatment) (Scotland) Bill, as outlined by Millan.

Nicola Sturgeon (Glasgow) (SNP): Amendment 69 is one of the more important amendments that we will debate over the course of the next two days. As Shona Robison said, according to the Millan report, the principle of reciprocity is one of the principles that should be enshrined in legislation. Shona Robison's amendment would ensure that that happened in a meaningful way.

As it currently stands, the bill states that regard must be had to

"the importance of the provision of appropriate services".

We all know from experience that provisions worded in that way can be rendered virtually meaningless. Shona Robison's amendment would impose a duty on health boards, which is the correct way to ensure that reciprocity is enshrined in the bill.

That is of fundamental importance. The bill gives details of circumstances in which the liberty of individuals—who in most cases have committed no offence—can be restricted or taken away completely by the state. In those circumstances, there should be an obligation on the relevant authority to provide the services that such an individual requires on the basis of reciprocity, as a matter of principle.

Throughout consideration of the bill at stages 1 and 2, a range of people from interested organisations expressed concerns about the inadequate resourcing provided for in the bill. I dare say that we will return to that issue. At this stage, suffice it to say that health boards might well be constrained in the delivery of services by a lack of resources. The danger that we face is that, if the principle of reciprocity is not enshrined in the bill in a meaningful way, the problem of service delivery might become simply an accepted norm. That would be against the interests of the patients affected by the bill and would run counter to the bill's intention.

Amendment 69 would give valuable and essential protection to some of the more vulnerable patients in our society and, for that reason, it should be supported.

10:45

Mr Ingram: I will be brief, as I agree with everything that members have said.

Amendments 69 and 70 go to the heart of the bill and would help to bolster the principle of reciprocity, as outlined by Millan.

As we all know, the current provision of community services throughout the country is patchy. The requirement on authorities to

"have regard to the importance of the provision of appropriate services"

could be meaningless if such services do not exist.

We need to impose a duty on authorities to provide appropriate services, otherwise we only pay lip service to the improvement of support to some of the most vulnerable and stigmatised members of society.

I ask members to support amendments 69 and 70.

Malcolm Chisholm: As Shona Robison and others have said, one of the key Millan principles, which I strongly support, is the principle of reciprocity. Where society imposes an obligation on an individual to comply with a programme of treatment and care, it should impose a parallel obligation on health and social care authorities to provide appropriate services.

We have stressed repeatedly that we fully accept that as a general principle, but there is a vast difference between stating a general principle and setting it out as a series of coherent, legal propositions in primary legislation. That is an important point to make about amendment 69 and, possibly, about other amendments.

As Nicola Sturgeon said, we must enshrine the principle of reciprocity in a meaningful way. Mary Scanlon put it in a negative way, saying that we must not make vague and meaningless statements.

The fundamental problem with amendment 69 is that it contains no definition of what is meant by "appropriate services". If a duty to provide services is to be imposed, as distinct from a need to "have regard to" such provision, there must be absolute clarity about what "appropriate" means. Otherwise, it will not be possible for health boards and local authorities to implement the duty or for the courts to say whether the duty has been fulfilled.

I ask members to reflect very carefully on amendment 69, because we must pass clear legislation, which can be followed—in this case by health boards and local authorities—without ambiguity and without having frequent recourse to the courts for an interpretation of what is meant and intended.

Mary Scanlon: It is my understanding that the Executive included in the bill a requirement on individual persons exercising functions under the bill to

"have regard to the importance of the provision of appropriate services".

What does the minister regard as an appropriate service? How can the minister judge what is an appropriate service? Who makes that judgment—the patient, the clinician, the tribunal or mental health officers? The minister criticises Shona Robison's amendment for using the words, "appropriate services", but he also uses them. We need to know what "appropriate services" means.

Malcolm Chisholm: That is a fair point but, with respect, I have already answered it. There is all the difference in the world between imposing a duty on someone, which then has to be carried out, and failing to clarify what is meant, so that the duty cannot be performed. The phrase "appropriate services" that is in the bill at present refers to existing duties. I was going to go on to raise the question whether the term "appropriate" in the amendment refers to existing duties or to services that are somehow different from the services that health boards and local authorities are already under duties to provide. The drafting seems to imply that that is the case, but it is hard to see what new services are meant. There is no clarity in the definition about what exactly is referred to. Local authorities and NHS boards already have a plethora of legal duties towards people who may be subject to compulsory measures, apart from the new duties that are being imposed in the bill. I will go on to list those duties in a moment.

Nicola Sturgeon: The minister may—advertently or inadvertently—have made the same case as the mover and supporter of the amendment. He makes the point that, if there is a duty, health boards must deliver on it, and so there must be clarity. Surely the other side of that argument is that, if there is no duty, they do not have to deliver the services. That is the key weakness in the current drafting of the bill.

Dr Simpson: Will the minister accept another intervention on that point?

Malcolm Chisholm: There are duties, which I will go on to describe. I will allow Richard Simpson to intervene once I have described them.

As I have already said, if there is a duty, we must know exactly what "appropriate" means. I am not a lawyer, but it may well be that a board or local authority could say that, in its opinion, services were appropriate. That is precisely the legal problem that we must have regard to when passing legislation.

Local authorities have duties to provide community care services under the Social Work (Scotland) Act 1968 and services for children under the Children (Scotland) Act 1995. They also have various specific duties to disabled people, which apply to people with mental disorder, and other duties in respect of matters such as education, housing and transport. NHS boards have wide-ranging duties under the National Health Service (Scotland) Act 1978. As I have indicated, it is impossible to be clear about what impact, if any, amendment 69 would have on those various duties. We certainly have no reason to suppose that whatever legal effect it might have would benefit people who use mental health services.

Dr Simpson: I wonder whether the minister can give us a slight further reassurance. The concern of the mover and supporter of the amendment is that there is a lack of clarity about the current wording. I understand the minister's legal concerns, but will he assure us that, in monitoring the operation of the act and promoting best practice, under paragraphs (a) and (b) of section 3, the Mental Welfare Commission for Scotland will ensure that the principle of reciprocity is embodied in practice? Will he assure us that, in reporting to ministers, the Mental Welfare Commission will be required specifically to take that into account? Will he further assure us that, as we discussed in the very first amendments, the ministers will then take action where the principle of reciprocity is not being followed through by health boards?

Malcolm Chisholm: I am happy to agree with Richard Simpson, because the principle of reciprocity is absolutely at the heart of what Millan proposed. I will go on to describe the ways in which we will ensure that that principle is implemented in mental health services in Scotland, but before I do so, I would like to make one final point, which is perhaps at the heart of members' concerns.

At stage 2, members expressed concern that duties on public bodies might not have the intended effect if those bodies simply do not have the resources to implement them. I can fully understand that concern, but amendment 69 would not solve the problem, either in a practical or in a legal sense. In so far as existing duties can be constrained by limitations on resources, the same would apply to amendments 69 and 70.

Having described why the amendments would not work, I shall turn to why I do not believe that they are necessary. They are not necessary both because the bill contains measures to implement the reciprocity principle and because we are taking steps to ensure that services are available on the ground.

At the heart of the new procedures for compulsory treatment orders is the plan of care. Any application for a compulsory treatment order must include a detailed and multidisciplinary plan of care. If the care and support set out in the plan are not adequate to underpin the compulsory measures, the tribunal would be within its rights not to approve the order. Furthermore, if there are aspects of the plan of care that the tribunal regards as particularly important, the tribunal can specify in the compulsory treatment order that they cannot be dropped without the matter being referred back to the tribunal for a review of the order. The bill also contains a duty on anyone exercising functions under it to have regard to the importance of providing appropriate services to people who are or have been subject to compulsion, and I have already discussed that in response to Mary Scanlon's intervention.

Moreover, part 4 provides clearer and stronger duties on local authorities towards all mental health service users. That is an important feature of the bill that has perhaps not attracted the attention and publicity that it deserves. The duties under that part of the bill include duties towards service users who are subject to compulsory measures, but are not restricted to them.

Mary Scanlon: If a service user is given a care plan that outlines all the care, support and treatment that they need, and they do not get that care and treatment, the minister says that they can go to the tribunal. If the tribunal bats that back to the local authority, which says that it does not have the staff, resources or wherewithal to provide what is necessary, the matter is batted back again to the tribunal. Who takes ultimate responsibility for providing appropriate services for the needs of people with mental health problems?

Malcolm Chisholm: I hope that I gave a reassurance in response to Richard Simpson's helpful intervention on that point. My fundamental point is that amendments 69 and 70 would not solve that problem. I accept that there is always a problem with resources, which we must deal with in different ways—including, if necessary, being more directive from the centre. However, an amendment that talks about a duty to provide appropriate services does not get round the problem. The fundamental issue is that there is absolutely no clarity about what "appropriate services" means, and we cannot pass laws that are not clear in their intention and effect.

I will go on to describe how we are dealing with the serious issue of reciprocity.

Tommy Sheridan (Glasgow) (SSP): Does the minister not think that it is incumbent on him to define what he means by "appropriate" in order to provide clarity?

Malcolm Chisholm: The reality is that an amendment such as Shona Robison's amendment 69 would have to define absolutely what the term means. I am sure that Mr Sheridan will understand that it is quite difficult to say in detail what "appropriate" might mean for any one of the many individuals who might be involved. There is a fundamental problem, which is why I am arguing that the way to deal with the issue is by a series of other measures. I am in the middle of describing what those measures are, but they include the powers of the tribunal to which I have already referred.

The bill is a huge step forward in strengthening the rights of mental health service users, and we are ensuring that the resources are available to

deliver those rights. As a result of the spending review, we have made significant additional resources available to NHS boards and local authorities to enable services to meet the demands identified in the financial memorandum to the bill. That includes an additional £14.5 million of expenditure per annum on improved services. Concern was expressed in the stage 1 debate about the capacity of services to meet the demands of the legislation, even with those significant additional resources being made available. I announced then that we intended to set in train an assessment of existing mental health service provision, to consider how current facilities, augmented by the additional resources that are coming on stream, could best meet the objectives of the bill.

On 5 February, I announced in answer to a parliamentary question that Dr Sandra Grant, the former chief executive of the Scottish Health Advisory Service, has agreed to lead that work. The aim is to complete that work by 31 August, and a report of the outcome will be published. I have the highest regard for Sandra Grant. I knew her when she served on the care development group and I assure members that she will take a robust and independent approach to the important work that she has been given. The assessment will play an important role in helping services to develop and to adapt to meet the demands of the new legislation. It will be carried out in consultation with all the key interests, including service users and carers.

I apologise for speaking at length, but I am totally at one with Shona Robison in feeling that the aim of delivering on the reciprocity principle lies at the heart of the bill. I hope that she will accept that we have done all that we can to make that aim a reality and will feel able to withdraw her amendment.

Shona Robison: I feel that the minister is hiding behind the legal issues that have been raised throughout the debate on the principle of reciprocity. It is a bit strange that he should focus on the definition of "appropriate services". Not only did Millan use that term, but the minister himself has used the term "appropriate services" in the much watered-down need to

"have regard to the importance of the provision of appropriate services".

Unless the minister is saying that the phrase "appropriate services" is nonsense and is so vague that it should never have been in the bill in the first place—which I am sure he is not—and given that the words are a term of reference that is used in the bill, I do not see a problem with imposing a duty on health boards and local authorities. Doing so would go some way towards solving the problem.

Obviously, the other end of the road is that health boards and local authorities must provide the services. I return to a point that was raised before. Unless a duty is imposed on health boards and local authorities, our fear—and the fear of many organisations out there that have expressed concerns about the matter—is that such services will not be provided.

11:00

Malcolm Chisholm: I am repeating myself to some extent, but what I will say is important with respect to the amendment and making laws in general. The matter must be focused on. I want to ensure that reciprocity is at the heart of the bill in the many ways that I have described. However, amendment 69 has no meaning in respect of being a duty that can be implemented clearly by boards and local authorities or that the courts can clearly interpret. We have a duty to pass laws that make legal sense. We all agree on the objectives, but we must take our duties seriously and pass clear legislation.

Shona Robison: I do not agree with the minister's analysis. Amendment 69 would make health boards and local authorities do what all members want them to do and provide the services that are required. The minister knows that this debate goes to the core of the issues of concern in the bill. He and I have heard all the mental health user groups and individuals say that there are two sides to the bargain. The bill extends the use of compulsory measures, particularly with the extension of community-based compulsory treatment orders. Such extension is accepted by many organisations and individuals, but only if the other side of the bargain is fulfilled, which is that health boards and local authorities provide services on the ground to meet the service users' needs. They feel that, if the principle of reciprocity is not explicitly stated as a duty on health boards and local authorities, that side of the bargain will not be met. The minister knows as well as I do that that has been the key concern of all the groups and individuals who have given evidence.

I press amendment 69.

The Deputy Presiding Officer: The question is, that amendment 69 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Aitken, Bill (Glasgow) (Con)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)

Douglas-Hamilton, Lord James (Lothians) (Con)
Elder, Dorothy-Grace (Glasgow) (Ind)
Ewing, Mrs Margaret (Moray) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McGugan, Irene (North-East Scotland) (SNP)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sheridan, Tommy (Glasgow) (SSP)
Sturgeon, Nicola (Glasgow) (SNP)
Tosh, Mr Murray (South of Scotland) (Con)
Ullrich, Kay (West of Scotland) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Young, John (West of Scotland) (Con)

AGAINST

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)
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)
Grant, Rhoda (Highlands and Islands) (Lab)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
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)
McLeish, Henry (Central Fife) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Raffan, Mr Keith (Mid Scotland and Fife) (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)
Thomson, Elaine (Aberdeen North) (Lab)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 38, Against 59, Abstentions 0.

Amendment 69 disagreed to.

Amendment 106 moved—[Bill Butler]—and agreed to.

Before section 20

Amendment 70 not moved.

Section 20—Care and support services etc

The Deputy Presiding Officer (Mr Murray Tosh): Amendment 107 is grouped with amendments 109 to 112, 143, 146, 149, 150, 153, 154, 159 to 161, 164, 113, 218, 219, 242, 243 and 252 to 271.

Mrs Mulligan: At stage 2, the Health and Community Care Committee accepted Adam Ingram's amendment to change the name of the bill from the Mental Health (Scotland) Bill to the Mental Health (Care and Treatment) (Scotland) Bill. The amendments make the necessary changes to provisions throughout the bill that refer to the name of the act that will result from the bill.

I move amendment 107.

Amendment 107 agreed to.

Section 23—Services under sections 20 to 22: charging

Amendments 109 to 112 moved—[Mrs Mary Mulligan]—and agreed to.

Section 24—Relationship between duties under sections 20 to 22 and duties under Social Work (Scotland) Act 1968 and Children (Scotland) Act 1995

Amendment 71 not moved.

Section 25—Co-operation with Health Boards and others

Amendment 72 not moved.

Section 26—Assistance from Health Boards and others

Amendment 73 not moved.

Section 27—Appointment of mental health officers

The Deputy Presiding Officer: Amendment 277 is grouped with amendments 278 and 279.

Mrs Mulligan: Amendments 277 and 278 make it clear that mental health officers not only must be appointed by a local authority, but must be officers of a local authority. Amendment 279 is simply a drafting amendment to reflect the change in the structure of section 27 resulting from amendments 277 and 278.

I move amendment 277.

Amendment 277 agreed to.

Amendments 278 and 279 moved—[Mrs Mary Mulligan]—and agreed to.

Section 31—Emergency detention in hospital

The Deputy Presiding Officer: Amendment 280 is grouped with amendments 281 to 287, 304 to 311, 318 to 322 and 734.

Mrs Mulligan: Amendment 282 will provide that there must not be a conflict of interest in relation to the medical examination when emergency detention is being considered. Amendment 287 will provide a regulation-making power in order to specify the circumstances that do or do not constitute a conflict of interest. Amendments 307 and 311 will make similar provision for short-term detention and amendments 318 and 321 will make provision for the three-day extension to short-term detention.

Amendment 283 takes account of the fact that an emergency detention certificate may be granted in respect of a patient who is subject to a community-based compulsory treatment order by removing the reference to CTOs from the criteria for emergency detention. Amendments 285 and 286 will make minor adjustments to section 31(7).

Amendments 309 and 310 will clarify that a patient who is subject to a short-term detention certificate may be transferred administratively between hospitals at any time during the 28-day period of detention, and amendment 280 will change the reference in section 31(2) to the three-day extension to a reference to short-term detention. Amendment 305 will change the reference in section 35(2) to a three-day period of detention following short-term detention.

Amendments 281 and 306 will ensure that an emergency detention certificate or a short-term detention certificate cannot be granted immediately following, respectively, detention for breach of an interim compulsory treatment order or a compulsory treatment order.

Mary Scanlon: I would like clarification on amendment 282. What would constitute a conflict of interest in relation to a medical examination?

Mrs Mulligan: That would be when the medical practitioner had already been involved in the circumstances.

Amendment 284 will clarify that when the medical practitioner who is considering granting an emergency detention certificate is able to consult the mental health officer and the MHO has the opportunity to consent and declines to do so, the medical practitioner is not allowed to grant an emergency detention certificate. Amendment 322 will clarify the same situation for extensions to short-term detention certificates.

Amendment 304 is a technical amendment and amendment 308 will improve drafting. Amendments 319 and 320 will improve the drafting of section 41 and amendment 734 will improve the drafting of section 228.

I move amendment 280.

Amendment 280 agreed to.

Amendments 281 to 287 moved—[Mrs Mary Mulligan]—and agreed to.

Section 33—Duties on hospital managers: examination, notification etc

The Deputy Presiding Officer: Amendment 288 is grouped with amendments 289, 314, 317, 347, 348, 358, 359, 361, 435, 441, 457, 468, 471, 472, 165, 186, 191, 192, 479, 481, 483, 574, 588, 589, 614, 622, 623, 646, 650, 651, 652, 653, 691 and 738.

Mrs Mulligan: Amendment 651 will introduce a new section that makes general provisions for the appointment of responsible medical officers throughout the bill. That will make it possible to remove specific references to appointing RMOs.

Amendments 288 and 289 will remove the requirement on hospital managers to appoint an RMO in respect of a patient who is made subject to emergency detention, and amendment 314 will

remove from section 37 the duty on hospital managers to appoint an RMO in respect of a patient who is made subject to short-term detention.

Amendments 347, 358, 435, 441, 165, 186, 191, 479, 574, 588, 614, 622, 646 and 691 will remove the sections that deal with the appointment of an RMO in respect of the various orders in the bill and amendments 359, 457 and 468 will remove the references in the bill to the sections that will be deleted by those amendments. Amendments 471, 472 and 481 will add other appropriate references to the new section.

Amendment 652 will introduce a new section that makes general provisions throughout the bill for the times when a social circumstances report should be prepared. That will make it possible to remove specific references to preparing social circumstances reports. Amendments 317, 348, 361, 192, 483, 589 and 623 will remove the sections that provided for preparation of the social circumstances reports.

11:15

Amendment 650 will introduce a new section that will make general provisions, throughout the bill, for designation of mental health officers who are responsible for a patient's case.

Amendment 653 will insert in the bill a necessary definition of "relevant event", as the term is used in amendment 650. Amendment 738 will delete the definition of social circumstances reports that is used in section 288, because it is no longer required.

I move amendment 288.

Amendment 288 agreed to.

Amendment 289 moved—[Mrs Mary Mulligan]—and agreed to.

The Deputy Presiding Officer: Amendment 290 is grouped with amendments 297 to 299.

Malcolm Chisholm: Amendment 297 will introduce a new section that will place a duty on the approved medical practitioner to revoke an emergency detention certificate if he or she is not satisfied that the criteria for emergency detention are met. The new section will replace section 33(3), which will be removed by amendment 290.

Amendment 298 will remove section 34A, which gave the Mental Welfare Commission for Scotland power to revoke an emergency detention certificate. The commission has advised us that, because it requires a full meeting of the commission to approve such an intervention, it would never be practical for such a power to be used within the 72-hour time limit that is set for emergency detention. Accordingly, that power is not required.

Amendment 299 will, as a consequence of amendments 297 and 298, revise section 34B, which will, if amended, provide a duty on the approved medical practitioner to notify the patient and the managers of the hospital if he or she decides to revoke an emergency detention certificate.

I move amendment 290.

Amendment 290 agreed to.

The Deputy Presiding Officer: Amendment 291 is grouped with amendments 292 to 296, 300, 315, 316, 323 to 326, 328 and 329.

Malcolm Chisholm: Amendment 291 will provide that hospital managers should "inform" rather than "give notice" to certain persons of the granting of an emergency detention certificate. That will mean that notice does not have to be in writing and it will enable managers to do so faster.

Amendment 292 will clarify the start and end point of the period of seven days in which hospital managers must pass on the information that has been provided to them by the medical practitioner as per section 32(2), concerning emergency detention. Amendment 316 will clarify the start and end point of the period of seven days within which the managers of the hospital must inform the tribunal and the Mental Welfare Commission of the granting of a short-term detention certificate. The period will begin at the start of the day on which the hospital managers receive the information or on which the certificate is granted, so that that full day counts towards the seven-day period.

Amendment 293 will tidy up the drafting of section 33(4)(b)(i) and amendments 294, 295 and 296 will tidy up the drafting of sections 33(5) and 33(5A).

Amendment 300 will revise section 34B to place a duty on the approved medical practitioner to notify the patient and the managers of the hospital if he or she decides to revoke an emergency detention certificate. The hospital managers are then required to inform the persons who are mentioned in sections 33(5) and 33(5A).

Amendments 315, 324, 325 and 328 will ensure that any guardian and any welfare attorney of a patient are informed of the granting of a short-term detention certificate, the granting of an extension certificate and revocation of short-term detention or its extension by the responsible medical officer or the Mental Welfare Commission.

Amendments 323 and 324 will require the approved medical practitioner who grants an extension certificate to give the certificate to the managers of the hospital in which the patient is

detained, and to give notice to the mental health officer who has responsibility for the patient's case. Amendment 324 will also remove local authorities from that list.

Amendment 326 will add a guardian or welfare attorney of the patient to the list of persons who are entitled to make representations, or to lead or produce evidence to the tribunal, when the patient or named person applies to the tribunal for revocation of a short-term detention or extension certificate. Amendment 329 will require the Mental Welfare Commission to inform the tribunal when it revokes a short-term detention or extension certificate.

I move amendment 291.

Amendment 291 agreed to.

Amendments 292 to 296 moved—[Malcolm Chisholm]—and agreed to.

After section 33

Amendment 297 moved—[Malcolm Chisholm]—and agreed to.

Section 34A—Commission's power to revoke emergency detention certificate

Amendment 298 moved—[Malcolm Chisholm]—and agreed to.

Section 34B—Revocation of emergency detention certificate: notification

Amendments 299 and 300 moved—[Malcolm Chisholm]—and agreed to.

After section 34B

The Deputy Presiding Officer: Group 13 is on the suspension of measures authorising detention and other measures. Amendment 301 is grouped with amendments 302, 330, 331, 37 to 55, 144, 145, 147, 148, 151, 152, 166 to 174, 476, 175 to 178, 180 to 183, 477, 184, 185, 478, 187, 188, 190, 193, 194, 196, 586, 197 to 207, 647, 208 to 213, 648, 214, 215, 709 and 710.

Malcolm Chisholm: Amendments 301 and 330 will introduce new sections that will enable a responsible medical officer to grant a suspension of the detention requirement in respect of a patient who is subject to emergency detention or short-term detention. The amendments will enable the responsible medical officer to set conditions in relation to the suspension and are broadly in line with provision that was made in the Mental Health (Scotland) Act 1984 regarding leave of absence.

Amendments 302 and 331 will provide the responsible medical officer with a power to revoke a suspension certificate that is granted in respect of emergency or short-term detention. Amendment 302 will provide notification requirements that are similar to those for the revocation of emergency detention. Amendment 331 will require the responsible medical officer to give notice of revocation of a suspension certificate in respect of short-term detention to the patient, the named person, the mental health officer, any person who is empowered to escort the patient while on suspension and the Mental Welfare Commission.

Amendments 709 and 710 will authorise any person who accompanies a patient as a condition of suspension of emergency or short-term detention to take into custody or resume the charge of that patient if he absconds. The amendments will modify section 205(2)(a) and (3)(b) and are consequential on amendment 708.

On 29 January, during stage 2 consideration of the bill, the Health and Community Care Committee voted in favour of amendments 257 and 258, which were lodged by Mary Scanlon and which sought to adjust section 83. However, section 83 was deleted following a vote in favour of Executive amendment 604, which replaced section 83 with section 90A. The Executive undertook to lodge amendments at stage 3 to take account of the views that lay behind amendments 257 and 258. We have therefore lodged amendments to sections 90A and 91 that will implement the spirit of amendments 257 and 258. I note in passing that those are the kind of amendments to which I referred earlier—they are responsive to the will of the committees, as is our custom in the Scottish Parliament.

In particular, amendment 49 will require the responsible medical officer to inform the patient, the named person and the mental health officer of the measures that are to be suspended and the period for which the responsible medical officer proposes to suspend them. Amendment 49 will also require the responsible medical officer to give his reasons. Amendment 50 will ensure that the Mental Welfare Commission is also made aware of those matters.

