MEETING OF THE PARLIAMENT

Wednesday 19 November 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): Good afternoon. The first item of business this afternoon is time for reflection. Our time for reflection leader today is Alan Sorensen, who is minister of Wellpark Mid Kirk in Greenock.

Mr Alan Sorensen (Minister of Wellpark Mid Kirk, Greenock): Many folk would have us believe that Christians are a bunch of pansies, wimps and big Jessies. Nowadays, any sort of religious faith is seen as something for wimps and church is seen as only for little old ladies with fur coats and hats with big pins stuck in them, or for those who are sad and lonely. Perhaps it sometimes seems so, but that was certainly not what Jesus had in mind when he called people to follow him.

Consider the folk Jesus hung around with: terrorists, rent collectors, prostitutes and fishermen. I do not know about you, but I do not know any namby-pamby fishermen. I go on holiday to the north-east and see those guys coming off the boats. They are real gutsy men. They do not have hairs on their arms—they have twigs. If their shirts were ripped open, "I love diesel" would be seen tattooed on their chests. Jesus called real gutsy men to follow him.

If I were to ask you to think of a disciple, you might think of Peter or Andrew. Both were fishermen. Jesus gave Peter that name, which means the rock. I like to think of Peter wearing a leather jacket with a stud-pattern on its back that spells Rocky.

I am saying such things because it seems to me that doing the right thing—following conscience, making decisions for the benefit of others and standing up against injustice—requires real courage and real determination. Living out the Christian life is anything but a soft option. Ask any young person that. Let us be honest, if a young person tells their friends that they go to church, have a faith or pray, they are likely to be crucified.

Whatever you decide as members of the Scottish Parliament and whatever issues you tackle, you will have your critics—MSPs probably know more about crucifixion than most. Your vocation requires real courage and guts, which is what the people whom Jesus called to follow him required.

However, perhaps the most important thing from my perspective—as someone who has faith—is that you are not left alone in your vocation. If you believe in prayer, I remind you that you are prayed for in churches throughout the land every week. Even if you do not believe in prayer, you should remember that a sizeable chunk of people focus their minds positively towards you. More than that, there has always been the belief that God is on the side of those who are working to make his world a better place.

Members of the Scottish Parliament, you have a difficult job, but you should be courageous and bold and be assured of the prayers of the people of Scotland.

Thank you.

Vulnerable Witnesses (Scotland) Bill: Stage 1

The Presiding Officer (Mr George Reid): The next item of business is a debate on motion S2M-193, in the name of Cathy Jamieson, on the general principles of the Vulnerable Witnesses (Scotland) Bill.

14:33

The Minister for Justice (Cathy Jamieson): Last Friday, I spoke at a conference that was organised by the Justice for Children group. The conference was entitled:

"Respecting Child Witnesses and Delivering Justice—It can be done".

Indeed, we can respect the rights of all vulnerable witnesses and deliver justice at the same time; in fact, we will not deliver justice unless we respect witnesses' rights. That is the challenge that the bill aims to meet.

One of the bill's overarching aims is to ensure that witnesses who may be vulnerable are identified at an early stage so that their needs are properly assessed and their views about how they can best give evidence are listened to. It also aims to ensure that the law is flexible enough to take account of the whole range of circumstances that may make someone vulnerable, whether because the witness is a child, has a mental health problem or a learning disability, has been the victim of a sexual or racist attack, or has a physical disability. The bill will also encourage and enable greater use of special measures across a wider range of court proceedings than ever before.

Of course, the law also has to protect the interests of people who are accused of committing offences and those of parties who are pursuing and defending civil cases. We believe that nothing in the bill erodes the right to a fair trial. It will allow the best range of evidence to be put before the judge or jury and will still allow the evidence to be tested in court.

Balancing the interests of the accused with the interests of witnesses is a delicate process and we are therefore very pleased that the Justice 2 Committee has concluded in its report that we have got that balance right.

Before I speak about the bill in more detail, I would like to record the Executive's thanks to everyone who has contributed to the process that has got us here today. We thank those who contributed to the "Vital Voices: Helping Vulnerable Witnesses Give Evidence" consultation, and the committee for its hard work in giving detailed consideration to the principles of the bill and for producing a thorough and carefully considered report. We will give careful consideration to the issues that were raised by the committee in its report and I will comment on one or two specific matters later in my speech.

