MEETING OF THE PARLIAMENT

Wednesday 25 June 2003
(*Afternoon*)

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Debates

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

Time for Reflection

The Presiding Officer (Mr George Reid): The first item of business this afternoon is time for reflection, which will be led by the Rev Professor Frank Whaling, co-convener of Edinburgh Interfaith Association and Emeritus Professor of the Study of Religion at Edinburgh University.

The Rev Professor Frank Whaling (Edinburgh Interfaith Association; Chair of Edinburgh International Centre for World Spiritualities; Emeritus Professor of the Study of Religion, Edinburgh University): It is a joy and privilege to offer this reflection on the basis of my interfaith experience and vision. It is perhaps appropriate that spiritual leaders such as Jonathan Sachs have been here before, that the Venerable Thich Nhat Hanh and Sri Chinmoy are in the capital today, and that the Dalai Lama will be here next year. There are saints in all religions. I have learnt much from others in the deepening of my own Christian faith, and am sure that the interfaith movement is one of the new beacons of our time.

In Scotland, interfaith awareness has grown rapidly in recent years. There are interfaith associations in our main cities, a Scottish Inter Faith Council, other bodies of interfaith significance, and increasing contact between the religions. This Parliament's time for reflection—for perhaps the first time in the history of any parliament—is religiously inclusive. Our children can learn about other religions in school and there is the possibility of interfaith chaplaincy in our educational institutions, hospitals, prisons and the military. In 2002, Scottish religious leaders met together for the first time and plan to do so regularly in the future.

My German colleague Hans Kung has written that there will be no survival without a world ethic, no world peace without peace between the religions, and no peace between the religions without dialogue between the religions. Scotland is part of the world, the world is part of Scotland, and Kung is surely right. Although religions differ and are diverse, they share basic values, such as do not steal; cheat; lie; or kill except in extremity; honour your family and love your neighbour as yourself. Separately or together, those religions give us meaning, purpose and values, and what Rabbie Burns called a sense of spiritual yearning. They light up the colour of a flower, the laughter of a child, the lilt of a mountain and the song of a bird. In the inner castle of our heart they kindle a spirituality of listening, empathy, prophecy, peace, righteous indignation, inwardness and involvement. Through dialogue, we move from bare tolerance to acceptance to mutual concern.

In 2001, as co-chair of an interfaith association in Scotland, I with others had a decision to make: 9/11 had happened and our annual September interfaith pilgrimage was due to visit a mosque, a Church of Scotland church, and a Buddhist priory. A smoke bomb had been thrown into the mosque. The question was whether we should cancel the pilgrimage or not. In the end, 150 people from different religions gathered together to share with our Muslim friends in their smoke-damaged mosque.

Our hope is that the interfaith journey that is just beginning will work with others in our total society towards the end that the care and concern of all the people by all the people for all the people might grow and abound throughout all this great land.

Presiding Officer, thank you for your kindness and courtesy. I wish good speed and God speed for the Parliament's work.

Modernising Justice

The Presiding Officer (Mr George Reid): The next item is a debate on motion S2M-191, in the name of Cathy Jamieson, on modernising justice, and two amendments to the motion.

14:34

The Minister for Justice (Cathy Jamieson): Before I begin, I offer my congratulations to the Opposition spokespersons, Annabel Goldie and Nicola Sturgeon, on their new roles. I am sure that we will have some interesting debating times over the next few weeks, months and, I hope, years.

Our partnership agreement gives a clear priority to working for a safer Scotland, supporting safe communities and improving public services. An efficient, effective and fair justice system is vital in creating that safer, stronger Scotland. During the second session of the Parliament, we will build on the work that was begun in the first four years. My aim is to modernise our laws and our legal system to make them more effective and efficient in handling the ever-growing volume of business, and more accessible and user-friendly for those who have to use them. We aim to make them fair where they most need to be fair—fair for the vulnerable, fair for ordinary, honest, hardworking people in our communities, and fair for those communities that are trying to fight their way out of deprivation. The law and the legal system must also be relevant to Scottish society in the 21st century.

We have already done a great deal. We have reformed the law dealing with adults with incapacity, protecting the most vulnerable in our society. We have replaced poinding and warrant sales. Legislation has been passed to ensure that criminals cannot profit from the proceeds of their crimes. We have improved safeguards against sex offenders and have given added protection to our children. We have modernised not just through legislation, but equally, and just as important, through practical measures. Police numbers are at record levels. We have a new, transparent system for judicial appointments. We have carried out a root-and-branch modernisation of our public prosecution service.

Let us be honest; modernising is not a quick-fix solution. Designing changes and implementing improvements that will work takes time and needs sustained effort. Our legal system and our laws must reflect the needs and concerns of our society. Expectations of what the justice system can and should deliver—protecting communities, punishing the guilty and offering offenders the chance to change—are high, and rightly so. We expect that people's individual rights will be protected and that effective action will be taken against those who profit from other people's misery and abuse other people's trust.

We want to make our legal system work better for ordinary people—for those who come into contact with the criminal justice system as victims of crime, as witnesses or as jurors, and for those who buy and sell houses, get married, separate, have children, run up debt or find themselves executors of an elderly relative's will. All our lives, every day, are touched by the workings of Scottish civil law.

Modernising justice is more than just a slogan. It is more than just another catchphrase that sounds good, but lacks substance. When we talk about modernisation we need to look at the process of justice as a whole, from beginning to end. Modernisation is about efficiency. The volume of business that the system has to deal with keeps increasing, so we must ensure that business is dealt with promptly, speeding up processes and cutting down on wasted time for victims, witnesses, the police and the courts. Modernisation is also about effectiveness. We want sentences and programmes that reduce reoffending, we want less offending by those on bail, and we want civil laws and procedures that resolve problems quickly.

Modernisation needs to deliver a more accessible legal system. Users—by which I mean ordinary people who need to pursue or defend a case, or who find themselves as witnesses or victims—should not be alienated by the system or excluded from using it. Fear of cost, the complex legal process and not being able to get help are all obstacles for individuals who need to use the legal system. That is not acceptable and we must remove those obstacles.

Fairness is crucial. We want a legal system that focuses on the needs of victims and protects the vulnerable and disadvantaged in society. We must ensure that there is consistency in the criminal justice system and that the punishment fits the crime. The system must be fair for victims, fair for witnesses and fair for jurors, while upholding the right to a fair trial for the accused. We also want to ensure that people from every background, tradition and community are able to benefit from, and contribute to, our society.

Modernisation means that our laws, our solutions and our institutions must be relevant and appropriate for Scotland in the 21st century. We need to abolish archaic laws where they no longer meet our needs and devise modern alternatives. We must take account of changing public attitudes and ensure that our laws reflect Scottish society as it is today, not as it was in the distant past. Our laws and institutions must reflect our priorities, our beliefs, our values and our aspirations.

We have an ambitious programme of modernisation for the coming four years, to make our courts and court processes more efficient, to ensure that the system is designed around the needs of ordinary people and to deliver modern laws that are based on common sense and current public attitudes.

Last week, we set out radical proposals for reform of the High Court, where Scotland's most serious crimes are handled. Those proposals are designed around the needs of the law-abiding many and are not for the convenience of the law-breaking few. To complement such far-reaching work on reform of the High Court, an equally wide-ranging review of the summary justice system is already under way, under the chairmanship of Sheriff Principal McInnes. There should be fairness for victims, witnesses and jurors, but the right to a fair trial for the accused should be maintained—those are fundamental principles.

Our most vulnerable people must not be denied access to justice. In a fair justice system, all witnesses, including children and young people, people who are ill or disabled and people who have suffered discrimination, harassment or distress must be enabled to give their best evidence so that the courts can take better-informed decisions. Earlier this week, we introduced the Vulnerable Witnesses (Scotland) Bill, which puts the needs of vulnerable witnesses at the centre of the process and ensures that their voices will be heard.

I want to bring forward new ideas on sentencing to deal effectively with those who commit crime, and to help offenders to get out of the vicious cycle of offending and re-offending. We will set up a new, judicially led commission on sentencing, bail and remand to consider consistency of sentencing, the use of fines, bail and remand and the effectiveness of sentences in reducing offending. I expect to announce the chair of that commission within the next few weeks and the Executive is committed to considering, during the lifetime of this Parliament, the legislation that might be necessary to implement its recommendations.

We will also consult on proposals to establish one organisation with one set of responsibilities for managing offenders, whether they are in prison or in the community. I believe that the good work that is done by criminal justice social workers and by staff in the Scottish Prison Service will be more effective if they not only work well, but work well together. Both services have a complex and difficult job to do in a challenging environment. The proposed new service will enable us to maximise the impact of protection, punishment and rehabilitation that is offered by the criminal justice system.

That adds up to an exciting agenda to reduce re-offending and ensure confidence in the consistency of sentencing and the system that implements the sentences of the courts, as well as adding up to real opportunities to change for the better. We will continue to work towards making Scotland a safer place to live.

Tomorrow, we will publish a consultation paper on antisocial behaviour with proposals that put communities first and ensure that the justice system and other agencies can deal with antisocial behaviour quickly and effectively. For too long, a minority of people have shown a complete disregard for the impact of their actions on others—I make it clear that I am talking about a small minority of people and that the issue is not just about youths hanging around on street corners. Antisocial behaviour has a corrosive impact on the lives of people in communities throughout Scotland and must be dealt with. We intend to deal with it effectively and to take action against the law-breaking few to improve the quality of life for the law-abiding many.

Our work on tackling antisocial behaviour must be seen in its wider context. There is a clear link with our programmes to tackle youth crime and programmes that provide positive alternatives for young people who might otherwise drift into trouble. That is why I announced earlier today a new funding package of £1 million for community safety partnerships throughout Scotland, to be used for ensuring that 12 to 16-year-olds have the opportunity to take part in sports and other constructive pursuits over the summer. Such pursuits will offer a real alternative to disorder, antisocial behaviour and petty crime and keep young people out of trouble, in addition to dealing with those who offend.

I will say a few words on civil justice issues. Scotland at the beginning of the 21st century is a land of many cultures, beliefs and lifestyles, all of which contribute to our society and have helped to make it what it is today.

To serve this society well we need to develop modern laws—based on modern Scottish values of tolerance, equality and opportunity—to deal with the complexities of modern life; laws that ensure fair and prompt solutions for problems that people and businesses encounter in their everyday lives. As I said, we need to ensure that people who need the law will not be excluded from using it—whether due to prohibitive costs, lack of knowledge or lack of help.

We will reform family law for all Scotland's people. Families nowadays come in many different shapes, sizes and configurations. Our goal will be to promote stability in relationships, to provide protection where it is most needed and, above all, to help children get the best possible start in life.

We must have relevant laws that ensure that people from every background, tradition and community are able to benefit from, and contribute to, our society.

We will bring forward reforms in other areas. Already, a major review of and consultation on the system for enforcing civil obligations—whether to pay debts or other duties—has taken place. We will consult very soon on modernising bankruptcy law and will next year bring forward a joint bill on bankruptcy and diligence reform.

Work on improving access to justice will continue—there will be further reform of legal aid for both civil and criminal issues.

We have already consulted on our proposals to establish a Scottish human rights commission. That will strengthen our agenda of fairness, which underpins all our modernising work. It will also help to create a culture of understanding and awareness of both rights and responsibilities; that is essential to the stability of any legal system.

I restate our belief that we need to modernise the system to make it work better and to bring it into the 21st century. Lord Bonomy recognised that, we recognise it and those who use the system know it from experience.

Some may wish to conduct this debate in terms of resources, but modernisation is not about ever-greater levels of expenditure. Resourcing this ambitious programme of modernisation is important but, above all, efficiency and effectiveness mean ensuring that the money that we spend achieves the outcomes that are expected from it. If we are to spend new money, we must ensure that that achieves better outcomes.

More police must mean that more crime is detected and more criminals are brought to justice. More investment in prosecution must lead to bringing more cases to court, more quickly. More investment in our courts must lead to a better experience for victims, witnesses and jurors.

We have invested in all those areas and we will continue to do so in a way that is properly costed and calculated to bring about the improvements that we seek.

Today, I have set out the agenda for modernising justice in Scotland. Over the next four years, all those issues and many more will come back to the Parliament for consultation and scrutiny.

We have an opportunity to reform the justice system so that it better serves all the people of Scotland and is a justice system that honours our long and rich Scottish legal tradition. It must be efficient, effective and fair—a justice system of which Scotland can be proud.

I move,

That the Parliament notes the commitment made in *A Partnership for a Better Scotland* to working for a safer Scotland, supporting safe communities and improving public services and supports the Scottish Executive in working to modernise the courts and criminal justice system for those who have to use them, including victims and witnesses, and in delivering modern laws to deal with the complexities of modern Scottish life.

14:48

Nicola Sturgeon (Glasgow) (SNP): I congratulate Cathy Jamieson on her appointment as the Minister for Justice. I wish her well in that important role.

I am delighted to see that Gordon Jackson is in the chamber today. He obviously thinks that as we are about to do something that might affect his day job, it is worth his while to be here.

I warmly welcome the publication of the Vulnerable Witnesses (Scotland) Bill and the court reform white paper. Both will go some way towards modernising the criminal justice system and making it much more sensitive to the needs of the victims of crime and those giving evidence. Of course, truly modernising justice will take more than legislation. It will demand, among other things, changes in the culture of all those who participate in the justice system.

That said, I will focus on the two consultations that have been issued in the past few days. I am glad that Cathy Jamieson referred to some of the other issues, particularly in civil justice, to which the Parliament will return when more details are available.

There is always a difficult balance to be struck between the rights of the accused in criminal trials and those of victims and witnesses. Of course, under Scots law, everyone is innocent until proven guilty and for that reason the accused has the right to test all the evidence that is led in a trial. That is why any move to excuse witnesses from giving evidence in court must be considered carefully. The Vulnerable Witnesses (Scotland) Bill will require careful parliamentary scrutiny to ensure that it delivers its objective of protecting vulnerable witnesses without unduly or unnecessarily impinging on the rights of the accused. My early impression is that the bill gets that balance broadly correct, which is why I welcome it in principle.

The High Court reform white paper, which was published last week, builds well on Lord Bonomy's excellent work in his review of the practices and procedures of the High Court. Everyone wants a cut in crime rates and the corresponding reduction in pressure on the High Court, but we also want to know that, when serious crimes are committed, the perpetrators will be brought to justice quickly

with as little stress and inconvenience as possible for the victims of crime and the witnesses who are required to give evidence in trials. At present, that does not always happen and, as the old saying goes, justice delayed is justice denied.

Lord Bonomy painted a picture of delay and uncertainty for all those involved in the administration of criminal justice. For example, more than a third of all cases that are listed for trial are adjourned at least once in the lifetime of the case. As the minister said, the increasing volume of High Court work is a major factor in some of the difficulties and that should not be underestimated. Lord Bonomy pointed out that the number of new indictments increased by almost a quarter between 1995 and 2001. However, the work load is not the only reason for the delays and blockages that are experienced in the High Court: many are caused by weaknesses in the system.

Lord Bonomy outlines well the main features of the present system that in his view stand in the way of efficient throughput of cases—I am sure that most people who practise in the criminal justice system would agree with him. He goes on to make a number of recommendations that are designed to address those problems, the vast majority of which I support. For example, the introduction of a mandatory preliminary hearing is eminently sensible. In most cases, the first court hearing of the accused is the trial diet, but in many cases that hearing turns out to be merely a procedural one in which the case is adjourned because one or both of the parties are not ready to go to trial. It would be far better to have a procedural hearing in advance of the date that is set for the trial.

The white paper proposals to ensure earlier preparation of cases and intimation to the defence, and better communication between the prosecution and the defence, are welcome, as is the amendment that will ensure that judges, in passing sentence, can take into account the stage at which someone tenders a guilty plea. That measure should encourage earlier guilty pleas and will avoid situations in which people wait until the trial diet to plead guilty, which wastes the time of all those who are involved in the system.