At stage 2, amendment 258 proposed that the responsible medical officer should specify in advance any circumstances that would be likely to lead to the premature end of the period of suspension. Through amendment 55, which will amend section 91, we will provide that the responsible medical officer should inform the patient, named person and mental health officer of the reasons for ending the period of suspension, if and when he does so. That is because we do not think that it is possible for the responsible medical officer to predict every scenario in which he might wish to end the period of suspension. Amendment 54 is consequential on amendment 55. Certain other matters that were raised at stage 2 in amendments 257 and 258, such as the period of

notice that should be given, were tightened up by Executive amendments at stage 2.

Amendments 41 and 42 will enable a suspension of detention under section 90 to be granted for a series of events, whether or not they include travel, and will implement the spirit of amendment 510, which Shona Robison lodged at stage 2.

Amendments 38 and 40 will remove section 90(3A) because the provision that the suspension of detention cannot exceed the period for which detention is authorised is no longer believed to be necessary.

Amendments 45 and 46 will modify section 90(6) to implement the policy that notice should be given to the persons who are listed in section 90(6) where successive periods of suspension of detention exceed 28 days. The bill already provides a similar provision for cases in which a single period of suspension of detention exceeds 28 days.

Amendment 168 will insert text, the consequence of which is that all persons who are subject to an assessment order cannot be granted a suspension of detention without prior authorisation by the Scottish ministers. That will ensure that better risk assessment is undertaken for patients whose risk to others has perhaps not been quantified.

Amendment 169 will remove section 99B(3). We do not now consider it necessary to state that the period for which the person can be granted a suspension of detention cannot be longer than the period for which the assessment order would exist. Amendment 166, which is consequential on amendments 168 and 169, will remove text that is no longer necessary.

Amendment 170 will change section 99B to make it consistent with the civil provisions in the bill and will enable a suspension of detention to be granted for an event or a series of events. Amendments 171, 178 and 478 will move the relevant sections to a more appropriate place in the bill. They will move the provisions on suspension of detention in parts 8A to 11 to one location.

Amendment 144 will remove section 52C(9), which will no longer be necessary because of the changes that amendment 168 will make to section 99B. If all assessment orders require the consent of the Scottish ministers prior to the granting of a suspension of detention, the court does not need the power to make an order under section 52C(9). Amendment 145 is consequential on amendment 144, as are amendments 147 and 148. Amendment 147 will ensure that the Scottish ministers will receive from the RMO the report on the review of the assessment order after 28 days and amendment 148 will ensure that the court will tell the Scottish ministers if it extends the order by seven days.

Amendments 151 and 152 will have the same effect for treatment orders as amendments 144 and 145 will have for assessment orders.

Amendment 180 will delete section 99E(1) and follows from amendment 168, which will insert a new subsection into section 99C to reflect the policy that suspension of detention certificates for persons who are subject to an assessment order should be granted only with the prior consent of the Scottish ministers.

Amendments 187, 188, 190, 193, 194 and 196 will delete sections in parts 8B and 8C that relate to suspension of detention for persons who are subject to treatment orders or interim compulsion orders. Those sections will not be required following amendment 197, which will add treatment orders and interim compulsion orders to section 160D. That will have the effect that sections 160D to 160F will apply to those orders in the same way as they apply to compulsion orders with a restriction order, hospital directions and transfer for treatment directions. Essentially, that means that suspensions of detention for persons who are subject to those orders and directions can be granted only with the consent of the Scottish ministers; that the total duration of a suspension cannot exceed nine months in a 12-month period; and that the Scottish ministers, as well as the RMO, can recall a patient to hospital from suspension.

Amendment 202 will make it clear that the notification requirements in section 160D(9) apply when suspension of detention that would total more than 28 days has been granted to a patient.

The remaining amendments in the group are technical and will improve drafting of relevant sections.

I move amendment 301.

Amendment 301 agreed to.

Amendment 302 moved—[Malcolm Chisholm]—and agreed to.

11:30

The Deputy Presiding Officer: Group 14 is on the effect of certain certificates or orders on other certificates or orders. Amendment 303 is grouped with amendments 332 to 357, 140 to 142 and 470.

Mrs Mulligan: Amendments 303 and 333 will clarify the status of the patient on a community-based compulsory treatment order who is made subject to, respectively, an emergency detention or short-term detention certificate. All the measures in the compulsory treatment order will

be suspended for the duration of the emergency or short-term detention. The only exception is any treatment authority that is specified under section 54(1)(b), which persists through emergency detention.

Amendment 334 will extend section 44 to cover interim compulsory treatment orders. That section will now provide that a short-term detention certificate is automatically revoked when an interim compulsory treatment order or compulsory treatment order is made in respect of the patient by virtue of amendment 335.

Amendment 336 will move section 44 into chapter 1 of part 7.

Amendments 332 and 357 will improve the drafting of sections 43 and 56G, respectively, by clarifying that the granting of short-term detention terminates emergency detention and that the granting of a compulsory treatment order terminates an interim compulsory treatment order.

Amendments 140, 141 and 142 will clarify the status of the compulsory treatment order or interim compulsory treatment order during the period of detention authorised by sections 85(5A) or 86(2), or by subsection (2B) of the new section that will be created by amendment 131. The amendments will introduce three new sections that will ensure that the terms of the pre-existing order will be suspended during the period of hospital detention. However, each new section will provide that any treatment authority that is granted under section 54(1)(b) will continue in effect throughout the period of detention.

Amendment 470 makes it clear that, should a person be made subject to an assessment or treatment order who is currently subject to an interim compulsory treatment order or a compulsory treatment order, the latter orders will be suspended while the person remains subject to the assessment or treatment order.

I move amendment 303.

Amendment 303 agreed to.

Section 35—Short-term detention in hospital

Amendments 304 to 311 moved—[Mrs Mary Mulligan]—and agreed to.

Section 36—Mental health officer's duty to interview patient etc

The Deputy Presiding Officer: Group 15 is on the duties of the mental health officer. Amendment 312 is grouped with amendments 313, 340, 385, 386, 409 and 410.

Mrs Mulligan: Amendments 385, 386, 409 and 410 will qualify the duty on the mental health officer to interview the patient when the responsible medical officer has determined that a compulsory treatment order should be extended with or without variation. The mental health officer need not interview the patient when it is impracticable for him to do so.

Amendments 312 and 313 will improve the drafting of section 36.

Amendment 340 will make a necessary consequential amendment to section 51(6), following amendment at stage 2. That subsection will, if the amendment is agreed to, correctly refer to subsection (3A).

I move amendment 312.

Amendment 312 agreed to.

Amendment 313 moved—[Mrs Mary Mulligan]—and agreed to.

Section 37—Hospital managers' duties: notification etc

Amendments 314 to 316 moved—[Mrs Mary Mulligan]—and agreed to.

Section 38—Social circumstances report

Amendment 317 moved—[Mrs Mary Mulligan]—and agreed to.

Section 41—Extension of detention pending application for compulsory treatment order

Amendments 318 to 322 moved—[Mrs Mary Mulligan]—and agreed to.

Section 42—Extension certificate: notification

Amendments 323 and 324 moved—[Mrs Mary Mulligan]—and agreed to.

Section 39—Responsible medical officer's duty to review continuing need for detention

Amendment 325 moved—[Mrs Mary Mulligan]—and agreed to.

Section 40—Patient's right to apply for revocation of short-term detention certificate or extension certificate

Amendment 326 moved—[Mrs Mary Mulligan]—and agreed to.

The Deputy Presiding Officer: Group 16 consists of amendments that are consequential on amendments that were agreed to at stage 2. Amendment 327 is grouped with amendments 431, 437 to 440, 475, 489, 493, 541, 545, 564, 567, 602, 613, 616, 625, 626, 629, 644, 248, 735 and 737.

Mrs Mulligan: As the title of the group makes clear, these amendments are all minor technical amendments that follow amendments that were agreed to at stage 2.

I move amendment 327.

Amendment 327 agreed to.

Section 42B—Revocation of short-term detention certificate or extension certificate: notification

Amendments 328 and 329 moved—[Mrs Mary Mulligan]—and agreed to.

After section 42B

Amendments 330 and 331 moved—[Mrs Mary Mulligan]—and agreed to.

Section 43—Effect of subsequent short-term detention certificate on emergency detention certificate

Amendment 332 moved—[Mrs Mary Mulligan]—and agreed to.

After section 43

Amendment 333 moved—[Mrs Mary Mulligan]—and agreed to.

Section 44—Effect of subsequent compulsory treatment order on short-term detention certificate

Amendments 334 to 336 moved—[Mrs Mary Mulligan]—and agreed to.

Section 48—Application for compulsory treatment order: notification

The Deputy Presiding Officer: Group 17 is on the application for and making of compulsory treatment orders in respect of notification and the right to be heard. Amendment 337 is grouped with amendments 341 and 346.

Mrs Mulligan: Amendment 337 will require the mental health officer to notify the commission that he is going to make an application for a compulsory treatment order as soon as practicable after the duty to do so arises.

Amendment 341 will allow the patient's responsible medical officer—in the case that he was not one of the doctors who provided a medical report in respect of an application for a compulsory treatment order—to make representations or to lead or produce evidence at the tribunal hearing in relation to the application.

Amendment 346 will tidy up the drafting of the requirement in section 53A for the tribunal to afford persons the opportunity to make representations and lead evidence before it grants an interim compulsory treatment order.

I move amendment 337.

Amendment 337 agreed to.

Section 51—Mental health officer's duty to prepare proposed care plan

The Deputy Presiding Officer: Group 18 is on proposed care plans, care plans and part 9 care plans. Amendment 338 is grouped with amendments 339, 360 and 482.

Mrs Mulligan: Amendment 338 will make a necessary consequential amendment to section 51(4)(f), following that section's amendment at stage 2.

Amendment 339 will remove the requirement for the proposed care plan to be signed by the medical practitioners who submitted the mental health reports in respect of an application for a compulsory treatment order. That is in response to views having been expressed to the Executive that such a requirement is unnecessarily bureaucratic and time consuming and does not offer any additional safeguards. We believe that it is sufficient for the proposed care plan to be signed by the mental health officer alone.

Amendment 360 will adjust the wording of section 58 to make it clear that the care plan should record the treatment that is currently being given to the patient as well as treatment that is proposed.

Amendment 482 will bring section 101A into line with changes made to the equivalent civil provision in part 7. The amendment makes it clear that the part 9 care plan should record both the treatment that it is proposed be given to the patient and that which is already being given to the patient.

I move amendment 338.

Amendment 338 agreed to.

Amendments 339 and 340 moved—[Mrs Mary Mulligan]—and agreed to.

Section 53—Powers of Tribunal under section 52: compulsory treatment order

Amendment 341 moved—[Mrs Mary Mulligan]—and agreed to.

The Deputy Presiding Officer: Group 19 is on compulsory treatment orders not authorising detention, in respect of the conditions to be satisfied. Amendment 74 is grouped with amendments 342, 343, 75 and 344.

Shona Robison: Amendments 74 and 75 are responses to the concerns that have been expressed by mental health organisations and

user groups in the light of the 284 per cent rise in the number of episodes of long-term orders between 1985 and 2001.

The bill does not differentiate between the type of patient for whom a community-based CTO would be more appropriate and the type of patient for whom a hospital-based CTO would be more appropriate. My amendments in this group attempt to make such a definition.

Research undertaken by the Scottish Executive's central research unit considered the international use of compulsory treatment orders. On the question of whom the orders suit, that research stated:

"Guidance is generally unclear. With no clear guidelines as to who is suitable it is difficult to assess whether CTOs are under or over used."

The Millan committee suggested that the new orders be used for patients in three categories in particular: patients

"who have relapsed whilst off medication in the community in the past, presenting a risk to themselves or others …

who have a history of refusing to take their medication once there is no legal compulsion to do so; and …

for whom all other means of trying to negotiate with them and maintain them in the community without compulsion have been tried and failed."

It is clear for whom the Millan committee thought community-based CTOs would be appropriate. I believe that those factors should be stated in the bill, as Millan recommended, so that it will be clear to all for whom community-based CTOs are appropriate. That will reduce the likelihood of an inappropriate rise in the use of the orders, which is the fear of many of the organisations that I mentioned earlier.

I move amendment 74.

Malcolm Chisholm: This group of amendments deals with one of the issues that has caused the most controversy during the bill's passage and during the wide consultation that took place prior to its introduction. That subject is, of course, compulsory treatment in the community.

The Executive amendments do not seek to rule out the possibility of community-based compulsory treatment, but seek to impose limitations on its use. We are satisfied that Millan was right to recommend that it should no longer be necessary in every case to detain in hospital a person who requires compulsory treatment. That view was endorsed by the Health and Community Care Committee in its stage 1 report and during stage 2 consideration. However, we know that there are still fears that the new provisions might be misused.

Amendments 74 and 75 seek to limit community-based orders to a particular kind of patient. They are similar to amendments that were lodged at stage 2 and that were not accepted by the committee. Those amendments seek to identify the kind of patient for whom a community-based order might be appropriate and to limit the orders to them. The situation envisaged under amendment 75 covers the sort of case where community-based orders might be particularly appropriate, but we cannot say that that situation is the only one where such an order might be the best option.

For example, a person with learning disabilities might be involved in dangerous or inappropriate behaviour. They might be able to be given a structured programme of support and treatment in the community, backed up by a residence requirement imposed under a CTO. If that were to be provided, that would surely be better than doing nothing, detaining the patient in hospital or allowing them to be dealt with under the criminal justice system. That is absolutely consistent with the Millan report.

Amendment 75 is, to an extent, sourced from paragraph 36 of the Millan report, but the examples that it outlines are prefaced by the words:

"The kind of patients for whom such an order would be particularly relevant might include".

It goes on to give illustrative examples, which have now become the exclusive subject matter of amendment 75.

I have referred to one example relating to learning disabilities, but there could well be others. One of the fundamental aims of the Millan report and of the bill is to provide for flexible orders, based on the needs of the patient, and to respect the principle of the least restrictive alternative. Shona Robison's amendments could work against that. They could mean that a tribunal could not make a community-based order, even if an order was necessary and if the patient preferred an order in the community to detention.

11:45

It is important to remember that the bill contains comprehensive safeguards. The mental health tribunal for Scotland has to be persuaded that the criteria for making an order are met and that the order is necessary. It will consider the specific terms of the order against the background of the care plan, and it must exercise its powers in the way that appears to it to involve the minimum restriction on the freedom of the patient that is necessary in the circumstances.

Those are stringent tests, but they allow the tribunal the flexibility to ensure that the order is truly based on the needs of the individual patient. We must be careful not to remove that flexibility. It

is one of the fundamental aims of Millan to move away from a one-size-fits-all model of detention to a patient-centred model of care and treatment.

Amendment 343 is set out in more general terms. It would require regulations to specify further conditions that must be met before a community-based order could be imposed. That clearly allows more scope for flexibility, but we cannot be sure at this stage that it would be possible to draft regulations that would improve on the safeguards in the bill but that would not have unintended adverse consequences for some service users.

However, we have listened carefully to the concerns and fears expressed by some service users, and we have concluded that we should not reject such regulations out of hand. Executive amendments 342 and 344 allow—but do not require—further regulations to be made. Such regulations would set out further conditions to be met before a compulsory treatment order that does not involve detention is authorised. As we prepare for implementation, we will consult further on the possible content of any such regulations.

I apologise that the Executive amendments were submitted late, but I was personally involved in discussions with the Scottish Association for Mental Health. I am not saying that its members support my amendments, but I understood the SAMH's concerns, and I wanted to make some movement on this issue.

The provisions in this area of the bill are not the only way in which we are approaching this issue. I said during the stage 1 debate that we would be monitoring carefully the overall numbers of community-based compulsory treatment orders. I am mindful of what Shona Robison said about the increasing number of compulsory orders now, although those are hospital-based orders.

The issue needs to be kept under review and, among its other responsibilities, the Mental Welfare Commission for Scotland has a specific remit to do that. The commission will fulfil that role under the bill, and research will be carried out. We will be monitoring the situation very closely because I understand the concerns that people have. The controversies around community treatment orders suggest that they could be used wrongly.

The safeguards in the bill are strong, but I am happy to move my amendments in this group in order to allow the Parliament at a future date, very easily and without recourse to primary legislation, to require that more specific restrictions be placed on the way in which the important new orders are used. The Health and Community Care Committee agreed that the orders represent a progressive move, although I know that others do not agree. The committee took the view that, in principle, community-based orders are in the interest of patients.

Through my amendments in the group, I hope to reassure the Parliament, services users and the voluntary organisations that raised the issue that we have provided for another way to ensure that the orders are used for their intended purposes. There are also all the additional ways in which we shall ensure that we keep a very close watch on the orders, and that we use them only where they are the least restrictive alternative and are in the interest of the patient.

I hope that members agree that that is a reasonable compromise. That is the basis on which I will move my amendments and ask Shona Robison not to press her amendments.

Mary Scanlon: I listened carefully to what the minister said. It is difficult for us to know whether the Scottish Association for Mental Health, the National Schizophrenia Fellowship (Scotland), Depression Alliance Scotland, Children in Scotland, the Scottish Human Services Trust and the 63 other organisations that signed up to Shona Robison's amendments are satisfied with the minister's amendments, given that they were lodged so late.

I hope that the minister appreciates that that presents a difficulty for us. I empathise with him on this point, because the bill is about balancing the needs of the patients and the duties of health and other professionals. Nowhere is that more important than in the advance statements.

Amendments 74 and 75 are intended to define which patients could be considered. The 284 per cent rise in the section 18 orders between 1985 and 2001 should give us cause for concern. Concerns were raised at stages 1 and 2 about the fact that there has been no research into why that rise occurred. There is a worry that that trend is likely to continue or even escalate when the community-based compulsory treatment orders are introduced. As Shona Robison said, the guidance is generally unclear, and with no clear guidelines as to who is suitable, it is difficult to assess whether CTOs are under or over-used.

However, taking a balanced view, I note that the Royal College of Psychiatrists sent in another last-minute submission. I find this area difficult to deal with because the late lodging of the Executive amendments means that I did not have time to get back to the organisations and ask whether they are satisfied with them. The submission from the Royal College of Psychiatrists states:

"Essentially they are seeking to limit the applicability of CTO's by defining the 'type' of patient and the kind of situation in which a CTO would be most appropriate. While Millan did comment on the kinds of clinical situations where

a CTO might be helpful, we think it would be very ill-advised to enshrine these descriptions in an Act that is likely to be in place for decades to come."

The final point states:

"decisions made by Psychiatrists will have to balance the need for patient autonomy and 'least restrictive alternative' against an individual's need for treatment or public safety. These decisions are always difficult ones, and in our view can only be made on an individual case-by-case basis."

I fully understand that point. Those are the difficulties in balancing the patient's needs and wishes against the psychiatrists' duty to care.

Amendment 343 would allow ministers to specify in regulations the additional conditions that must be met before community-based treatment orders are made. The amendment would also impose on ministers a requirement to consult. Indeed, the minister seemed to make that point.

The Millan committee suggested that the new order should be used, as Shona Robison said, for patients

"who have relapsed whilst off medication in the community in the past, presenting a risk to themselves or others"

and

"who have a history of refusing to take their medication once there is no legal compulsion to do so".

Therefore amendment 343 would enable those and other conditions to be specified in regulations. That would introduce some flexibility, and if it were decided over time that those conditions could be changed, amending the regulations could achieve that.

The minister talked about the least restrictive alternative to compulsory treatment orders. Many of those who gave evidence at stage 2, particularly Maggie Keppie of the Edinburgh users forum, stated that they did not want their homes to become hospitals. For many people, their home is a private place in which they wish to live in dignity with respect and privacy. The home is, for many people, not the least restrictive alternative. For some people, the hospital is the preferred choice. I appreciate the difficulties, but we must not lose sight of the patient's needs and the enormous patient experience that dealing with mental health produces. We all recognise that that voice has not been listened to sufficiently in the past.

Mr Ingram: I listened carefully to what the minister said this morning and welcome the movement that he has made in amendment 342. However, I believe that amendment 343, in the name of Shona Robison, addresses more completely concerns about the advent of community-based CTOs.

I want to speak to amendments 74 and 75 and to articulate some of those concerns. The amendments are supported by all the voluntary organisations that are involved with the mental health community and would qualify the use of community-based compulsory treatment orders in line with the original intent of the Millan committee. User groups are deeply sceptical about the notion that community-based compulsory treatment orders will always be the least restrictive alternative. Because of the many gaps that exist in community-based services, there is suspicion that the new orders will amount to little more than compulsory medication in people's homes, as Mary Scanlon outlined, and will involve no reciprocity.

The bill does not specify the types of patients for whom a community-based compulsory treatment order would be more appropriate than a hospital-based compulsory treatment order. Surely the last thing that we want to do is to refuse people who need it the kind of asylum—in the true sense of the word—that hospital provides.

Amendments 74 and 75 spell out the Millan committee's recommendations concerning those who are most suitable for community-based treatment. As proposed new subsection (5B) indicates, the committee's clear intention was that community-based CTOs should be used as preventive measures to stop people becoming so ill that they have to be hospitalised. The fear is that, unless conditions for their use are tightly drawn, community-based compulsory treatment orders may increase compulsion significantly. Furthermore, it is feared that the orders may be used as a resource management tool to relieve pressure on an understaffed national health service that has a decreasing bed capacity.

If the Executive were to accept amendments 74 and 75, people's fears could be effectively allayed and the bill's credibility with service users would be enhanced considerably. That is why I support amendments 74 and 75.

Mrs Margaret Smith: As colleagues have said, this is one of the areas of controversy in the bill. The minister said that the Health and Community Care Committee supported community-based compulsory treatment orders when it considered the matter. This is one of many issues on which we had to make a judgment call and to balance the evidence that was before us.

In the end, we supported community-based compulsory treatment orders on the basis that there was a need for greater flexibility in dealing with individual patients. Some of the points that members have made bear that out. We need a system that ensures that any person who does not want to be treated in the community will not be treated in the community or their own home and will have the place of asylum to which Adam Ingram eloquently alluded.

However, there are others who want the least destructive influence on their life and the option that is least restrictive for them and their family. We heard evidence on both sides of the argument from service users. We cannot get away from the fact that a certain stigma is still attached to mental health difficulties in our society, although we should do everything possible to remove that. For some people, a stigma is attached to being taken away from their families and placed in a psychiatric ward. A balance needs to be struck.

12:00

In giving its support to the Executive's point of view, which to a large extent echoes the Millan report, the committee was saying that it shared many of the service users groups' concerns. That is why, at stage 1, we supported Shona Robison's suggestion of a trigger—some way in which, if an unacceptable number of community-based compulsory treatment orders was made, that would be brought to the attention of the Mental Welfare Commission for Scotland and ministers. The Executive did not accept that but accepted that there was a need for close monitoring of the bill's impact and effect. Community-based compulsory treatment orders are one of the key areas in which the bill's impact must be monitored. Obviously, a role exists for the Health and Community Care Committee's successor committee in that regard.

I welcome the minister's comments. He has obviously listened to many of the service users' concerns, moved on the issue and lodged amendment 342. We need monitoring and we need to ensure that the tribunals' safeguards and powers will work. However, further consultation of service users on regulations to be made about which patients community-based CTOs would most benefit will prove beneficial. It is a question of balance. Mary Scanlon mentioned the Royal College of Psychiatrists taking the view that decisions to be made by psychiatrists will always be made on an individual, case-by-case basis. We do not want to rule out the community-based CTO as a flexible option for somebody whom it might assist in giving the least restrictive alternative.

The other important point that Adam Ingram made is that what lies behind many service users' concerns is the idea that services and actions should be geared to the needs and circumstances of the patient and their families. We therefore need a substantial investment in community-based services to ensure that those who are subject to community-based CTOs are supported properly in the community. Otherwise, the flexible approach will ultimately fail.

Dr Simpson: The greatest concern of most of the users organisations is the increase in the number of compulsory orders between 1985 and 2001, which is estimated to be around 280 per cent. There is no clear evidence as to why that has occurred, but I suggest that the most likely cause is the increasing use of drugs in association with mental illness. They are not necessarily causally related, but are nevertheless interrelated. That is causing a major problem.

It is important that we consider the bill in the round. The basic principle is that the least restrictive approach should be applied. The minister has referred to that. Amendments 342 and 344 in the minister's name go a long way to answering my concerns in that regard, because the minister now proposes to ensure that he consults people about regulations and that those regulations should be specified. That is helpful.

However, we need to go further than that. As Margaret Smith said, it will be important to monitor the bill's progress. The community-based compulsory treatment order is a new area for us and we need to be sure that the new order works effectively and is not abused. I have fewer fears about its abuse because the tribunal will manage it and each individual will have to have a care plan. Those two facets will prevent the abuse of the community-based CTO.

However, although I will vote for the Executive amendments 342 and 344 and not for amendments 74, 343 and 75, I ask the minister for an undertaking that adequate research will be done from the outset. As I said at stage 1, the verdict of the international research on community-based compulsory treatment orders—they are called various things in various countries, but other countries have the same sort of order—is at the moment not proven. There is considerable evidence that, if the resources applied in the community are adequate, the need for CTOs or some equivalent diminishes. The test for the Executive will be whether the number of CTOs is minimised by the effective input of resources into the community.

I therefore ask that the CTOs be monitored effectively and for an undertaking that a research programme into CTOs should be commissioned from the outset. On that basis, I offer my support for amendments 342 and 344.