Of course, the protection and help that we are giving to witnesses and victims does not begin and end with the legislation. The "Scottish Strategy for Victims" set out our priorities in 2001. We have made progress in implementing the recommendations of the Lord Advocate's working group on child witness support; we are working in partnership with the range of organisations that share our concerns about child witnesses. We have already published guidance on interviewing child witnesses as well as questioning children in court, and we are now finalising further guidance on child witnesses and access to therapy. Our pilot victim statement schemes will commence shortly.

We need legislative change, but we also need a culture change. Constant adjournments are not efficient in the court process and they can be particularly stressful for victims and witnesses. Such practices must be reduced as far as possible. Our proposed reforms of the High Court will help to address that situation.

The Executive must also change to promote our reform agenda. That is why we recently announced the establishment of a victims and witnesses unit within the Justice Department to bring together the different strands of work. The new unit will have an important role in ensuring that the legislation works in practice, in developing training and promoting good practice, in raising awareness and in driving forward cultural change. The unit will also develop proposals to pilot vulnerable witness officers to provide on-going support to agencies and help to ensure that the needs of all vulnerable witnesses are met.

The bill is only part of the jigsaw—changing the law is only one of the many pieces that we are bringing together. The big picture is about changing the culture in the justice system, modernising processes and changing attitudes. We want a justice system that delivers a high-quality service to the people of Scotland—one in which victims and witnesses are listened to, treated with respect and given the protection that they need to enable them to fulfil their vital role in delivering justice.

The Executive cannot achieve that culture change alone. We need the help of everyone who is involved in delivering justice: the police; the legal professions; the judges; local authorities; and professional and voluntary agencies that work with and support victims and witnesses. We all need to raise awareness about when witnesses might be vulnerable. The bill will be one of the catalysts for

change and we are committed to playing our full part in leading that change.

Let me highlight some important elements of the bill. The first of those is the automatic entitlement to special measures that the bill gives to children. At the moment children are eligible to use special measures, but that will now be a right for all children under the age of 16.

The bill will give additional protection to children under the age of 12 in sex and violence cases, where they are particularly vulnerable. The bill provides that those children should not have to attend court to give their evidence. Instead, they will give evidence from another building by live TV link or by evidence on commission. The bill will also ensure that children who are under 16 when the complaint or indictment is served on the accused will continue to have the right to special measures, even if they reach 16 before the trial starts.

The bill will make a significant difference to hundreds of child witnesses, but we should remember that it will also make a major change for vulnerable adult witnesses. At the moment, adults qualify for consideration for special measures only if they are the subject of one of a number of mental health-related court orders, or if, in the words of the current legislation, they have

"significant impairment of intelligence and social functioning".

That wording allows certain witnesses with mental health problems and some witnesses who have learning disabilities to be considered, but it excludes other witnesses with mental health problems, such as those who receive treatment on a voluntary basis, which means the majority of people with mental health problems.

The current legislation does nothing to take into account the wider circumstances of the witness, or the nature of the evidence that they are likely to give. The bill will allow anyone who has a mental disorder that may affect their ability to give evidence to be considered as a vulnerable witness. The definition of mental disorder in the bill, which is much more flexible and inclusive than the current provision, is taken from section 328 of the Mental Health (Care and Treatment) (Scotland) Act 2003 and includes people with a learning disability.

As things stand, there is nothing in statute to help witnesses who are vulnerable because of harassment, intimidation, or traumatic events that they may have been through. The bill will create a new category of vulnerable adult witness, where fear or distress may impact on the evidence that someone will give. The bill sets out a wide range of factors that the court can take into account in determining whether the person is a vulnerable witness and would benefit from the use of special measures when giving evidence. The category is intended to help, among others, victims of sex offences, hate crimes or domestic abuse, or witnesses who have been intimidated. We want to allow the court maximum flexibility.

I understand the Justice 2 Committee's view that witnesses with a mental disorder and victims of sex offences or domestic abuse should be automatically entitled to special measures. In many cases, those are the very people who will benefit from the bill as drafted. However, I want to guard against a tick-box approach to dealing with vulnerability; the danger of listing categories of people is that we risk ignoring individual needs. We want those who call a witness to court to treat that person as an individual and to consider what is best for that individual. Putting people in pre-determined categories could undermine that; rather than being inclusive, the suggestion might end up being exclusive.

Victims of sex offences, or domestic abuse, and people with learning disabilities need extra help, but elderly witnesses and witnesses to violent crimes and antisocial behaviour also need extra help. All those people are individuals, with individual needs; I want the justice system to recognise that and to meet their needs. That is why the bill will place duties on both the party who calls the witness and the court to have regard to the witness's best interests and the witness's views when deciding which special measure is needed, to ensure that vulnerable witnesses get the help that they need. That will mean that everyone who works in the system will have to be responsive to each witness's individual needs.