I mention in passing the minister's comments on the creation of a sentencing commission, which is a welcome and overdue development. The inconsistency of sentencing in Scotland baffles the general public and contributes to the view that justice is not done consistently, even when cases have similar key factors. The proposal is a welcome development and I look forward to hearing more of the details.

The two proposals in the High Court reform white paper that are, in my view, the most controversial and which require the most careful scrutiny are the proposal to extend the 110-day rule and the proposal to increase sheriffs' sentencing power in solemn cases from three to five years.

The purpose of the 110-day rule, which is one of the cornerstones of the Scottish criminal justice system, is to prevent injustice and to protect the interests not only of those who are accused of crime, but of the victims of crime who want cases to proceed as quickly as possible. However, just because the time limit is and always has been 110 days is not in itself an argument against change. Too often in the justice system, tradition and the established ways of doing things take precedence over the efficient administration of justice. In fact, the 110-day rule in its present form is relatively new—it used to be the case that trials had to be concluded, not merely started, within that time scale.

I want to make it clear that, whatever time limit is set—whether it is 110 days or the proposed 140 days—I agree with the Executive that if the Crown Office and Procurator Fiscal Service is unable to start a trial within the time limit, the accused should not have all charges against him dismissed, but should simply be released on bail to await trial. That change would ensure that fewer people escape justice on a mere technicality.

I do not believe that a convincing case has been made for extending the 110-day time limit. The Executive's logic for proposing to do so is only superficially attractive. The Executive points out that the defence requests 80 per cent of all adjournment motions and that the most common reason is that more time is needed. I agree that that is the case. However, the Executive then makes a leap of logic that is not borne out by Lord Bonomy's report—although I concede that he supports the proposed change—by stating that the 29-day period between the serving of an indictment, which must be done within 80 days, and the start of a trial is, per se, too short a time for the defence to prepare its case.

I think that Lord Bonomy's report bears it out that the time is usually too short only because of late preparation by the prosecution, which serves indictments right up to the deadline. I accept that that will be inevitable, particularly in complex cases. Witness production lists are provided, at best, at the tail-end of the 80-day period. As Lord Bonomy said, it would not be so bad if the serving of the indictment marked the point at which all information was given to the defence.

Pauline McNeill (Glasgow Kelvin) (Lab): I thank the member for giving way. Does she accept that Scotland is in an unusual position because, according to the Solicitor General, only China and Macedonia have a shorter time limit than we do? Sir Anthony Campbell, when he reported on the

Chhokar case, said that the English legal system could not prepare cases within the time scale that the prosecution system in Scotland does so. The COPFS is under incredible pressure—I do not think that that situation will necessarily change—and needs an increase in resources.

Nicola Sturgeon: I accept the thrust of the member's intervention, but the point that I am trying to develop is that the main pressure on the system comes within the initial 80-day period. If we could get that situation right, the 110-day limit would be achievable. I think that the Executive has made the wrong emphasis, which is why I remain to be convinced of its proposal.

The failure—for all the reasons that we know—to properly prepare a case within 80 days results in the defence having little time to prepare for a trial. If everything is done properly at the outset, the 29-day period, per se, is not too short. Given that so many of the white paper's proposals are designed to speed up preparation in the early period, it would be far more sensible to wait and see how they impact on things before deciding to go ahead with the extension of the limit. Of course, proper resourcing of the COPFS is also essential, which is the point of the Scottish National Party's amendment. The minister will no doubt say that the COPFS budget has increased—which it has—but so has its work load, which is a point worth bearing in mind.

My last, brief point relates to the increase in the sentencing power of sheriffs in solemn cases. I support the increase from three to five years. However, my slight concern is that the impact on the work load of sheriff courts has not been properly assessed. I note that the white paper estimates a 7 per cent increase. However, the review of summary justice by Sheriff Principal McInnes, to which the minister referred, is not complete. That review deals with a different part of the system, but it is an essential part of the jigsaw. I am worried that, without that review, we will not see the picture in the round and will perhaps go ahead with something without properly considering its impact on the sheriff court system.

With those caveats, and the points that I made, I welcome the white paper. I look forward not only to scrutinising its detail after the recess, but to scrutinising and considering the other proposals that the minister made in her speech. All in all, that will make the period ahead very interesting.

I move amendment S2M-191.1, to insert at end:

", and further recognises that the efficient administration of criminal justice depends on all parts of the system, not least on the Crown Office and Procurator Fiscal Service having adequate resources to meet the increasing demands placed on it."

14:59

Miss Annabel Goldie (West of Scotland) (Con): First, may I thank the minister for her kind remarks and wish her well in her ministerial position. I do not know what the watching public will make of three harridans occupying briefs on justice and home affairs. I should also declare my interests for the purposes of this debate, as I am a member of the Law Society of Scotland, an enrolled solicitor and a partner in a law firm in Glasgow.

Like Nicola Sturgeon, I welcome the opportunity to debate measures announced by the Executive to improve the delivery of justice in Scotland. I particularly welcome the opportunity to debate the white paper, "Modernising Justice in Scotland: The reform of the High Court of Justiciary" and, in the time available, I will concentrate on it.

To some people, lawyers and modernisation might sound like improbable bedfellows, but Lord Bonomy's report raises important issues and modernisation, in its broadest sense, is overdue. I shall come back to that aspect later.

It is important that any proposals for change proceed on a proper analysis of the spectrum of justice and do not simply emerge from the powerful platform of lawyers talking to their own in a procedural microcosm.

The white paper commences with a commendable objective, stating that the aim is

"to reduce crime and reoffending".

My party certainly supports that objective. However, the objective also implies that the High Court element of the process is a part of a whole and not a free-standing component.

The process of criminal justice starts with someone with a sense of civic responsibility reporting criminal activity to the police and assuming that the police will be able quickly and competently to gather evidence and that the police will charge the perpetrator and set in train the necessary court procedure. The good citizen then assumes, likewise, that the court procedure will be discharged swiftly and that, if conviction of the perpetrator is the outcome, the conclusion will be the imposition of a sentence that fits the crime.

That process should produce fairness to the accused and reassurance to the victim and the civic-minded reporter of the incident that the criminal justice system works. However, I have to say that the public verdict on our criminal justice system is currently a little less charitable.

My party finds merit in the idea of increasing the sentencing power of the sheriff courts in jury cases from three to five years. Equally, we acknowledge that that will place a more onerous responsibility

on our sheriffs and will add a significant work load to our sheriff courts, which already rank among the busiest courts in Europe. It is worth noting that such is the volume of criminal work in a sheriff court that a 20 per cent reduction in indictments in the High Court will represent only a 7 per cent increase in sheriff and jury cases. Against that, we have to consider a further increase in work load that will arise from the Vulnerable Witnesses (Scotland) Bill that is currently before the Parliament.

It does not take a mathematical genius to work out that the sheriff courts will grind to a halt unless much more resource is allocated to them. I noticed the minister's hooked comment that some people might choose to make this a debate on resources but, frankly, if seismic changes of the sort that are proposed in the white paper are made, the consequences will be an increase in work for the sheriff courts and the resource implications of that will have to be considered. Quite simply, the courts could not function without some augmentation of personnel and infrastructure. I would like the minister to comment on that aspect and to inform the Parliament what the current estimate is for additional personnel—including, perhaps, new sheriffs—in the sheriff courts, once the new provisions are implemented.

My party welcomes an increase in the sentencing powers that are available to sheriffs for summary cases. I hope that that will not be lost sight of. I share Nicola Sturgeon's interest in Sheriff McInnes's forthcoming report on summary justice in the sheriff courts.

We welcome the principle of a mandatory preliminary hearing, provided that it does not become the route to adjournment and delay, not only because that would be undesirable but also because failure to bring a case for trial within 140 days for full committal before a sheriff would mean the release of the accused on bail regardless of the charges that the accused might face. Naturally, the public might have an interest in that. Equally, we support, in principle, sentence discount for early plea, although the need for consistency is of paramount importance.

I noticed the minister's comment with reference to a judicial commission on sentencing. It will be interesting to learn the specific proposals for that commission, because a fundamental principle of the law of Scotland is that judicial discretion in sentencing is vital.

On the issue of the time that is spent by the accused on bail, Lord Bonomy proposed a new nine-month deadline for the case to go to a preliminary hearing, effectively requiring the Crown to issue the indictment within eight months. We support that and regret that the Executive has not had the courage to grasp that opportunity. If the Executive were to concede the principle of a reduction being possible, the reduction of the existing period from 11 to only 10 months would be much more attractive. The opportunity should have been seized and Lord Bonomy's proposal implemented.

I now come to two issues of profound concern, which—the minister will be disappointed to hear this—concern resourcing. They are the overall resourcing of the police and the Crown Office and Procurator Fiscal Service.

The availability and swift provision of evidence to the prosecution depends upon the police being able to do their job timeously. The appalling recent disclosure that, due to time bar and delay by police or reporting agency, more than 17,000 cases were marked no proceedings in 2002-03 is the measure of the problem. Unless we resource the police properly, we can reform the High Court until the cows come home, but there will be no improvement. My party, as the minister is aware, supports a significant increase in resources for the police—an extra £45 million per annum.

The Lord Advocate described the Crown Office and Procurator Fiscal Service as a cinderella department due to a great lack of resources. If lack of resources is masquerading as a catalyst for changes in procedure, that is not acceptable.

That brings me to the nub of my concerns—the proposal to extend the 110-day rule, whereby an accused may spend an extra 30 days in custody before coming to trial. A fundamental precept of Scots criminal law is that an accused person must not be allowed to languish in jail for an unreasonable time and that the prosecution should be given a reasonable time to prepare the case. That principle has reigned supreme for three centuries. The period was 100 days, and the Criminal Procedure (Scotland) Act 1887 increased it to 110 days. I find it remarkable that, in the days of Sir Walter Scott and the quill pen—before telephone, fax, e-mail and the internet had ever been heard of—prosecution and defence agents could bring cases to trial within 100 days, but in 2003, with communications technology undreamt of 300 years ago, we need 140 days to get a case ready for trial.

The reality is that an under-resourced police force and an under-resourced Crown Office and Procurator Fiscal Service are not being given the tools to do the job quickly. That is no excuse for sweeping away the 100-day rule. It is no justification for denying an accused, who may be innocent, his or her liberty for a further 30 days. That is not modernisation. It is repression and it is illiberal. I urge the minister to give that aspect of the proposals the most careful thought.

The Law Society of Scotland, in its response to Lord Bonomy's report, did not support extending

the 110-day limit. I will quote from that response, which was prepared by the Law Society's criminal law committee:

"The Committee would suggest that the solution to the problem is not extending the time limit but rather in directing greater resources to solving the problem."

As a member of the Law Society, I am entitled to see that submission. I am somewhat filled with regret that the debate is taking place without full sight of a summary of the responses that were submitted to Lord Bonomy, although I appreciate that they are due to come out imminently.

The real modernisation that we need in the Crown Office and Procurator Fiscal Service is the deployment of modern technology in all its forms to facilitate better and swifter engagement with defence representatives, professional witnesses and the panoply of personnel who are involved in a trial and thereby to expedite dispatch of cases comfortably within the 110-day period. That requires increased resources at every stage in the process. That is why I have lodged the amendment in my name.

I move amendment S2M-191.2, to leave out from "supporting" to end and insert:

"and, while welcoming proposals to make more efficient the processing and disposal of criminal cases, expresses concern at the proposed extension to the 110 day rule, the resources implication for sheriff courts of handling an increased workload and the continuing inadequacy of resources available to the police and the Crown Office and Procurator Fiscal Service."

15:08

Mrs Margaret Smith (Edinburgh West) (LD): I welcome the minister to her new job. Indeed, I welcome all the spokespeople to their jobs. I am glad that Annabel Goldie did not include me in the list of harridans. That is probably the nicest thing that she has ever said to me.

I will give members a flavour of the incidents that have been reported in my constituency in the past week: an armed robbery in Davidson's Mains; wanton vandalism in the former National Coal Board offices in Corstorphine and at a new nursery in Cramond; and serious assaults in Muirhouse. Incidences of antisocial behaviour and bad neighbours are reported to me at my surgery almost every week without fail. That is the reality of what my constituents have to live with in a relatively good part of Edinburgh; it is the reality of what people have to live with throughout Scotland. It is not acceptable to the Executive and it is not acceptable to the Parliament.

Improving the justice system is the people's priority, and it should be our priority too. We need a justice system that is fair and efficient, compassionate and effective. We need to improve the system's performance in both civil and criminal cases if we are to regain the confidence of the general public. It is crucial that we concentrate our efforts on protecting the public, preventing crime, tackling reoffending and giving proper support to the victims of crime. The Executive has a number of policies in place and in the pipeline that will do just that.

I welcome the minister's announcement today of £1 million to help prevent youth crime this summer through community safety partnerships. The time was when we used to get our summer or holiday pound. We now have a holiday million. In any case, I hope that the children of Scotland benefit from it.

We increased justice spending by 50 per cent in the first session of the Parliament. While there was a 1 per cent increase in the incidence of recorded crime in Scotland last year—partly because of the nature of police activity—the crime clear-up rate set a new post-war record. We passed the Criminal Justice (Scotland) Act 2003 and established the Scottish Drug Enforcement Agency. We set up pilot fast-track children's hearings, and drugs and youth courts.

At the beginning of the new session, the Executive set out a radical agenda to reform Scotland's courts and legal system. The McInnes review of summary justice, which is examining the work of the district and sheriff courts, is continuing, and is likely to be completed in the autumn. Lord Bonomy's recommendations on what we should do to improve the business of the High Court of Justiciary have been taken forward in the white paper that was published last week, "Modernising Justice in Scotland", which represents a real attempt to introduce greater efficiency, certainty and fairness to the High Court system.

We need to restore public confidence. We need to put an end to cases of criminals walking free on technicalities. We need to minimise the number of occasions on which victims, witnesses and police officers hang around courts only to be released because a trial has been postponed or an accused has not turned up.

Having spoken to victims' families, I know that many of them feel that, just when they are starting to put their lives back together after a serious crime has been committed, the justice system assaults them again through a lack of information; through their having to come face to face with the accused and their family; and through their having to wait for a court date only then to live with the uncertainty of when or whether they will be called to give evidence. It is time to give the justice system back to the people and to build greater transparency and certainty into it.

We welcome the package of proposals that is contained in the white paper. The rise in the incidence of serious crime in recent years has put more pressure on the High Court system; there has been a 23 per cent increase in the number of indictments between 1995 and 2001. We believe that the proposed measures will go a long way towards relieving that pressure.

The proposal to raise the sentencing power of sheriff and jury courts from three to five years should reduce the volume of High Court indictments by 20 per cent while increasing that of the sheriff courts by 7 per cent. Obviously, the impact of that measure on the sheriff courts will need to be monitored carefully, and we must look at the changes in the round, taking into account the views of sheriffs. If we can, we should also consider some of the findings of the McInnes review. We will need to recognise in particular the impact that the measures will have on the busiest sheriff courts.

One of the key reasons for the sixfold rise in the number of motions for adjournment in the same period—between 1995 and 2001—was lack of communication between prosecution and defence. A change of culture is needed as well as a change of rules. We welcome measures that will mean more and earlier information being given to the defence about the case against the accused. That will benefit the defence, which will have longer to prepare what may well be a complex case, but should also reduce the number of adjournments. That will be done through pre-trial discussions and, crucially, at a mandatory preliminary hearing, at which a judge will confirm the readiness of both sides to go to trial.

A similar system is already in place in the sheriff courts and it appears to reduce the number of adjournments. It also appears to result in accused persons pleading guilty earlier in proceedings. In the sheriff court, 30 per cent of accused persons plead guilty at the preliminary hearing and 30 per cent do so on the final day of trial. In the High Court, 60 per cent of accused persons currently plead on the day of trial.

The most controversial proposal appears to be the extension of the 110-day rule to a period of 140 days. I am no lawyer—that is probably quite obvious—so, in a way, I bow to the expertise of my colleagues on the SNP and Tory benches, but I know that we have a problem.