Malcolm Chisholm: I will start with Richard Simpson's last point. I assure him that we have established a research programme that will monitor the bill's operation, including community-based compulsory treatment orders. I agree with Richard Simpson entirely and made it clear in my opening speech that it is very important to research the effectiveness of the orders and monitor their implementation.

I understand fully—and have done from the beginning—the concerns that some service users

have. I note and understand the comments of Maggie Keppie, who is a member of the Edinburgh users forum. I have discussed the matter with her. I am honoured to be the forum's honorary president, so I hope that it does not throw me out of office if I do not entirely support the views that it has put forward.

Adam Ingram also reflected those fears that compulsion will increase as a result of the CTO. That is precisely what, in various ways, we must and shall avoid.

Richard Simpson referred to how CTOs will be managed by the tribunal and to the fact that each individual should have a care plan. That is an important part of the bill's provisions. Research and monitoring have been referred to.

Amendments 342 and 344 provide a further avenue for the Parliament to take action if it starts to have concerns about the operation of community-based compulsory treatment orders. That is the right way to do it. We should let the orders start and watch them carefully. If there are problems, we should act, which amendments 342 and 344 will enable us to do.

That is the right way. If we go down the route that Shona Robison proposes in different ways in her amendments 74, 75 and 343, we shall put at risk the flexibility that is potentially a positive feature of community-based compulsory treatment orders.

Members have spoken about service users wanting to be in hospital rather than the community when they are under compulsion. In a way, that has happened, because part of the response to Maggie Keppie's evidence is that the bill explicitly provides that forcible treatment can be administered in a hospital only. There is no question of that taking place in the patient's home.

However, we should also reflect on the opposite situation: someone who would prefer to have the compulsory treatment in the community rather than the hospital if the choice had to be made. The danger of Shona Robison's amendments is that we will disadvantage those people by removing the flexibility that the bill contains.

Although I acknowledge all the understandable concerns of members and service users—I share those concerns, which is why I will be watchful of how the community-based CTOs work—I strongly urge members to support amendments 342 and 344, which I lodged to address those concerns, rather than support the ultimately inflexible approach that Shona Robison recommends.

Shona Robison: I will be brief. I suppose that to speak on others' behalf is always dangerous to do. However, it would be fair to say that the mental health organisations, user groups and most of the individuals to whom I have spoken would prefer amendments 74 and 75 to be agreed to for the reasons that Adam Ingram outlined eloquently. For that reason, I will press those amendments.

However, if amendments 74 and 75 are not successful, I would regard amendment 343 as a compromise amendment. I welcome the minister's movement, but if there are to be regulations, let us have them. If the minister is going to consult on regulations, let us have them to consult on. He should not say that he may have them, because to lead organisations up the path by talking about having regulations and then not to have them is not the best approach. That could lead to further feelings of alienation among some of the organisations that are concerned that their views have not been taken on board.

I strongly urge the minister to compromise on amendment 343, which would mean that ministers would put further restrictions on the use of community-based CTOs. The minister would be able to go out and consult on the regulations. That would be better than leaving the situation so vague. There is no indication of whether there will be regulations. If there were no regulations, that would be too much of a compromise for most of the mental health user groups that I have spoken to. Therefore, I intend to press my amendments.

The Deputy Presiding Officer: The question is, that amendment 74 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Mrs Margaret (Moray) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)

Scott, John (Ayr) (Con)
Sturgeon, Nicola (Glasgow) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
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)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
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, 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)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Smith, Elaine (Coatbridge and Chryston) (Lab)

The Deputy Presiding Officer: The result of the division is: For 31, Against 61, Abstentions 1.

Amendment 74 disagreed to.

Amendment 342 moved—[Malcolm Chisholm]—and agreed to.

Amendment 343 moved—[Shona Robison].

The Deputy Presiding Officer: The question is, that amendment 343 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Mrs Margaret (Moray) (SNP)
Fergusson, Alex (South of Scotland) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Kenneth (Glasgow) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hamilton, Mr Duncan (Highlands and Islands) (SNP)
Harding, Mr Keith (Mid Scotland and Fife) (Con)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North-East Scotland) (Con)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Robison, Shona (North-East Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sturgeon, Nicola (Glasgow) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
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)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
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, 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)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Smith, Elaine (Coatbridge and Chryston) (Lab)

The Deputy Presiding Officer: The result of the division is: For 32, Against 61, Abstentions 1.

Amendment 343 disagreed to.

Amendment 75 not moved.

Amendment 344 moved—[Malcolm Chisholm]—and agreed to.

Section 53A—Powers of Tribunal on application under section 52: interim compulsory treatment order

The Deputy Presiding Officer: Group 20 relates to the time limit for determining applications for compulsory treatment orders in a special case. Amendment 345 is grouped with amendment 754.

Mrs Mulligan: Amendment 754 seeks to introduce a new section that will provide that, where a patient is detained under section 56, following short-term detention and the making of an application to the tribunal, the tribunal must either grant an interim compulsory treatment order or determine the application before the five-day period of detention expires. Amendment 345 will insert a reference to that new section in section 53A, which provides the tribunal with a power to grant interim compulsory treatment orders.

I move amendment 345.

Amendment 345 agreed to.

Amendment 346 moved—[Mrs Mary Mulligan]—and agreed to.

Section 54—Measures that may be authorised

The Deputy Presiding Officer: For group 21, amendment 114 is in a group on its own.

12:15

Mary Scanlon: Amendment 114 would give the tribunal the power to exclude particular treatments from being given to patients who are subject to a compulsory treatment order. The amendment would allow the tribunal to provide a general treatment authority that would be subject to such exclusions or limitations as it may consider appropriate. That would allow the tribunal to have regard to patients' views. The patient could put all the arguments to the tribunal, which could then exercise its discretion in recognition of the patient's views.

Amendment 114 is supported by the Scottish Association for Mental Health and 63 other organisations that support people with mental health problems. Those organisations believe that the tribunal should consider whether a particular treatment should be given only when an individual has expressed strong wishes about the treatment. That brings us back to the need to strike a balance between the views of the patient and the views of the clinician. It also brings us back to the point about advance statements, to which we will return either later today or tomorrow. Amendment 114 is important to users of mental health services.

The experience of being subject to compulsory powers under the mental health acts can be extremely traumatic for many individuals, not only because they may be deprived of their liberty but because they may be compelled, sometimes forcibly, to accept treatments that may be controversial or invasive or that may involve unpleasant and distressing side effects. Service users who have been in receipt of services for a

significant period of time often build up considerable expertise about which treatments work for them. Many service users feel that the distressing effects of certain treatments are such that they do not wish to accept them under any circumstances, regardless of any benefits that such treatments may have. Again, we come back to the recognition of the power and autonomy of patients to express their wishes. The bill should reflect that.

The Millan committee proposed a scheme whereby compulsory intervention would be tailored to the needs of the individual patient. The framework for such intervention was to be a plan of care that would be submitted to, and approved by, a tribunal. The plan of care would be a single document that would set out what treatments and care were proposed by the range of agencies and it would identify which of those treatments would require compulsion. The Millan committee envisaged that, if the patient had concerns about particular kinds of treatment, those concerns could be taken into account by the tribunal before it decided whether to approve the plan of care.

The Scottish Association for Mental Health and the other organisations that support amendment 114 believe that the implication of the Millan report was that, if an individual expressed strong wishes not to have a treatment such as electro-convulsive therapy, the tribunal could take those wishes into account when it decided whether to approve the plan of care.

Disappointment has been expressed about the fact that the tribunal will not have the power to exclude specific treatments from being given, regardless of an individual's wishes and feelings. The effect of section 54(1)(b) as currently drafted would be that the tribunal would be faced with a blunt choice: it would have to decide whether to grant or refuse a general authority for treatment that was given in accordance with part 13.

During stages 1 and 2, I often spoke about advance statements, which are all about patient power. However, I am sympathetic to the arguments that were made by Professor David Owens of the University of Edinburgh to the effect that an advance statement could in fact inhibit the level of care and the treatment that could be given to patients. Again, we need a balance between the wishes of patients and the duty of clinicians. As I said, many patients have long-standing experience of the service, which should be taken into account. We also need to take cognisance of the clinician's duty of care against the rights of the patient.

A similar amendment at stage 2 caused a vote in the committee. It is not often that I quote John McAllion—I do not think that I am qualified to do so—but he argued that the amendment

"would increase the tribunal's flexibility and improve its ability to put the patient's interests first."—[*Official Report*, *Health and Community Care Committee*, 21 January 2003; c 3672.]

That is an important factor for all members to consider and I ask them to support amendment 114.

I move amendment 114.

Mr Ingram: It is with pleasure that I speak to amendment 114, given that I lodged a similar amendment at stage 2. My amendment was defeated only by the convener's casting vote.

As Mary Scanlon said, amendment 114 has widespread support in the mental health community. It would allow tribunals to exclude particular treatments from being given to patients who are subject to CTOs, while allowing the tribunal to make a general treatment authority subject to such exclusions or limitations as it might consider to be appropriate.

Such powers would be in line with the Millan committee's proposal that compulsory intervention should be tailored to the individual patient's needs. If the patient had concerns about a particular type of treatment, the tribunal could take those concerns into account before it decided whether to approve the plan of care. The implication of the proposal is that if an individual has a strong wish not to have a particular treatment, such as ECT, the tribunal could take that into account. That would allow the tribunal to exclude such treatments from being given.

Through experience over time, service users become knowledgeable about treatments that work for them and others that are so distressing that they would not wish to accept them under any circumstances regardless of any benefit that professionals might claim they will have. Too often, professionals dismiss those wishes in what is often regarded by recipients as an arrogant and patronising way on the ground that the recipient lacks insight into their condition. The bill will reinforce that approach.

As Mary Scanlon said, the effect of section 54(1)(b) as drafted would give the tribunal a blunt choice. It would have to decide whether to grant or refuse a general authority for treatment in accordance with part 13. I suspect that few, if any, CTOs will be refused and that many people will thus be forced to endure unnecessary ordeals during treatment. A more humane, sophisticated and flexible regime is called for and I call on members to support amendment 114.

I also refer to the minister's earlier arguments calling for the tribunal to have flexibility. I suggest that this is a clear case for consistency.

Mrs Mulligan: We do not support amendment 114, the effect of which would be to allow the

tribunal to exclude certain treatments, or to impose limitations on their use, when granting authority for a compulsory treatment order. A similar amendment was considered by the Health and Community Care Committee at stage 2 and was not accepted.

The Millan committee also rejected the suggestion. The Millan report recommended that, in approving a plan of care, the tribunal should be entitled to satisfy itself that the necessary safeguards will be followed, but not to add additional safeguards. The appropriate safeguards are elsewhere, particularly in part 13.

We agree with the Millan committee's analysis. It is important to be clear about what is reasonably within the remit of the tribunal and what is within the responsibility of the treating clinician.

Mary Scanlon: Can the minister clarify whether, if an individual had strong wishes against a particular treatment—for example ECT—and that view was contained in an advance statement, the tribunal could overrule that wish?

Mrs Mulligan: The position on advance statements is that we would ask that everybody take due cognisance of them. However, we are not intending to legislate so that advance statements are the only way forward. There needs to be flexibility in interpretation, to which Adam Ingram referred. If amendment 114 is agreed to, we will be asking the tribunal to override the position of the responsible medical officer, who has the closest contact with the patient and is most aware of the patient's needs. That is why amendment 114 is wrong. It is the job of the tribunal to consider whether compulsory powers are justified and what those powers should be but, at the end of the day, the responsible medical officer has responsibility for the care of the patient and must choose which treatments are appropriate.

We must remember that the tribunal is primarily a legal, not a medical, body. It will have a medical member, but that member will not have examined the patient and so will not be in a position to overrule the clinical judgment of the responsible medical officer. It is not realistic to expect the tribunal to consider detailed medical evidence and to evaluate which individual treatments might not be appropriate.

Furthermore, amendment 114 does not simply ask the tribunal to consider what treatment is not justified now, but also what treatment might not be justified in the future. The tribunal does not have the RMO's clinical knowledge and cannot predict how the patient's mental state might develop. Do we really want the patient's mental state to have to deteriorate so much that an emergency order can be called for? I do not think that we do.

We recognise that there will be treatments that particular patients dislike, but the bill provides suitable protection. Many of those treatments will be covered by part 13, which will require an independent doctor to certify that the treatment is appropriate and necessary. The RMO and any second-opinion doctor will have a legal duty to apply the principles of part 1 in deciding what treatment to give. That means that they must have regard to the wishes and feelings of the patient—I say to Mary Scanlon that that is essential and is part of the bill—as well as take account of any advance statement that the patient might have made. They must also consider the full range of options that is available in the patient's case and act in a way that involves the minimum restriction on the freedom of the patient, which is the principle to which we keep coming back. If a patient has a strong objection to a particular treatment, and even if that patient is too unwell to make a competent treatment decision and is liable to be treated compulsorily, a doctor cannot lawfully give that treatment without having a compelling reason for doing so.

That is not to say that the issue of the proposed treatment is irrelevant to the tribunal. If the tribunal was persuaded that the patient would accept alternative forms of treatment, it would have to consider whether the CTO was truly necessary, and may decide not to grant it. That is an appropriate role for the tribunal to play.

It is also possible that discussions on the care plan will allow the patient to be reassured about the treatment that might or might not be indicated, although we would hope, of course, that those discussions would happen without the need to go to the tribunal. However, to go further than that would not be appropriate to the role of the tribunal and could throw up a host of practical problems. I hope, therefore, that Mary Scanlon will choose not to press her amendment.

The Deputy Presiding Officer: I call Mary Scanlon to wind up the debate and to indicate whether she will press or seek to withdraw amendment 114.

Mary Scanlon: I will certainly press amendment 114.

The point that I made is that if we are to reduce stigma, which is one of the principles of the bill, we must treat the users of mental health services with the respect and dignity that their experience accords them. Their views about their treatment should be taken into account fully. As I said, service users build up considerable expertise about the treatments that work and do not work for them.

12:30

I accept what the minister says about the fact that, under section 171, urgent medical treatment can be given to a patient but I noticed that she said that the matter was not about having additional safeguards but about the need to "have regard to" the patient's wishes. There is an awful lot of talk about having regard to things. To be honest, having regard to something could mean taking on board the patient's every wish or reading the patient's wishes then throwing them in the bin. I am not a lawyer, but I do not think that the phrase "have regard to" means much. If I were a service user, I would have to ask why I should bother writing an advance statement.

Mrs Mulligan: Will the member give way?

Mary Scanlon: In a moment.

People are fearful of ECT because of the potential side effects, such as memory loss. If a patient writes in an advance statement that they do not wish to have ECT, will the fact that the tribunal has only to have regard to the wishes and feelings of patients but retains flexibility in the interpretation of those wishes mean that the advance statement can be totally ignored?

Mrs Mulligan: When I tried to intervene earlier, I was going to talk about patient deterioration and my concern that the ability to take action, even if that action is contrary to the wishes that were expressed previously, is important. Mary Scanlon is suggesting that we should wait until a person is so ill that they need emergency treatment before we do anything.

In relation to the question that Mary Scanlon asked before she gave way, I wonder whether she is aware that Executive amendments that we will come to later in stage 3 deal with additional safeguards around ECT that provide that a patient will not be given ECT without consent and which strengthen the safeguards for patients.

Mary Scanlon: In that case, I do not see why the minister has any problems with my amendment, which I intend to press.

Mrs Mulligan: I can answer that.

Mary Scanlon: Not at the moment.

This is about treating the users of mental health services with some respect. Many of the people who will be liable to receive compulsory intervention are those who have been in and out of mental health services over many years and have built up an enormous amount of expertise. Amendment 114 asks that their wishes be treated with the respect that is due them because of their experience of the service.

I will take the minister's intervention now.

The Deputy Presiding Officer: The minister is indicating that she no longer wishes to intervene.

Mary Scanlon: In that case, I have nothing to add.

The Deputy Presiding Officer: The question is, that amendment 114 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (North-East Scotland) (SNP)
Campbell, Colin (West of Scotland) (SNP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Mrs Margaret (Moray) (SNP)
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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)
Lochhead, Richard (North-East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
McAllion, Mr John (Dundee East) (Lab)
McLeod, Fiona (West of Scotland) (SNP)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)
Mundell, David (South of Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Paterson, Mr Gil (Central Scotland) (SNP)
Quinan, Mr Lloyd (West of Scotland) (SNP)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (North-East Scotland) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Sturgeon, Nicola (Glasgow) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Wilson, Andrew (Central Scotland) (SNP)

AGAINST

Baillie, Jackie (Dumbarton) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
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)
Gray, Iain (Edinburgh Pentlands) (Lab)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)

Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Jenkins, Ian (Tweeddale, Ettrick and Lauderdale) (LD)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macintosh, Mr Kenneth (Eastwood) (Lab)
MacKay, Angus (Edinburgh South) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McLeish, Henry (Central Fife) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Rumbles, Mr Mike (West Aberdeenshire and Kincardine) (LD)
Simpson, Dr Richard (Ochil) (Lab)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North-East Fife) (LD)
Smith, Mrs Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Thomson, Elaine (Aberdeen North) (Lab)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 34, Against 58, Abstentions 0.

Amendment 114 disagreed to.

Amendment 754 moved—[Mrs Mary Mulligan]—and agreed to.

The Deputy Presiding Officer: I have been asked to advise members that a Consumers Association briefing on dentistry will take place shortly in committee room 1.

12:35

Meeting suspended until 14:30.

14:30

On resuming—

International Situation (Contingency Planning)

Mr Lloyd Quinan (West of Scotland) (SNP): On a point of order, Presiding Officer, I seek your guidance. Several constituents have reported to me that they are being prevented from entering the Parliament's public gallery this afternoon. What reasons are there for preventing ordinary members of the public who are constituents of ours from attending a public meeting of the Parliament? Who decided to prevent them from entering?

The Presiding Officer (Sir David Steel): No one has been prevented from entering the gallery. The police are responsible for controlling, on public safety grounds, any crowd in Mylne's Court. However, entry to the Parliament building is a matter for our security people and members of the public are being allowed into the public gallery without tickets, if necessary.

Mr Quinan: Further to that point, Presiding Officer, within the past 10 minutes four people have attempted to get tickets for the gallery—which, as you can see, has a considerable number of empty seats—but were told in the Parliament visitor centre that no seats were available for them because they looked like anti-war activists. Do you have a comment on that?

The Presiding Officer: As you will remember, Mr Quinan, following previous demonstrations in the public gallery, I promised a review of security. I can tell you that if anyone has been identified as having been removed from the chamber previously—as has happened on two occasions—they are temporarily not being allowed back in. I cannot comment on individual cases. There is open access to the gallery. I will ensure that your point is examined while we get on with business.

Mr Quinan: I suggest that we do not proceed with the business until the matter has been settled, so that the meeting is a genuine public meeting of the Parliament of Scotland.

The Presiding Officer: It is. [*Interruption.*] Order. I remind those in the public gallery that they signed a piece of paper agreeing not to interrupt proceedings. Interruption includes applauding. There is to be no interruption from the gallery. I suggest that the security people pay attention to the people at the back of the gallery.

Tommy Sheridan (Glasgow) (SSP): I am sorry, Presiding Officer, but I ask you to review your last

comment. People sitting at the back of the gallery happen to have on tee-shirts that say “Don’t attack Iraq”, but that does not mean that they should be the subject of special attention from anyone.

The Presiding Officer: If they are standing up—

Tommy Sheridan: I think that you should review your comments.

The Presiding Officer: I will not review them. If they stand up and expose the tee-shirts for publicity purposes, that is not allowed.

Tommy Sheridan: As far as I know, you banned publicity.

The Presiding Officer: Yes.

Tommy Sheridan: So there is no problem.

The Presiding Officer: That ban is lifted.

Tommy Sheridan: So there is no problem.

The Presiding Officer: No. The ban is lifted. Let us stop the argument and get on with the First Minister’s statement on contingency planning for the current international situation.

Mr Quinan: On a point of order, Presiding Officer. If people who want to hear the First Minister’s important statement are still queueing to get into the public gallery, would it not be appropriate to allow time for them to enter, given that, although they were told that they would not be allowed in, you suggest that they will be allowed in? We should let them in and then let the First Minister speak.

The Presiding Officer: Mr Quinan, it is always the case that people come into the gallery during our proceedings. There is nothing new in that today.

Mr Quinan: Not when they have been told that they are not allowed in but then that that decision is reversed.

The Presiding Officer: I have assured you that everybody is being allowed in. I investigated that just before I came into the chair. I call the First Minister to give his statement. There will be questions at the end, so there should be no interventions.

14:33

The First Minister (Mr Jack McConnell): Now that the armed forces of the United Kingdom stand ready to take military action to disarm Saddam Hussein in Iraq, it is right that we in this Parliament should consider the implications for our devolved responsibilities.

We held a mature debate here last Thursday and I hope that we can behave in the same way this afternoon. Events have now moved on. Military action by British and United States troops is now very close. It is still just possible that, if Saddam Hussein allows it, war can be avoided, but we have to face the probability that he will not do so.

I think that all members are agreed that it would have been preferable if military action could have been avoided. However, the fact that that has not been possible is ultimately down to the regime of Saddam Hussein. For 12 years, he has chosen to defy the international community. I think that we all also agree that it would have been better if military action had been preceded by a further United Nations resolution. Unfortunately, that was not possible. In the view of the legal advisers to the UK Government, military action has a basis in international law.

The UK Government, with the UK Parliament’s backing and together with the Governments of the United States of America and other countries, has decided that the time to act is now. Such decisions are properly for the UK Government and Parliament and they have taken those decisions.

These are difficult and trying times. I recognise that others can sincerely and in good faith hold different views and I respect the diversity of views. We all have worries and concerns, but the time for agonising is past. The decision has been taken and our military forces face a dangerous and difficult task.

In our devolved Scottish Government, the partnership parties have taken a different route on the issue in the wider sense, but it is a reflection of the maturity of the partnership in Scotland that we can work together and take our responsibilities seriously to serve the people of Scotland in this difficult time. The Scottish ministers will do what is right.

Two consequences follow. Our country faces war and young men and women from throughout the UK face a dangerous and life-threatening challenge. Two Scottish Army regiments—the Royal Scots Dragoon Guards and the Black Watch—are key members of the British Army contingent. Royal Air Force personnel from bases in Scotland are on active duty in the gulf. Naval personnel from Rosyth, marine commandos from Arbroath and regular and reserve members of the forces from throughout Scotland are ready and waiting to do their duty. In all parts of Scotland, wives, husbands, partners, parents and children are proud, certainly, but worried about a husband or wife, son or daughter, or father or mother who is engaged in a dangerous conflict in a far-off land. We in the Parliament owe them and British troops our care and clear support, which they will have.

Now that the decision has been made, we must look to our responsibilities in devolved Scotland.

The constitutional position was touched on during last week's debate and members will be well aware of the responsibilities—for defence, foreign affairs and national security—that are reserved. However, the Scottish ministers are responsible for policing—including public order and public safety—emergency planning, community relations and any other devolved matters on which military action might have an effect.

The military action comes against a background of heightened concern about international terrorism and about tension in our communities. The risk of terrorism following the events of 11 September resulted in a high state of alert, which remains the case. As I have said for some months, it is important that we should stay alert and vigilant. We should not panic or give terrorists a victory by letting them disrupt our daily lives. There remains no specific threat to Scotland. However, it is important to prepare for the possibility of terrorist attack by continued work on contingency planning.

In Scotland, such work is based on eight emergency planning groups, which cover our eight police force areas. That work is co-ordinated by the Executive-led Scottish emergencies co-ordinating committee. As a result of action in the past year, we are better prepared to deal with chemical or biological attacks, because of training, the provision of decontamination equipment and the stockpiling of vaccines by the national health service. We have made significant progress, but our work to protect the public continues.

Military action to disarm Saddam Hussein could be used as a pretext for violence by extremists. A number of measures are being taken to guard against that. Our chief constables have established a Scottish police information co-ordination centre, which is structured to deal with the current situation. Jim Wallace and I visited the centre this morning. It will perform intelligence co-ordination and other work, which will include monitoring community tension. That will assist in identifying the need for preventive measures and action that is needed to deal with any incident. I was greatly reassured by my briefing this morning. It is clear that what is a difficult situation is being tackled with considerable professionalism and sensitivity. I congratulate the Scottish police forces on establishing the arrangements quickly and effectively.

The Scottish Executive emergency room was opened this afternoon and will operate to ensure that ministers are fully informed of any developments and that any ministerial actions that are required can be taken quickly. The Scottish ministers will also continue to take part in civil contingency committee meetings, which are being held regularly in order to monitor the position at the UK level.

Our contingency preparations also include the NHS in Scotland, which, as is the case with the health service elsewhere in the UK, is preparing to deal with the casualties of any action. We have robust and flexible plans in place with local authorities and other partners to deal with any increased demand. We have also made plans to cope with the call-up of NHS staff.

At this morning's meeting of the Scottish Cabinet, we agreed to set up the Scottish Cabinet contingencies group to deal with contingency planning throughout any period of conflict, including during April if necessary. I will chair the group, whose members will include the Deputy First Minister, Malcolm Chisholm and Patricia Ferguson. We will meet our responsibilities and fulfil our obligations. We will provide leadership where it is required, making contingency plans in the way that I have described. We must also keep under review the economic impact. It is likely that any conflict will affect trade and tourism. We will have to monitor those impacts and take appropriate action to manage them.