I will say a bit about the practical help that vulnerable witnesses will receive. Screens, live TV links and evidence on commission are available in some circumstances at present and will continue to be available. A new statutory special measure will be the supporter. As many members will be aware from the evidence to the Justice 2 Committee, a supporter is someone who is allowed to sit near a vulnerable witness while they give evidence. At present, supporters can be used under common law, but I am aware of a lack of consistency among courts on their use. The bill will promote consistency by making supporters a statutory special measure and by providing more detailed guidance on the role of the supporter. The committee heard strong views that a witness in a case should be able to act as a supporter in the same case as long as they have already given their evidence. I have considered that point and I agree with it.

The second of the new special measures is the use of a prior statement as the witness's evidence-in-chief. That special measure means that, for

example, a video recording of an initial interview with the witness could be played in court, with the witness then having only to be cross-examined on it. The cross-examination could be done by live TV link.

No doubt, over time, lessons will be learned from how those measures work in practice and from what works elsewhere. I am aware that people may want to suggest additional special measures over time and that improvements in technology could also benefit vulnerable witnesses. That is why there is an important power in the bill to enable ministers to add to the list of special measures that are available.

So far, most of what I have said has been about criminal cases—the kind of cases that grab most of the column inches in our newspapers. However, for a child, or other vulnerable witness, the experience of giving evidence could be just as intimidating or distressing in a civil case as in a criminal one. Therefore, the bill also covers civil proceedings, extending many of the provisions that are available in criminal proceedings to civil proceedings for the first time.

I spoke earlier about the need for culture and attitude changes in the courts. One of the themes running through many of the views that we gathered during our consultation process—which has continued through the evidence that has been given to the committee, and which I heard strongly reinforced at the Justice for Children conference on Friday—is the need for appropriate training and guidance to be made available to drive forward that culture change. That is something to which I am strongly committed and that will be a priority for the new victims and witnesses unit.

Lord James Douglas-Hamilton (Lothians) (Con): Will the minister take an intervention?

Cathy Jamieson: I was just about to conclude, but with the Presiding Officer's agreement I will happily take the member's intervention.

The Presiding Officer: Yes, we have plenty of time.

Lord James Douglas-Hamilton: Before the minister sits down, following her very welcome speech, will she consider the representations of Rape Crisis Scotland, which is concerned that the special measures that are available to women who have been seriously assaulted in England should be considered for Scotland? At the moment, those measures are much less readily available.

Cathy Jamieson: As I have outlined, the important point is that the vulnerability of each individual witness is to be assessed. We will work with those witnesses to give them a say in how they can give their evidence under the special measures. I am always open to the view that there may be other special measures that we could develop in specific circumstances. At the conference last week, some people talked about the role of intermediaries. Although we have not included specific provision for those in the bill, we would be open to considering them and we would want to look at that option in the future.

It is very important that we work to bring together all the agencies that are involved to ensure that there is a consistent approach and that good ideas and best practice are developed and shared. During the committee's evidence taking, concerns were raised about training, especially in relation to the judiciary. I am therefore pleased that, as far as the training of judges is concerned, the independent Judicial Studies Committee of Scotland has issued general guidance to all sheriffs and judges about the treatment in court of vulnerable witnesses. It was also encouraging to hear the director of judicial studies say, at the launch of the guidance on interviewing child witnesses, that the guidance would be used in training. The changes that the bill introduces must work in practice, and we will ensure that routine monitoring takes place in parallel with implementation so that we can learn from best practice as things develop.

I believe that the bill will make a real difference to vulnerable witnesses. In combination with a range of work that we are undertaking to place victims and witnesses at the heart of the justice service, it will help to promote a genuine culture change whereby everyone in the service will treat vulnerable witnesses with sensitivity and respect.

I move,

That the Parliament agrees to the general principles of the Vulnerable Witnesses (Scotland) Bill.

The Presiding Officer: A considerable number of members whom I expect to speak have not yet pressed their buttons. I would be grateful if they would do so now. The debate is undersubscribed, so if members need a couple of extra minutes that will be fine by me.

14:49

Nicola Sturgeon (Glasgow) (SNP): That is an offer that I cannot refuse, Presiding Officer.