Annabel Goldie said that the 110-day rule was established in 1887. She spoke of the march of science, and the fact that people did not have phones and faxes and so on in 1887. At the risk of turning that argument on its head, I point out that nor did they have our current complexity of cases. They did not have to consider forensic evidence or DNA evidence, and they did not hear from expert witnesses like we do now. I do not think that anybody could argue justifiably that we should take the justice system back to 1887; we have to live in the modern world.

The Crown is now taking many more cases up to the 80-day limit before indicting the accused.

Miss Goldie: Will Margaret Smith take an intervention?

Mrs Smith: I will do my best with it.

Miss Goldie: I accept the thrust of Margaret Smith's argument that legal tradition should not stand still and that the justice system must, like other things, be expected to change. However, does she sense concern that under the present proposals an accused person, who might be acquitted at trial, will be denied liberty for a further 30 days?

Mrs Smith: That has to be a matter of concern. There have to be safeguards. We have a set of proposals, which will be opened up during the consultation period and the appropriate stage 1 period for careful consideration not only by lawyers but by lay people and others who have expertise in the area. We should be prepared to be flexible, if we hear that the proposal is unworkable.

It is hardly surprising that in 2001, 80 per cent of the motions to adjourn came from defence teams on the ground of their needing more time. A number of lawyers feel that their clients would be better off if they had more time.

Nicola Sturgeon: Will the member give way?

Mrs Smith: No. I think that I am in my last minute. Is that right, Presiding Officer?

The Deputy Presiding Officer (Murray Tosh): I was going to call your final minute when you had spoken for seven minutes and 30 seconds.

Mrs Smith: It is absolutely right that the courts observe strict time limits, but it is simply not acceptable to the people whom we represent that an accused should walk free if there is a breach of the time limit because of a technicality. I welcome the proposal that the consequence of the Crown's not adhering to the 140-day limit will be that the accused is released on bail and not released for all time. However, if the Crown could still not prosecute the case within a year, it would seem obvious and reasonable that the charges should be dropped.

Central to all the proposals is the need to support victims and witnesses and we should put them at the top of our agenda. I, too, welcome the publication of the Vulnerable Witnesses (Scotland) Bill, which should make the court process less intimidating for children under 16, people with a mental disorder and other vulnerable witnesses.

The Executive will set up a sentencing commission to review sentencing, improve consistency of sentencing within our independent judiciary and investigate the effectiveness of sentences in reducing reoffending.

Within our communities we will tackle antisocial behaviour through a range of measures including antisocial behaviour orders, parenting orders and tagging for under-16s, on which we will be consulting from tomorrow. We will be driven by the commitment to improve the lives of our constituents and to put in place a spectrum of measures that work.

15:17

Colin Fox (Lothians) (SSP): As the Scottish Socialist Party's justice spokesperson, perhaps I could ask the representatives of the other parties what a harridan is. It seems to me that fewer professions in Scotland are held in lower regard than are lawyers and perhaps journalists. Here we are as politicians talking about lawyers in the company of journalists—perhaps that is why nobody is in the public gallery to my right.

When I heard that the Executive was to make time available for a debate on modernising justice in Scotland I thought, "At last, a chance to address the old-fashioned, class-ridden traditions and archaic nature of our legal system. At last, a chance to debate whether it is time to scrap the wigs and ermine and make the law appear to be modern and to belong in the 21st century. At last, a chance to consider the need for High Court judges who come from all walks of life and are far more representative of Scotland as a whole in this age of equal opportunities for all. At last, a chance to reduce the vast numbers of people whom we lock away in our jails and the chronic overcrowding—both are undoubtedly among the worst in Europe. At last, a chance to abolish the unnecessary religious oath. At last, a chance to commit the Parliament to ending the barbaric practice of slopping out in Scottish prisons."

Unfortunately, we have none of that. Instead of concluding that there is a clear need for extra resources and funding, the report on how our courts are clogged up and cannot cope with their work load calls for an increase in sentencing powers and a lengthening of the time for those who are on remand. Lord Bonomy's report into the problem of overwork suggests efficiencies, but it appears to me that those efficiencies would be paid for by extending the time limit for people on remand from 110 days to 140 days. Members have alluded to the fundamental principle in Scots law that a person is innocent until found guilty. However, here we are, extending the time in prison for people who have been found guilty of no crime. That is not efficient, nor is it just. How many cases fell last year under the 110-day rule? The minister may be able to answer that in her summing up.

A few weeks ago, the Parliament held a debate on youth crime, and today, just as in that debate, there is a great difference between the fear and the reality. There is a great deal of fear about young offenders on our streets, but a great difference between that fear and the actual numbers involved. In this debate, we have a fear that hundreds and hundreds of guilty people are going free on a technicality, but I wonder what the reality is. How many cases were dropped by the Crown last year because it did not get its paperwork done on time? On the other hand, how many people were remanded and left languishing in prison for four months in some of the filthiest conditions imaginable, only eventually to be found not guilty or given a non-custodial sentence? I suspect that the proportions are nowhere near even. Her Majesty's inspectorate of prisons for Scotland said of Barlinnie and the rest of our prisons that

"some 40% of Scotland's remand prisoners continue to be held in unacceptable conditions."

I believe that my remarks have been necessary to bring the debate back into balance. The minister, in her opening speech, made clear the need to defend the rights of witnesses and of people who would like to give evidence. However, she refrained from mentioning, or missed out, the commensurate rights of defendants. Is it better that one case is not abandoned and that hundreds stay in jail a month longer, or is it better—as I think it is—that 99 guilty men go free than that one innocent man be convicted? If the 110-day rule is to be extended to ease the overload on the prosecution service, what will happen if that measure fails? Will the time limit be extended to 170 days?

On the issue of transferring cases from the High Court to the sheriff courts and extending the sentencing powers of sheriffs from three to five years, the minister will know that it is not that long since sentences in the sheriff courts had a two-year maximum. That maximum was extended to three years and now we are extending it to five years. What next? Will we extend the maximum from five years to 10 years?

The issue for the Parliament to consider is the shortage of resources that are available in both the High Court and the sheriff courts. Public services need more money—this one as much as any. It is time that we found more money for the legal aid budget as well.

We need a modern approach to the issues that are at the root of crime—poverty, alcohol abuse and hard drug abuse, and the hopelessness and

alienation that go with them. In other words, we need a justice system that seeks to prevent crime and to reduce the courts' work load before it gets there. Unfortunately, such legislation is nowhere to be seen. It is quite something when it takes the Tories to bring some balance to the discussions of the Labour-led Executive. Page 42 of "Modernising Justice in Scotland" suggests:

"This is the first major piece of legislation in an ambitious programme for court reform which is focused on greater efficiency in the delivery of justice."

I would like to suggest that other legislation should follow quickly. We must pay attention to the widespread belief in Scotland that, although everyone is equal under the law, some are more equal than others, and that the rich are powerful, above the law and the ones who are getting off scot free.

I finish by offering members a quote from the Greek philosopher Anacharsis, no less. He might have been Scottish, for he once remarked:

"The laws appear to be like cobwebs—strong enough to catch the weak, but insufficient to hold the strong."

15:24

Pauline McNeill (Glasgow Kelvin) (Lab): The Executive's record on modernising justice is, I believe, healthy. It has transformed our approach to victims in the system; legislated on serious, violent and sexual offenders; and amended the procedures and evidence rules for sexual offenders, against the advice of the medical profession. However, in the next four years, both justice committees will be as busy as ever with the Executive's programme and with more progress on modernising our justice system. We are all gluttons for punishment.

I want to deal with two issues. I have some serious concerns in the area of women's offending. I am not the first MSP to stand here and raise such concerns and I will certainly not be the last. I urge the Executive to bring a progress report to Parliament, because the Parliament is genuinely interested in that issue.

An analysis of the nature of the crime that women commit and how it is dealt with in the system shows that there are sharp contrasts with the way in which male offenders are dealt with. Our women's prison is so overcrowded that we now have 50 places at HMP Greenock and we do not have the capacity for the women whom we are locking up.

Twenty per cent of male prisoners on remand do not go on to receive a prison sentence, but the equivalent figure for female prisoners is 47 per cent. The number of women held on remand who do not end up with a prison sentence is well over double the number of men in that position.

Ten years ago, the court of origin for women would have been the district court—probably the stipendiary court. Now, it is likely to be the sheriff court. Although the number of women on remand has decreased from record levels, the issue remains critical in the context of modernising our justice system.

There are extreme mental health issues affecting women remand prisoners that need to be sorted out; those issues have sometimes resulted in suicide. The vicious circle in which such women find themselves must come to an end. I call on the Executive to deal with the issue urgently.

The medical centre at Cornton Vale provides an impressive service. The mental health condition of many of the women whom the nurses at the centre must deal with and the sheer volume of drugs that the nurses have to dispense mean that they probably face the most arduous drug round that any nurse could undertake.

There is a theory that sheriffs direct such women to prison because they know that women who are in a poor mental health condition will get some attention and care at Cornton Vale. We cannot continue to accept that Cornton Vale should be the place where such women are dealt with. We need to modernise the way in which we deal with women's offending. We must address sentencing policy for women now.

The Executive's proposal for a time-out centre for women is a bold step, which I applaud, but I urge ministers to give a progress report on when that facility will open. I understand that the fact that the Executive is not entirely in control of the project—we should commend Glasgow City Council for managing it—causes problems, but we still need to see more progress.

Cathy Jamieson: I have taken an interest in the matter and I am concerned that the completion date has slipped; it now looks as if the centre will not be ready until the end of September. In the meantime, it is important that we explore with Glasgow City Council and Turning Point Scotland how to get some of the programmes that the centre will offer into operation in advance of the completion of the building. I will keep a close eye on progress.

Pauline McNeill: I thank the minister for that information.

We must examine other disposals for women who come in front of sheriffs. I sit on the board of Routes Out of Prostitution, which has identified that almost 90 per cent of the women involved are drug addicts. I do not see why we could not consider sending some of those women to the drugs courts. We do not know why our bail hostels are empty and we need to find out why sheriffs are not using them. There might be a reason for that

and we need to find out the answers so that we can make progress once and for all. I know that the Executive, along with a number of members, is committed to making progress in that area.

I welcome the white paper on court reform. Lord Bonomy's work is to be commended, as it will mean greater certainty that trials will proceed. In addressing that issue, Lord Bonomy has performed a great service for accused persons, victims, witnesses and jurors, who often hang around courts endlessly. I am impressed that the Executive has moved quickly in that area.

The defence is not required to alert the prosecuting authorities that a particular witness is essential, even if that witness is there only in relation to a minor issue. We must get rid of the adjournment culture that exists in the High Court. We must address that problem, so that we can bring to our system those people who are critical as witnesses and victims.

It is right that we should have a mature debate about the 110-day rule. Anthony Campbell said in his report that the pressure on our prosecutors is high. He said that, in Belfast, it simply would not be possible to get the cases ready with the same speed as in Scotland and that our deadlines could not be met.

The fact remains that the defence asks for more adjournments than the Crown does, even though the opposite perception exists. Even if we increased resources, I do not believe that it would be possible to get indictments ready in less than 80 days. The two reasons for that are that the case cannot be completed if there is a delay in the forensic evidence and nothing can be done if there is a delay in the witness talking to the procurator fiscal who is preparing the case. Additional resources will not change that. Real practicalities are involved in the system.

Let us get it right. An accused is entitled to a fair trial, so when the Parliament gets the opportunity to do so, it must review whether keeping the 110-day rule is the right or wrong thing to do. Let us have an open mind about it.

15:30

Mr Stewart Maxwell (West of Scotland) (SNP): I welcome the publication of the white paper on court reform, but at the same time I must express concerns about some of what it contains.

The white paper proposes that the 110-day period be extended and that a preliminary hearing be introduced. Although I fully support the idea that there should be a preliminary hearing in the High Court, it is unclear why its introduction must lead to extension of the 110-day period. I accept that that is not the only reason for the change to the 110-day rule, but it is obviously among the reasons.

Sheriff courts manage to accommodate a first diet within the 110-day period, so it is surely not unreasonable to expect the High Court to abide by the same rule. I accept that the High Court deals with more complex cases than does the sheriff court, but the conclusion that should be drawn is surely that the resources are inadequate, not that the 110-day rule is wrong. It would set a dangerous precedent if we were to decide to change a rule because it is being broken. Using the same logic, we could eliminate speeding by changing the speed limit to 150mph—the problem would appear to be solved. Instead, we need to examine why the rule is being broken, decide whether the rule has any merit—I believe that it does—and try to find ways to alleviate the problem so that the rule is not broken in the future.

The 110-day rule forms a central part of our system of justice by ensuring that both the accused and the victim are not kept in limbo for an unacceptably long time. The concern that prosecutions take too long to carry out their work, with the consequence that defences have insufficient time to prepare their cases, leads me to the conclusion that the Crown Office requires additional resources, not that the 110-day rule is wrong.

Safeguarding Communities Reducing Offending has stated that it believes:

> "that there is a sincere genuineness on behalf of the PF department to work with us but due to inadequate staffing levels, the case turnaround is nowhere near as quick as it should be."

The problem is not that 110 days is too short, but that the Executive has failed to put sufficient resources into the service, which would allow the prosecution to deal with its work load speedily and therefore allow the defence enough time to prepare its case within the current time limit. I am not convinced of either the need or the desirability of extending the 110-day period.

However, I welcome the proposal to increase the sentencing power of sheriff courts from three to five years, which will lead inevitably to an increase in their work load. The estimated 20 per cent reduction in the work load of the High Court that will result from the change is welcome, but the sheriff courts will see their work load increase by an estimated 7 per cent. It seems odd that the Executive should wish to push ahead with the change before completion of the review of the summary justice system. It would be much more sensible if the Executive were to await the outcome of that inquiry before proceeding.

Concerns already exist about the current situation in sheriff courts, where there is increasing

difficulty in finding new recruits as defence solicitors in the legal aid system. Does the Executive believe that increases in the work load and in the complexity and seriousness of the cases that are dealt with by those who work in the sheriff courts, without an increase in the resources that are available, will result in an improvement in the service? The fact that the legal aid rates that are payable to defence solicitors have not changed in 11 years needs urgently to be addressed. I hope that the minister will respond to that in his summing up.

Colin Fox and Annabel Goldie made an important point. Are we saying that, if the 110-day rule fails, we will change the period to 140 days and that if a 140-day rule fails, will we change the period to 170 days? If a 170-day rule fails, where will we go from there? It is clear that that is not an acceptable methodology for changing the rule.

I welcome the move to reform, but the answer to the problems that have been identified within our system is to put in the required resources, not to move the goalposts.

15:34

Bill Aitken (Glasgow) (Con): I regret very much that I am unable to help Mr Fox with the definition of "harridan". Despite Miss Goldie's earlier remarks, I would certainly not include the minister in that category.

In the lexicon of Labour Newspeak, the words "modernising" and "modernisation" have a particular resonance. Labour is always seeking to modernise. It does not necessarily seek to improve things—it seeks just to modernise. That said, there are many things in the white paper with which we could agree. We certainly agree that there is a serious problem with the running of the High Court. Recently, a lawyer told me that because so few cases get off the ground, Glasgow High Court resembles an airport where all the aircraft are circling and none is actually landing. We must do something about that.

There are serious concerns not only about the delays and the number of adjournments, but about the fact that justice delayed is justice denied—not only to the victims, but to wider society. Some of the reasons for the problems are easy to identify. For example, from time to time, senior counsel takes on too much work. Crime is becoming more complex, and the effects of drug misuse—with which we are all familiar—are causing many more cases to go to the High Court, especially cases involving the supplying of drugs.