These are testing times, but they are not times for us to let go of our basic values of humanity, tolerance and democracy. The military action is against the evil regime of Saddam Hussein. It is emphatically not an attack or an excuse for an attack on Islam or on Muslim communities in Scotland. It must not result in violence against other minority groups or those who are seeking asylum in this country.

When I went to the Central mosque in Glasgow earlier this month, I heard first hand about some of the intolerance, intimidation and abuse that our ethnic minority communities are already facing and have faced before now. The Parliament sends a clear signal today: we will not accept such behaviour in Scotland, whether it takes the form of bullying in schools or racially motivated attacks on people, their property or their places of worship.

The Solicitor General, Elish Angiolini, met the Commission for Racial Equality and Scotland's racial equality councils on 6 March and assured them of our determination to deal with racist crime. The Deputy First Minister has recently visited members of our minority communities to reassure them. The Scottish ministers continue to seek opportunities to get that message across at a local level and I am confident that members of other parties will support us in that task.

These are deeply worrying times. No one can view the start of a war, especially one with fearsome weaponry, with anything other than horror. However, the decision is made and it was made in our democratic Parliament. Our country is committed. We must all hope for a swift and successful conflict, after which we will make every effort to help and support the ordinary people of

Iraq to rebuild their society. It is now our responsibility to make it clear that our armed forces have the Parliament's whole-hearted support, that the Scottish ministers stand ready to cope with the domestic impact of the action and that nothing can excuse intolerance of minority communities in Scotland. We must all hope and pray that the war will be short, with minimum casualties and an outcome that helps to secure a better world.

Mr John Swinney (North Tayside) (SNP): I thank the First Minister for his statement and for giving me advance sight of its contents. I also thank the justice department officials for their briefing on emergency planning some weeks ago.

The First Minister recognises the reality that this country will shortly be at war. The Scottish National Party opposes this country going to war. In the circumstances that we now face, we can only pray for the safe return of our armed forces—some of my constituents are in the Black Watch and other regiments—and express our support for them and their families. We also pray for the avoidance of civilian casualties in the conflict—we should not forget the wise counsel of my colleague George Reid that nine out of 10 casualties of war are now civilians.

The First Minister has outlined the preparations for war, how we are to respond to the conflict and how we have reached this point in the conflict. I have three specific questions about his statement.

First, bearing in mind the statutory responsibility that is exercised by local government for emergency planning and given that Parliament will be dissolved on 31 March, can the First Minister explain how he has found space in his special Cabinet committee for the Minister for Parliamentary Business but not for the Minister for Finance and Public Services, who has ministerial responsibility for local government and emergency planning?

Secondly, in his discussions with the British Government, what assurances has the First Minister sought about the preservation of civil amenities in Iraq, such as the water treatment system and power plants, which are vital to the humanitarian effort? What contribution does he believe that Scotland can make to the international humanitarian effort?

Finally, the First Minister said in our debate last Thursday on the Iraq crisis that his amendment

"makes the point that action should be authorised by the United Nations."—[*Official Report*, 13 March 2003; c 19434.]

Can he explain why he is now willing to back military action when it is quite clearly not authorised by the United Nations?

The First Minister: On Mr Swinney's final point, I made it clear last week in response to a number of questions from him that there was a variety of views on the legal effect of previous UN resolutions, as was backed up by the advice that was given by the official legal advisers to the British Government this week. I do not want ever to be in a situation where the British Government—

The Presiding Officer: First Minister, I am sorry to interrupt you. Mr Quinan, would you put down that notice, please?

The First Minister: The point that I was making was that I certainly do not want to be in a situation where the British Government questions the legal advice that I receive as First Minister from my law officers, so I am not about to start questioning the advice that the British Government receives.

On the first question, the responsibility for emergency planning in our Executive lies with the Deputy First Minister, which is why he, and not the minister with responsibility for local government, is a member of the group.

On the second question, which was reasonable and sensible, there will be people across Scotland who are uncomfortable about the fact that this country is going to war, who are against that decision or who have chosen to support it based on the available evidence. However, all those people will want to do whatever they can to help to rebuild society in Iraq after the conflict. I am absolutely certain that any advice that we could give and any practical support that we could offer, either on water or in any other way, would be enthusiastically welcomed by the British Government as part of the efforts that it announced yesterday.

David McLetchie (Lothians) (Con): On behalf of the Scottish Conservative and Unionist Party I concur with the First Minister's sentiments and say that our thoughts and prayers are with our servicemen and servicewomen, for a swift resolution to the conflict and a safe return to their families back home. I do not think that anybody wants war, but there are times when armed conflict is necessary to deal with dangerous and tyrannical regimes, such as Saddam Hussein's—this is such a time.

I was pleased to note the substantial backing for the Government's motion in the House of Commons, as was reflected in the votes cast by Scottish MPs at Westminster. However, irrespective of who voted for what in either of Scotland's Parliaments, does the First Minister agree that the time for wrangling and voting in divisions is behind us and that our armed forces deserve the unanimous support of us all?

Having expressed that sentiment, I will ask the First Minister a couple of specific questions. First,

will he join me in welcoming the fact that Thursday's strike by the Fire Brigades Union has been called off? Does he recognise that, despite that, 19,000 troops throughout Britain are still on standby, tied up to cover any future industrial action, which has not as yet been ruled out? Does he agree that it would be most helpful if the Fire Brigades Union were to give an undertaking that there will be no more strikes as long as there is a substantial British military involvement in Iraq, thereby enabling the troops who are on standby to be released from their firefighting duties?

The First Minister: On Mr McLetchie's second point, I sincerely hope that, at some point in the near future, the Fire Brigades Union will accept the generous offer that has been made to its members and the commitment that has been given to modernising the fire service in partnership with those who work in the service. I hope that those factors will lead to a successful and speedy resolution to the dispute, which would free up the troops who have been on standby for a long time.

On the first point, clearly, I hope that the country, the Scottish Parliament and the Westminster Parliament resolve that, having debated, voted and made our decisions, we should all, in a situation in which military conflict is taking place in Iraq, support our troops in the job that they have to do, which is to disarm Saddam Hussein of weapons of mass destruction and to free and liberate the people of Iraq, ensuring that they have a better society in the years to come.

Donald Gorrie (Central Scotland) (LD): The First Minister's remarks about support for Muslims, Jews and other ethnic minorities were encouraging. Will he indicate any of the practical steps that it is possible to take at local or national levels to give support and comfort to those minority groups that might be the subject of attack by the small brainless minority in the country?

The First Minister: After the horrific events of 11 September and the genuine concern that was expressed by minority communities in Scotland at the time, we allocated resources—about £1 million—to provide for additional security at places of worship. We stand ready to make further resources available, should they be required.

The Deputy First Minister and I were heartened by what we heard this morning about the way in which the operation of Scottish police forces has been integrated with the work of those who have some responsibility in our local authorities, racial equality organisations and elsewhere for liaison with the ethnic minority communities. The hard work that has been done in that regard in recent weeks will bear fruit over the coming weeks; it will ensure that the police are alerted at an early stage to any difficulties and that our ethnic communities have confidence that they can contact the police and know that action will be taken. I assure members that the Solicitor General and the Lord Advocate take the matter seriously and will secure prosecutions where those are appropriate and desired.

The Presiding Officer: A large number of members want to ask questions and I think that, on such an issue, it is important to try to include everyone. Therefore, I appeal for brevity.

Gordon Jackson (Glasgow Govan) (Lab): There is a large Muslim population in my constituency, with many Muslim-owned businesses and a number of mosques. As the First Minister will know from his visit to the Central mosque in Glasgow, there is anxiety that that mosque will become a target for inappropriate, illegal and violent action. Will the First Minister emphasise again that there will be continued dialogue with the community? Although the community will welcome what he has said about safeguarding security and taking matters seriously, it is important that people do not feel marginalised in the discussions that must take place. I would like him to make it clear, further to what he has already said in this regard, that dialogue will continue and that the Muslim community will be kept in the loop.

The First Minister: There will be local and national dialogue to secure that confidence throughout any conflict. Following a meeting that I had with Mr Jackson in his constituency recently, I can say that there will also be an absolute guarantee of a level of police visibility in those communities and those areas that will, I hope, ensure that people who might be motivated to carry out attacks or intimidation will be put off from doing so.

Roseanna Cunningham (Perth) (SNP): Scottish troops, including the Black Watch and the 51st Highland Brigade of the Territorial Army, both of which have strong connections with my constituency, are in the gulf. What assessment has there been of the risk of reprisals against Army barracks and RAF and naval bases in Scotland? What steps have been taken to protect against terrorist attacks on military and non-military installations in Scotland that are provoked as a result of the war? What assurances have been sought or given that any and all relevant intelligence will be shared with Scottish police forces?

The First Minister: I can give an absolute assurance that the Scottish police forces not only have access to all the necessary intelligence, but have already carried out significant analyses of Army barracks and the economic and political targets that might be obvious to us all as the focus of a terrorist attack. Detailed preparations and analyses are under way and it would be wrong of

me to detail them today. However, if military action comes about over the next 24 hours, we will see an increased visibility and presence of Scottish forces at some of those locations over the next few days. The co-ordination arrangements that are in place are designed partly to secure that aim and partly to enable the police across Scotland to work together to ensure that those forces that might come under pressure because of the number of such locations in their area are given full support.

Mr John Home Robertson (East Lothian) (Lab): The conflict started because Iraq holds stocks of biological agents and—

Mr Quinan: Question.

Mr Home Robertson: In the past, those agents were used on Iraqi citizens in Halabjah and they may be used against Scottish service personnel who are fighting to give Iraq back to the Iraqis. I happen to have been involved in the House of Commons Select Committee on Defence report on gulf war syndrome and—

Mr Quinan: Question.

Mr Home Robertson: With the benefit of that hindsight, will the First Minister ensure that the NHS in Scotland will stand ready to give all necessary support to Scottish service personnel or Iraqi civilians who may be exposed to such agents in the coming weeks?

The First Minister: Without going into too many details, I can give the member that assurance. The Scottish health service has been involved in all the discussions about contingencies and it will remain involved. I am sure that its staff will stand ready to do their duty in the weeks ahead.

Robin Harper (Lothians) (Green): I express regret that this appalling decision has been taken. However, I am glad to have heard some of the positive things that the First Minister has said, particularly in respect of our minority communities. Will he meet representatives of Action of Churches Together in Scotland, the Scottish Council for Voluntary Organisations and the Scottish branches of international organisations with a view to co-ordinating a specific Scottish response to helping Iraq to recover from the war, which—hopefully and mercifully—will be over as quickly as possible?

The First Minister: The suggestion is extremely helpful and constructive. Not only would I be prepared to do that, but I would be enthusiastically willing to participate in such a meeting.

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): On the subject of NHS planning, will the First Minister ensure that information will be made available to people in my constituency and locally about the level of contingency planning and the implications for people locally of the demands that might be made on the health service?

The First Minister: Clearly, it is possible to discuss much of the information that is available publicly, although it is not necessarily advisable to discuss some of it publicly. With that caveat, we will do all that we can to keep members of the public in Scotland informed of the contingency arrangements.

Nicola Sturgeon (Glasgow) (SNP): Is the First Minister aware of the effect that staff shortages could have on the NHS? Does he agree that the call-up of staff to service the armed forces, coupled with the increase in demand due to potential casualties, can only make matters more difficult? He said:

> "We have robust and flexible plans in place … to deal with any increased demand. We have also made plans to cope with the call-up of NHS staff."

Will he tell the chamber what those plans are?

The First Minister: Although I do not want to go into too much intricate detail about the arrangements that might be in place, I can reassure the chamber that, although the number of NHS staff in Scotland who are involved is not insignificant, it is not at the other end of the spectrum. I think that, at present, 10 doctors and 27 nurses may have been called up to undertake service in some capacity. Clearly, arrangements are required to ensure that their work load is shared among others or re-routed; that has been the subject of discussions that have taken place over recent weeks.

None of us should deny that there will be an impact on Scotland. In addition to the potential impact on our national health service, there could be an impact on our communities as a result of rising tensions. Moreover, any international tension could have an impact on our tourist trade. We must prepare for and move to accommodate eventualities in all those areas and ensure that Scotland's public services and economy are as strong as possible afterwards. That is exactly what the contingency planning is all about.

Mrs Margaret Smith (Edinburgh West) (LD): I associate myself and members of the Liberal Democrat party in this Parliament with the First Minister's comments about our armed forces. Despite any concerns that we might have about how we got here or where we go from here, we all owe clear and whole-hearted support to those forces.

The First Minister knows that Edinburgh airport falls within my constituency. What part will our airports play in the contingency planning and what extra security measures will be put in place? Furthermore, will he assure us that neighbouring police forces have all the resources that they need to maintain order in surrounding communities and to redeploy officers at airports in the coming weeks?

The First Minister: Additional security arrangements have been made at Edinburgh airport in particular over recent months, which is only right and proper. Over recent weeks, those arrangements have been scrutinised in the light of the eventuality that we might be about to face. Security arrangements will be adjusted accordingly—particularly over the next 48 hours—should military action begin.

In addition, chief police officers across Scotland have a very specific arrangement that will allow them to act in a concerted fashion if any incident should occur in any part of Scotland. As a result, individual local forces will not be left to deal with such incidents on their own but will be supported by forces across Scotland. Again, that is only right and proper. However, it is probably not appropriate to go into the details of such arrangements in public this afternoon.

Mr John McAllion (Dundee East) (Lab): Does the First Minister accept that in a democracy such as ours the real betrayal of our armed forces would have been not to challenge and go on challenging the political decisions that are forcing them to lay their lives on the line? If so, will he assure me that our democracy will not now be confined to the boundaries of either Westminster or Holyrood but will continue to include the people's right to protest, march, demonstrate and take part in peaceful and non-violent civil disobedience against a war that they believe to be wrong and which they now bitterly regret will kill many innocent people?

The First Minister: As I said before, I sincerely hope that, if there is to be conflict, it is concluded speedily and with the minimum number of casualties, and I hope that members in the chamber feel the same way. I am also proud to live in a country where we—unlike the people of Iraq—are able to demonstrate on whatever point of view we have on the subject.

That said, some recent comments about the potential conflict and about disagreements of opinion on the issue have shown a lack of respect for the fact that, in this country, we can demonstrate, speak our minds, have votes in democratic Parliaments, make decisions and then implement them—I hope—in a united fashion.

Phil Gallie (South of Scotland) (Con): Does the First Minister agree that there will be immense pressures on the police at this time? What special arrangements will be made for the families of reservists and members of our territorial armed services who have almost been snatched from their homes to go to the middle east? Those families will need special support. What protection will they be offered and what support will be provided to them?

The First Minister: The Ministry of Defence has arrangements in place to help to ensure that support is given to families either in barracks or in their domestic circumstances. We liaise carefully and closely with the MOD to ensure that public services in Scotland are able to back up its efforts and that families are properly provided for at this difficult time. Those arrangements will not only continue, but will be stepped up in the weeks ahead.

Dr Richard Simpson (Ochil) (Lab): The First Minister mentioned the Scottish police information co-ordination centre. Does he agree that, in monitoring tension in communities, the police should do all in their power to protect Sikh communities in Scotland who, because of their beards and turbans, are sometimes wrongly identified as terrorists by a misguided few?

Further to that, will the First Minister discuss with law officers the need to ensure that, if any attacks occur on groups or individuals in the minority population, those attacks will be the subject of swift and strong justice? Finally, will he ask police constables to call together their ethnic advisory committees—which are now present in six out of eight forces—to be consulted at an early point in the monitoring of tensions in the community?

The First Minister: I am happy to give those assurances. In particular, I am happy to say that we will do all that we can to ensure the safety, security and integration of the Sikh community in Scotland at the present time. I make one other point: the Islamic religion is a peace-loving religion. Members of the Muslim community in Scotland are peace-loving citizens of Scotland. Just as we do not associate those who carry out extreme and violent acts in Northern Ireland with mainstream Christianity in Scotland, we must not associate those who carry out extreme, violent and murderous acts in the name of Islam around the world with those members of the Islamic religion in Scotland who are peace-loving, well-integrated members of our society.

Michael Russell (South of Scotland) (SNP): I am sure that the First Minister accepts that many of us believe that it should never have come to this.

I have two questions about children. First, what active steps is the Scottish Executive taking to assist children's charities in Scotland who will want to and, indeed, need to be involved in looking after the children of Iraq, during and after the conflict?

My second question is about the children of Scotland. Whether one agrees with them, the children of Scotland have shown their extreme horror at what is taking place. What action will the First Minister take to try to persuade the young people of Scotland, against all the evidence that

they have, that politicians listen to people, because most people and children in Scotland do not want this conflict to happen?

The First Minister: I hope that Mr Russell is aware of my consistent efforts as I go round the country to various engagements to ensure that I take time to talk to the younger citizens of Scotland. I do that on a regular basis, and I hope that, when they have a chance to put questions or views to me, they find that I not only listen, but I act on what I say. I would also be happy to ensure that the children's charities in Scotland are involved in any meeting that arises from Mr Robin Harper's suggestion.

Margo MacDonald (Lothians) (Ind): Does the First Minister agree that one of the most effective means of laying to rest the insecurities and uncertainties felt at present by Muslim communities in Scotland and throughout the world would be for the United Nations to state clearly that the state of Israel is in contravention of the spirit of the United Nations' founding fathers and that it should desist and resist the harassment and containment of the Palestinian people now?

The First Minister: In response to that question, I take the opportunity to say something that I did not get a chance to say last Thursday in the chamber, because of the timing of President Bush's announcement. I hope that the vast majority of members in the chamber, regardless of their views on the conflict that looks likely to take place in Iraq, welcome the clear statement of support from the American Government for a separate Palestinian state that has been made in the past week. That firm resolution on the part of the American Government will contribute to achieving a lasting solution in the whole of the middle east, not just an immediate solution in Iraq.

Mr Kenneth Macintosh (Eastwood) (Lab): I thank the First Minister for his comments on the contingency preparations, particularly in the health service. As part of those preparations, I believe that the smallpox vaccine is being made available to key emergency service workers, including health staff. I would welcome the First Minister's assurance that the vaccine will be made available on a voluntary basis only.

Secondly, can the First Minister or the Minister for Health and Community Care give further guidance on the risk assessment that will have been carried out if health workers are assured that they may continue to work with vulnerable patients while the vaccine is live?

The First Minister: First of all, I give Mr Macintosh the assurance that the option of using the vaccination is voluntary.

Clearly, the individual circumstances of each member of staff following use of the vaccination are for them to discuss with their managers. I strongly urge and expect to see sensitive handling of fears and concerns throughout the health service, although the Joint Committee on Vaccination and Immunisation gives an absolute guarantee that the vaccination is safe.

Mr Mike Rumbles (West Aberdeenshire and Kincardine) (LD): One of the most important issues faced by any soldier who is called into action is the assurance that an effective casualty evacuation process is in place. I am sure that that is the case with our field hospitals and the theatre of operations.

We all pray that the war will be short, but it may not be. Will the First Minister outline in a little more detail exactly how the NHS in Scotland is preparing to deal with casualties of war?

The First Minister: Arrangements are being made to deal with casualties on a UK basis, not just here in Scotland. The health service in Scotland is working closely with counterparts south of the border and elsewhere to make the appropriate arrangements. It is also working closely with the MOD, and is part of the contingency planning arrangements that I have outlined. I hope that the chamber will respect the fact that I do not think that it would be appropriate to name this afternoon specific locations or hospitals that may be used for civic purposes. However, I assure the chamber that preparatory work has been going on for some time, and that I have every confidence that the arrangements will work as smoothly as possible.

Mr George Reid (Mid Scotland and Fife) (SNP): Further to his answer to Robin Harper on a specifically Scottish appeal, I ask the First Minister to consider three areas of expertise in which this Parliament and this country may add value to British foreign policy: our experience in water engineering, which is the major immediate need; our experience in programmes for women and children run by women; and our experience in building new, peaceful relationships between the different peoples of this country, which may be of value to a country divided among Shias, Sunnis and Kurds.

The First Minister: Those are helpful and constructive suggestions. I will take them on board.

Elaine Smith (Coatbridge and Chryston) (Lab): Does the First Minister accept that people who oppose what they believe to be an unnecessary and immoral war today can hardly be expected to support it tomorrow?

On Monday, Robin Cook said:

"it is false to argue that only those who support war support our troops. It is entirely legitimate to support our

troops while seeking an alternative to the conflict".—[*Official Report*, *House of Commons*, 17 March 2003; Vol 401, c 727.]

Does the First Minister agree with his words? Does he agree that the best way in which to support our armed forces is to ensure their safety by bringing them home as soon as possible?

The First Minister: I sincerely hope that British troops—and Iraqi civilians—are in their own homes as soon as possible and as safely as possible. I hope that Elaine Smith recognises that, throughout all the debates that have taken place in the chamber and on the number of occasions in recent months on which I have been questioned on the subject, I have made it consistently clear that there is a diversity of opinion on the matter in Scotland, in this chamber and even inside my own party, and that I respect that diversity of opinion and expect others to do the same and to listen and to move forward together, if we can do that. I hope that, in the weeks to come, which will be difficult for those on all sides of the previous argument and for those who want to represent their constituents' or their own point of view in the debates that I am sure will continue, we will remember that our troops are in a dangerous and difficult situation and that the people of Iraq need the support that we and those troops can give them to bring the situation to a speedy conclusion.

Dennis Canavan (Falkirk West): The First Minister has said several times that the decision to go to war has now been made. Does he agree that it is not disloyal to state that that decision is not irrevocable and that, even at this 11th hour, every effort must be made to stop this senseless war, which threatens the lives of hundreds of thousands of innocent Iraqi people, as well as members of our armed forces?

The First Minister: I could not agree more, and I hope that Mr Canavan will join me in making a direct appeal from the Scottish Parliament chamber to Saddam Hussein and his regime to take the actions that they must take to avoid this unnecessary conflict.

Alex Neil (Central Scotland) (SNP): Has the First Minister received representations, as I have, from the parents and friends of servicemen and women who are already out in the gulf? Some of those servicemen and women have been in the gulf for many months and feel that they are ill fed, ill clothed and ill equipped—indeed, food parcels are being sent to some of them. If men and women are to be sent to an unjust war, will the First Minister, through his talks with the Prime Minister, at least ensure that they are well fed, well clothed and well equipped?

The First Minister: I have received no such representations. If I did, I would certainly pass them on to the First Minister—[MEMBERS: "The Prime Minister."] I meant the Prime Minister. I strongly believe that troops from Scotland who are already in the gulf and others who will go there will be ready for the difficult circumstances that they will face. I am speaking not only about what they will eat and wear when they are in the gulf. The troops will have to face difficult circumstances, which is why they deserve our full support.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I am sure that, like all of us here today, the First Minister will regret that he must give a statement on emergency planning to members, but we all echo what he has said.

In preparation for any possible terrorist attack, the Home Office direct communications unit has issued advice on people being alert and vigilant. Specifically, that advice asks people to listen for broadcasts about any possible terrorist attack. That is probably good advice, but what should we say to the 1 million Scots who are deaf or have varying degrees of hearing difficulty? Will the First Minister make representations to the Home Office to ensure that there will be communications on television with subtitling in English and the use of British Sign Language, if that is appropriate?

The First Minister: I would be happy to do so. If such a situation arose, it would be vital that no Scots were disadvantaged or discriminated against in the provision of information.

Mr Keith Raffan (Mid Scotland and Fife) (LD): Will the First Minister give an assurance that the emergency services are sufficiently well equipped, particularly in respect of protective clothing, to deal with chemical and biological attacks? I ask in view of the somewhat disturbing "Panorama" programme last Sunday, which indicated that emergency services south of the border are not yet sufficiently well equipped.

The First Minister: I understand that emergency services in Scotland are significantly better equipped than they were a year ago and that steps are being taken to ensure that further progress is made with immediate effect. Progress will continue in the coming weeks.

Tommy Sheridan (Glasgow) (SSP): Does the First Minister believe that the bombing of Iraq is an important issue for Scotland and the Parliament? He is nodding in approval, so he thinks that the issue is important. Why, then, has the Executive not brought forward a debate on such an important issue? Why has the First Minister relied on the Opposition parties to bring forward debates on it?

Will the First Minister join me in congratulating the young people of Edinburgh who have taken part in demonstrations today against what they believe to be an acutely unjust and immoral war and the massacre of innocent men, women and—predominantly—children in Iraq? Will he

congratulate those young people on having the courage of their convictions and on marching with banners that declare loud and clear that they do not support a war for oil? Does he agree that the best way in which members can support the armed services personnel and regiments of Scotland that will be flung into the front line of any invasion of Iraq is to demand that they are immediately sent home to their families, so that they will not take part in an immoral and unjust war?

The Presiding Officer: Order. The member has had his fair share. Another four members want to—

Tommy Sheridan: I want to make a final important point. We are part of the United Kingdom and signatories to the International Court of Justice. Will the First Minister determine whether the Parliament has the autonomy to raise an action against the UK Government for engaging in a war that is not only unjust and immoral, but illegal?

The Presiding Officer: Order. That is enough, Mr Sheridan. This is not a debate. [*Interruption.*] You have no more rights than any other member in the Parliament and you have no right to go on like that without a microphone. You should apologise to the chamber and allow other members to have the chance to speak.