The Vulnerable Witnesses (Scotland) Bill is an extremely important bill. It is absolutely right that witnesses who are vulnerable—whether because of their age, a disability or the nature of the case in which they give evidence—should be supported in giving evidence to the court. The range of special measures that vulnerable witnesses can apply to use—live TV links, evidence on commission or giving evidence behind a screen or with a supporter sitting next to them—will enable many vulnerable witnesses to give their evidence in a

way that will be far less stressful to them than the normal method of getting in the witness box and being examined and cross-examined, sometimes brutally, in the full glare of everyone present—including, in criminal cases, the person who might be accused of committing quite horrific violent or sexual crimes against them.

However, it is important to make the point, as the minister did, that the bill will serve the wider interests of justice. A witness who is terrified, for whatever reason, by the prospect of giving evidence in court is not likely to be able to tell their story in a clear, lucid and fulsome manner, and courts in Scotland—particularly criminal courts—rely on honest and accurate evidence being presented. That is why it is in the interests of everyone in court cases—the Crown and the accused in criminal cases; the pursuer and the defender in civil cases—that witnesses are supported to give their best evidence.

Although the bill is important and worthy of support, we as legislators must ensure that it strikes a fine balance. That balance—which is particularly important in criminal cases, although the bill does not deal exclusively with criminal cases—is between protecting vulnerable witnesses and ensuring the right of someone who is accused of a crime to a fair trial.

In Scotland, we have an adversarial system of justice: everyone who is accused of a crime is innocent until proven guilty, the onus is on the Crown to prove guilt beyond reasonable doubt, and the accused has the right to test to the full the evidence on which the Crown relies to do that. Although it will not always be the case that witnesses who are considered vulnerable will be Crown witnesses, they will be more often than not, and every time that a Crown witness is allowed to give evidence in a non-conventional way, such as on commission, there is potential—I stress the word "potential"—for the right of the accused to test that evidence in open court to be compromised.

The question for us today is whether the bill gets the balance right. Overall, it does get it right—that was the Justice 2 Committee's conclusion—but there are some specific areas that the Executive should reconsider. I stress that, in some of those cases, that is because it is possible to extend the protection of vulnerable witnesses even further than the bill does without compromising the right of the accused to a fair trial. However, in one or two other cases, which are mainly procedural matters rather than issues of substance, the danger may be that the bill goes a bit too far.

I will deal first with those instances where vulnerable witnesses could be given greater protection than the bill currently gives them. As the minister said, under the bill, only witnesses who are under 16 years old would automatically be considered to be vulnerable and eligible to use special measures; all other witnesses have a discretionary entitlement only. I can understand the Executive's reluctance to extend the automatic entitlement too far, but I agree with the Justice 2 Committee that there are other witnesses who should be in that category to ensure that they do not simply slip through the net. I was not convinced of that at the start of the committee's deliberations, but I was persuaded during their course.

I make particular mention of those with a mental health disorder or learning disability and the victims of sexual and domestic abuse. I do not agree that to extend the automatic entitlement to those categories would lead to a tick-box approach, because witnesses who are not in those categories would still have a discretionary entitlement, and the courts would still, in relation to such witnesses, have all the flexibility for which the minister has rightly called. That is one important advance that could be made.

I will touch briefly on some of the special measures. First, after some consideration, I think that it is wrong that the bill leaves open the possibility of an accused person being present while a vulnerable witness gives evidence on commission. The Executive said in evidence to the committee that that would happen only in exceptional circumstances and cited cases in which evidence was given on commission because the witness was in hospital or incapacitated in some other way.

Such cases are very different from those that involve vulnerable witnesses. I presume that in a case in which evidence is taken on commission only because a witness is in hospital, there would be no objection to that witness's giving evidence in open court in the presence of the accused. However, in cases where there are vulnerable witnesses, the witness is allowed to give evidence on commission because they cannot give their best evidence in the presence of the accused. That is why I believe that—perhaps not in general, but in the context of the bill—there should be no circumstance in which the accused should be present when evidence is taken on commission. To allow the accused to be present would run the risk of defeating the purpose of the special measure.

The second and final change that I was going to urge the Executive to make to extend the protection that is afforded to vulnerable witnesses related to supporters, so I am glad that the minister got there before me. She said that the bill allows vulnerable witnesses to have a supporter with them in court who must not be a witness in the same trial. In many cases, that exclusion

would restrict the use of supporters in practice and I am glad that the minister conceded that point. If we want an example of how important that is, we have only to consider cases that involve child abuse. In such cases, the child witness is likely to want his or her mother to be the supporter, but in most—or certainly many—cases, the mother will also be a witness in the trial, and so would not be able to act as the child's supporter. Common sense demands that we amend that aspect of the bill. As the minister said, a witness in any court case is free to sit in the public gallery after giving evidence, so there is no reason why such a witness could not sit next to another witness to act as their supporter. An important advance has been made today in that regard.