Those are contributory factors, but the main reason for the delays is quite simple: nowadays, very few people plead guilty at the earliest opportunity. In our daily lives, we all tend to put off the evil hour, and criminals who face potentially lengthy prison sentences are more likely to do that than are the rest of us. They are motivated by the knowledge that the longer the delay, the less chance there is of a conviction and an appropriate sentence. Witnesses' recollections fade, judges become impatient with constant Crown motions for adjournment, and hard-pressed and harassed advocates depute frequently accept soft pleas. Again, that denies justice to the victim and society.

The problem, therefore, seems largely not to be greed on the part of the bar—who do not get paid until a case finishes—but the fact that our prosecution service has been under-resourced for years. Some of the remedial action that has been suggested by the minister and in Lord Bonomy's report will certainly help. Properly managed preliminary hearings would improve the situation; that is one of many excellent ideas that are contained in Lord Bonomy's report.

To increase sheriffs' sentencing powers could, however, succeed merely in moving a bottleneck. At present, Glasgow sheriff court operates seven sheriff and jury courts. There are substantial delays in the court, although I accept the fact that it is an extreme example. There are, however, serious delays in other jurisdictions.

There seems to be a strange inconsistency in the Executive's suggestions, because much of the solemn work at the lower end of the scale could have been removed from the sheriff and jury courts if the Executive had agreed to my suggestion that sentences on summary convictions should be increased to 12 months. However, like many—indeed, most—of our proposals for the Criminal Justice (Scotland) Act 2003, it was voted down by Labour members and their Liberal Democrat allies. No doubt, like many of our suggestions for that act, it will be introduced by Labour members and their Liberal Democrat allies in a different form just a few weeks later. We therefore look forward to Sheriff McInnes's report and recommendations, as—once again—an element of Conservative policy will become Executive policy.

I also take issue not with the accuracy of the statistics that are included in Lord Bonomy's excellent report, but with the interpretation of those statistics. It is true that a substantial number of cases that were dealt with in the High Court resulted in sentences that could competently have been imposed by sheriffs under both the existing and the proposed legislation. However, there is in the report no information relating to the state of the final indictments upon which the judges passed sentence. As I said, soft pleas have been accepted and juries may remove parts of an indictment. It is possible, in fact it is frequently the case, that the sentence in a case of serious

assault to severe injury is so reduced—as a result of the plea that has been accepted or of the jury's finding—that it becomes a sentence of just a few months' imprisonment for simple assault, if a custodial sentence is imposed at all.

I turn now to the 110-day rule. It must be conceded that the existing time constraints are tight. As Lord Bonomy says, it is in effect an 80-day rule, but it has been enshrined in Scots law for generations. Even with the ready availability of bail in the most serious cases, it is a basic human right that any individual should be brought to trial at the earliest possible date. With respect to Pauline McNeill, I am frankly not interested in what happens elsewhere. Scotland might have the tightest time frames, but that is a matter for pride rather than anything else.

Where there are difficulties on the basis of cause shown, extensions to the 110-day provision can be granted, and frequently are. However, I suggest in the strongest possible terms that interfering with that provision—which is a vital protection for the individual—is a retrograde step. Accused persons are entitled to a presumption of innocence and should be locked up awaiting trial only for the minimum possible time.

There is considerable merit in a number of the proposals that have been made. Lord Bonomy's report is well thought out and accurate, and provides a great basis for moving forward. I was especially intrigued by his basic suggestion that people should turn up in time for work. Perhaps some of us could learn that lesson.

I have much pleasure in supporting Miss Goldie's amendment.

15:40

Kate Maclean (Dundee West) (Lab): I am happy to participate in today's debate about modernising justice and I am especially pleased by some of the High Court reforms that have been proposed.

I agree with Colin Fox that there are huge problems with the justice system. It is a class system and it is very difficult for ordinary people to reach a high level in it. I attended an appeal hearing in the High Court, which was like watching a scene from "Alice in Wonderland" and had nothing to do with the modern world. Some of the proposals will start to bring the High Court into the 21st century. Given that most of the 20th century passed it by, people cannot deny that that is a good thing.

In her opening remarks, the minister said that witnesses and victims should not feel alienated. That is the issue on which I want to concentrate today. The proposed reforms would start to put the needs of victims and witnesses at the core of the justice system. I speak from experience both as an MSP who has taken up cases on behalf of constituents and from personal experience when I say that the current system and its administration often leave people feeling let down, frustrated and cynical.

This is not about tilting the balance away from defendants and towards victims and witnesses; protecting the rights of both defendants and victims does not have to be mutually exclusive. However, at the moment many members of the public feel that the scales are tipped too much away from victims, their families and witnesses.

I was fortunate not to have had any dealings with the High Court system until relatively recently and I had assumed—probably naively—that it would operate in a reasonably efficient and sensible way. I was involved as a witness in a murder trial and a subsequent fatal accident inquiry. I was appalled by the way in which both the witnesses and the victims' families were treated. I was among a number of witnesses who were expected to turn up day after day for more than a week and to sit in a small waiting room all day, without being told what was happening and whether we would be called to give evidence. At the end of that time, I was called to give evidence. However, many people who gave up more than a week were not called. Others were called merely to confirm that they had had to call the emergency services.

Nicola Sturgeon said that she would be concerned if witnesses were excused. I, too, would be concerned if people did not have the opportunity to lead evidence from any witness they chose, but currently the prosecution and defence can agree evidence and witnesses can be excused. It should be possible to confirm by records whether someone has made a telephone call. Having witnesses attend court to do so is a waste of time and money, because people who wait for a week and a half to give evidence must be compensated for that.

The most worrying point is that most of the people who attended court with me said that, because of their experiences during the trial, they would in the future be reluctant to become involved in any way if they were to witness another incident. People such as I who think that good justice depends not just on judges and lawyers but on good citizens who trust and want to participate in the administration of justice should welcome some of the proposals in the white paper.

In the case to which I have referred and in another serious case in my constituency, victims' families were left feeling very let down by the system. I have heard other MSPs talk about cases in their constituencies. When families' lives are

devastated by the murder of a loved one, lack of information, delays, misinformation and hearing things from the press rather than from the appropriate bodies adds to the horror of their situation. It is not only what happened to them; the public perception of what happened to them means that whole communities are outraged by the way in which people are treated. Over the years, people's opinion of the justice system has got worse—they are very cynical about it.

The reforms that the minister outlined, especially those that relate to the High Court and the introduction of preliminary diets will go a long way to resolving some of the outstanding issues in the justice system. The reforms will start to build some confidence in the system and we will begin to see a system that operates for the benefit of the victims and witnesses of crime and their families, rather than for the convenience of the legal establishment, which is the case at the moment.

15:45

Patrick Harvie (Glasgow) (Green): On behalf of the Green group, I welcome many of the aspects of the Executive's partnership agreement that relate to the justice system. I also welcome many of the provisions that are contained in the white paper on modernising justice, which are designed to relieve some of the problems that are experienced in administering the justice system and in protecting the people who come into contact with it as defendants, witnesses or victims.

The consequences of the problems are far from trivial. I know that members of all parties take the problems very seriously. All of us, including the newcomers in the short time that we have been in the Parliament, have had contact with people who have been aggrieved by their experiences of the justice system. All of us are aware of the damage that can be done to communities in cases of failures of justice.

I welcome in particular the measures that are designed to prevent the harrowing experiences of some victims and witnesses, which can leave them feeling intimidated, upset and traumatised. Measures that seek to ensure that a trial occurs at a time and date that are fixed in advance will help to reduce the personal insecurity that can for many people precede a trial. Although we share some of the reservations that have been expressed about the changes to the time limits, we recognise that the certainty that a trial will take place on a fixed date and time, if that can be achieved in the majority of cases, might outweigh those concerns.

I have to admit that I would have preferred to see early progress on some of the more visionary aspects of the Executive's programme, such as its commitment on restorative justice. Over the course of this session of Parliament, I hope to see developments that recognise the benefits to offenders, victims and communities that could come from making restorative justice, as opposed to punitive justice, our priority.

I also hope that there will be a recognition that prevention is always better than cure. I believe that that applies every bit as much to crime as it does to health. Colin Fox mentioned measures to reduce the role of alcohol and drugs in crimes of disorder. I hope to see the introduction of those measures. I also hope to see the widespread provision of mediation services to families, neighbours and communities in order to prevent problems from escalating, and I want more conflict resolution education in our schools. Those and other measures would go some way to addressing the longer-term issues that create the problems that the Executive hopes to solve.

I also look forward to the consultation paper on antisocial behaviour, which the minister mentioned and which will be published tomorrow. I look forward to it in the sincere hope that it will allay the worst fears that many people—me included—held during the election campaign about knee-jerk reactions and tough-talk posturing on crime. Let us hope that future elections to the Scottish Parliament will not be dominated by the distortions and half-truths that all of us saw recently.

15:49

Donald Gorrie (Central Scotland) (LD): Before I launch into the world of justice, I will try to do myself justice by correcting the record. I was recorded as not being present in the three votes that took place last Wednesday, although I voted—I think correctly—each time. As they were three votes in which I voted loyally for the partnership, I would like to be given due credit for that.

I will focus on the words "safe communities", which can be found in the motion. The thrust of my speech is to suggest that we should put the courts out of business by sorting out our communities and creating far less crime. In that connection, I welcome the announcement in the minister's speech about community safety partnerships, which seems to be an excellent idea. In some respects, the Executive is moving in the right direction. I just want to push it a wee bit further along that road.

We must direct resources better and we must support schemes that help to keep people out of court. I take the minister's point that money is not unlimited; however, we do not use our resources as well as we should. Many existing schemes that have very good effects are not properly copied; indeed, often we do not even know about them or

list them. For example, the Executive introduced a good housing initiative called "Supporting People", in which councils received money and produced different schemes to help people retain tenancies and sort out their housing situation better. Those schemes are about to be evaluated, so it would be a simple business to list the schemes that work well and to make them better known. At the moment, we simply fail to list good projects in many spheres, and then to copy them. We should do that, because all aspects of our lives impact on young people, families, older people and those who get involved in crime. For example, housing changes affect children, but we ignore that aspect of the housing problem altogether. The housing benefit system creates disincentives for people to work, which is idiotic. We should get together with our colleagues at Westminster to sort that problem out.

As far as employment is concerned, although the modern apprenticeship initiative is very good in many ways, it is contrary to our approach to lifelong learning—after all, a person who is over 25 will find it almost impossible to secure an apprenticeship. We could do more to give people constructive work to do. Community businesses are a start; however, we could do far more with very small microbusinesses that might blossom in the community.

We also need to fund better positive alternatives to court and jail. We have debated that matter on other occasions, but the Liberal Democrats certainly feel that catching as many people as early as possible is the best solution. Obviously, we would also need to find solutions for people who we have not sorted out.

In this country, we suffer from a disease in which we incessantly introduce new projects instead of continuing to fund existing successful projects. For example, after six years of very successful work on helping young people not to get into trouble, the city of Edinburgh youth café, which is just around the corner, was abruptly terminated because there was no money. Cutting off such a project is a very foolish use of resources.

As the spheres of sport, the arts and health all have an impact on communities and on keeping people out of the courts, ministerial and local government departments must co-operate. However, it seems to be extremely difficult for our administrators to find the necessary team spirit and spirit of co-operation.

Ultimately, people who feel valued individually and in their communities are much less likely to get into trouble and into court. As a result, we must make people and communities feel valued, ensure that different departments co-operate and target money better in order to empty our courts.

15:54

Stewart Stevenson (Banff and Buchan) (SNP): I join many other speakers in the chamber in welcoming a large number of the proposals that the minister has announced. If the measures can contribute to an effective justice system for the people of Scotland, we should all welcome them.

I start by congratulating the people who work in the Crown Office and Procurator Fiscal Service on their commitment to the public service ideal and on their ability to deliver—often, over recent years, in circumstances of lamentably inadequate resources. The rise in cases that have been marked as no proceedings—or no pros—is damaging to the workings of the system of justice and to its credibility and image among the public.

That said, I support much of what the Executive is proposing although I, like other members, have one very serious reservation, which relates to the 110-day rule. To increase the 110 days to 140, as is being suggested, might in fact risk making things substantially worse. I say that as someone who is looking at the proposal as a management issue. The benefit of 30 extra days will deliver a resource benefit once and once only. Once it is used, the capacity of the system to deal with cases will remain absolutely unchanged, because the number of people working in the system remains the same.

The idea gets worse, however, when one examines it more closely. The backlog of cases will increase and it will take more resources to manage that backlog. An individual case will be picked up more often and reviewed more often, and that will use additional resources. Very quickly, the one-off benefit in resource terms of a further 30 days would be reduced over the longer term. To view the matter purely as an operational efficiency issue, reducing the 110-day rule to a 90-day rule would make for more effective use of resources.

Of course, it is not just a resource issue. It is a question of justice, and that must be the top priority. There must be justice for the victims of crime and the real sufferers of unacceptably high numbers of no pros. Justice must also be delivered to the accused. Cases' being dragged out works against that, but shortening time limits to restrict the justice that can be delivered would not be any better. It is against the serving of the ends of justice that we must test the Executive's plans. Let us look at what has actually been happening. The Justice 1 Committee and Justice 2 Committee joint discussions on the budget for 2003 revealed that total managed expenditure rose by 3.1 per cent in real terms, while justice department expenditure fell by 1.7 per cent.

If I return to time limits, the minister might argue that the Executive's proposal is a modernisation. If we look at the matter differently however, it could be an opportunity to make real changes rather than just tinker at the edges and have to revisit the whole issue when the system melts down at a later stage.

I would like to make a few suggestions, some of which are entirely personal, as a member of Parliament contributing to the debate. The document on modernising the justice system refers to early pleas. If the accused pleads guilty on the day of the trial, that inconveniences a vast number of people. In 2001, more than half of all cases ended that way. Of course, that is not a free-standing problem; it is part of a general system. Judges must have the discretion to decide on sentencing, but perhaps there is scope for more transparency and more statutory provision to enable sentence discounting. The minister should seek the opportunity to make it clear that criminals will get discounts for admitting what they have done, but that must also be something that the victims and the public feel happy with.

Miss Goldie referred to the increase in 1887 from 100 days to 110 days, and she said that the modern world should make things faster. However, there is a saying that every new solution brings a new problem, and technology creates many new opportunities for wrongdoing, so perhaps it is not quite as simple as she suggested.

The minister has proposed a correctional agency, and we shall see how the detail of the proposals works out. If it helps, I am sure that it will have our support. There is one thing that it might do that is not currently done. At the moment, those who do not go to jail after being found guilty are not tested for literacy, which is a big factor in much offending. The minister might care to think about that.

Moving from three-year sentences to five-year sentences in the sheriff courts will involve dealing with long-term offenders in the sheriff courts for the first time. Will that have implications for parole eligibility for programmes? Currently, the bail limit is 12 months and the Executive discounts changing to nine months. It takes nine months to create a life, so it might be reasonable to deliver a life in a similar time scale.

Finally, although the minister referred to civil proceedings, there has not been much reference to such proceedings, although there needs to be more. With only one in 20 civil actions proceeding on the scheduled day, there is plenty of scope for the minister to contribute to reform in that area.

I support Nicola Sturgeon's amendment.

16:00

Karen Whitefield (Airdrie and Shotts) (Lab): It is fitting that one of the final debates before the recess should be on modernising the justice system. During the debate on the Executive's programme, I said that the issues that were raised most regularly while I was on the campaign trail were crime and antisocial behaviour. In the two short months since the election, people have continued to raise those issues with me. Incidents involving those issues not only make up a large percentage of my casework, but account for some of the most frustrating and disturbing cases that are brought to me. That is why I welcome the Executive's commitment to introducing legislation to improve our judicial system, to protect vulnerable witnesses and to tackle crime and antisocial behaviour.

I have no doubt that we cannot do the last of those things without first substantially modernising our High Court and sheriff courts and improving the operation of the Crown Office and Procurator Fiscal Service. The initial measures that will come before the Parliament involve High Court reform and the protection of vulnerable witnesses. Those measures will provide a firm foundation for making Scotland a fairer and more just society in which the accused is given the right to a fair trial and in which it is clear that the presumption of innocence is retained. We should have a society in which witnesses feel able to give their evidence without fear and in which those who are suspected of serious crimes cannot walk away from justice because of a technical failure in the system.