Tommy Sheridan: I tell you what, Presiding Officer—

The Presiding Officer: No. I am asking you to apologise to the chamber.

Tommy Sheridan: I will apologise to the chamber if the First Minister apologises for not bringing a debate to the chamber because the Executive has been running scared from the issue.

The Presiding Officer: Order, Mr Sheridan.

Tommy Sheridan: I will apologise when the Executive apologises.

The Presiding Officer: Mr Sheridan, you have no more rights than any other member. If you continue like that you will make me put you out of the chamber. I do not want to do that.

Does the First Minister want to respond to part of that?

The First Minister: I suspect, Presiding Officer, that removing Mr Sheridan from the chamber is exactly what he would like you to do.

The Presiding Officer: That is why I am not doing it.

The First Minister: I would strongly advise you not to do so. I am happy to be patient, if everybody else is. Mr Sheridan has freedom in this country that people in Iraq do not have. He needs to remember that.

Mr Sheridan has taken a principled position against any action or even the threat of action in Iraq over recent months. His position has been consistent. I ask him, as someone who occasionally makes speeches in this chamber that give the clear perception that he cares about children, poverty, discrimination, and pain and suffering, to reflect on the fact that, without the threat of military action at any time in the past 12 years, Saddam Hussein would never have complied with any international obligation and would never have had the decency to refrain from actions such as those he took 15 years ago last Sunday, when he murdered thousands of his own civilians. Mr Sheridan should remember that.

Mrs Margaret Ewing (Moray) (SNP): On a quieter note, I will return to a point that the First Minister made in his opening statement, when he said that the agonising was over. I am sure that he will accept that I speak as the elected MSP for Moray, where we have more personnel deployed than any other constituency—they are in the gulf. This is a worrying time for all of us in the area, because those people are our friends and neighbours.

What has been done to ensure that there is communication between the personnel and their families at home? Does he accept that it is very distressing for people to receive phone calls from wives, husbands, brothers and sisters from whom they have not heard for some three to four weeks? Is anything being done to ensure that personal communication is available to all our service personnel and to their families at home, who still agonise over what is happening?

The First Minister: Not only on my recent visit to Elgin but on other occasions, I have been well aware of the importance of the military community to the community of Elgin and to Moray as a whole. I will certainly take up that matter and pass the point on to the Ministry of Defence.

Rhona Brankin (Midlothian) (Lab): I was reassured to hear the First Minister say that any racially motivated crime will be dealt with swiftly and that the Solicitor General for Scotland will monitor the matter. Will he assure me that the Minister for Education and Young People will monitor schools in Scotland for racially motivated bullying?

The First Minister: I give that assurance. Guidance on the subject is available to schools, teachers and education authorities.

Mr Quinan: The First Minister said that contingency plans have been made to prevent extremists from taking advantage of the situation. Will he give us a list, saying who those extremists are and where he expects them to come from?

The First Minister: If anybody out there were planning a terrorist attack on Scotland, and if we knew who they were, we would not give Mr Quinan a list of them; we would catch them and lock them up.

Dorothy-Grace Elder (Glasgow) (Ind): I will ask a question that was asked by the children who marched today, of whom some members are extremely proud. Given that the First Minister has repeatedly mentioned evil regimes that appear to need sorting out, does he support the invasion of other countries that are controlled by evil regimes, such as Zimbabwe, or is the murderous Mr Mugabe safe because he does not have oil?

The First Minister: Occasionally the Presiding Officer tries to stop me from encroaching too far on reserved responsibilities, but to be fair, I must point out that the difference between Mr Mugabe and Mr Hussein is that, to my knowledge, Mr Mugabe does not yet have facilities for chemical and biological weapons. The United Nations has addressed that specific issue over the years and Mr Hussein has been asked to address it, but he has not done so, which is why he stands out in the international community as being different from others. I hope that Dorothy-Grace Elder heard me say last week that I believe passionately that United Nations resolutions and United Nations resolve should be implemented consistently throughout the world—not just in one country, but in every country. I hope that that will be the case in the years to come.

Points of Order

15:27

The Presiding Officer (Sir David Steel): I have a point of order from Mr Russell.

Michael Russell (South of Scotland) (SNP): I have given you notice of my point of order, Presiding Officer, and I have given notice of it to members of the Education, Culture and Sport Committee, among others.

I received a letter from you this morning that said that the Parliamentary Bureau had voted by a majority not to timetable the Gaelic Language (Scotland) Bill. I understand that the Executive was in the process of considering a financial resolution, but that that consideration has been halted by the refusal of a majority of members of the bureau to timetable the bill. Another effect of that decision has been to cancel the Education, Culture and Sport Committee's stage 2 meeting that was scheduled for next Tuesday. The point is not that time was not allocated for the meeting, but that the meeting has been cancelled because of the actions of the bureau and because the Executive has not produced a financial resolution.

Presiding Officer, I ask you to consider whether the bureau has jumped the gun on the matter. The issue is not whether the bill should proceed to stage 3, but whether it should be allowed the stage 2 hearing that was already scheduled. Will you consider whether, if the Executive were to honour its commitment—[*Interruption.*]

The Presiding Officer: Order. Members of the public in the gallery sign a statement saying that they will not interrupt proceedings. The member of the public who is shouting has contravened that—remove him, please.

Please continue on your point of order, Mr Russell.

Michael Russell: As I was saying, the reality of the situation is that we are only two short meetings away from achieving secure status for Gaelic. One meeting has already been scheduled and there is the possibility of discussing next week whether—[*Interruption.*]

The Presiding Officer: I remind everybody in the public gallery that they signed a piece of paper containing an undertaking to be quiet and to observe our proceedings properly. People are breaking that undertaking by making a noise.

Please complete your point of order, Mr Russell.

Michael Russell: I will complete my point of order, although it is fortunate that you received it in writing, Presiding Officer.

The Presiding Officer: Yes, that is fortunate.

Michael Russell: We are two very short meetings away from achieving secure status for Gaelic, and there is huge disappointment about the fact that we might not be allowed to do that. Even if we are not allowed to do that next week, the cancellation of a meeting that has already been scheduled, but which could take place if the Executive were to produce a financial resolution—it has said in writing that it is in the process of drawing one up—seems to be very wrong. I ask you, Presiding Officer, to consider the matter and perhaps to say to the Executive that it would be helpful and generous to allow us to have that stage 2 meeting and to return next week to the issue of how to deal with stage 3.

The Presiding Officer: I thank the member for his courtesy in giving me that point of order in advance, which has enabled me to consider it and to give a clear ruling.

You misunderstand the procedure between the bureau and the committee, Mr Russell. You could, for example, have addressed the issue this morning by moving an amendment to the business motion. Stage 2 proceedings are prohibited until a financial resolution is agreed to by the Parliament, and no such resolution is included in the business motion that we agreed to this morning.

For the benefit of the Parliament, I repeat my message to you, which was in a letter of yesterday. The majority view of the bureau was that we have reached the buffers in terms of the amount of parliamentary time that we have left. Although there was considerable sympathy with your position, it was felt that it would not be in the interests of proper parliamentary scrutiny to compress the bill's consideration in the manner that you propose. I am afraid that that was the decision of the bureau, and Parliament agreed to the business motion this morning.

Michael Russell: Presiding Officer, without going into the point, one might also argue that proper scrutiny could not be achieved by lodging 500 amendments on the final day of consideration of a bill. The reality is that it would still be possible to have the stage 2 debate if the Executive were to produce a financial resolution tomorrow—which it has often done at short notice. I realise that you cannot overturn the view of the bureau; however, if the Executive were to give notice that it intended to produce the financial resolution, the bill could proceed to stage 2.

Many members object; there may be arguments against the bill, but only small amendments to it are required and discussions with the Executive have taken place. Many members would accept an honest vote in the chamber on the bill. What they find difficult to accept—and what the Gaelic community will find it impossible to accept—is the fact that the Parliament is being used by the Executive as a procedure to kill the bill. That is wrong.

The Presiding Officer: That is an interpretation that I do not share. I have no authority to change the business that the Parliament agreed this morning. You had an opportunity to move an amendment to include a financial resolution, but you did not take that opportunity.

The Minister for Parliamentary Business (Patricia Ferguson): I feel obliged to respond to the point that Mr Russell has just made. Having tried to imply that the bureau was somehow stymying the bill, he now implies that it is the fault of the Executive—[*Interruption.*]

Mr Russell might want to say that a bit more loudly for the *Official Report*.

Michael Russell: It is.

Patricia Ferguson: Thank you.

The Presiding Officer: Do not encourage him.

Patricia Ferguson: We are now in absolutely no doubt about Mr Russell's intention.

The bureau considered the matter in its entirety yesterday. We came to the conclusion that it would not be appropriate to truncate by suspending the standing orders the correct provisions of the standing orders as they relate to timetabling of bills. Mr Russell is on record on many occasions talking about the sanctity of that process, on which I agree with him whole-heartedly.

In order for the bill to go through stage 3, we would be required to have the Education, Culture and Sport Committee meet on Tuesday to consider amendments. Thereafter, a bill would have to be printed to be available on Wednesday, amendments to that bill would have to be lodged by close of play on the same day and the bill would have to be considered on Thursday.

Parliament has standing orders to protect it and its processes. Therefore—as someone who holds the Parliament very dear, having argued for it for many years—I believe that the standing orders exist to protect the smaller parties in the Parliament and individual members. In its discussion, the bureau—by majority, with one member voting otherwise—voted that the bill should not proceed further because the timetable did not allow it to do so because of when the bill was introduced. That is a fact of which Mr Russell was aware at the time of the bill's introduction.

Tricia Marwick (Mid Scotland and Fife) (SNP): On a point of order.

The Presiding Officer: You may speak if it is a real addition to the previous point of order.

Tricia Marwick: Will you confirm that on occasion stage 1, stage 2 and stage 3 of a bill have all been considered on the same day?

The Presiding Officer: I think that that has happened only with emergency legislation and, with great respect, I do not think that the Gaelic Language (Scotland) Bill is an emergency bill.

We should now proceed to dealing with the legislation that is before us today.

Michael Russell: Presiding Officer, could I make one further point of order? I was unaware of the procedure under which members got to respond to points of order, but—

The Presiding Officer: No—that was further to your point of order. You are also now speaking further to the point of order.

Michael Russell: Well, further to the further to the point of order, the Minister for Parliamentary Business has proved my point. What she is arguing for is the reason why stage 3 of the Gaelic Language (Scotland) Bill should not take place; she has not argued why a timetabled meeting of the Education, Culture and Sport Committee, during which that committee was to consider stage 2 of the bill, should not take place. The only barrier to such a meeting is the lack of a financial resolution. The only people who can move a financial resolution are members of the Executive; ergo, Presiding Officer, the Executive is killing the bill. Let it not avoid that fact.

The Presiding Officer: I think that we should return to the important bill that we are discussing this afternoon.

Jackie Baillie (Dumbarton) (Lab): On a point of order.

Dr Richard Simpson (Ochil) (Lab): On a point of order.

The Presiding Officer: Is this on the same point of order, Dr Simpson?

Dr Simpson: Mine is a completely separate point of order—although Ms Baillie's might be on the same point.

The Presiding Officer: We do not want endless discussion of the matter, but is your point of order on the same matter on the same point?

Jackie Baillie: It is indeed, Presiding Officer.

It is unjust of Mike Russell to blame the Executive; all members of the Parliament are aware of the time scale for consideration of members' bills. The Education, Culture and Sport Committee has worked especially hard on the Gaelic Language (Scotland) Bill, but it would be nonsense to schedule a meeting for stage 2 consideration when there is no subsequent time for stage 3 consideration. I think that the Parliamentary Bureau has, on the basis of its reflection on standing orders, arrived at the correct decision.

The Presiding Officer: We will not have a debate on the point of order. I will hear a different point of order from Dr Simpson.

Dr Simpson: Presiding Officer, the interruption in the public gallery that just occurred was unusual, in that it was not simply a verbal interruption involving the display of a banner—which is unacceptable in the chamber—but included the spreading of material on to the back two rows of the side of the chamber on which I am sitting. The material happened to be confetti, which was okay, but it might have been some other substance. I ask you to raise with the security office the need to ensure an adequate police presence in order that individuals involved in such activity can be properly restrained in good time, so that nothing more serious occurs to my fellow members.

The Presiding Officer: I take that point of order seriously. Without going into the details of our arrangements, I will say that the gentleman concerned was in the front row, which is reserved for guests of members. I will make inquiries into whose guest he was.

Pauline McNeill (Glasgow Kelvin) (Lab): On a point of order.

The Presiding Officer: Is it on the same point of order?

Pauline McNeill: No.

The Presiding Officer: Go on, in that case.

Pauline McNeill: I apologise for not being able to give you notice of this point of order, but I feel rather strongly about it. I support you, Presiding Officer, in your role and in what you try to do in calling for order in the chamber, but what we witnessed earlier concerns me, because I have found myself on the receiving end of your interventions when you have thought that I have gone on for too long.

I have supported the same position on the war as Mr Sheridan has—I still support that point of view—but it cannot be right that Mr Sheridan seems to be allowed more time than anyone else in the Parliament. In my first year in the Parliament, I recall clearly your standing up and telling me to sit down, which you were perfectly right to do, but that must apply to all members. Could we please have equal treatment? If we do not tolerate one another's views and have equal treatment, the place will go to ruin.

The Presiding Officer: I agree wholly with that point of order. I cut off Mr Sheridan's microphone, but it is unfortunate that he has a voice that overrides the microphones; you might not have been aware that I had cut him off. In fact, I did that quite early on and although I asked him to sit down, he did not do so. I notice that the First Minister agreed with my view that to have asked Mr Sheridan to leave the chamber would simply have created the kind of publicity that he was, perhaps, seeking; that is why I did not do so. I accept entirely your point that it is not right for any member to arrogate to himself the right to go on and on at the expense of other members who wish to speak. I think that that is a general view that is held throughout the chamber and I thank the member for her support on that.

Let us go back at last to consideration of the Mental Health (Care and Treatment) (Scotland) Bill, for which I hand over the chair to the Deputy Presiding Officer.

Mental Health (Care and Treatment) (Scotland) Bill: Stage 3

15:40

Resumed debate.

After section 56

The Deputy Presiding Officer (Mr Murray Tosh): We now resume consideration of amendments. Amendment 115 is grouped with amendment 251.

Malcolm Chisholm: Amendment 115 will introduce a new section that will apply chapter 1 of part 7 to patients who are subject to hospital directions or transfer for treatment directions in accordance with a new schedule that will be introduced by amendment 251.

I move amendment 115.

The Deputy Presiding Officer: As no members have asked to speak, we will move straight to the question.

Amendment 115 agreed to.

Section 56A—Appointment of patient's responsible medical officer

Amendment 347 moved—[Malcolm Chisholm]—and agreed to.

Section 56B—Social circumstances report

Amendment 348 moved—[Malcolm Chisholm]—and agreed to.

Section 56C—Interim compulsory treatment order: responsible medical officer's duty to keep under review

The Deputy Presiding Officer: Amendment 349 is grouped with amendments 350 to 356.

Malcolm Chisholm: Amendments 349 and 350 will bring section 56C, which requires the responsible medical officer to revoke an interim compulsory treatment order where the criteria are no longer met, into line with the wording that is used in section 64A, which makes a similar provision for compulsory treatment orders.

Amendment 351 will remove section 56D, and amendments 352 to 356 will modify section 56F.

Amendment 352 will place a duty on the responsible medical officer to notify certain persons when he makes a determination to revoke an interim compulsory treatment order by replacing provision at section 56D that will have

been removed by amendment 351. Amendment 353 will tidy up the drafting of section 56F.

Amendment 354 will require the Mental Welfare Commission for Scotland to provide to certain persons a statement of the reasons for its decision to revoke an interim compulsory treatment order.

Amendment 355 will require that any guardian of the patient and any welfare attorney of the patient be notified of the responsible medical officer's, or the commission's, decision to revoke an interim compulsory treatment order. Amendment 356 will remove the requirement on the commission to notify hospital managers of the decision to revoke an interim compulsory treatment order.

I move amendment 349.

Amendment 349 agreed to.

Amendment 350 moved—[Malcolm Chisholm]—and agreed to.

Section 56D—Revocation under section 56C: notification

Amendment 351 moved—[Malcolm Chisholm]—and agreed to.

Section 56F—Revocation under section 56E: notification

Amendments 352 to 356 moved—[Malcolm Chisholm]—and agreed to.

Section 56G—Effect of subsequent compulsory treatment order on interim compulsory treatment order

Amendment 357 moved—[Malcolm Chisholm]—and agreed to.

Section 57—Appointment of patient's responsible medical officer

Amendment 358 moved—[Malcolm Chisholm]—and agreed to.

Section 58—Care plan: placing in medical records

Amendments 359 and 360 moved—[Malcolm Chisholm]—and agreed to.

Section 59—Mental health officer's duty to prepare social circumstances report

Amendment 361 moved—[Malcolm Chisholm]—and agreed to.

Section 60—First mandatory review

The Deputy Presiding Officer: Group 24 concerns mandatory reviews. Amendment 362 is grouped with amendments 363 to 365, 485 and 486.

Malcolm Chisholm: Amendments 362 and 363 will make minor technical drafting improvements to section 60 and amendment 364 will modify section 60(3A) in recognition of the fact that the care plan will not necessarily include any reference to community care services, relevant services or other treatment, care or service.

Amendment 365 will remove the reference to section 66B from section 61(3)(a) because it is unnecessary, having been specified in subsection (1). Amendment 485 is a minor drafting amendment that will remove some unnecessary text from section 104.

Amendment 486 will bring part 9 of the bill into line with the changes that have been made to part 7. It makes it clearer whom the RMO should consult on a review of the compulsion order.

I move amendment 362.

Amendment 362 agreed to.

Amendments 363 and 364 moved—[Malcolm Chisholm]—and agreed to.

Section 61—Further mandatory reviews

Amendment 365 moved—[Malcolm Chisholm]—and agreed to.

15:45

The Deputy Presiding Officer: Amendment 366 is grouped with a huge number of amendments, which are: 367 to 384, 387 to 392, 397 to 404, 411 to 426, 490 to 492, 494 to 496, 499 to 510, 512 to 530, 533 to 540, 546 to 560, 562, 563 and 565.

Malcolm Chisholm: As the Presiding Officer has said, there are quite a few amendments in the group, but I promise to get through them within five minutes. We have lodged amendments to part 7, chapter 2 that will enable the responsible medical officer to carry out more of the duties in respect of mandatory reviews on the same occasion, thereby reducing the burden of those reviews. Amendments 367, 375, 380, 388, 399 and 412 will remove the word "after" from sections 64(2), 63(2), 66(2), 66B(2), 68(2) and 68B(2). Amendment 378 will remove the absolute requirement to consult again the persons who are mentioned in section 60 after having completed the steps in section 63 in relation to the mandatory reviews of a compulsory treatment order. Amendment 381 will remove from section 66(2) the reference to the responsible medical officer consulting under section 63(3)(c).

The remaining amendments to part 7, chapter 2 are primarily technical amendments. Amendments 366, 373, 374, 379, 397, 398 and 426 will clarify that the compulsory treatment order that is being

reviewed is the compulsory treatment order to which the patient in question is subject.

Amendment 369 will make it clear that the duty on the responsible medical officer to consider from time to time whether to revoke the compulsory treatment order is without prejudice to the duty to consider from time to time whether to vary the compulsory treatment order.

Amendment 377 will require that, where the responsible medical officer considers that it might be necessary to vary the compulsory treatment order at section 63(3)(b), he will also consider what modifications are required.

Amendments 383, 384, 402, 403, 404, 420, 421 and 424 will remove unnecessary words from various sections in part 7, chapter 2. Amendments 387 and 411 will remove section 66B(1) and section 68B(1), which are no longer necessary. Amendments 414, 417, 419, 422 and 423 will make sections 68B, 72 and 73 more concise. Amendments 389 to 392, 400, 413, 415, 416, 418 and 420 will tidy up the cross-references within part 7, chapter 2.

The remaining amendments concern part 9, chapter 2. We have lodged amendments to part 9, chapter 2 that parallel those to part 7, which will enable the responsible medical officer to carry out his duties in respect of mandatory reviews in a more streamlined fashion. Amendments 496, 501, 508, 513, 521 and 526 will remove the word "after" from sections 105, 105D, 106, 106B, 106D and 106F and amendment 506 will simplify the process of consultation that is required under section 105D. The bill currently requires the RMO to consult the relevant persons twice, under sections 104(2) and 105D(3). Amendment 506 will change section 105D(3)(d) so that the RMO must consider the view that has been expressed by the persons consulted under section 104(2).

Amendments 491, 519 and 550 will harmonise part 9 with part 7, as amended at stage 2. More substantively, amendment 556 will bring section 108 into line with the equivalent part 7 section. It will make it clear that the application to the tribunal following the first review must state whether the mental health officer who was consulted agrees or disagrees that the application should be made or has failed to inform the RMO of their views.

Amendments 562 and 565 will modify section 108F to make it clear that a patient or their named person cannot make more than two applications to the tribunal under that section in the six months after the order is first renewed, or in any subsequent period of 12 months. Any application under section 108E will count as one of the permitted applications. That gives the same effect as under the equivalent section in part 7.

The remaining amendments to part 9, chapter 2 are primarily technical amendments. Amendments 494, 495, 499, 500, 507, 510, 512, 520, 524, 525, 533, 534, 538 and 540 will clarify that the compulsion order that is being reviewed is the compulsion order to which the patient in question is subject.

Amendments 490, 535, 548, 552 and 559 will remove unnecessary words from various sections in part 9, chapter 2. Amendment 547 will remove section 107B(1), which is unnecessary. Amendments 492, 502, 503, 504, 509, 515, 523, 528, 536, 537, 539, 558 and 563 will improve the words that are used in various sections of part 9.

Amendment 505 will make it clear that if, following consideration of whether an order should be varied, the RMO believes that it should be varied, he or she should also consider what modifications to the order would be appropriate.

Amendments 514, 516, 517, 518, 522, 527, 529, 530, 546, 549, 551, 553, 554, 555, 557 and 560 will tidy up the cross-references within part 9, chapter 2.

I am glad to say that I will have completed my speech within five minutes, although I realise that some members will think that it is the best speech that I have ever made in the Scottish Parliament.

I move amendment 366.

The Deputy Presiding Officer: We are able to go straight to the question, which seems to be so unfair.

Amendment 366 agreed to.

Amendments 367 to 392 moved—[Malcolm Chisholm]—and agreed to.

The Deputy Presiding Officer: We come now to group 26, on the period for which a compulsory treatment or compulsion order may be extended. Amendment 393 is grouped with amendments 394, 405 to 408, 511, 531 and 542 to 544.

Mrs Mulligan: Amendment 393 removes an unnecessary "and" from section 66B(4). Amendments 394 and 408 improve the drafting of sections 66B(4)(b)(ii) and 68B(4)(b)(ii), respectively. Amendment 405 makes a necessary consequential change to section 68(4) that results from amendment at stage 2. The reference to subsection (2)(a) should be to subsection (2A). Amendments 406 and 407 remove unnecessary linking words from section 68(4). Amendment 511 is a minor amendment to improve the drafting of section 106(2). Amendment 531 is a minor amendment to improve the drafting of section 106F(4)(b). Amendment 542 is a minor amendment to improve the drafting of section 107(4)(a).

Amendment 543 makes it clear that the period for which an order will be extended at a further review is the 12 months that follow on from a

previous period of extension. Amendment 544 is a technical amendment that deletes section 107(5). Subsection (5) applied the notification requirements of section 69 to applications for an extension and variation of the compulsion order made under section 107, but the subsection is no longer required because section 107C deals with the notification requirements.

I move amendment 393.

Amendment 393 agreed to.

Amendment 394 moved—[Mrs Mary Mulligan]—and agreed to.

Section 67—Determination extending order: notification etc

The Deputy Presiding Officer: Amendment 395 is grouped with amendments 396 and 532.

Mrs Mulligan: Amendment 395 makes a drafting improvement to section 67(1). Amendment 396 improves the drafting of section 67(3). That subsection enables the responsible medical officer to withhold a copy of the record of the determination that extends a compulsory treatment order from the patient if he considers that there

"would be a risk of significant harm to the patient, or to others"

if he did not do so. The drafting now reflects the power's conditional nature. Amendment 532 will have the same effect for section 106F in part 9.

I move amendment 395.

Dr Simpson: Will the patient or the patient's representative have any right of appeal against the withholding of the information?

Mrs Mulligan: An immediate appeal is not available, but reasons for the decision could be discussed. I stress that the information would be withheld only if it put the patient or somebody else at risk, so I think that the decision would be agreed with.

Amendment 395 agreed to.

Amendment 396 moved—[Mrs Mary Mulligan]—and agreed to.

Section 68—Responsible medical officer's duty where extension of order appears appropriate

Amendments 397 to 408 moved—[Mrs Mary Mulligan]—and agreed to.

Section 68A—Mental health officer's duties: extension and variation of order

Amendments 409 and 410 moved—[Mrs Mary Mulligan]—and agreed to.

Section 68B—Responsible medical officer's duty to apply for extension and variation of order

Amendments 411 to 420 moved—[Mrs Mary Mulligan]—and agreed to.

Section 71—Responsible medical officer's duties: variation of order

Amendment 421 moved—[Mrs Mary Mulligan]—and agreed to.

Section 72—Application by responsible medical officer for variation of order: notification

Amendment 422 moved—[Mrs Mary Mulligan]—and agreed to.

Section 73—Application by responsible medical officer to Tribunal

Amendment 423 moved—[Mrs Mary Mulligan]—and agreed to.

Section 73A—Recorded matters: reference to Tribunal by responsible medical officer

Amendment 424 moved—[Mrs Mary Mulligan]—and agreed to.

Section 75—Application by patient etc for revocation of determination extending order

Amendment 425 moved—[Mrs Mary Mulligan]—and agreed to.

Section 76—Application by patient etc for revocation or variation of compulsory treatment order

Amendment 426 moved—[Mrs Mary Mulligan]—and agreed to.

Section 78—Extension of order pending decision of Tribunal

The Deputy Presiding Officer (Mr Murray Tosh): Group 28 is on the interim extension or variation of a compulsory treatment order. Amendment 427 is grouped with amendments 428 to 430, 432 to 434, 568 to 571 and 573.

Mrs Mulligan: Amendment 427 will remove section 78, which provided the tribunal with the power to make an order that extends a compulsory treatment order when it could not determine an application for extension and variation before the order's expiry.

Amendment 428 will introduce a new section to replace section 78 and give the tribunal the power to grant an interim order that extends, or extends and varies, a compulsory treatment order following an application under section 70 by the responsible

medical officer for extension and variation. The tribunal may make such an order when it considers that it will be unable to determine the application before the compulsory treatment order expires and that making such an order is appropriate. An interim order under the new section may not last more than 28 days, but several may be granted consecutively. Amendment 433 provides for the tribunal to specify the modifications that it has made as a result of an interim order that was granted under the new section.

Amendment 429 will introduce a new section that gives the tribunal the power to grant an interim order that varies the compulsory treatment order for a period of up to 28 days at any time when the tribunal is considering the compulsory treatment order. The tribunal is likely to use that power when it is not satisfied about an aspect of a compulsory treatment order but is satisfied that compulsory measures are necessary. It will give the tribunal the opportunity to monitor the patient's case closely. An interim order under the new section may not last more than 28 days, but several may be granted consecutively. Amendment 432 will add the new section to the list in section 80 of sections in whose orders the tribunal must specify the modifications that it has made as a result of variation.

Amendment 430 will introduce a new section to limit the tribunal's power to make interim orders under the sections that amendments 428 and 429 will add, so that interim orders under either new section or both may not run consecutively for more than 56 days.

Amendment 434 will introduce a new section that makes it clear that the granting of an interim order to extend and vary a compulsory treatment order does not affect the anniversaries for renewal of that order on subsequent occasions.

Amendments 569, 570 and 571 will bring part 9 into line with part 7 and allow the tribunal to make an interim order for up to 28 days if it considers that it is unable to determine an application before the compulsion order would cease to have effect. Amendment 571 will ensure that the maximum time that is allowed for any number of extensions is 56 days.

Amendment 568 will delete section 110C, as it is no longer required following the inclusion of interim extensions as provided for by amendments 569, 570 and 571.

Amendment 573 provides that if the tribunal has extended an order under the section added by amendment 569, the time spent on that order will not be taken into account in the calculation of the anniversaries for renewal of a compulsion order.

I move amendment 427.

16:00

Dr Simpson: Again, I have a brief question. I note the new section that is being inserted after section 79A instead of section 78. The minister has stated that interim orders may be repeated. One of the problems with compulsory detention orders under previous legislation was that they were used repeatedly. Will she assure me that the use of orders will be monitored and reviewed so that repeated interim orders are not used as a general method for extending orders?

Mrs Mulligan: I assure the member that they will be reviewed and I am sure that the tribunal will take into account that repeated orders should not be granted without reasonable cause. I believe that there will be further reference to that in the bill.

Amendment 427 agreed to.

After section 79A

Amendments 428 to 430 moved—[Mrs Mary Mulligan]—and agreed to.

Section 80—Tribunal's powers etc when varying compulsory treatment order

Amendments 431 to 433 moved—[Mrs Mary Mulligan]—and agreed to.

After section 81

Amendment 434 moved—[Mrs Mary Mulligan]—and agreed to.

Section 81A—Variation: appointment of responsible medical officer

Amendment 435 moved—[Mrs Mary Mulligan]—and agreed to.

Section 84—Failure to attend for medical treatment

The Deputy Presiding Officer: Amendment 436 is grouped with amendments 116 to 129 and amendment 131.

Mrs Mulligan: Amendment 436 changes the reference in section 84(1) to section 54(1)(c), following the restructuring of section 54 at stage 2.

Amendment 131 clarifies provision at section 86 for detention following breach by splitting the section into two sections so that breach of compulsory treatment orders and breach of interim compulsory treatment orders are dealt with separately.

Amendments 116 to 122 complete the new section dealing with breach of a compulsory treatment order. Amendments 116 to 120 are technical amendments that will clarify the drafting of section 86(1), so that it sets out more clearly the

steps that must be followed before the granting of a detention certificate. Amendments 121 and 122 reproduce provision lost to the section dealing with interim compulsory treatment orders.

Amendments 123 to 129 complete the new section dealing with breach of an interim compulsory treatment order. In particular, amendments 125 and 127 clarify that a certificate authorising detention following breach of an interim compulsory treatment order may be granted before the expiry of the 72-hour period of detention authorised by section 85(5A).

I move amendment 436.

Amendment 436 agreed to.

Amendment 437 moved—[Mrs Mary Mulligan]—and agreed to.

Section 85—Non-compliance generally with order

Amendments 438 to 440 moved—[Mrs Mary Mulligan]—and agreed to.

Section 86—Short-term detention following examination under section 85(6)

Amendments 116 to 129 moved—[Mrs Mary Mulligan]—and agreed to.

The Deputy Presiding Officer: Amendment 130 is grouped with amendments 132 and 136.

Mrs Mulligan: Amendment 130 will remove subsections (4) to (8) of section 86. Subsection (4), which required the certificate to be signed by the responsible medical officer, is no longer necessary given provision at amendment 122 for breach of a compulsory treatment order and amendment 129 for breach of an interim compulsory treatment order. Subsections (5) to (7) are unnecessary, following amendment at stage 2 and the insertion of subsection (2C), which requires mental health officer consent for detention under section 86. Subsection (8) is no longer necessary, as provision for the notification of detention following breach is made in a new section introduced by amendment 132.

Amendments 132 and 136 seek to insert two new sections requiring certain persons to be notified of the granting and revocation of a detention certificate following breach of a compulsory treatment order or interim compulsory treatment order. Those persons are the patient, the patient's named person, any guardian of the patient and any welfare attorney of the patient. The mental health tribunal and the Mental Welfare Commission must be informed within seven days.

I move amendment 130.

Amendment 130 agreed to.

Amendment 131 moved—[Mrs Mary Mulligan]—and agreed to.

After section 86

Amendment 132 moved—[Mrs Mary Mulligan]—and agreed to.

Section 86A—Application for variation of compulsory treatment order

The Deputy Presiding Officer: Amendment 133 is grouped with amendments 134, 135 and 137 to 139.

Malcolm Chisholm: Amendments 133, 138 and 139 delete sections 86A, 86B and 86C from the bill. Section 86A is no longer necessary as the link between detention following breach and an application for variation of the order has been made explicit in section 86(1) by amendment 117. Section 86B has been superseded by the two new sections introduced by amendments 134 and 135, which place a duty on the responsible medical officer to revoke the detention certificates when certain conditions are met.

Amendment 137 inserts a new section into the bill, which replaces section 86C, and deals with the patient and the patient's named person's right to apply to the tribunal for revocation of a detention certificate following breach. Amendment 137 clarifies the application procedure, following the splitting of section 86 into two sections to deal with compulsory treatment orders and interim compulsory treatment orders separately.

I move amendment 133.

Amendment 133 agreed to.

After section 86A

Amendments 134 to 137 moved—[Malcolm Chisholm]—and agreed to.

Section 86B—Certificate under section 86(2) or (2B): responsible medical officer's duty to review

Amendment 138 moved—[Malcolm Chisholm]—and agreed to.

Section 86C—Certificate under section 86(2) or (2B): patient's right to apply to Tribunal

Amendment 139 moved—[Malcolm Chisholm]—and agreed to.

After section 86C

Amendments 140 to 142 moved—[Malcolm Chisholm]—and agreed to.

Section 88—Transfer to hospital other than state hospital: appeal to Tribunal

The Deputy Presiding Officer: Amendment 35 is grouped with amendment 36.

Malcolm Chisholm: Amendment 35 removes section 88(1)(b) and amendment 36 removes section 89(1)(b). Those provisions qualified the appeal right of a patient who was being transferred, so that the patient could not appeal if the hospital was one specified in the compulsory treatment order. Those provisions are redundant, as it is not competent to specify a transfer in a compulsory treatment order as one of the compulsory measures. Therefore, the patient may appeal against any transfer to any hospital.

I move amendment 35.

Amendment 35 agreed to.

Section 89—Transfer to state hospital: appeal to Tribunal

Amendment 36 moved—[Malcolm Chisholm]—and agreed to.

Section 89A—Transfers: appointment of responsible medical officer

Amendment 441 moved—[Malcolm Chisholm]—and agreed to.

Section 90—Suspension of measure authorising detention

Amendments 37 to 46 moved—[Malcolm Chisholm]—and agreed to.

Section 90A—Suspension of other measures

Amendments 47 to 50 moved—[Malcolm Chisholm]—and agreed to.

Section 91—Certificates under sections 90 and 90A: revocation

Amendments 51 to 55 moved—[Malcolm Chisholm]—and agreed to.

Section 92—Mentally disordered persons subject to criminal proceedings: assessment and treatment

The Deputy Presiding Officer: Amendment 442 is grouped with amendments 443 to 445, 449 to 452, 454 to 456, 458 to 461 and 464 to 467. This group of amendments deals with the application for or making ex proprio motu of assessment orders. I am sorry, minister, but I cannot explain that further—I am not even sure that I pronounced it properly.

Malcolm Chisholm: Amendments 442, 443, 449, 450, 458, 459, 464 and 465 change the structure of the relevant sections to make it clear that ministers can apply to the court for an assessment or treatment order if a person is in custody, has been charged with an offence, has yet to be sentenced and appears to have a mental disorder.

Amendments 444 and 460 amend subsection (4A) of new sections 52B and 52K respectively of the Criminal Procedure (Scotland) Act 1995. They ensure that ministers must inform the prosecutor that they are applying for an assessment or treatment order if the prosecutor still has a role to play in the proceedings—that is, if the relevant disposal set out in new section 52A(3) of the 1995 act has not been made.

Amendment 445 is consequential on amendment 444 and amendment 461 is consequential on amendment 460. As the term "relevant disposal" has been introduced into sections 52B and 52K of the 1995 act, it requires definition. The amendments do that by referring back to the definition given in section 52A.

Amendments 451 and 466 make it clear that the court can make an assessment order under section 52D or a treatment order under section 52M only if it would have made one under section 52C or 52L following an application by the prosecutor or the Scottish ministers.

Amendments 452 and 467 clarify that an assessment order that has been made under section 52D or a treatment order that has been made under section 52M would have the same effect as an order made under sections 52C or 52L.

Amendment 455 makes it clear that the court can make a treatment order after reviewing an assessment order under section 52F only if it would have done so under section 52L. Amendment 454 paves the way for amendment 455.

Amendment 456 clarifies that, if a treatment order is made under section 52F, it would have the same effect as if the treatment order had been made under section 52L.

I move amendment 442.

Amendment 442 agreed to.

Amendments 443 to 445 moved—[Malcolm Chisholm]—and agreed to.

The Deputy Presiding Officer: Amendment 446 is grouped with amendment 462.

Malcolm Chisholm: Amendments 446 and 462 are minor drafting amendments. They ensure that the court can specify a person to escort the person to hospital once the assessment or treatment order has been made.

I move amendment 446.

Amendment 446 agreed to.

Amendments 143 to 145 moved—[Malcolm Chisholm]—and agreed to.

The Deputy Presiding Officer: Amendment 447 is grouped with amendments 463 and 469.

Malcolm Chisholm: Amendments 447 and 463 delete a subsection from new sections 52C and 52L of the 1995 act as the required references to section 65 of that act are contained within the new section added to the bill by amendment 469.

Amendment 469 inserts a new section concerning the prevention of delay in trials to clarify the position concerning assessment and treatment orders. The effect of the amendment is that the time limits of 40, 80 and 110 days, which are set out in sections 65 and 147 of the 1995 act, apply both to assessment and to treatment orders. That ensures that the making of those orders would not delay the start of the trial and that the Crown must adhere to the same time limits as other persons involved in criminal proceedings.

I move amendment 447.

16:15

Margaret Jamieson: On a point of clarification, when stage 2 amendments were lodged, I asked Mary Mulligan whether assurances would be built into the bill in respect of the interaction between health service provision and the police so that individuals would not be kept in hospital during the time that they should be at court. She indicated that there would be such an interaction, but the minister has not alluded to that today. I had a constituent who should have been at court, but who was held on assessment for one more week. I seek an assurance that that situation will no longer happen.

Malcolm Chisholm: I can certainly assure Margaret Jamieson that we are determined that health services and the police will act together. We will ensure that that happens.

Amendment 447 agreed to.

Amendment 146 moved—[Mrs Mary Mulligan]—and agreed to.

The Deputy Presiding Officer: Amendment 448 is grouped with amendment 453.

Mrs Mulligan: Amendments 448 and 453 add a necessary definition of the term "relevant disposal" to sections 52C and 52E respectively.

I move amendment 448.

Amendment 448 agreed to.

Amendments 449 to 453, 147, 454, 148, 455 to 457, 149, 458 to 462, 150 to 152, 463 to 468, 153, 469 and 470 moved—[Mrs Mary Mulligan]—and agreed to.

Section 93— Mentally disordered offenders: interim compulsion orders

Amendment 154 moved—[Mrs Mary Mulligan]—and agreed to.

The Deputy Presiding Officer: Members will have to forgive me, as I have a few pages to turn. We move to group 37 and amendment 155, which is grouped with 162.

Mrs Mulligan: Amendments 155 and 162 are technical amendments to clarify that when a court makes an interim compulsion order or a compulsion order, it cannot at the same time make a remand order under section 200 of the Criminal Procedure (Scotland) Act 1995.

I move amendment 155.

Amendment 155 agreed to.

The Deputy Presiding Officer: We move to group 38 and amendment 156, which is grouped with amendments 157 and 158.

Mrs Mulligan: Amendment 156 makes it clear that, under new section 53C of the 1995 act, the person who deals with reviews and extensions of the interim compulsion order must be the responsible medical officer who has been given responsibility for the patient's case by the managers of the hospital where the patient is detained.

Amendments 157 and 158 are technical amendments. Amendment 157 ensures that, on a review of the order, the court must look at whether it "is"—not whether it "would be"—necessary to extend the interim compulsion order. Amendment 158 removes unnecessary text. There is no need for the bill to say

"for such period as the court thinks fit",

as the period of any extension is dealt with in new section 53C(4) of the 1995 act.

I move amendment 156.

Amendment 156 agreed to.

Amendments 157, 158 and 471 moved—[Mrs Mary Mulligan]—and agreed to.

Section 95—Mentally disordered offenders: compulsion orders

Amendments 159 to 162 and 472 moved—[Mrs Mary Mulligan]—and agreed to.

The Deputy Presiding Officer: Amendment 163 is grouped with amendment 473.

Mrs Mulligan: Amendment 163 seeks to remove the requirement for the mental health

officer to state in his or her report to the court the name and address of the offender's named person. Such a requirement is not necessary as the mental health officer's duty to identify the named person is dealt with under section 103 in part 9 and section 124 in part 10.

Amendment 473 is a minor drafting amendment that seeks to remove an unnecessary reference to new section 57A of the Criminal Procedure (Scotland) Act 1995 in new section 57B(3)(e) of that act, as it is already mentioned earlier, in new section 57B(3)(c) of the 1995 act.

I move amendment 163.

Amendment 163 agreed to.

Amendments 473 and 164 moved—[Mrs Mary Mulligan]—and agreed to.

After section 95

The Deputy Presiding Officer: Amendment 76 is in a group on its own.

Mrs Mulligan: Amendment 76 seeks to implement a Millan committee recommendation. Where a court acquits a person involved in criminal proceedings, other than by reason of insanity, and is satisfied on the evidence of two doctors that the person meets the compulsion criteria set out in proposed new section 60C(3) of the 1995 act, and it is not practicable for a doctor to examine the patient at that time, the court can order the detention of the person in a place of safety for up to six hours to allow an examination by a doctor. The power is necessary because doctors are not always available during criminal proceedings. If the person in question is allowed to go, necessary early intervention—which is so important in the treatment of mental disorder—cannot take place.

I move amendment 76.

Amendment 76 agreed to.

Section 97—Transfer of prisoners for treatment for mental disorder

The Deputy Presiding Officer: Amendment 474 is in a group on its own.

Malcolm Chisholm: Amendment 474 is a minor technical amendment that makes it clear that the definition of a prisoner

"serving a sentence of imprisonment"

used in section 97 does not include a person subject to an assessment order, a treatment order, an interim compulsion order, a temporary compulsion order, an insanity disposal or a compulsion order.

I move amendment 474.

Amendment 474 agreed to.

Amendment 475 moved—[Malcolm Chisholm]—and agreed to.

Section 99A—Appointment of patient's responsible medical officer

Amendment 165 moved—[Malcolm Chisholm]—and agreed to.

Section 99B—Suspension of measure authorising detention

Amendments 166 to 171 moved—[Malcolm Chisholm]—and agreed to.

Section 99C—Power to terminate suspension of detention

Amendments 172 to 174, 476 and 175 to 178 moved—[Malcolm Chisholm]—and agreed to.

Section 99D—Power of Scottish Ministers to require responsible medical officer to provide information

The Deputy Presiding Officer: Amendment 179 is grouped with amendments 189, 195, 649 and 692.

Malcolm Chisholm: Amendment 692 seeks to consolidate the provisions concerning the Scottish ministers' power to require RMOs to provide information into one section that covers all the relevant orders and directions in parts 8, 10 and 11. The section is necessary to ensure that the Scottish ministers can obtain access to up-to-date information on patients.

Amendments 179, 189, 195 and 649 seek to delete sections that are no longer required if amendment 692 is agreed to.

I move amendment 179.

Amendment 179 agreed to.

Section 99E—Powers of Scottish Ministers in respect of suspension of measure authorising detention

Amendments 180 to 183, 477, 184, 185 and 478 moved—[Malcolm Chisholm]—and agreed to.

Section 99F—Appointment of patient's responsible medical officer

Amendment 186 moved—[Malcolm Chisholm]—and agreed to.

Section 99G—Suspension of measure authorising detention

Amendment 187 moved—[Malcolm Chisholm]—and agreed to.

Section 99H—Power to terminate suspension of detention

Amendment 188 moved—[Malcolm Chisholm]—and agreed to.

Section 99I—Power of Scottish Ministers to require responsible medical officer to provide information

Amendment 189 moved—[Malcolm Chisholm]—and agreed to.

Section 99J—Powers of Scottish Ministers in respect of suspension of measure authorising detention

Amendment 190 moved—[Malcolm Chisholm]—and agreed to.

Section 99K—Appointment of patient's responsible medical officer

Amendment 191 moved—[Malcolm Chisholm]—and agreed to.

Section 99L—Mental health officer's duty to prepare social circumstances report

Amendment 192 moved—[Malcolm Chisholm]—and agreed to.

Section 99M—Suspension of measure authorising detention

Amendment 193 moved—[Malcolm Chisholm]—and agreed to.

Section 99N—Power to terminate suspension of detention

Amendment 194 moved—[Malcolm Chisholm]—and agreed to.

Section 99O—Power of Scottish Ministers to require responsible medical officer to provide information

Amendment 195 moved—[Malcolm Chisholm]—and agreed to.

Section 99P—Power of Scottish Ministers in respect of suspension of measure authorising detention

Amendment 196 moved—[Malcolm Chisholm]—and agreed to.

Section 101—Appointment of patient's responsible medical officer

Amendment 479 moved—[Malcolm Chisholm]—and agreed to.

Section 101A—Part 9 care plan

The Deputy Presiding Officer: Amendment 480 is grouped with amendments 484, 487, 488, 561, 575 and 587.

Malcolm Chisholm: Amendment 480 is a technical amendment to make it clear that section 101A applies once a compulsion order without a restriction order is made in respect of a patient.

Amendments 484, 487, 488, 561 and 575 are minor drafting amendments that insert text to ensure that the relevant sections refer to a relevant compulsion order, as defined by amendment 480.

Amendment 587 corrects an error in section 121B to change the reference to section 101(1) to section 101A(1).

I move amendment 480.

Amendment 480 agreed to.

Amendments 481 and 482 moved—[Malcolm Chisholm]—and agreed to.

Section 102—Mental health officer's duty to prepare social circumstances report

Amendment 483 moved—[Malcolm Chisholm]—and agreed to.

Section 103—Mental health officer's duty to identify named person

Amendment 484 moved—[Malcolm Chisholm]—and agreed to.

Section 104—First review of compulsion order

Amendments 485 to 487 moved—[Malcolm Chisholm]—and agreed to.

Section 112—Further reviews of compulsion order

Amendments 488 to 493 moved—[Malcolm Chisholm]—and agreed to.

Section 105—Responsible medical officer's duty to revoke compulsion order: mandatory reviews

Amendments 494 to 496 moved—[Malcolm Chisholm]—and agreed to.

Section 105A—Revocation of compulsion order: responsible medical officer's duty to keep under review

The Deputy Presiding Officer: Amendment 497 is grouped with amendment 498.

Malcolm Chisholm: Amendment 497 is a minor drafting amendment that corrects a mistake in section 105A(2), in which the reference to section 104(2) should have been to 104(1).

Amendment 498 is a technical amendment to the same subsection, to add in a reference to section 108A(2), which refers to the duty to consider from time to time whether to vary the order.

I move amendment 497.

Amendment 497 agreed to.

Amendment 498 moved—[Malcolm Chisholm]—and agreed to.

Section 105D—Mandatory reviews: further steps to be taken where compulsion order not revoked

Amendments 499 to 506 moved—[Malcolm Chisholm]—and agreed to.

Section 106—First review: responsible medical officer's duty where extension proposed

Amendments 507 to 511 moved—[Malcolm Chisholm]—and agreed to.

Section 106B—First review: responsible medical officer's duty to apply for extension of compulsion order

Amendments 512 to 518 moved—[Malcolm Chisholm]—and agreed to.

Section 106C—Application to Tribunal for extension of order following first review

Amendment 519 moved—[Malcolm Chisholm]—and agreed to.

Section 106D—Further review: responsible medical officer's duty where extension proposed

Amendments 520 to 524 moved—[Malcolm Chisholm]—and agreed to.

Section 106F—Further review: responsible medical officer's duty to extend compulsion order

Amendments 525 to 531 moved—[Malcolm Chisholm]—and agreed to.

Section 106G—Determination extending compulsion order: notification

Amendment 532 moved—[Malcolm Chisholm]—and agreed to.

Section 107—Responsible medical officer's duty where extension and variation proposed

Amendments 533 to 544 moved—[Malcolm Chisholm]—and agreed to.

Section 107A—Mental health officer's duties: extension and variation of compulsion order

Amendments 545 and 546 moved—[Malcolm Chisholm]—and agreed to.

Section 107B—Responsible medical officer's duty to apply for extension and variation of compulsion order

Amendments 547 to 555 moved—[Malcolm Chisholm]—and agreed to.

Section 108—Application to Tribunal for extension and variation of compulsion order

Amendment 556 moved—[Malcolm Chisholm]—and agreed to.

Section 108A—Responsible medical officer's duties: variation of compulsion order

Amendments 557 to 559 moved—[Malcolm Chisholm]—and agreed to.

Section 108B—Application for variation of compulsion order: notification

Amendment 560 moved—[Malcolm Chisholm]—and agreed to.

Section 108D—Commission's power to make reference to Tribunal

Amendment 561 moved—[Malcolm Chisholm]—and agreed to.

Section 108F—Application to Tribunal by patient etc for revocation or variation of compulsion order

Amendments 562 to 565 moved—[Malcolm Chisholm]—and agreed to.

Section 110B—Powers of Tribunal on review under section 110A

The Deputy Presiding Officer: Amendment 566 is grouped with amendment 572.

Malcolm Chisholm: Amendment 566 adds the mental health officer and the patient's RMO to the list of people in section 110B(3) who must be afforded the opportunity to give evidence to the tribunal following a review of a determination under section 110A.

Amendment 572 is a technical drafting amendment to section 110E(3)(a), to remove an unnecessary reference to the specific paragraphs of section 110B(3).

I move amendment 566.

Amendment 566 agreed to.

Amendment 567 moved—[Malcolm Chisholm]—and agreed to.

Section 110C—Extension of compulsion order pending decision of Tribunal

Amendment 568 moved—[Malcolm Chisholm]—and agreed to.

After section 110D

Amendments 569 to 571 moved—[Malcolm Chisholm]—and agreed to.

Section 110E—Powers of Tribunal on reference under section 108D

Amendment 572 moved—[Malcolm Chisholm]—and agreed to.