In that respect—and unlike some members who have spoken today—I welcome the intention to reform the 110-day rule. As members will be aware, if there is a breach of the 110-day limit at the moment, the accused will be free of charge for all time. That does not serve any reasonable idea of justice. The proposal to have the 110-day time limit run to the date of the preliminary hearing will help to prevent such a situation, while making more time available to the defence to prepare for the trial.

Nicola Sturgeon: Does Karen Whitefield accept that the reforms that she is talking about can be made and we can avoid situations in which people escape justice on a technicality without extending the time limit? The two issues are separate and should be dealt with separately.

Karen Whitefield: We will have an interesting debate on that matter. However, in 80 per cent of cases in which the defence successfully calls for an adjournment, the adjournment is the result of insufficient time to prepare. If such things did not happen, some people who walk away might be convicted of serious crimes. We must get the balance right.

Last summer, I spent a day visiting a court. I was shocked by the number of police officers at Airdrie sheriff court who were waiting to give evidence that in many cases was not required on the day. It is vital that we do everything possible to minimise such a waste of valuable police resources; we must devise a criminal justice system that, as far as possible, allows police officers to remain within our communities, where they are most needed. Such delays also have a detrimental and often devastating impact on victims, witnesses and jurors.

I believe that the measures that are outlined in the court reform white paper will go some way towards addressing such problems. The creation of mandatory preliminary hearings for all High Court cases will require the judge to ensure that the prosecution and defence are ready to proceed before a trial date is set. Indeed, the proposal to ensure that the majority of trials are set for a fixed date will also help. In addition, increasing the sentencing powers of sheriff and jury courts will help to free up High Court time to deal more effectively with the most serious cases.

I am pleased that one of the first bills to be introduced in the new session of Parliament is the Vulnerable Witnesses (Scotland) Bill. A modernised court system must balance the right of the accused to a fair trial with the right of victims and witnesses to feel secure while they are giving evidence. The bill will prevent some of the horror stories that we all know about, in which an accused rapist can effectively harry and intimidate the victim by conducting his own defence and engaging in a protracted examination of the victim.

Of course, reforming our court system is only one way in which to improve services for victims and witnesses. I recently attended the opening of the victim information and advice office in Airdrie. That excellent service liaises with the local procurator fiscal, the courts and voluntary organisations to attempt to ensure that victims do not feel alienated or isolated by the justice process.

I know that the Solicitor General for Scotland, Elish Angiolini, feels strongly about that. I point out that she is a moderniser. She does not come from a particularly distinctive background, refuses to wear a wig in court and is determined to modernise our criminal justice system. That proves that, with a Labour-led Executive, things can change.

I have no doubt about the need for the proposed reforms. Our justice system must work to improve the safety and security of our communities. To do that, reforms must facilitate the successful prosecution of those who are guilty of crimes. They must free up police officer time rather than devour it and they must encourage victims and witnesses of crime to come forward rather than deter them from doing so. I urge all members to support the Executive's motion.

16:07

Margo MacDonald (Lothians) (Ind): I congratulate the Executive on the priority that it has given to the reform of the justice system, although I find myself in agreement with much of what Donald Gorrie and Colin Fox said. I commend to the minister Stewart Stevenson's analysis of the strengths, weaknesses, opportunities and threats—a SWOT analysis—of the 110-day rule.

I will introduce another element into the debate—our appeals procedure. I do not claim to have all the answers, but many questions arise about the implications for Scots law of the Prime Minister's announcement of fundamental constitutional changes, including his commitment to establish a supreme court.

It is not clear whether the proposed supreme court is to be a court of final appeal or a court whose jurisdiction is largely confined to cases that raise questions of constitutional law or issues under the Human Rights Act 1998. Obviously, the character of the court and its relationship to the different legal systems in the United Kingdom are dependent on the answers to those questions.

The issue is one on which, no matter how unionist individual members or parties in this Parliament may be, we require an independent Scottish approach. This Parliament is responsible for the Scottish legal system and it must exercise that responsibility, free from any influence exerted by the party system in Westminster. That does not mean that we cannot take good ideas from whatever source, but they should not be party-politically motivated and we should not feel constrained by party politics.

The Prime Minister's idea of a supreme court raises profound issues for Scotland and for this Parliament. The Scottish Parliament should open a dialogue with the Scottish judiciary, organisations that come into contact with the system and the public before we come to any certain conclusions about our view.

Lord Hope—by general agreement one of Scotland's best judges and now a law lord in the House of Lords—has pointed out that, because of the provisions of the Treaty of Union, any supreme court that is part of the English royal courts of justice cannot be the supreme court of Scotland. As a treat, I will read from article 19 of the Act of Union 1707. It states:

"And that no Causes in Scotland be cognoscible by the Courts of Chancery, Queens-Bench, Common-Pleas, or any other Court in Westminster-hall; And that the said

Courts, or any other of the like nature after the Union, shall have no power to Cognosce, Review, or Alter the Acts or Sentences of the Judicatures within Scotland, or stop the Execution of the same".

The immediate question, to which we have not heard an answer from either Prime Minister Blair or Lord Falconer, is whether the supreme court is to be separate from and above the Scottish and English legal systems. If it is, there is another question: are we to change the practice whereby, although Scottish civil cases can be appealed to the House of Lords, Scottish criminal cases stop at the appeal stage in the High Court in Edinburgh? Why, after centuries, should criminal appeals leave the Scottish judicial system? That system works and, if it ain't broke, why fix it?

The basic question is whether we in Scotland require a supreme court. Could not we repatriate the power of the House of Lords on civil cases, which was not given to it by statute but arrogated by it through a judicial decision? If anyone is interested, the Earl of Rosebery raised the matter in 1707 and 1708 and the House of Lords heard it—I thought that members would be interested in that.

Another interesting question is raised. This Parliament has the power to legislate over the Scottish legal system, so why do not we pass an act to cut out the House of Lords from Scottish civil cases? Our act, given that it would be a statute, would have greater authority than a judicial decision that was made around 1708 in Lord Rosebery's favour.

I remind members of another quirky feature of the present set-up. The Parliament is governed by its own supreme court, the Judicial Committee of the Privy Council, whose power over our acts is written into our constitution—the Scotland Act 1998. If we believe that the ability to appeal beyond the inner house of the Court of Session is necessary in Scottish civil cases, why do not we send appeals to the Judicial Committee of the Privy Council rather than to the House of Lords? I know that last year's Justice report on the subject was not enamoured of that idea and I can understand that in the future there might not be a Judicial Committee of the Privy Council, but the issue is worth considering.

Why do we need a supreme court in Scotland? If we decide that we need one, why do not we have our own supreme court, which would hear both civil and criminal appeals in Scotland, with the most eminent Scottish judges applying Scots law? There would be symmetry to the system and it would be consistent.

That idea raises another pertinent question about the Prime Minister's idea. Who is to appoint the supreme court judges? We already have the Judicial Appointments Board for Scotland, but England does not have a similar board, although I believe that one is promised. Is there to be a joint appointments board or a new board to appoint judges to the supreme court of the United Kingdom? If there is to be a new board, what will the Scottish contingent be?

I have discussed some propositions, but I will draw only two conclusions. One is that the issue is complex and that any decisions that are taken will probably affect our legal system for centuries to come. The second is that, given the complexities of the issue, it seems clear that Prime Minister Blair announced the idea of a supreme court before he had thought it through. It falls to this Parliament to think through the idea from the perspective of maintaining the wholeness of Scottish justice.

16:13

Lord James Douglas-Hamilton (Lothians) (Con): I mention my interest, as stated in the register of interests, as a non-practising Queen's counsel.

Margo MacDonald is absolutely right to raise the issue of the supreme court and to present queries about it to the Parliament. I start from the premise that, if there is to be a British supreme court, the constitutional status of the three jurisdictions in the United Kingdom must be safeguarded. I realise that the Prime Minister might wish to be remembered as a reforming Prime Minister—if his party will allow him to pursue that role—but we should remember that some constitutional concepts and institutions cannot simply be swept away.

One of those institutions is Scotland's legal system, which, unlike English civil law, was originally based on the principles of Roman law. Our separate legal system was safeguarded by the Act of Union 1707, which represents a written element in an unwritten constitution. I therefore seek assurances from the Minister for Justice and the Lord Advocate on a number of issues.

First, the creation of a new supreme court in Britain must be consistent with the legal position under the Act of Union. Criminal appeals in Scotland are decided by the High Court of Justiciary in appellate jurisdiction. There is no further right of appeal. It is important that reassurances are given that that system of appeal, which has served Scotland so well, is not under threat. I would be grateful for confirmation of that. It would be intensely controversial if the Scottish system were challenged, because our criminal law system is under the jurisdiction of the Scottish Parliament. I do not think that the wishes of the Parliament should be cavalierly thrust aside.

The Lord Advocate was on stronger ground when he said to advocates on 20 June:

"Since the creation of the Scots Parliament in 1999, we have also become accustomed to devolution issues in criminal cases going to the Judicial Committee of the Privy Council. I think there is an issue as to whether or not these cases should now go to the new Supreme Court and we will want to consider the case for change carefully".

We need to know exactly what the Lord Advocate has in mind. It appears, from the terms of his statement, that he was not consulted about the supreme court proposal. It is essential that Scotland's law officers are consulted properly and that the interests of the Executive and the Parliament are properly and fully taken into account.

My second point is about appointments, to which Margo MacDonald referred. When a supreme court is established, it is essential that judges are appointed from Scotland who are highly qualified in Scots law and well experienced in the Scottish legal system's rules of evidence and procedure. Frankly, if cases with a Scottish input were under consideration, they could not be dealt with by anyone who was not qualified in Scottish law. The appointment of judges from Scotland to a supreme court must be done through a system that is clearly distinct and separate from the appointment commissions in the jurisdictions of England and Wales and Northern Ireland.

My third point—again, Margo MacDonald touched on this subject—is that, if a supreme court is to operate effectively and correctly, it must be clearly separate from the domestic courts of Scotland and England and Wales. It would be helpful to know what arrangements are under consideration and where any supreme court would go.

Fourthly, the proposal for a supreme court also raises questions about whether its deliberations would be carried out efficiently and whether it would be properly resourced. The House of Lords appeal court has operated effectively for many years. The law lords have access to research facilities and computer and security systems. They also have many highly trained staff and a large library. Before the law lords leave the House of Lords, it will be necessary to ensure that any new building is accessible and includes a library, computers and judicial offices. The staff must be properly trained and fully recruited before any upheaval takes place.

Margo MacDonald: On the question of premises, Somerset House is being mooted as a possible home for a supreme court. However, should a supreme court for the whole United Kingdom be agreed, is there any reason why such a court should not meet in Edinburgh?

Lord James Douglas-Hamilton: Scotland has only 10 per cent of Britain's population, so there might be a debate among the other 90 per cent about the location of the court. Wherever a supreme court is placed, it is important that it is accessible.

My last point for the Minister for Justice is that there appears to have been virtually no consultation on a subject that has important implications for Scotland. Cases that have ended up in the appellate jurisdiction of the House of Lords have tended to be very complex. Therefore, I ask the minister and the Lord Advocate—the latter has welcomed the concept of a supreme court—whether they will be prepared to go into battle on Scotland's behalf, if necessary. I do not expect a long and detailed reply this afternoon, but I would be grateful if the minister could discuss matters fully with the Lord Advocate and ensure that there is a full Scottish input. Scotland's interests and those of its legal system must be highlighted. We must ensure that those interests are properly understood and safeguarded, because Scotland will expect nothing less.

16:20

Mr Kenneth Macintosh (Eastwood) (Lab): I welcome the opportunity to speak in the debate and to welcome the Government's plans to reform our courts. The Scottish Executive is committed to making a number of reforms to the criminal justice system, all of which I hope will improve our treatment of the victims of crime. There is a growing consensus that victims have been marginalised by the justice system for too long. Yes, justice should be fair, but it should be fair to all those involved and not, as is currently the case, exclude those with arguably one of the greatest interests in the process.

It will not surprise anyone who knows me to hear that I wish to highlight the case of one family, whose experience exemplifies what is wrong with the current justice system. The Cawley family have been struggling for two and a half years to come to terms not only with the unprovoked murder of their son, husband and father, Christopher Cawley, but with the failure of the public prosecution service to convict the men who killed him. In the past month, the Lord Advocate has decided not to authorise an independent inquiry into the handling of the case. I want to put on record my own and the family's deep disappointment at that decision.

We can learn many lessons from the manner in which the Cawley family were treated before, during and after the unsuccessful prosecution. Despite waiting in a state of acute anxiety and grief, the family were not notified of the start of the trial and so were not present to hear the charges

read out or the pleas of the accused. Christopher's father and brother were cited as witnesses but were excused from duty on the first day of the trial. On the second day, they were told to take their places as witnesses but, once more, they were excused. Therefore, they, too, missed the start of the trial.

Throughout the trial, the Crown failed to explain to the family the reasoning behind the decision to charge two men with the murder before dropping the charges against one. Moreover, the Crown failed to explain why certain evidence and witnesses were called whereas other evidence and witnesses were ignored or why a particular line of questioning was followed.

The precognition officer allocated to the case went on holiday at the start of the trial, partly, at least, because it was difficult to predict with any certainty when the trial would start. I note that, on that point, the Crown Office has accepted that adequate cover, in the shape of another precognition officer, should have been put in place and I am pleased that the procurator fiscal's office in Glasgow has been strengthened by the appointment of additional staff.

Despite the family's request for the return of Christopher's body as speedily as possible, it took three weeks for that to happen. That meant that it was impossible for the family to hold a wake.

When the charges against one of the accused were dropped, not only were the family not told, but they were left to discover the fact when they walked into court the next day alongside the man, his family and relatives. Throughout the trial, they had to share the same toilet and canteen facilities as the associates of the men accused of murdering a member of their family.

Throughout the case, the family found it difficult to access reliable information on the progress of the trial. Following the failure of the prosecution, the family also found it difficult to have their concerns and complaints addressed in an appropriate manner. The accused men had a history of violent criminal activity and the family were alarmed at the lack of protection or security that might prevent the intimidation of witnesses or jurors.

It is right that people accused of a crime should be made aware of their rights, but the literature that is available to the victims of crime and their families inadequately explains what they can expect when a case comes to trial.

I have listed many—but not all—of the concerns that the Cawley family brought to my attention following their unfortunate experience of our criminal justice system. Some of those concerns are already being addressed through the reform of the Crown Office and Procurator Fiscal Service, the establishment of a witness service run by Victim Support Scotland and the dedicated victim information and advice service, which will have the specific task of ensuring that victims and next of kin receive appropriate information and support. However, I have no doubt that further reforms are needed, not least to the old-fashioned, inefficient and insensitive court system with which we are burdened. We talk about inclusion, yet we have an entirely exclusive criminal justice system as far as victims and witnesses are concerned.

The changes that we are debating today will move us in the right direction, but I hope that they will be accompanied by a change in the mindset that puts the system above the needs and rights of the victims of crime, perhaps at the expense of the law or justice.

The Lord Advocate has made it clear that there will be no independent inquiry, but the Cawley family's diligent questioning has already answered some of their concerns. I ask the minister to meet my constituents so that they can share some of that knowledge, so that she can learn from their experience and to show that, although the courts may have let them down, the Scottish Parliament will not do so.

16:25

Ms Rosemary Byrne (South of Scotland) (SSP): The Scottish Socialist Party welcomes and supports the increased emphasis on victims' rights. The rights of victims can be recognised without the rights of the accused, who should have the right to be considered innocent until found guilty, being reduced.