After section 110G

Amendment 573 moved—[Malcolm Chisholm]—and agreed to.

Section 110H—Variation of compulsion order: appointment of responsible medical officer

Amendment 574 moved—[Malcolm Chisholm]—and agreed to.

Section 119—Meaning of "modify"

Amendment 575 moved—[Malcolm Chisholm]—and agreed to.

Section 120—Non-compliance with compulsion order

16:30

The Deputy Presiding Officer: Amendment 576 is grouped with amendments 577 to 585.

Mrs Mulligan: Amendment 576 is a minor drafting amendment to improve the drafting of section 120. Amendments 577 and 578 are technical amendments to insert the correct references into section 120. Amendment 579 is a technical amendment necessary to ensure that the reference to section 54(1)(b) in section 84 should be read as a reference to new section 57A(7)(c) of the 1995 act when section 120 applies. Amendments 580 to 585 are technical amendments to section 120A to ensure that it refers correctly to other sections of the bill.

I move amendment 576.

Amendment 576 agreed to.

Amendments 577 to 579 moved—[Mrs Mary Mulligan]—and agreed to.

Section 120A—Non-compliance generally with compulsion order: application of sections 85, 86, 86A, 86B and 86C

Amendments 580 to 585 moved—[Mrs Mary Mulligan]—and agreed to.

Section 121A—Suspension of measures: application of sections 90 to 91

Amendment 586 moved—[Mrs Mary Mulligan]—and agreed to.

Section 121B—Interpretation of Part

Amendment 587 moved—[Mrs Mary Mulligan]—and agreed to.

Section 123—Appointment of patient's responsible medical officer

Amendment 588 moved—[Mrs Mary Mulligan]—and agreed to.

Section 123A—Mental health officer's duty to prepare social circumstances report

Amendment 589 moved—[Mrs Mary Mulligan]—and agreed to.

Section 125—Review of compulsion order and restriction order

The Deputy Presiding Officer: Group 47 deals with the period in which review of compulsion and restriction orders or hospital and transfer for treatment direction is to be carried out. Amendment 590 is grouped with amendments 591, 624 and 627.

Mrs Mulligan: Amendments 590 and 591 simplify the wording in section 125, which specifies the period during which the RMO is required to review the compulsion order and restriction order. The effect remains the same: each year, the RMO must undertake a review, not earlier than two months before the end of the year. Amendments 624 and 627 do the same for directions under part 11.

I move amendment 590.

Amendment 590 agreed to.

Amendment 591 moved—[Mrs Mary Mulligan]—and agreed to.

Section 127—Responsible medical officer's report and recommendation following review of compulsion order and restriction order

The Deputy Presiding Officer: Amendment 592 is grouped with amendment 628.

Mrs Mulligan: Amendment 592 improves the drafting of section 127(7). It removes the unnecessary reference to the MHO's views, which have already been taken into account in section 127(5).

Amendment 628 brings part 11 into line with the rest of the bill. It adds a new section that places a duty on the patient's RMO to review the direction to which the patient is subject on an on-going

basis. If, as a result of such a review, the RMO believes that the direction should be revoked, the RMO must then send a report with a recommendation to that effect to the Scottish ministers.

I move amendment 592.

Amendment 592 agreed to.

Section 128B—Duty of Scottish Ministers to refer to Tribunal if required to do so by Commission

The Deputy Presiding Officer: Amendment 593 is grouped with amendments 595 to 598, 600, 630, 631, 633 to 635, 637 and 643.

Malcolm Chisholm: The amendments in this group clarify the duties of the Scottish ministers with respect to compulsion orders and restriction orders, in part 10, and hospital directions and transfer for treatment directions, in part 11.

Section 128B(3) requires the Scottish ministers to give notice only once a reference to the tribunal in respect of a patient's compulsion order and restriction order has been made. Amendment 593 will require the Scottish ministers to give notice to the relevant people before such a reference is made, where it is practicable to do so. Amendment 598 deals with the same issue in relation to section 129A.

Amendment 595 is a drafting amendment to include an appropriate reference to section 128B(2)—dealing with the Scottish ministers' duty to refer a case to the tribunal if required to do so by the commission—in section 129(1).

Amendment 596 clarifies the working of section 129A(2). It ensures that the Scottish ministers must make a reference to the tribunal two years after the making of the compulsion order and restriction order, if no other reference or application has been made to the tribunal in the intervening two years. It also ensures that, following that reference, the Scottish ministers must, on each anniversary, look back at the previous two years and make another reference to the tribunal if the tribunal has not considered the order in that period. That ensures that the tribunal will consider the order at least once every two years. Amendment 634 does the same for directions in part 11. Amendment 637 is consequential on amendment 634 and removes text that is no longer required.

Amendment 597 makes it clear that a prior reference under section 129A(2) does not come into consideration when determining whether a reference or application has been made in the previous two years that would preclude a reference under section 129A now. Amendment 635 has the same effect for directions in part 11. Amendment 600 is consequential on amendment 596 and removes text that is no longer required.

Amendment 630 updates section 152. It adds appropriate references to the new section that is added by amendment 628 and allows the Scottish ministers the opportunity to revoke the direction if they believe it appropriate to do so before having to make a reference to the tribunal.

Amendment 631 makes it clear that section 102 of the National Health Service (Scotland) Act 1978, which concerns the functions of the state hospital, does not affect a decision of the Scottish ministers under section 152. Amendment 633 is a technical amendment to make it clear that the Scottish ministers are under a duty to review the status of a patient who is subject to a part 11 direction in addition to their duties under other sections, as provided for in the amendment.

Amendment 643 adds to subsection (1) of section 154B a necessary reference to section 152(1A), which was added to the bill by amendment 630. It means that if the Scottish ministers were to revoke a direction under section 152(1A), they would also direct the transfer of the patient to prison and the direction would cease to have effect once the patient had been admitted to prison.

I move amendment 593.

Amendment 593 agreed to.

The Deputy Presiding Officer: Amendment 594 is grouped with amendments 599, 601, 632 and 636.

Malcolm Chisholm: Amendments 594, 599 and 601 are drafting amendments, which will ensure that the relevant sections properly refer to the persons who are listed in section 128(2). Amendments 632 and 636 have the same effect for part 11 and ensure that the relevant part 11 sections properly refer to the persons who are listed in section 152(3).

I move amendment 594.

Amendment 594 agreed to.

Section 129—Duty of Scottish Ministers to keep compulsion order and restriction order under review

Amendment 595 moved—[Malcolm Chisholm]—and agreed to.

Section 129A—Reference to Tribunal by Scottish Ministers

Amendments 596 to 600 moved—[Malcolm Chisholm]—and agreed to.

Section 130—Application by Scottish Ministers: notification

Amendment 601 moved—[Malcolm Chisholm]—and agreed to.

Section 131—Application to Tribunal

Amendment 602 moved—[Malcolm Chisholm]—and agreed to.

Section 132—Application to Tribunal by patient and named person

The Deputy Presiding Officer: Amendment 603 is grouped with amendments 604, 605, 621 and 638 to 641.

Malcolm Chisholm: Amendment 603 improves the drafting of section 132(1), which makes it clear that both the patient and their named person can make applications to the tribunal under section 133 for a review of the compulsion and restriction order. Amendment 638 has the same effect for applications to review directions under section 154 in part 11.

Amendment 604 removes text, with the effect that a patient or their named person cannot make an application to the tribunal under section 132 for three months after any review by the tribunal under section 133. Amendment 605 makes it clear that the three-month time bar on applications under section 132 by the patient or their named person includes cases in which the tribunal has reviewed the compulsion order and restriction order under section 133 but has decided to make no order.

Amendment 621 is a drafting amendment to section 141(1), which makes it clear that both the patient and their named person can appeal to the tribunal under section 141 against the patient's recall from conditional discharge to hospital. Amendment 639 is a minor drafting amendment, which replaces the word "and" with the word "to" as a consequence of amendment 641, which inserts new subsections into section 154.

Amendment 640 is required to make it clear that an application under section 154 cannot be made in the first six months after a hospital direction has been made.

Amendment 641 will allow a patient who is subject to a transfer for treatment direction to make an application under section 154 in the first 12 weeks after the direction has been made. The amendment implements a Millan recommendation that the patient and their named person should be able to appeal against the making of a transfer for treatment direction. If they do not make such an appeal, the patient and their named person cannot then make an application until six months after the making of the direction has elapsed.

I move amendment 603.

Amendment 603 agreed to.

Amendments 604 and 605 moved—[Malcolm Chisholm]—and agreed to.

Section 133—Powers of Tribunal on reference under section 128(2), 128B(2) or 129A(2) or application under section 131 or 132(2)

The Deputy Presiding Officer: Amendment 606 is grouped with amendments 607 to 610, 612 and 642.

Malcolm Chisholm: The amendments deal with the powers of the tribunal under sections 133 in part 10 and 154A in part 11.

Amendment 606 is a drafting amendment to section 133(1)(a) to insert the proper reference to section 132(1). Amendments 607, 608 and 609 are minor drafting amendments that reflect the fact that when the tribunal revokes a compulsion order or restriction order under section 133, it does so by making an order.

Amendment 610 makes it clear that the tribunal can make an order conditionally discharging a patient only where it is not satisfied that it is necessary for the patient to be detained in hospital.

Amendment 612 is a technical amendment that will change the text in section 133 (8) to read "Before making a decision under this section the Tribunal shall—". That reflects the fact that the tribunal may not make any order under section 133—the amendment leaves the status of the patient unchanged.

Amendment 642 brings section 154A in part 11 into line with section 133 in part 10. It ensures that before the tribunal makes any decision under section 154A in relation to patients who are subject to a direction, it must have afforded the persons listed in the new subsection (5B) that is proposed by the amendment the opportunity to make representations or to give evidence to the tribunal on the patient's case.

I move amendment 606.

Amendment 606 agreed to.

Amendments 607 to 610 moved—[Malcolm Chisholm]—and agreed to.

The Deputy Presiding Officer: Amendment 611 is grouped with amendments 618 and 619.

Mrs Mulligan: Amendment 611 makes it clear that the tribunal can, when it makes an order to conditionally discharge a patient under section 133, impose such conditions on that discharge as it thinks fit. That retains the effect of the Mental Health (Scotland) Act 1984 in relation to restricted patients.

Amendment 618 inserts a new section that allows the Scottish ministers to vary the conditions that are imposed by the tribunal—as provided for by amendment 611—on a patient on conditional discharge. If they do so, they must give notice of the variation to the patient, their named person, the RMO and the MHO.

Should the Scottish ministers vary—under the section that is added by amendment 618—the conditions that are attached to a patient who is currently on conditional discharge, amendment 619 enables the patient and their named person to appeal to the tribunal against any such variation. The patient and the named person have 28 days in which to lodge an appeal.

I move amendment 611.

Amendment 611 agreed to.

Amendment 612 moved—[Mrs Mary Mulligan]—and agreed to.

Section 134—Tribunal's powers etc when varying compulsion order

Amendment 613 moved—[Mrs Mary Mulligan]—and agreed to.

Section 134A—Variation of compulsion order under section 133(5A): appointment of responsible medical officer

Amendment 614 moved—[Mrs Mary Mulligan]—and agreed to.

After section 136

The Deputy Presiding Officer: Group 54 is on the effective revocation of compulsion orders or restriction orders. Amendment 615 is grouped with amendment 617.

16:45

Mrs Mulligan: Amendment 615 makes it clear that, should the tribunal make an order under section 133 to revoke a compulsion order, the restriction order to which the patient is subject would also cease to have effect.

Amendment 617 will provide that, where the tribunal revokes a restriction order under section 133 but does not revoke the underlying compulsion order, part 9 will apply to the patient as if the compulsion order had been made on the date on which the restriction order was revoked.

I move amendment 615.

Amendment 615 agreed to.

Section 137—Effect of revocation of restriction order

Amendments 616 and 617 moved—[Mrs Mary Mulligan]—and agreed to.

After section 138

Amendments 618 and 619 moved—[Mrs Mary Mulligan]—and agreed to.

Section 139—Recall of patients from conditional discharge

The Deputy Presiding Officer: Group 55 is on recall from conditional discharge. Amendment 620 is in a group on its own.

Mrs Mulligan: Amendment 620 will remove section 139(2)(a), which is unnecessary. Section 139 allows the Scottish ministers to recall to hospital a patient who is on conditional discharge. Section 139(2)(a) required the Scottish ministers to be satisfied that the compulsion criteria in section 125(3) were met before they could do that, but as the Scottish ministers are under an on-going duty under section 129 to keep a patient's case under review—which includes consideration of the section 125(3) criteria—section 139(2)(a) is not necessary. With the deletion of that section, it will be possible to recall a patient from conditional discharge if the Scottish ministers are satisfied that it is necessary for the patient to be detained in hospital. For example, that might be done if the patient's mental state deteriorates so that they require further treatment in hospital, or if the risk that they present to themselves or others is raised to a level at which hospital detention is appropriate.

I move amendment 620.

Amendment 620 agreed to.

Section 141—Appeal to Tribunal against recall from conditional discharge

Amendment 621 moved—[Mrs Mary Mulligan]—and agreed to.

Section 147—Appointment of patient's responsible medical officer

Amendment 622 moved—[Mrs Mary Mulligan]—and agreed to.

Section 148A— Mental health officer's duty to prepare social circumstances report

Amendment 623 moved—[Mrs Mary Mulligan]—and agreed to.

Section 149—Review of hospital direction and transfer for treatment direction

Amendments 624 to 627 moved—[Mrs Mary Mulligan]—and agreed to.

After section 151

Amendment 628 moved—[Mrs Mary Mulligan]—and agreed to.

Section 152—Duty of Scottish Ministers on receiving report from responsible medical officer

Amendments 629 to 631 moved—[Mrs Mary Mulligan]—and agreed to.

Section 152A—Duty of Scottish Ministers to refer to Tribunal if required to do so by Commission

Amendment 632 moved—[Mrs Mary Mulligan]—and agreed to.

Section 153—Duty of Scottish Ministers to keep directions under review

Amendment 633 moved—[Mrs Mary Mulligan]—and agreed to.

Section 153A—Reference to Tribunal by Scottish Ministers

Amendments 634 to 637 moved—[Mrs Mary Mulligan]—and agreed to.

Section 154—Application to Tribunal by patient and named person

Amendments 638 to 641 moved—[Mrs Mary Mulligan]—and agreed to.

Section 154A—Powers of Tribunal on reference under section 152(2), 152A(2) or 153A(2) or on application under section 154(1)

Amendment 642 moved—[Mrs Mary Mulligan]—and agreed to.

Section 154B—Effect of revocation of direction

Amendment 643 moved—[Mrs Mary Mulligan]—and agreed to.

Section 155—Termination of hospital direction on release of offender patient

Amendment 644 moved—[Mrs Mary Mulligan]—and agreed to.

The Deputy Presiding Officer: Group 56 is on the effective release of a patient on direction. Amendment 645 is in a group on its own.

Mrs Mulligan: Amendment 645 is a technical amendment that will insert the phrase "or otherwise" into section 155. Under section 155, if the underlying prison sentence of a patient who is subject to a hospital direction or transfer for treatment direction comes to an end, or if the person is otherwise released from that prison sentence, the direction will also cease to have effect at that point. If the patient is to remain detained in hospital, they would have to be detained under the civil provisions in parts 5 to 7. Amendment 645 will ensure that the provision catches all patients who might be released.

I move amendment 645.

Amendment 645 agreed to.

Section 160C—Appointment of responsible medical officer on transfer of patient under section 156, 160A or 160B

Amendment 646 moved—[Mrs Mary Mulligan]—and agreed to.

Section 160D—Patients subject to certain orders or directions: suspension of measure authorising detention

Amendments 197 to 203 moved—[Mrs Mary Mulligan]—and agreed to.

Section 160E—Power to terminate suspension of detention under section 160D

Amendments 204 to 207, 647, 208 and 209 moved—[Mrs Mary Mulligan]—and agreed to.

Section 160F—Power of Scottish Ministers in respect of suspension of measure authorising detention under section 160D

Amendments 210 to 213, 648, 214 and 215 moved—[Mrs Mary Mulligan]—and agreed to.

Section 160G—Power of Scottish Ministers to require responsible medical officer to provide information

Amendment 649 moved—[Mrs Mary Mulligan]—and agreed to.

Section 49—Assessment of needs for community care services etc

Amendment 113 moved—[Mrs Mary Mulligan]—and agreed to.

After section 160H

Amendments 650 to 653 moved—[Mrs Mary Mulligan]—and agreed to.

Section 164—Treatment mentioned in section 162(2): patients incapable of consenting

The Deputy Presiding Officer: Group 57 is on the designation of medical practitioners. Amendment 654 is grouped with amendments 658 and 661.

Mrs Mulligan: Amendments 654, 658 and 661 correct an incorrect cross-reference to the appropriate subsection in section 161, which provides for the list of commission-appointed second-opinion doctors.

I move amendment 654.

Amendment 654 agreed to.

The Deputy Presiding Officer: We are some three hours ahead of schedule, and I would be willing to accept a motion without notice to bring forward decision time.

The Deputy Minister for Parliamentary Business (Euan Robson): May I move a motion without notice to bring forward decision time to now, given the fact that we are making faster-than-anticipated progress through the bill?

The Deputy Presiding Officer: I will be happy to put that question to the chamber as soon as you have moved the Parliamentary Bureau motions.

Parliamentary Bureau Motions

16:52

The Deputy Presiding Officer (Mr Murray Tosh): The next item of business is consideration of six Parliamentary Bureau motions. I ask Euan Robson to move motions S1M-4034 to S1M-4038 and S1M-4042 en bloc.

Motions moved,

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2003 (SSI/162).

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Advice and Assistance (Scotland) Amendment Regulations 2003 (SSI 2003/163).

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Police Grant (Scotland) Order 2003 (SSI 2003/172).

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003 (SSI 2003/178).

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Zoo Licensing Act 1981 Amendment (Scotland) Regulations 2003 (SSI 2003/174).

That the Parliament agrees that Her Majesty The Queen should be invited to address a meeting during the next session of the Parliament in 2003.—[*Euan Robson.*]

Motion without Notice

16:52

Motion moved,

That, under Rule 11.2.4 of Standing Orders, decision time on Wednesday 19 March 2003 be taken at 4.52 pm.—[*Euan Robson.*]

Motion agreed to.

Decision Time

16:52

The Presiding Officer (Sir David Steel): There are six questions to be put as a result of today's business. Unless any member objects, I will put the first five questions together, as they are all about the designation of lead committees. The question is, that motions S1M-4034 to S1M-4038, in the name of Patricia Ferguson, on the designation of lead committees, be agreed to.

Motions agreed to.

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2003 (SSI/162).

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Advice and Assistance (Scotland) Amendment Regulations 2003 (SSI 2003/163).

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Police Grant (Scotland) Order 2003 (SSI 2003/172).

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Civil Legal Aid (Scotland) (Fees) Amendment Regulations 2003 (SSI 2003/178).

That the Parliament agrees that the Justice 1 Committee be designated as lead committee in consideration of the Zoo Licensing Act 1981 Amendment (Scotland) Regulations 2003 (SSI 2003/174).

The Presiding Officer: The sixth question is, that motion S1M-4042, in the name of Patricia Ferguson, on an address to the Parliament, be agreed to.

Motion agreed to.

That the Parliament agrees that Her Majesty The Queen should be invited to address a meeting during the next session of the Parliament in 2003.

Charity Law Reform

The Deputy Presiding Officer (Mr George Reid): The final item of business today is a members' business debate on motion S1M-3961, in the name of Jackie Baillie, on reform of charity law.

Motion debated,

That the Parliament shares the Scottish Executive's commitment to progressing the reform of charity law; recognises that this will assist in developing the contribution of charities to their communities; notes the voluntary sector's call for a charities bill, and welcomes the Executive's commitment to keep the need for such legislation under review.

16:55

Jackie Baillie (Dumbarton) (Lab): As members know all too well, charities form a vital part of Scottish life. Their unique qualities mean that they are especially well equipped to provide to the public services that are sensitive to local needs. Social justice, community regeneration and skills development are but a few of the objectives that charities can help us to achieve. Charities are, however, forced to work in a complicated and archaic legal framework that does little to support them.

Existing charity law is based on a statute that was passed in 1601. In May 2001, the report of the Scottish Charity Law Review Commission—the McFadden report—found, not surprisingly, that it was high time, 400 years later, for an update of the law on charity. The McFadden report was the result of a wide-ranging year-long consultation process, in which questionnaires and leaflets were sent to every organisation that is recognised as a charity in Scotland, and with large public meetings being held in our major cities.

When the commission concluded its work, its final recommendations were referred back to the charity sector for approval; its response was overwhelming support for the recommendations. In essence, the McFadden report recommended a complete overhaul of the current system. The Executive has accepted the case for charity law reform and has thereby taken an important step towards creating a framework that is fit for the 21st century.

It is now time to move on from positive sounds to positive actions. There are some important implications for legislation, which should not be allowed to fall by the wayside. One of the commission's key findings was that the 1601 definition of a charity no longer fits today's public perception of a charity. The public view of charities 400 years ago was that they were apolitical

organisations that pursued objectives such as the advancement of religion, education or poverty relief. These days, such a narrow definition is insufficient.

As members know, there are about 50,000 voluntary organisations throughout Scotland; however, only 28,000 are recognised by the Inland Revenue as Scottish charities. Many organisations that members of the public assume are charities do not have that status, Amnesty International UK and Greenpeace being two examples. Because those charities seek to influence legislation and are, in a sense, political, they are unable to benefit from having charitable status. At the same time, there are many publicly funded organisations—quangos by any other name—that the person on the street would not think of as charities, yet which have charitable status and are subsidised by the taxpayer. It is time that we introduced new legislation to reflect and protect charities today.

McFadden recommended four defining principles for Scottish charities: First, a charity should be for the public benefit. That should be its overriding purpose, which is essential if charities are to maintain their good names. Secondly, they should not be profit-distributing organisations. Thirdly, they should be independent and lastly, they should be able to have political—but not party-political—aims. I acknowledge that there needs to be a debate on what constitutes public benefit and on how we define bodies' independence. As for the political aspect, members need not fear—I do not think that anybody is proposing that the Official Monster Raving Loony Party should become eligible for subsidy. Many charities have a political lobbying arm, but that does not make their aims any less laudable.

Westminster is currently looking into redefining charitable status. It would be ideal if there were a convergence of views between here and Westminster and if we shared our information and thinking. It looks, however, as if legislation will not reach the UK Parliament until 2005, but Scotland need not wait until then because the Labour party, with others, has made an absolute commitment to legislating through a single charities bill.

Let me turn to regulation of charities. In Scotland, charities are not currently monitored to ensure that they comply with the existing body of legislation. They are not required to lodge financial or any other information centrally and, although they are required to provide copies of their accounts on request to members of the public, they do not have to provide core information, such as how many people they employ and what they spend on fundraising.

As organisations that are known for their lack of profit motive and for being run by dedicated staff with loads of committed volunteers, charities are usually rightly viewed with trust and respect by society. In fact, surviving as they do on donations, their good name is their life-blood. However, under today's less than robust legislation, the bad practices of a few charities might muddy the names of the others to the cost of society as a whole. Therefore, there is a clear need for a legislative framework for charity regulation.

In England and Wales, the Charity Commission establishes charitable status and is the centre for charity regulation. It is clear that the independence of that organisation is valued; in fact, the strategy unit in Westminster is working on making England's Charity Commission more independent. We have no equivalent organisation in Scotland, but the McFadden commission shows that there is a widespread belief among charities that that situation must change. I believe that the Executive shares that view and I welcome its stated aim of putting in place a new regulator for Scottish charities that is proportionate, independent, accountable, transparent, consistent and fair. However, I urge the minister to consider putting the proposed new regulator on a statutory footing as part of the key guarantee of independence and stability.

The way in which the Executive has involved the charity sector in consultation is to be commended. We in the Parliament pride ourselves on our inclusive approach, which sets us apart as an effective democracy, but if we are to come up with a sustainable solution, consultation must be continuous. We must face the fact that if the solution is to last for the next 400 years—as the current legislation has—it had better be sustainable. Consensual legislation will be strong legislation, so a charities (Scotland) act that reflects the McFadden report is crucial to our relationship with the charity sector and to our reputation as an inclusive legislature. Consultation must be seen to be more than mere gesture.

Things are already changing for the better for charities in Scotland. Reform that is suited to Scottish needs and which is informed by local consultation on the charity agenda is a breath of fresh air in a stale and neglected corner of the law. That is illustrated by the comments of an employee of the Scottish Council for Voluntary Organisations, who said:

"Before devolution I was a policy officer with SCVO and spent most of my time travelling to London to persuade politicians down there that issues of interest to the Scottish voluntary sector were worthy of a small amount of parliamentary time. We spent eight years trying to get charity law on to the agenda of the Westminster Parliament, but it was on the agenda of the Scottish Parliament from the word go."

Let us not lose that momentum. Charities are the heartbeat of civic society and they protect our

values in an age of cynicism and social fragmentation. However, we should not through haste lose the essence of reform. We need a modern definition of a charity so that we can support organisations that deserve help, and we need a body that is sufficiently independent of Government influence to protect and regulate the sector. I urge the minister to put the commendable work that has already been undertaken to good use and to make rapid progress on charity law reform.