We should continue to be proud of the 110-day rule, as it is a distinctive feature of the Scottish legal system. On the basis that people are presumed innocent, they should not have to wait for a further 30 days. Scottish prisons are overcrowded and too many people are sitting in prison on remand. The change to the 110-day rule would mean that people might sit there for 30 days longer. We would have done better to consider how we could reduce the prison population. We could have taken many routes to do that.

Many of those who go to prison have drug abuse problems and have committed crimes related to those problems. I would like to see moves towards building up rehabilitation and detoxification facilities in our communities. Crosshouse hospital in North Ayrshire, where I live, has three detox beds to serve the whole community. I would be delighted to see a move in the direction of detox and rehab instead of the proposals for longer sentences for offenders.

The proposal on the 110-day rule has come about due to underfunding and the lack of

resources. As with much of the public sector, improvements could be made to the justice system if it was all better funded. The proposed change will not speed things up. Rather than watering down an important law, the Executive should make funds available to the Crown Office, which is starved of resources. That is the real reason why so many cases have reached the 110-day limit.

The Executive is manipulating valid concerns about crime to introduce measures that will do nothing to reduce the amount of crime in society and alleviate the suffering of the victims of crime. If it is serious about reducing crime it should, as I said, divert funds into treating drug addiction problems and into building up our social services so that there is enough care in the community to provide for people who commit drugs-related crimes.

We have massive shortages in our social services. Members will hear me go on and on about that in the Parliament, because I feel strongly that, if young people are going to be penalised and people are going to be criminalised for drug offences, the back-up must be in place. We can talk about setting up and expanding drugs courts, but unless the facilities are in place, those courts will be meaningless.

Pauline McNeill: I do not disagree with a lot of what Rosemary Byrne says, but she must surely recognise that the setting up of a drugs court in Glasgow is to be commended—in fact, all the reports are that it has been successful—and that, to expand the service for other groups, we must make it work. Does Rosemary Byrne welcome the initiative?

Ms Byrne: I would welcome the initiative only if the funding was made available. Young people cannot be referred to drugs courts if there is no back-up in the community and, at the moment, there is no decent detox facility and no rehab at all in most communities. Unless those facilities exist, there is no way that we can expand drugs courts. One must follow the other. I digress somewhat from what I was going to say, but the point is important. We could tackle the criminal justice system's problems if we put the funding where it needs to be instead of talking about tinkering with the system.

16:29

Mike Pringle (Edinburgh South) (LD): What do we want out of the proposals? We want legislation that is designed to reduce crime, modernise the courts and criminal justice system and deliver modern, effective laws. As the minister said, the new legislation must also be effective.

The Law Society of Scotland has welcomed the white paper "Modernising Justice in Scotland" and is of the view that it, together with the review of summary justice that is being conducted by Sheriff Principal McInnes,

"will ensure that the central values of the Scottish Criminal Justice System are fully debated and that reform where appropriate can be brought forward".

Many members, including Stewart Maxwell, have spoken about resources. My understanding is that the budget for the Crown Office and Procurator Fiscal Service was £46 million in 1997. It rose to £78 million this year and is to rise further, to £92 million.

Last week I visited the High Court with my colleague Margaret Smith and I thank those at the court who gave up their time for us. I found it an enlightening experience. I believe that the introduction of what in effect is to be a pleading diet in the High Court is a positive result of the proposed change to the 110-day rule. That will serve all parties well. According to those who spoke to us at the High Court, the rule was established in 1887. It will come as no surprise to hear that I do not agree with Nicola Sturgeon or Annabel Goldie that the change to the rule will not be effective. I think that those at the High Court would agree that it will be extremely effective.

Miss Goldie: One of the more compelling arguments in support of an extension of the 110-day rule surrounds the perception that cases are being lost—that cases are arising in which accused persons are walking free—because of a failure to comply with the time limit. Is the member satisfied about the robustness of the evidence available to substantiate that view?

Mike Pringle: Yes: I think that it is robust. The proposed change to the 110-day rule will certainly serve the accused well, in that it will give the defence more time to prepare. In 2001, about 80 per cent of all motions to adjourn were requested by the defence, the most common reason being that it needed more time.

Annabel Goldie made a good point about all the technology that we now have. On the other side of the coin, following the advent of such procedures as DNA testing, cases have become more and more complicated.

Kate Maclean hit the nail on the head with regard to her experience of witnesses. I do not think that witnesses are treated well. Under the new scheme, no witnesses will be cited at the preliminary hearing, at which point a specific date and time are fixed for the trial. That means that witnesses have to attend only once. That will save police time, as the police currently spend a lot of time sitting in court, doing nothing.

We all know that antisocial behaviour blights people's lives, and everyone is determined to address that. I welcome today's announcement of

£1 million for community safety partnerships. I was at the launch of a new initiative in my constituency today: the south Edinburgh youth action team. The action team consists of four dedicated police officers, whose sole remit is to tackle youth crime and antisocial behaviour in Edinburgh South. It is a partnership between the police, the South Edinburgh Partnership and the City of Edinburgh Council housing department. It is proposed to run for a two-year trial period. That is just the sort of partnership working that will bring relief to the communities of Edinburgh South and many other communities throughout Scotland. Indeed, it could well be used as a model for other parts of Scotland.

I entirely agree with Pauline McNeill's comments on women in crime. I well remember sitting in a district court when somebody came in front of me for a pleading diet. She was a mother of four children, and had been fined £150 for not having a television licence. I suggested that she could pay 50p a fortnight to pay the debt off. I got into extreme trouble afterwards from the clerk, who asked me what I thought I was doing. In my view, that lady should never have been fined in the first place.

It is the Scottish Children's Reporter Administration and the children's panels that deal with problems involving young people. I had a very constructive meeting with some of their representatives this week. Fifteen thousand children—20 per cent of whom were girls and 80 per cent of whom were boys—are referred each year to the children's panel for allegedly committing 40,000 offences. More than 50 per cent of those children have committed only one offence and only 5 per cent have committed 10 or more offences.

I believe that the proposals on antisocial behaviour that are about to be set out in the antisocial behaviour bill will be a success, but they will need greater support. I believe that that support will have to come from more resources being put into social work to make the proposals a success. I ask the minister to say what steps are under way to tackle that issue. I support the motion.

16:35

Margaret Mitchell (Central Scotland) (Con): I welcome this important debate and commend the Scottish Executive and the Minister for Justice for bringing it to the Parliament.

It has already been stated that justice delayed is justice denied. That statement is no less true today than it was when Gladstone made it more than 100 years ago. As such, it underpins any debate on modernising justice. Criminal prosecutions are initiated by the Crown in the public interest. It therefore follows that any delay in the processing and disposal of prosecutions is not in the public interest and is in effect justice denied.

In his report "Improving Practice: the 2002 Review of the Practice and Procedure of the High Court of Justiciary", Lord Bonomy highlights the problems that have led to delays. Those include a dramatic increase in the volume of cases referred to the court in recent years, accompanied by an increase in the number of indictments and adjournments. Given that background, the Conservative amendment has sought to focus on the proposals in the Bonomy report and the court reform bill white paper that aim to address those issues.

The white paper proposals to clarify the existing statutory provision, which are designed to enable the sentence to be discounted for an early plea of guilty, and the proposal to increase sentencing powers in sheriff and jury cases from three to five years, together with Lord Bonomy's suggestion that the greater use of closed-circuit television be considered for videoconferencing to cut down on unnecessary travel between prison and court and to provide victims and their families with a live link to the court, allowing them to see and hear what is happening, are to be welcomed as they attempt to make more efficient the processing and disposal of criminal cases.

However, as my colleague Annabel Goldie pointed out, the proposed extension of the 110-day rule is cause for concern. In essence it is a measure that seeks to treat the symptom of the problem rather than address the underlying cause, which Nicola Sturgeon and Stewart Maxwell detailed comprehensively. No matter how well intentioned the proposal, it must be a retrograde step. In effect, it delays justice for victim and accused alike. In that regard I agree—probably to the surprise of both of us—with Colin Fox.

The minister has attempted to play down the importance of resource, but if inadequacy of resource is preventing the police and the Crown Office and Procurator Fiscal Service from delivering—the alarming increase from the 1997 figure of 3,081 cases marked no proceedings to a staggering 17,094 cases in 2002 suggests that it is—the answer is patently to increase the resource.

Margaret Smith pledged to give the justice system back to the people, but I note that she made no commitment to provide the resource necessary for that to happen.

It is pointless arresting criminals if they are never brought to trial. Therefore, there is a desperate requirement for more resource at all levels of the justice system to, for example,

increase the number of fiscals and establish weekend and evening sittings of the court.

Unlike many Scottish Executive-inspired debates—based on vague motions and devised primarily to deflect criticism from the Executive and its policies—this debate has been worth while. It has highlighted proposals that could modernise and improve Scotland's criminal justice system and that could make a real difference to the quality of life of everyone in Scotland. I urge the Parliament to support the Conservative amendment.

16:40

Michael Matheson (Central Scotland) (SNP): Like most members who have contributed to this afternoon's debate, I welcome the general thrust of the white paper on reforming the High Court. I also welcome some of the other initiatives that the Executive has rolled out or plans to roll out, such as the Vulnerable Witnesses (Scotland) Bill and the proposals for a sentencing review commission and a human rights commission—which are long-standing SNP policies. I hope that the minister will acknowledge the problem that Mike Pringle highlighted—that of someone being fined for not having a television licence. That is a good example of an area for reform. Not having a television licence should be a civil offence rather than a criminal offence. There is no point in criminalising people for such a small misdemeanour. It may be that, through a simple measure, the minister will be able to ensure reform in that area of our law.

In her opening remarks, the minister correctly pointed out that modernisation is not a one-off event and is not an end in itself. It is in everyone's interest to ensure that our justice system works effectively, efficiently and fairly. In modernising the system, it will also be important to have mechanisms in place to highlight problems sufficiently early that we do not find ourselves having to modernise much more radically at a later stage. We must continue the momentum of change so that we can deal with problems as they arise.

Nicola Sturgeon, Annabel Goldie and a number of other members have stressed that we must view the justice system as a whole and not as a series of unrelated parts. It is important that our police have the resources to do their job effectively; that the prosecution service has the resources to do its job effectively; and that the courts have the resources to meet the demands that are placed on them. Interestingly, the minister omitted to say that the prison service, too, must have the resources to do its job effectively. Once people are sent to prison, their behaviour must be addressed.

We must ensure that the system is much more holistic. We must have adequate provision of alternatives to custody and adequate provision of early-intervention programmes to head people off from getting into trouble with the prosecution service, the police or the courts. If we can do that, and get everything working together, we will have modernised the justice system so that it works as it has never worked before.

My party has highlighted a number of concerns, one of which is to do with the proposed change to the 110-day rule in the High Court. As other members have said, it is an important principle of our justice system—and I made this point to the minister last Thursday at question time—that the system protects victims and the accused to ensure that justice is served quickly. A number of reasons have been suggested as to why we have to extend the 110-day rule to 140 days. One reason suggested in the consultation document is that, between 1995 and 2001, there was a 23 per cent increase in the number of indictments to the High Court. However, by extending the sentencing powers of sheriffs from three years to five years, we can reduce the level of indictments to the High Court by 20 per cent. That leads to an obvious question: is there really still the demand to extend the period to 140 days? Likewise, if a preliminary hearing is introduced, that will improve efficiency in the system and ensure that there are no moves to get cases adjourned earlier. If the Crown Office is to have the resources that it needs to do its job, I would hope that the defence would not, on the ground that it had not had time to prepare, have to go to the High Court to ask for an adjournment. Very often, the basis of such a request is that the Crown has not passed on information in good time.

Annabel Goldie asked Margaret Smith about the possibility that someone who was acquitted after eventually going to trial might have to spend an extra 30 days in prison as a result of the proposed change to the 110-day rule. Margaret Smith's response was that, although that was an issue of concern, some safeguards were necessary. The point is that the 110-day rule acts as the safeguard—that is why it was introduced in the first place.

Mrs Smith: The Bonomy report says that the 110-day rule is not a safeguard that ensures that justice is done in the way in which it should be done, because 80 per cent of the adjournment requests that are being made come from defence teams that claim that they do not have enough time to put forward a decent case. As has been said, we should keep an open mind on the subject. We will have to examine the issue closely in consultation and during stage 1 consideration of the relevant bill. It might be the case that we should stick with the 110-day rule but, if it is not

working, we should probably do something about it.

Michael Matheson: I take note of the member's comments. If the rule were extended to 140 days, it is likely that people would work to the 140-day time limit, which would not service justice properly.

The white paper does not mention what effect the proposed change could have on our remand population and on the prison service. We must take that into account before proposing any further changes.

I want to discuss resources in the Crown Office and Procurator Fiscal Service. As Stewart Stevenson mentioned, the way in which the staff of the Crown Office and Procurator Fiscal Service discharge their duties and their dedication to public service give us much to be proud of. However, we have only to consider some of the events that have taken place to realise that they are struggling to cope with the demands that have been placed on them. In the nine months to the end of 2002, one in every 20 cases was lost because of delays in the system. The main reasons that were given were resources and problems with information technology.

I am sure that all members acknowledge that if we are to modernise our justice system, the police service and the Crown Office must have modern IT systems and must interface effectively with each other. Modernisation should not have meant that the number of cases that were lost because of reporting delays went up from about 2,500 between 1998 and 1999 to more than 14,500 in the first 10 months of last year. That is inefficiency, not modernisation; it suggests that changes are having a detrimental effect on our system. That is why it is important that reforms are carried out in a managed way, so that they ensure that we have a fairer and more efficient and effective justice system.

I share the concerns that Margo MacDonald and Lord James Douglas-Hamilton expressed about the new supreme court. I hope that the minister will be able to confirm that the Parliament will have a part to play in the consideration of that matter and that the Parliament's justice committees will be able to examine the proposal in detail. It is important that we protect the integrity of our justice system if we are to ensure that it modernises for the benefit of all the people of Scotland.

16:48

The Deputy Minister for Justice (Hugh Henry): The debate has been excellent and it has shown that the Executive was right to put the theme of modernising justice forward for debate early in the new session. Some of the speeches that have been made have shown that many members' constituents are affected by the workings of the judicial system. Although we have heard about many positive cases, there are also far too many cases in which matters have not gone right and which have had an adverse impact on people. Therefore, we must take a close look at how justice is delivered in Scotland.

Today's debate has revealed that we have much to be proud of in our Scottish legal system. We should be proud of our independent judiciary and of some of our traditions, which have evolved in the best interests of the citizens of this country, but we should not allow that pride to make us complacent. It would be wrong to assume that, because things have sometimes gone well, things will never go wrong. We should be big enough to reflect on experience and on changes in society, and to consider whether our judicial system is able to cope with some of the demands of the 21st century.

As one speaker said—I think that it was Pauline McNeill—to some extent our judicial system let the 20th century pass it by. Some of the ways of working are still rooted in the past and need to be brought into the present. That is not per se a criticism of those involved but a reflection of the reality that exists today. For too many of the ordinary people who rely on it, the justice system is remote, unclear and incapable of being easily understood. We are committed to a modern justice system, which will be strongly rooted in the priorities of the partnership agreement that was reached to form this Administration. We want to work for a safer and stronger Scotland and to improve public services.

It is important to restate the four guiding principles that the minister articulated for modernising justice. We want a system that is fair where it needs to be fair. It must be fair to vulnerable people and ordinary people as well as to the accused. We want a system—this is especially relevant for the criminal justice system—that is effective and efficient. We want a system that is accessible and user-friendly, both for criminal justice and for civil justice. In that regard, I welcome Stewart Stevenson's comments. The Executive will address those problems, but there are many changes that need to be considered. The fourth principle is that we want a system that is relevant to 21st century public attitudes and aspirations.

We will consider many of the points that have been made in the debate. We want to focus on making the courts and the court processes more efficient. We want a system that is designed around the needs of ordinary people and that is more open to them. We want modern laws that are based on common sense and current public attitudes. The minister's opening speech was a

general statement of the principles that we want to be examined. The debate was deliberately not about the details of the 110-day rule or of the sentencing powers of sheriffs. There will be further opportunities for consultation and more detailed discussion on those issues. It would be wrong to try to resolve all those issues in one short debate.

However, I will pick up on some of the points that were raised. Nicola Sturgeon highlighted the need for a balance between the rights of the accused and those of the witnesses and victims. That is absolutely right, but we need to make a link to the need for perpetrators to be brought quickly to trial.

In different ways, Nicola Sturgeon, Annabel Goldie, Colin Fox, Stewart Maxwell and others raised the issue of the 110-day rule. Without going into a huge amount of detail, I want to put on record the fact that Lord Bonomy's report makes it clear that at present accused can, and often do, spend more than 110 days on remand. The reason is not a delay on the part of the Crown. Almost invariably, the Crown meets the 80-day time limit for issuing indictments. In 2001, extensions to the 110 days were sought in 24 per cent of cases, but the most frequent reason was that the defence was not ready.

Nicola Sturgeon: I accept what the minister has said, but does he accept that, in 50 per cent of cases, notices were lodged under section 67 of the Criminal Procedure (Scotland) Act 1995 to allow the late lodging of witness lists and productions lists after the indictment? That kind of thing holds up defence preparation in many cases.

Hugh Henry: Clearly, there are issues to be examined about the way in which the Crown Office and Procurator Fiscal Service works from start to end, but that is part of our commitment to modernisation of the justice system. It is also the case that the defence asked for more time in many of the individual cases that were looked at. We believe that our proposals for preliminary hearings and fixed diets will spare many of the uncertainties that arise from adjournments.

Annabel Goldie said that judicial discretion in sentencing is important. We accept that judicial discretion is fundamental to the way that the legal system in Scotland works, but we must reflect on the fact that, as many members said, many people feel that sentences are inappropriate and do not properly reflect the seriousness of the crimes that have been committed.

There is an opportunity for a sentencing commission to consider many of the wider issues surrounding sentences. Margaret Smith was right to say that we need a change of culture. Colin Fox referred to the same matter in a slightly different way. We need a change of culture among all who are involved in the judicial system. Margaret Smith and others were also right to talk about supporting victims. Kate Maclean movingly described the difficulties that many people face when they are confronted with the court system: it fails the victims and witnesses and it does not give protection.

Ken Macintosh talked about the harrowing lessons to be learned from the Cawley case and what that family experienced in being exposed to the accused and the families of the accused. The Cawleys were given no privacy or protection. When someone is in great distress, they suffer trauma and feel intimidated, and they will perhaps feel unable to contribute fully to the judicial process. That issue needs to be addressed.

Colin Fox mentioned some of the archaic traditions of the judicial system and, in referring to the attitude of the Solicitor General, Karen Whitefield answered that very well.

Pauline McNeill raised the question of the disgraceful situation in which many women offenders find themselves, whereby sheriffs and the courts sentence them to prison simply to get treatment for them. That issue also arises in many drug-related cases, and Pauline McNeill is right to raise it. It is an issue that the minister wants to address, and she will give a commitment to consider such issues carefully.

Bill Aitken asked why many of his proposals for the Criminal Justice (Scotland) Bill had not been accepted. The reason was not that the proposals were unacceptable in principle, but that the amendments that he lodged were unworkable. We took them away and considered them very carefully.

Kate Maclean said that there is a perception that the balance has swung too far away from victims, their families and witnesses. In any consideration of the judicial system, there is a need to ensure that the balance is right. We must defend the rights of the accused but also defend the victims and witnesses.

Patrick Harvie is right to say that we should not have a debate on the judicial system without considering restorative justice and crime prevention.

I agree with Stewart Stevenson that there is a need for more transparency in relation to early pleas. I give him an assurance that we are fundamentally committed to delivering that and that we will ensure that that happens.

Two significant points were raised in great detail by Margo MacDonald and Lord James Douglas-Hamilton, concerning important issues that deserve careful consideration. The Lord Advocate will meet Lord Falconer, the Secretary of State for

Constitutional Affairs, tomorrow to discuss what has been announced. Many important points of detail need to be considered. Ministers will have to be consulted and they will have to reflect on the proposals. Anything that impinges on the powers of the Scottish Parliament will also need to be considered in great detail and come before the parliamentary committees and Parliament itself.

In consideration of the judicial system, we are all duty bound to keep our eye firmly on what our system should be about. The system should give protection to individuals and punish wrongdoing. Fundamentally, it should be about the way in which people relate to one another. Most of the time, conflicts in our society are resolved without any great problem, but there are, unfortunately, times when the judicial system has to step in. We want a judicial system that provides a positive framework for dealing with people; a system that is able to act when things go wrong; and, above all, a system that is effective and fair and in which the general public has confidence.

Business Motion

16:59

The Presiding Officer (Mr George Reid): The next item of business is consideration of business motion S2M-200, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out a revised business programme.

Motion moved,

That the Parliament agrees—

(a) as a revision to the programme of business agreed on 19 June—

Wednesday 25 June 2003

after,

followed by	Parliamentary Bureau Motions

insert,

followed by	SPCB Motion on Membership of the Scottish Commission for Public Audit

Thursday 26 June 2003

9:30 am	Landfill (Scotland) Amendment Regulations 2003
followed by	Motion on Fireworks Bill - UK Legislation
2:30 pm	Question Time
3:10 pm	First Minister's Question Time
followed by	Parliamentary Bureau Motions
followed by	Final Stage of Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill
followed by	Parliamentary Bureau Motions
5:00 pm	Decision Time
followed by	Members' Business - debate on the subject of S2M-110 Irene Oldfather: Valuing Carers

and (b) the following programme of business—

Wednesday 3 September 2003

2:30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Executive Business
followed by	Debate on Procedures Committee's Report on First Minister's Question Time
followed by	Parliamentary Bureau Motions
5:00 pm	Decision Time
followed by	Members' Business

Thursday 4 September 2003

9:30 am	Parliamentary Bureau Motions
followed by	Executive Business
2:30 pm	Question Time

3:10 pm	First Minister's Question Time
followed by	Executive Business
followed by	Parliamentary Bureau Motions
followed by	Business Motion
5:00 pm	Decision Time
followed by	Members' Business—[*Tavish Scott.*]

17:00

Bruce Crawford (Mid Scotland and Fife) (SNP): I make it plain that we do not oppose the motion on the basis of the Scottish Parliamentary Corporate Body motion on membership of the Scottish Commission for Public Audit. The issue that I want to raise relates to a debate held at this morning's meeting of the Health Committee on the Food Supplements (Scotland) Regulations 2003 (SSI 2003/278). At the meeting, Shona Robison moved

"that nothing further be done"

under the instrument. The motion was defeated by five votes to four, but there was good cross-party consensus among the four members opposed to the instrument.

The situation that we face is not the fault of the Health Committee.

Janis Hughes (Glasgow Rutherglen) (Lab): Will the member give way?

Bruce Crawford: I do not think that I am allowed to take an intervention.

The Presiding Officer: You may.

Janis Hughes: I am astonished to hear Mr Crawford oppose the business motion on the basis of something that happened at this morning's meeting of the Health Committee, at which I was present. Is Mr Crawford attempting to undermine a decision that was taken at that meeting? The motion that was before us to annul the statutory instrument was defeated by five votes to four—as can happen in any committee of the Parliament. Is the member attempting to undermine that process?

Bruce Crawford: It is clear that, like every committee of the Parliament, the chamber has a view on this matter, and it should be allowed to make that known.

It is no fault of the Health Committee that the construction of the original legislation ensured that the instrument could be brought before the Parliament only under the negative procedure. Had the affirmative procedure been used—as it was last week for the Water Industry (Scotland) Act 2002 (Consequential Provisions) Order 2003, which was discussed in the chamber for 45 minutes, and as it will be tomorrow for the Landfill (Scotland) Amendment Regulations 2003—the story might have been different.

This is an important issue of considerable public interest. Our mailbags are becoming increasingly full with correspondence on the European food supplements directive. The chamber should discuss the matter, and we recommend that a debate be held on it. We oppose the motion on the basis that the Parliament has until 17 September to annul the instrument.

17:03

The Deputy Minister for Parliamentary Business (Tavish Scott): Mr Crawford said that there was a good cross-party consensus on the Health Committee—presumably a good consensus in favour of the Executive, given that the motion was defeated by five votes to four.

It is unfortunate that the SNP opposes the business motion and calls for a debate simply because the decision that was taken in committee did not go its way. The Health Committee has considered the matter fully. I understand that there was a three-hour meeting this morning and that Mr McCabe answered questions on the instrument for between an hour and a half and two hours. It is extraordinary to say that there has been no scrutiny of the instrument.

If members of the Health Committee—or any member—had concerns about the food supplements directive, the committee was the most appropriate forum in which to raise those. It is usually most appropriate for subordinate legislation to be considered in committee. When that happens, it does not make sense to duplicate in the chamber work that has been done elsewhere. If that is not the position of the SNP, it is setting a new policy precedent—that all matters debated in committee should be referred to the full Parliament for further consideration. The Executive does not support that position, and I suggest that Parliament will not support it. In my view, it would imply criticism of the committee system and we would be seen openly to question the ability of the Health Committee to scrutinise subordinate legislation.

On that basis, I ask members to support the business motion.

The Presiding Officer: The question is, that motion S2M-200, in the name of Patricia Ferguson, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Mr Richard (North East Scotland) (Lab)

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

AGAINST

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kane, Rosie (Glasgow) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Margo (Lothians) (Ind)
Martin, Campbell (West of Scotland) (SNP)
Mather, Mr Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Mundell, David (South of Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 65, Against 50, Abstentions 0.

Motion agreed to.

That the Parliament agrees—

(a) as a revision to the programme of business agreed on 19 June—

Wednesday 25 June 2003

after,

followed by	Parliamentary Bureau Motions

insert,

followed by	SPCB Motion on Membership of the Scottish Commission for Public Audit

Thursday 26 June 2003

9:30 am	Landfill (Scotland) Amendment Regulations 2003
followed by	Motion on Fireworks Bill - UK Legislation
2:30 pm	Question Time
3:10 pm	First Minister's Question Time

followed by	Parliamentary Bureau Motions
followed by	Final Stage of Robin Rigg Offshore Wind Farm (Navigation and Fishing) (Scotland) Bill
followed by	Parliamentary Bureau Motions
5:00 pm	Decision Time
followed by	Members' Business - debate on the subject of S2M-110 Irene Oldfather: Valuing Carers

and (b) the following programme of business—

Wednesday 3 September 2003

2:30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Executive Business
followed by	Debate on Procedures Committee's Report on First Minister's Question Time
followed by	Parliamentary Bureau Motions
5:00 pm	Decision Time
followed by	Members' Business

Thursday 4 September 2003

9:30 am	Parliamentary Bureau Motions
followed by	Executive Business
2:30 pm	Question Time
3:10 pm	First Minister's Question Time
followed by	Executive Business
followed by	Parliamentary Bureau Motions
followed by	Business Motion
5:00 pm	Decision Time
followed by	Members' Business

Scottish Parliamentary Corporate Body Motion

17:05

The Presiding Officer (Mr George Reid): The next item of business is consideration of a motion on behalf of the Scottish Parliamentary Corporate Body. I ask Robert Brown to move motion S2M-198, on the membership of the Scottish Commission for Public Audit.

Motion moved,

That the Parliament agrees to the Scottish Parliamentary Corporate Body's proposal to appoint Margaret Jamieson, Cathy Peattie, Mr Keith Raffan and Mr Andrew Welsh to be members of the Scottish Commission for Public Audit.—[*Robert Brown*.]

The Presiding Officer: The question on the motion will be taken at decision time.

Decision Time

17:05

The Presiding Officer (Mr George Reid): The first question is, that amendment S2M-191.1, in the name of Nicola Sturgeon, which seeks to amend motion S2M-191, in the name of Cathy Jamieson, on modernising justice, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kane, Rosie (Glasgow) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
MacDonald, Margo (Lothians) (Ind)
Martin, Campbell (West of Scotland) (SNP)
Mather, Mr Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Mundell, David (South of Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Mr Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
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)
Swinburne, John (Central Scotland) (SSCUP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 45, Against 62, Abstentions 0.

Amendment disagreed to.

The Presiding Officer: The next question is, that amendment S2M-191.2, in the name of Annabel Goldie, which seeks to amend motion S2M-191, in the name of Cathy Jamieson, on modernising justice, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Kane, Rosie (Glasgow) (SSP)
Lochhead, Richard (North East Scotland) (SNP)
MacDonald, Margo (Lothians) (Ind)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Martin, Campbell (West of Scotland) (SNP)
Mather, Mr Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Mundell, David (South of Scotland) (Con)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

AGAINST

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Mr Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
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)
Swinburne, John (Central Scotland) (SSCUP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Harvie, Patrick (Glasgow) (Green)

The Presiding Officer: The result of the division is: For 47, Against 67, Abstentions 1.

Amendment disagreed to.

The Presiding Officer: The next question is, that motion S2M-191, in the name of Cathy Jamieson, on modernising justice, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Mr Richard (North East Scotland) (Lab)

Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Frances (West of Scotland) (SSP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fox, Colin (Lothians) (SSP)
Gibson, Mr Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (West of Scotland) (SNP)
Martin, Paul (Glasgow Springburn) (Lab)
Mather, Mr Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McFee, Mr Bruce (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 (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scott, Tavish (Shetland) (LD)
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)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Canavan, Dennis (Falkirk West)
Davidson, Mr David (North East Scotland) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)

ABSTENTIONS

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
MacDonald, Margo (Lothians) (Ind)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Murray (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 95, Against 3, Abstentions 15.

Motion agreed to.

That the Parliament notes the commitment made in *A Partnership for a Better Scotland* to working for a safer Scotland, supporting safe communities and improving public services and supports the Scottish Executive in working to modernise the courts and criminal justice system for those who have to use them, including victims and witnesses, and in delivering modern laws to deal with the complexities of modern Scottish life.

The Presiding Officer: The fourth and final question is, that motion S2M-198, in the name of Robert Brown, on the Scottish Commission for Public Audit, be agreed to.

Motion agreed to.

That the Parliament agrees to the Scottish Parliamentary Corporate Body's proposal to appoint Margaret Jamieson, Cathy Peattie, Mr Keith Raffan and Mr Andrew Welsh to be members of the Scottish Commission for Public Audit.

Red Brae School

The Deputy Presiding Officer (Murray Tosh): The final item of business is a members' business debate on motion S2M-140, in the name of Phil Gallie, on Red Brae School.

Motion debated,

That the Parliament commends the experienced staff at Red Brae School, Maybole, who provide an alternative education path for pupils excluded from mainstream education for disruptive and undisciplined behaviour; acknowledges the benefits of this education which the pupils themselves appreciate, and believes that the Scottish Executive must ensure that such facilities are available across the country thereby ensuring that those children whose behaviour patterns are not suited to mainstream education are catered for in a way that steers them into becoming useful and respected members of society.

17:10

Phil Gallie (South of Scotland) (Con): I thank the Presiding Officer for selecting the motion for debate and all those members who supported it.

Red Brae School is a small, independent school that has provided an unsurpassed service to education authorities in Ayrshire for the past 20 years. It specialises in providing educational and behavioural support for 10 to 16-year-old boys who fall into a classification over which both the Executive and the Parliament have recently expressed much concern. Indeed, such concern was expressed as recently as this afternoon's debate.

The boys provide a classic example of those who from an early age are excluded from mainstream society, albeit as a consequence of their own actions. Despite the Executive's policy of restricting exclusions from mainstream education, most of the boys at Red Brae have been barred by their schools and respective education authorities. Some will have demonstrated excessive levels of disruptive or aggressive violent behaviour; some will be extreme truants; and others will have been diagnosed as victims of Asperger's syndrome, autism or similar disorders. Indeed, there will be boys who, even at their young age, are well known to the police and children's panels.