The Deputy Presiding Officer: Because the stage 3 debate on the Mental Health (Care and Treatment) (Scotland) Bill runs on tomorrow, the clock runs on as well. I will advise members when they have spoken for three minutes, after which they can have an extra minute.

17:04

Tricia Marwick (Mid Scotland and Fife) (SNP): I apologise for having to rush off before the debate ends.

It will not have escaped Jackie Baillie's notice that I have not signed the motion that we are debating tonight. Although I acknowledge Jackie Baillie's personal commitment to charity law reform, I do not recognise a Scottish Executive commitment to progress reform of charity law as stated in the motion.

Charity law reform should already be a reality. As we come to the end of the Scottish Parliament's first session, it is unacceptable that the Executive has not legislated on the matter. Charity law reform would have found all-party support in the Parliament—I note that members of all parties have asked questions about it from 1999 and, if we look around the chamber now, we can see the great groundswell of support in the Parliament for charity law reform.

The McFadden commission was established in January 2000 and reported in May 2001, as Jackie Baillie said, after which the Executive decided to consult on the commission's recommendations. That consultation ended on 30 September 2001, but although eighteen months have passed, there is still no bill. The Executive has let down the charities and voluntary organisations in Scotland, which realise how vital charity law reform is.

Jackie Baillie was right: for years policy officers from the SCVO urged charity law reform legislation at Westminster and the SCVO had high hopes that, in the first session of the Scottish Parliament, the Executive would introduce such legislation. At the first Justice and Home Affairs Committee meeting in June 1999, I highlighted the need for charity law reform. I said:

"One of the major problems faced by charities and voluntary organisations in Scotland is that there is no regulatory framework for them: charities are allowed to do whatever they want. Unlike the Charity Commission for England and Wales, which has regulatory powers of investigation, the equivalent office in Scotland is small and has virtually no powers. Anybody in Scotland can set up a charity with very little investigation even when things go wrong. … We would do a great service to the voluntary and charitable sector in Scotland if we could initiate legislation on that."—[*Official Report*, *Justice and Home Affairs Committee*, 29 June 1999; c 11-12.]

At that time, I even considered introducing a member's bill on the subject. Unfortunately, I was talked out of doing so by Martin Sime of the SCVO while we chatted at the Parliament's official opening in July—I am sure that he remembers the conversation. He urged me not to introduce a member's bill because he believed confidently that the Executive would legislate: how disappointed he must be.

The Executive has let down charities in Scotland. Jackie Baillie spoke about the need for positive action, but it is a pity that we did not have positive action four years ago. I assure members that there will be positive action in the Scottish Parliament's next session, because we must ensure that we have charity law reform. It must be a priority for everybody.

17:08

Lord James Douglas-Hamilton (Lothians) (Con): I declare an interest, as I am the trustee of a small charitable trust. I am also active in some other charities, including the Edinburgh support group of Hope and Homes for Children and the International Rescue Corps, and have been active in some others in the past.

Jackie Baillie is to be congratulated warmly on securing this timely debate. The description of a charity that is contained in the Statute of Charitable Uses 1601 continues to be used, which shows that there is a great need for reform. I remember one case, in which I was responsible for reforming the Bastardy Act 1845, which was a desperately patronising document and a disgrace even to be seen. However, that is in the past.

To provide easily accessible information to help to protect against bogus charities—[*Interruption.*] Does a member want to intervene? They are welcome to do so.

The Minister for Tourism, Culture and Sport (Mike Watson): Yes, why not? I was just responding to Lord James Douglas-Hamilton's comments on the act the name of which I will not repeat: it seemed to me to be the mother and father of all legislation.

Lord James Douglas-Hamilton: I thank Mike Watson for his contribution.

We need easily accessible information to help to protect against bogus charities and to make it

easy for members of the public to see which charity does what in their area.

In the conclusion to its paper "Charity Scotland: What happened to Scottish charity law reform?", the Scottish Council for Voluntary Organisations says:

"Coherent charity law in Scotland would provide a supportive framework for the voluntary sector to grow its already recognised role in community life. It would allow charity trustees to better understand their position, and allow charity supporters to be more engaged in the organisations they care about."

I am sure that the SCVO is right. In co-operation with other organisations, such as the Edinburgh Voluntary Organisations Council, the SCVO has repeatedly called for reform of charity law. The SCVO stresses the importance of partnership between charities and voluntary organisations and the Executive to bring about reform.

The Executive welcomed the publication of the McFadden commission's report and the Minister for Justice said that he wanted to keep the momentum going. The next session of Parliament will provide an admirable opportunity to do that. We support the proposal to create a one-door regulatory office that is proportionate, independent, accountable, transparent, consistent and fair. However, we would like that office to be truly independent. I believe that that is what the charities want.

We welcome the fact that the Executive is committed to keeping under review the need for charities legislation. We think that such legislation will be required and that it should be developed in partnership with charities and voluntary organisations. We would support a charities bill and its subsequent enactment, which would be of great service to the community.

I am glad to support the motion.

17:11

Donald Gorrie (Central Scotland) (LD): I congratulate Jackie Baillie on getting the debate. Her personal commitment, as a minister and as a back bencher, to charities is certainly well known. She rehearsed in her opening speech many of the facts and arguments, so I will try not to go over the same stuff.

Personally, I regret the Executive's lack of progress on the issue of charities and voluntary organisations. We have made some progress, but it is regrettable that, in the Parliament's early days, we were ahead of the English in the charities area and now they have surpassed us. They produced two good reports and are doing something about them. To be surpassed by the English on any occasion is a bitter pill to swallow.

We need a stronger bill than the one that the Executive proposes, which defines charities and provides for an independent regulator. We must also address a wider issue. How can we create a society and a government system that encourages, co-ordinates, sustains and monitors charities and voluntary organisations, which have a huge overlap? Monitoring must be related to size. For example, there is no point in small local clubs having to fill in 52-page documents, which the current system tends to involve them in doing. As a basis, there could be a rule that states that each charity has to be registered and that, in order to get a grant, each voluntary organisation has to produce two pages of stuff, for example, which could be on a website and available on paper, setting out their aims, activities, a budget summary, how to contact their officials and so on. That would be helpful. Greater monitoring would be needed for larger organisations, which would have to produce a proper annual return.

We must also consider funding. There must be co-ordination of direct Government funding and lottery funding for core costs. I am sure that members will have heard charities and voluntary organisations state repeatedly that the issue is core costs versus project costs. There is an understandable political desire for new projects. Unfortunately, we live in a contract culture, which results in unsettling, flavour-of-the-month funding and a lack of core funding. There should be far more core funding, which should be directed nationally and have proper advisory arrangements, so that the voluntary sector, local authorities and others are advised on the giving of any money. Good charities and voluntary organisations that do a decent job should get sufficient core funding and be told to get on with it.

We should also fund the continuation of existing projects. Many good projects are wound up after three years, which is a ludicrous waste of money. Then somebody invents a new project and an organisation has to tell lies to qualify for new funding. The whole thing is a recipe for dishonesty and disorganisation. We must have a better system of funding core costs and existing projects.

We should co-ordinate the supervision and funding of such projects through national funding and lottery funding. We must get a grip on the lottery in Scotland, instead of relying on some of what is done in London, such as the New Opportunities Fund and the fund for charities. We must co-ordinate Government giving, lottery giving and local government giving to make best use of the available money. We should avoid duplication of regulation, so that charities are not deaved by incessant requests to fill in more and more forms. A problem lies in keeping the body of charities independent while having some co-ordination at the Government level.

We must have a system that encourages a new breed of voluntary local community organisations, which I am sure that all parties want to encourage. We are working hard to get communities to pull themselves up instead of having initiatives parachuted in. The system must make it easy to start such organisations, which should be monitored with the lightest touch and given financial help when they need it.

The subject is important. I welcome the debate and hope that any of us who is lucky enough to reach the next parliamentary session pursues the issue strongly.

17:16

Robin Harper (Lothians) (Green): I congratulate Jackie Baillie on initiating the debate and on the motion, which I signed. I agree with Tricia Marwick that four years is a long time for 50,000 organisations to wait for a definition of and help with their status in Scots law.

I will give an example of the problems that the lack of a definition has caused. In the chamber during the passage of the Water Industry (Scotland) Act 2002, the Executive promised relief on water charges. However, the criteria for water charges relief are so narrow that only 4,000 of the 50,000 charitable organisations qualify under the regulations, whereas the Executive announced that 80 per cent of organisations would qualify. That is an enormous problem that the Executive must deal with and which can be addressed only by charity law reform. That is one reason why we should get down to charity law reform as soon as possible.

Charities and trustees lack knowledge about their legal status. Charities were recently invited to apply for grants to help them with village halls. Of those who filled in forms and got them back, 50 per cent found to their intense surprise and horror that they were personally liable for their charity's debts. They were unaware of that because we do not have a proper definition of charities or a proper body of law to which people can refer.

I apologise for leaving the debate early, but as co-convener of the cross-party group on architecture and the built environment—that is a long name to remember—I am standing in for Rhona Brankin at a meeting of the group, because she is not terribly well. I will have to dash off to help.

Jackie Baillie said that the Executive has been good about co-operating with and talking to charities, but the view has been expressed to me that the Executive has recently gone into hugger-mugger and is talking to itself. It has not responded much to charities' inquiries about recent charity law developments. When asked for further advice on charities' position in Scots law, the Executive's response was that it would give charities money to produce an advice handbook for trustees. I believe that that is already being done, but on what basis can a handbook for trustees be produced when we hope for new charity law?

My plea to the Executive is for the promised charity law reform to occur in the first year of the new Government. Whether the Executive forms the new Government is a matter to be settled on 1 May. Let us have some promises from somewhere—preferably from everywhere—that the Parliament will address the issue.

17:20

Johann Lamont (Glasgow Pollok) (Lab): I congratulate Jackie Baillie on bringing the debate to the Parliament. I had been looking forward to it, but then we heard from Tricia Marwick and Donald Gorrie—being so cheery must keep them going. I thought that the Parliament had put the voluntary and charitable sector at the heart of its programme and debate. The Social Justice Committee has and so has the Parliament, and we need to consider how to progress in that context rather than taking the view that we do not have an understanding or commitment to the voluntary sector. Any constituency MSP could have nothing other than huge admiration for the role of charities and the voluntary sector.

Fiona Hyslop (Lothians) (SNP): Will the member take an intervention?

Johann Lamont: If the member lets me finish my point.

In its deliberations on the voluntary sector, the Social Justice Committee said that there had to be progress on charitable law. I am sure that the Executive will take that on board.

I want to make a few points before I move on to the substance of what I want to say. The issue is not just about legislation; it is about respecting and understanding the sector, and the Executive has an excellent record on that. We should also not be over-legislating for the sector. I was speaking to a constituent who, for the past 25 years and because she wanted to, ran a lunch club for a group of local pensioners. She has now stopped running the club because of the level of regulation and the lack of respect for the expertise of the women who ran the club out of the goodness of their hearts. They have simply stopped running the club. We have to be careful about that.

I welcome the work done by Jean McFadden and I recognise the degree of commitment that the commission has shown and the body of evidence that it has provided for us to use in moving forward.

As Jackie Baillie said, many organisations are charitable that we might expect would not be, and others are not charitable that we might expect would be. Given the perceptions of what a charity should be, which we might or might not share, that is central to the debate. We want to make the decision based on principles that have been developed through discussion and debate rather than through the deliberations of the Inland Revenue. That is why we need legislation.

The discussions will not always be easy, particularly for organisations that imagine that they are charities, and which might currently be charities, but whose benefit to the public might not be evident to the rest of us. The role of co-operatives highlights the importance of that debate—and I declare an interest.

The co-operative movement is broad and encompasses a range of groups and organisations. Because co-operatives often provide dividends to their members, they would be excluded from charitable status under what is being proposed—the McFadden commission considered the issue. However, co-operatives genuinely benefit the public in their communities, not least because they offer work opportunities to people within local communities and often provide a service that no other organisation would be able to provide. Co-operatives are rooted in an understanding of what their local communities need. Their position would be tested in the debate surrounding a charities bill, and discussion of such interesting and challenging issues could be developed.

We would be kidding ourselves on if we thought that there was a lack of will simply because the issues that have to be addressed are complex. We want charities legislation that can add to the support for the important work of charities and voluntary organisations in our communities not just because of what it concludes and what is enacted, but because of the legislative process, which allows further discussion and acknowledgement by all who are involved in making decisions of the key role of charities, organisations and people within our communities who genuinely provide a public benefit for us all.

I congratulate Jackie Baillie again. I am sure that the debate will put down a marker that this is one of the important jobs that must be done in the next Parliament, to build on the excellent work that has already been done and to recognise the key role of the voluntary and charitable sectors in Scotland.

17:24

Linda Fabiani (Central Scotland) (SNP): Like my colleague Tricia Marwick, I did not sign up to Jackie Baillie's motion. That was not because I did not want it to be discussed—I want it to be discussed—and it was not because I have any problems with the commitment of Jackie Baillie and loads of other members to reforming charity law. However, I wonder a wee bit about the Executive's commitment—after all, four years down the line and four social justice ministers later, we do not yet have a bill on charity law reform to look at. Way back in 1999, the then Minister for Communities, Wendy Alexander, pledged to reform charity law in Scotland. However, after the McFadden report, it was an inordinately long time before the Executive responded properly.

Charity law reform is a social justice issue—it is interesting that social justice ministers have spoken about it and that the Social Justice Committee has been pushing it. Hugh Henry should not take this point personally, but I am concerned that the issue is now under the justice remit—last week in the chamber, Jim Wallace answered questions about charity law reform. That worries me, because the ethos of each portfolio and department is different. The social justice ethos is, "We can do this and we want to do it, so how are we going do it?" I often feel that the justice ethos is, "Why can't we achieve this?" I worry that that has held things up.

Another issue that could have held up reform is the on-going problem that we have with the authorities that deal with the voluntary sector. The amount of knowledge and expertise within the voluntary sector and the fact that people in the voluntary sector can run the agenda themselves are sometimes not recognised. That is down not so much to members of the Parliament or ministers—I do not doubt for a minute that our social justice ministers have all recognised the value of the voluntary sector—as to officials, who sometimes have a problem with recognising those facts. I talk from experience, having worked for a voluntary organisation. I know that there is a perception that people who work for voluntary organisations or charities are not right up there in knowing how to move forward—they are perceived as a bit wishy-washy. I would like ministers to take that problem on board.

There is an on-going example of that problem. I notice in the Executive's response to the McFadden report that the Inland Revenue charities register will be overhauled and reviewed, so that charities that no longer exist are removed from it. The Scottish Council for Voluntary Organisations has taken such an approach for 10 years, with its charities register in Scotland database, which is constantly updated and as a result is the most modern and up-to-date register of where charities are at in Scotland today. Why cannot we use that? Why cannot the Executive say, "The information is there; we don't need to

waste time or money on doing another survey of the Inland Revenue register"? I ask the minister how much that will cost, how long it will take and whether the process will delay reform yet again.

I have two quick points to finish. Can we get the ethos of social justice back into charity law reform? Can we all make the commitment that, no matter who is in the Executive after 1 May, charity law reform will be a high priority on everybody's agenda?

17:28

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab): I speak with some trepidation, given the substantial experience of many of the members who have spoken in the debate and their contributions to the work of charities in Scotland. I am delighted to congratulate Jackie Baillie on bringing the motion, which I support, to the Parliament. There is nothing wrong with injecting a bit of politics into members' business—I do it myself—but we have heard three extraordinarily graceless speeches. I wonder whether, on reflection, members feel that this was the debate for those speeches, but that is a matter for them to decide.

Linda Fabiani: Will the member give way?

Brian Fitzpatrick: On gracelessness? Certainly.

Linda Fabiani: That is the kind of attitude that I have problems with—the attitude that, as the debate is about the voluntary sector and charity law, it is not about politics. The debate is serious and it is a political matter. We should respect people by recognising that.

Brian Fitzpatrick: I am obliged to Linda Fabiani for that corroboration of my point.

I wanted to make a point about the way in which people come to be involved in charities and the importance of making sure that we do what we can to reduce the legislative burden—an important point was made earlier about the need not only for a legislative framework, but for simplification. People who become involved in charities come from all sorts of backgrounds and have all sorts of motivations. My involvement stems from the fact that I was asked to become involved in the Head Injuries Trust for Scotland, partly because it was felt that lawyers instinctively know lots about charity law. What frightened me was the tremendous responsibility that can fall on trustees and directors of charitable companies, as Robin Harper said. The responsibility for carrying a substantial enterprise on which a number of employees, exercises and endeavours depend—and the knowledge that that is being done on the side, as it were—falls not only on lawyers, but on many people across Scotland who give their time to try to create better circumstances.

Partly because of some of the funding issues that Donald Gorrie mentioned, the charity that I was involved with ended up having to shut its doors. Another reason for that was the burden on the trustees and charity workers whereby, at times, we felt that we were navigating the legal arrangements for the charity rather than trying to find a funding solution. Anything that can be done to assist and enable charities is to be welcomed.

I sympathise with Robin Harper's position, but I am not sure that it is appropriate to say that giving advice and guidance to trustees is a bit of a waste of time. The problem that he outlines about the liability of trustees in relation to the letting of a hall is precisely the kind of situation in which straightforward advice would be helpful. On reflection, he might recognise that point.

I would like an overhaul of charity legislation. Many good things happened in the 17th century, but we need to move on.

Jackie Baillie: Name one.

Brian Fitzpatrick: I was thinking of 1603, actually.

The opportunity to conduct that overhaul will be available to us in the next session of Parliament. It can be done through an Executive bill or through a bill lodged by an MSP who can build consensus in the chamber—perhaps Tricia Marwick could give us some lessons on that. I hope that such a bill will make progress and I hope to hear the minister speak on that point later. There is a compelling argument for placing the regulator on a statutory footing. I would like the minister to respond to that point, too.

17:33

The Deputy Minister for Justice (Hugh Henry): Jackie Baillie has done us a favour in giving us an opportunity to focus yet again on the critical role that charities and voluntary organisations play in the life of the country, as many members have testified is the case.

It would go against my grain if I were not to rise to some of the political comments that have been made. I do not want the debate to deteriorate into petty party-political point scoring, but I say in passing that there are some who joined this Parliament four years ago whining, moaning and groaning and who are clearly determined to end the session doing the same thing. I did not recognise the description that I heard tonight of the Parliament's and the Executive's view of the voluntary and charitable sector.

I have noted some points and I will reflect and report back on them. Donald Gorrie regretted the lack of progress made by the Executive and I will certainly feed his comments back to Jim Wallace,

who has taken a close interest in the matter during the past four years. I do not think that the criticisms and some of the concerns that were raised are entirely accurate. That said, there are some things to which we need to give due consideration.

It is important to put on record our appreciation of the work that charities do throughout Scotland. As members have testified, charities deliver a wide range of services. Their work with disadvantaged and marginalised groups plays a key part in achieving greater social justice in Scotland. I know that Jackie Baillie feels very strongly about that.

Charities also provide a range of expertise that is not available in any other organisation in Scotland. Without charities' knowledge, skill and expertise, Scotland and many of its inhabitants would be much the poorer. The changes in charity regulation that we are putting in place are designed to support and encourage that work, while reassuring the public that their money is being well used and that support is being properly provided.

Our response to the McFadden report contains responses to all 114 of the commission's recommendations and sets out plans for the way forward. I hope that members have had the opportunity to reflect on our response to the report, as we responded at length. We are grateful to the McFadden commission for the important work that it carried out. The McFadden report was a diligent and worthwhile piece of work, which deserved a careful and thorough response. I believe that that is what it received—indeed, one commissioner described our response as well worth the wait. The commissioners do not accept the suggestions that have been made that the Executive responded negatively to their report.

We accept the thrust of the report, which is that there should be better regulation and support of charities in Scotland. Our plans will provide, for the first time, an up-to-date register of Scottish charities and a central source of support and advice for charities, their trustees and the public. Our plans will also provide a regulator—the office of the Scottish charity regulator—whose functions will include the routine monitoring of charities, including scrutiny of their annual reports. I believe that those plans address the gap in regulation, which has clearly been a cause of concern for some time. We are working on many of the tasks that need to be undertaken to bring the OSCR into operation early next year.

As Robin Harper and one or two other members remarked, the definition of a charity is key to the question of which bodies receive the benefit of charitable status and so fall to be regulated. We agree with McFadden that the current definition of a charity is outdated. Jackie Baillie and other members mentioned the long history of the legislation in that respect. We believe that a new UK-wide definition is desirable. Although none was in prospect at the time that the McFadden commission was carrying out its work, I believe that there is the prospect of such a definition.

The Cabinet Office strategy unit produced a report on charities and the wider not-for-profit sector. Johann Lamont made a valuable contribution about that sector. We need to consider some of the issues in relation to co-operative organisations that she raised, including how money and resources are owned and distributed.

The Cabinet Office strategy unit report gives us an opportunity to consider a modernised definition of charities that is based on the principle of public benefit and a wider range of purposes. Such a definition could encompass issues such as the promotion of human rights, which is all too often ignored, and the advancement of amateur sport, in which many organisations in this country play a valuable part.

I believe that the strategy unit definition reflects the spirit of the McFadden recommendations. Indeed, the SCVO has described the continuing role of the Inland Revenue in determining charitable status as unnecessary and problematic. It would probably be possible to legislate for charitable status to be conferred in Scotland by the regulator, using either the UK or a different definition.

Fiona Hyslop: The Minister for Social Justice and I were both members of the Social Justice Committee before Johann Lamont became a member of the committee. At that time, the committee was asking for legislation. I want to concentrate on the process and not the pace of progress. Will the Deputy Minister for Justice reassure the chamber that social justice officials and justice officials are drafting the legislation?

Furthermore, if there is a problem with the Inland Revenue definition of charity, does the minister think that it would be appropriate to seek some form of reverse Sewel motion to allow the Parliament to have a wider remit over the issue of definition in any legislation?

Hugh Henry: I was about to say that, as far as using the same definition or a different one is concerned, we have ruled nothing out. However, we should bear it in mind that the Inland Revenue would still be an important part of the process. For example, eligibility for tax relief is a reserved issue, but is central to the viability of many charities and represents a key attraction of charitable status.

On Fiona Hyslop's first question, I absolutely assure her that the social justice department plays

a critical part not just in relation to legislation but in considering the role of charities in the voluntary sector. I would not dare to contemplate any discussion on the matter without allowing the Minister for Social Justice to have her say.

Cathy Peattie (Falkirk East) (Lab): As Johann Lamont pointed out, the voluntary sector does not just include organisations that are involved in social justice; it covers sport, the environment, the arts and so on. The list is endless. It is important to recognise that the voluntary sector is diverse and wide.

Hugh Henry: I agree entirely with that comment.

I want to return to points that members made about the need for legislation and about putting the regulator on to a statutory footing. Following the McFadden report, we made it clear that there would be no opportunity to introduce a charities bill in the current parliamentary session. Unfortunately, I cannot commit the Parliament or Administration in the next session to introducing such a bill within the parliamentary timetable. Instead, we have been trying to concentrate on setting up the new regulator. I completely respect the right of interested individuals to make the case for legislation that they believe is necessary; indeed, Jackie Baillie has articulated many of those views. However, I do not believe some members' claims that it is all or nothing. Although no legislation has been introduced, we should not ignore the many good things that are happening in the sector. I do not think that what we are doing is a waste of time, and the new arrangements will provide a good basis for developing proposals for regulation.

Lord James Douglas-Hamilton: Is the subject suitable for a committee investigation, or even a committee bill, given that such bills have been one of the Parliament's triumphs?

Hugh Henry: That is entirely a matter for the new committees of the next Parliament. Over the first four years of the Parliament, the committees have demonstrated their vigour and the wide-ranging nature of their interests. I am sure that some of them will consider the work of the broader range of charities that Cathy Peattie described.

On the regulator, we believe that the agency model is an established and effective way of delivering regulatory functions. It means that we do not have to wait for a legislative opportunity to set up the regulator—its work can begin immediately. In response to Brian Fitzpatrick and other members, I make it clear that we have not ruled out putting the regulator on a statutory footing in time, if experience shows that that is necessary.

In due course, there will be a need to introduce a new legal form for charities such as the charitable incorporated organisation. We also need to extend trustees' investment power and improve the procedures and powers of the Scottish charities nominee. Moreover, there might be a further review of proposals to put the register of charities on a statutory footing in order to extend the regulator's powers, which might include the power to grant charitable status.

This important debate has come towards the end of the parliamentary session. As a result, it is only right that we yet again give due recognition to the work of thousands of organisations and tens of thousands of people throughout Scotland in improving and sustaining the quality of life for individuals who are sometimes vulnerable and isolated.

We pay tribute yet again to the expertise and dedication of those involved and we recognise the absolutely critical role that charities play in the fabric of life in Scotland, whatever shape or form they take.

As Johann Lamont said, we are offering tremendous support to the charitable sector. We should celebrate and recognise not only its work, but the work that Parliament has done. Tonight's debate should be about a positive recognition of what has been achieved, although we recognise that more is still to be done.

As Lord James Douglas-Hamilton said, in the next session, we hope to work in partnership to make the work of charities in delivering for communities easier, and thereby to improve directly the quality of life throughout Scotland.

Meeting closed at 17:46.

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Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178