Some members might have disagreed with my past proposals for dealing with young people's misbehaviour in communities. However, all members would surely agree that alternative measures must always be available to guide such children on to a path that will allow them to have a useful and fulfilling life. Red Brae School has more than played its part towards that end.

The school caters for up to 32 pupils, although the actual number of pupils has fallen well short of that figure. In fact, by the beginning of this month, the number of pupils on the register had fallen to 21. It is ironic that the school is being sidelined at a time when truancy and disruption by children in our communities are increasing.

The school has a staff of eight teachers, several of whom have been in post for 15 to 20 years. All of them are special-needs qualified; however, the most valuable aspect of all must be the combined experience that is present in the school. The total staff complement is 27, the balance of which is made up of care workers, ancillary staff and a couple of administrators, and they are all trained to deal with the special needs of the children in their care.

The success of Red Brae, as evidenced by former pupils, is widely acknowledged. Indeed, one of those pupils, Callum Stewart, is in the chamber today. He has now returned to mainstream schooling. While he was a pupil at Red Brae, he attained bronze and silver awards under the Award Scheme Development and Accreditation Network. That achievement is surely a credit both to Callum and to the school.

I am sad to say that despite such achievements, and after a series of negotiations with local authorities, it appears that the authorities consider that there is no need to continue the services that Red Brae School offers. I suspect that that judgment was based on a search for cost savings, because high staff to pupil ratios do not come cheap. Irrespective of that, it is essential that we do not abandon such youngsters. It is a fact that their exclusion from mainstream education brings benefits to their peers and, to a degree, to teaching staff, as we heard at the recent Educational Institute of Scotland conference. It would be ironic if, on a day when the Executive offered £1 million for short-term facilities for youngsters to keep them out of trouble this summer, we lost sight of those youngsters' long-term interests.

The building that houses the school is council-owned. The founder of the school is a former teacher who recognised the need for such a service, but he suffers ill health and has no desire to fight an uphill battle to keep the school running. Committed staff have investigated the means of creating a charitable trust to keep the school going, but have been discouraged by the local authority.

Red Brae is scheduled to close this week. Of their own volition, pupils wrote to the minister, pleading a strong case as they saw it for keeping going the school that they have identified with and from which they have gained much benefit. They did so for themselves, as well as for others in the future. I, too, have drawn ministers' attention to the matter and, belatedly, have registered my concerns with the local authority—until last week,

discussions were still going on between the school and the local council.

I freely acknowledge that I take a relatively hard line on issues of crime and punishment, but I balance that by seeking supporting measures that are aimed are rehab and redirection. Red Brae offers a much-needed facility with a recognised success rate in bringing young people back into society from a position of total exclusion. I pay tribute to the staff and pupils whom I have met in recent times and welcome some of them to the chamber this evening. In doing so, I say to them that my wish is that they will hear some words of encouragement and hope from the minister when he replies to the debate.

Given the Executive's aspiration to curb indiscipline and disruption by youngsters such as those who attend Red Brae, it is essential that it does not allow such a facility to be lost. I ask the minister to intervene to ensure the school's continuation.

17:17

Mr Adam Ingram (South of Scotland) (SNP): First, I congratulate Phil Gallie on securing this evening's debate on Red Brae School. My remarks will echo the sentiments that he expressed.

It is a matter of great regret that the institution that we are praising for the excellent work that it has done in Ayrshire over the past 20 years or so is likely to be shutting its doors for the last time at the end of term on Friday. From my perspective, what is worse is the fact that the team of 20-odd staff at the school, who have amassed so many years of invaluable experience between them, can be broken up and scattered to the four winds. Undoubtedly, that represents a great loss to the education service in Ayrshire.

Ironically, we are losing the facility at a time when public policy is focusing ever more closely on problems such as rising violence and disruption in classrooms and levels of youth crime in society in general. It remains to be seen whether the new policy driven initiatives within councils will prove to be as effective as Red Brae has been in turning round the lives of many of the boys who passed through its doors down through the years.

My understanding is that the day care service that the school provides is no longer deemed to be best value compared with, say, placing secondary 3 and secondary 4 pupils in Rathbone Community Industry. It is undoubtedly true that the additional resources that have been made available to councils by the Executive have encouraged new programme delivery using local education department facilities and staff. However, it would not surprise me in the slightest if, in the fullness of time, the policy circle turns again in favour of the establishment of schools such as Red Brae. I will be interested in what the minister has to say about appropriate programme delivery within that evolving policy context.

In the meantime, I want local authorities in Ayrshire to put much more effort into ensuring that Red Brae's dedicated staff are absorbed into the local education service and their expertise properly utilised to the benefit of the whole community. I understand that South Ayrshire Council is taking a lead in that respect, as it should do, and I trust that acceptable outcomes will be achieved. Of course, the survival of Red Brae in some shape or form would still be top of my list.

Last night, I spoke to Mike McCabe, who is South Ayrshire Council's director of education. He said that the council is still in discussions about potentially keeping Red Brae open, even under the aegis of the council, in a slimmed-down form. The council has also had discussions with Quarriers, for example, so there is still some hope. Like Phil Gallie, I would like Red Brae to continue to serve the pupils—

Phil Gallie: Does the member agree that the teamwork that revolves around the staff, the pupils' recognition of that teamwork and the support that the staff receive from the pupils are major aspects of Red Brae?

Mr Ingram: I agree with Phil Gallie. I have spoken to Leah Galbraith, staff at the school and some youngsters who are here tonight. What can be achieved in seemingly difficult situations is heart warming. The lives of many people have been turned around. Of course, there are failures, but without institutions such as Red Brae, the boys concerned would be leading very different lives.

In conclusion, I hope that the debate does not mark the end of Red Brae School. There is a glimmer of hope and I hope that the minister will give us additional hope.

17:22

Ms Rosemary Byrne (South of Scotland) (SSP): I find myself in a unique position again: I will still be teaching until Friday and am in a secondary school in which I run a pupil support department. Part of my role is to promote social inclusion and keep young people in the setting that is best for them—in most cases, a mainstream setting.

However, many young people need extra support. Sometimes we can give them such support in a mainstream school, but a small minority need alternative placements. Ardrossan Academy, which is my school, has in the past sent young people to Red Brae School, so I know

about its good work. I am delighted that Phil Gallie has lodged the motion and that I can support it.

Red Brae School does a tremendous amount of good work with young people. It has an excellent track record, staff and facilities, as members have rightly said. It is unfortunate that local authorities such as North Ayrshire Council and South Ayrshire Council are reducing the number of referrals to Red Brae. They are doing so not because they have fewer young people in need of alternative placements, but to save money and to put young people into their own establishment. That is happening in North Ayrshire, where an establishment has been set up so that there is an alternative placement for the young people who are referred through joint support teams in secondary schools.

Over the past year or so, I have been enormously distressed that joint support teams of professional people—including head teachers, heads of departments, educational psychologists, social workers, parents and pupils—can recommend a referral for a young person to a different setting, such as Red Brae, Ballikinrain Residential School or somewhere else, yet the local authority social inclusion placement group can consider that referral and say, "No, you are going to our own unit in North Ayrshire".

The only reason for such decisions has to be lack of funding. It is cheaper to send the young people to a unit within the local authority for all sorts of reasons—fees and so on—but that is not always in the best interests of the young person. One size does not fit all. The young person who is dealing with drugs should be put into a placement where they are secure and do not influence others. However, the young person who has behavioural and emotional difficulties should be put into a place such as Red Brae, where they can get the correct treatment and support and where there is also support for parents.

It is vital that we fight hard to keep Red Brae open, but a bigger debate has been opened up about the recommendations that are made in schools and about what is going on at the higher level of the social inclusion placement group in the local authority. There are lots of problems with young people being maintained in schools, despite the fact that they should not be there, or being put into the wrong placements. We are talking about a small group, so we should be able to deal with the matter effectively and put those young people into the right placements. However, we are not doing so.

I support Phil Gallie's motion. I hope that we can do something about the situation and I will work as hard as I can with him to achieve that.

17:26

Lord James Douglas-Hamilton (Lothians) (Con): Rosemary Byrne speaks from a position of considerable experience as a teacher. We welcome her contribution this evening and look forward to many more.

Phil Gallie summed up the essence of the matter in one sentence:

"Red Brae offers a much-needed facility with a recognised success rate in bringing young people back into society from a position of total exclusion."

I understand that some of the young people concerned—perhaps a considerable number—come from areas of urban deprivation, although not all of them do. They are children who lived in fragile circumstances and therefore it seems that they should be given strong support. At the very least, the council should be able to offer them better facilities or facilities that are every bit as good as those that they have at present. If the council cannot do that, the argument for the minister to intervene is strong. I support my friend, Phil Gallie, who lodged the motion.

17:27

The Deputy Minister for Education and Young People (Euan Robson): I congratulate Phil Gallie on securing the debate and initiating an interesting discussion.

Promoting positive behaviour in our classrooms and supporting teachers and pupils are key priorities for the Executive. I will say more about those matters shortly, but first I will say a few words about Red Brae.

Members will appreciate that I am not personally acquainted with the work of Red Brae, but it is clear that the staff have made a big impression on the pupils who signed the petition in support of the school, which came to the Scottish Executive Education Department. I add my congratulations to those of Phil Gallie to Callum Stewart, whom Phil mentioned specifically and who has achieved a number of significant goals. I am pleased to hear that. I commend the hard work that staff in schools such as Red Brae and other special schools put into supporting the education of pupils who, for whatever reasons, are unable to attend a mainstream school.

We understood that the decision to close Red Brae had been taken by the school's independent managers. That was a decision for them to take and I know that it will have been a hard choice for them to make. However, I am aware that the education authorities that use the school have plans in place to ensure continuity in the education of pupils who currently attend the school.

The future use of the building is a matter for South Ayrshire Council, which owns the school building and the grounds. I understand that the council has set up a feasibility group to consider options for continuing to use the building as a school, possibly independently run.

As Adam Ingram said—I received the information this morning, he received it last night—discussions about the future of the school are on-going. Later this week or next week, we might find that the school will stay open, although in a slightly different form. It would be wrong for the Executive to intrude in those discussions, which involve a number of parties, including South Ayrshire Council. The *Official Report* of tonight's debate will be available to South Ayrshire Council, which could pick up the various points that members have made.

John Swinburne (Central Scotland) (SSCUP): The school may or may not close, but the main point is that the children who are at the school will not disappear. The local authority will have to look after them; it is not satisfactory for it to say, "The school is switched off, we'll possibly do something about those children in the future." We must come up with something more substantial than that so that we—or someone else—might do something. Phil Gallie pointed the way on that.

Euan Robson: I thank the member for his comments. Doubtless, South Ayrshire Council and the independent managers will take his points on board. It is for the council to provide the facilities and to deal with the education of young people. I repeat that when there was discussion about the closure the understanding was that the local education authority would plan to ensure continuity in the education of the pupils who attend the school. We must await the developments from the on-going discussions with the council.

Phil Gallie: Does the minister accept that the suggestion made to the independent management was that the flow of pupils would not continue into the school and that, on that basis, it was understandable that the independent management was prepared to stand back, particularly given the terms to which I referred earlier? If South Ayrshire Council comes up with an alternative, that would be tremendous, but, as I pointed out to Adam Ingram, the tremendous team at Red Brae will be broken up in the immediate future if we do not do something quickly. If the minister got involved with the council and counselled it a little, I would be delighted.

Euan Robson: I recognise the point about breaking up a team of specialists. Perhaps one option that was not given the fullest consideration was the reconfiguration of Red Brae, given that there might be a smaller number of pupils. I was not party to the advice that the council gave to the independent managers about future supply, so I do not know about that. Phil Gallie's point about the team of people who work at the school is important and, doubtless, the council will want to take that matter into account in its future provision.

I will make some general points, because it is important to set the debate in a wider context. The Executive is committed to equality, inclusion and diversity in school provision throughout Scotland—that is one of our national education priorities. It is essential that children receive a quality education in the school setting that best meets their needs. "A Partnership for a Better Scotland" sets out the Executive's belief that a range of mainstream and specialist provision, including special schools, is required to meet the needs of all children. That includes the needs of pupils for whom mainstream education is not appropriate or who have been excluded from mainstream provision.

Ms Byrne: The minister talks about the correct setting, but the point that I made earlier, to which I would like a response if he can give me one, was that, at the moment, recommendations to send young people to alternative settings are not listened to. Young people are either left in mainstream schools or put into unsatisfactory units. A small number of young people are not being placed in the correct setting, which has resulted in the closure of Red Brae because the local authorities that normally used it do so no longer.

Euan Robson: I should have referred to the member's remarks earlier because her professional experience in the area is important. If she has examples, it would be acceptable and appropriate for her to make them available to the relevant local authority for consideration. If the examples are from her constituency, she has a right to do that. That might contribute to supplying a greater number of individuals not only to Red Brae, but to other parts of the system.

Exclusion from school continues to be a last-resort sanction for behaviour that seriously disrupts the school environment. A decision to exclude must take into account not only the needs and right of the majority of pupils to learn, but the effectiveness of the sanction in addressing a pupil's behaviour.

Exclusion does not remove an education authority's responsibility to ensure that all children and young people continue to receive an education. Therefore, it is essential that authorities have appropriate strategies in place so that they can re-establish excluded pupils' education and help them to develop a positive attitude to learning as soon as possible. Indeed, Mr Gallie's earlier example was an appropriate one to raise in the debate.

Fiona Hyslop (Lothians) (SNP): It is obvious that the Executive has taken steps to change its exclusion policy, because its previous target of reducing exclusions by a third has been removed. Consequently, there might be more exclusions because head teachers have more powers to exclude. Does that not suggest a strategic role for the Government in looking at schools such as Red Brae, which deal with excluded pupils? We acknowledge that it is important to let local authorities decide on local facilities, but a strategic decision from the Executive will have a knock-on effect that could mean that places such as Red Brae receive a further supply of pupils.

Euan Robson: I understand the member's point, which is an important one. The Executive will continue to monitor the impact of its policy. I cannot predict whether the number of exclusions will rise, but I do not think that it will do so. Our clear policy objective is to include as many pupils in mainstream education as possible, but we never intervene in a head teacher's decision to exclude. Head teachers are the appropriate professionals to make such decisions. If there has been an emphasis that has suggested anything to the contrary, it is important for the Executive to correct that.

It is important to have a range of approaches. Independent special schools such as Red Brae offer local authorities an important option for dealing with disaffected young people. The Executive has made that clear. However, we should not ignore the broad range of approaches that local authorities are developing in the light of the recommendations of the Executive's discipline task group.

Where alternative education is required, it is important that it is tailored to the needs of the individual child. For example, it might not be enough to develop an alternative curriculum within a school as an option for disaffected pupils. Support from an in-school base, which can enable pupils' behaviour to be addressed without the need for exclusion, might also be required. Peter Peacock and I recently visited a good example of such a base in Glasgow. A multiplicity of approaches can be developed.

Some authorities have developed support bases that provide, within the authority, out-of-school provision for pupils from a cluster of schools. That is a perfectly valid approach. An important feature of such bases is the link between the staff who work in the bases and the staff in schools who will continue to support the pupils in their school when they return. The objective must be to get the pupils back into schools.

There is an increasing emphasis across authorities on developing a multi-agency approach to address the needs of pupils with severe behavioural difficulties. Such an approach can take account of all a pupil's educational, personal and social needs and help to inform decisions on appropriate placements for pupils whose needs cannot be addressed within mainstream education.

I will try to be brief, Presiding Officer, because I think that I am well beyond my time.

The Executive is providing significant support for education authorities. We are investing £21 million a year for the implementation of the recommendations of the discipline task group and in alternatives to exclusion. We will continue to support schools through funding the specialist training of teachers in behaviour support. We will disseminate good practice through a national website and draw on professionals with experience of the chalk face, parents, pupils and others to develop our promotion of positive discipline.

I look forward to seeing what happens with Red Brae and I am grateful to Phil Gallie for raising the issue.

Meeting closed at 17:39.

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