There are two areas in which it could be argued that the bill unduly restricts the rights of the accused. I stress again that both relate to procedural matters. The bill requires judges to assess in various circumstances whether the right to a fair trial is likely to be compromised by the use of special measures. The bill also allows the judge to disregard a risk to the fairness of the trial if that risk is outweighed by the risk to the vulnerable witness. I understand what motivated the bill's drafters to include that provision, but the Faculty of Advocates, among others, has put it to us very powerfully that the right to a fair trial must be absolute. I agree with that. As soon as we accept that some degree of unfairness is acceptable in a criminal trial, we risk putting our justice system on a slippery slope. The right to a fair trial is the cornerstone of the justice system and it should be absolute.

Before anyone suggests that I want to water down the protection that is afforded to vulnerable witnesses, I make it clear that I do not. It would be wrong to enter caveats on the right to a fair trial, but it is not necessary to do so in the bill. None of the provisions in the bill, if properly applied, would compromise the right to a fair trial. The bill does not therefore require to envisage such a prospect by making a provision that would allow for the possibility that unfair trials might proceed.

The second procedural matter that must be addressed relates to the rights of both parties in a case to be heard when an application for an order authorising the use of special measures is made. That is not the case at the moment; the party who is not applying for such an order has no right to be heard at the initial stage of the application and a hearing is granted only if the judge does not agree to the application at that stage. In the interests of natural justice, that is not sufficient and I commend the Justice 2 Committee's recommendations in relation to that point.

To finish, I will say a little about early identification of vulnerable witnesses and about resources. The bill is about court procedure; it is about what happens in a court and about what happens to enable witnesses to give evidence to the court. However, if it is to work, it cannot be only about courts. It must have the active co-operation of all the agencies that are involved, at all stages of the justice system.

I endorse the committee's recommendation about the self-referral of vulnerable witnesses, but the bill puts the onus entirely on lawyers to apply for special measures on behalf of witnesses. In most cases, that will mean the procurator fiscal. In many cases, the first time that the procurator fiscal meets a witness is on the morning of the trial, although that situation might change, and I hope that it will. In practice, early identification will depend to a huge extent on others, including precognition agents, the police, Victim Support Scotland, Scottish Women's Aid and many other organisations.

The committee has recommended that the police should be under a specific legal duty to identify vulnerable witnesses, but all the agencies that have a role to play in the justice system must be trained and adequately resourced to enable them to identify and support vulnerable witnesses. My big fear is that if that does not happen, the bill, which is hugely worthy, will not in practice make the difference that we all want it to make.

With those comments, I am happy warmly to endorse the general principles of the bill.

15:00

Miss Annabel Goldie (West of Scotland) (Con): I seldom agree with much that the Executive says when I come to the chamber to take part in debates on law and order. I am sure that the minister's disappointment would be uncontained if I were to adopt a markedly different stance today. I shall, therefore, on the whole be predictably consistent by making some prickly introductory comments.

To me, the Scottish Executive's approach to law and order is like a Christmas tree whose lights fail to come on. In Scotland, a crime is committed every 1.2 minutes. Since 1997, we have seen escalating increases in violent crime, vandalism and drugs-related crime. A quarter of Scots do not feel safe outside their front door. That means that there is little cause for Executive rejoicing. Increasing the number of police and ending automatic early release for prisoners would be a bright illumination of the gloom. In the meantime, I concede that the Vulnerable Witnesses (Scotland) Bill is a small but welcome glimmer.

However, as long as potential witnesses remain discouraged by a lack of police in our communities, recurring delays in the criminal

justice system, inadequate resourcing of the Crown Office and Procurator Fiscal Service and the prospect of convicted criminals getting automatic early release, there is a huge disincentive to the law-abiding public serving as witnesses.

Cathy Jamieson: Miss Goldie would be very disappointed if I did not rise to the bait that she has carefully dangled in front of me.

The bill is about ensuring that people get the protection and support that they need to give their evidence in court. It is a little disingenuous for Miss Goldie to use this opportunity to suggest that there is not adequate policing in communities. As she is well aware, the number of police officers in Scotland is at a record level. She is also aware that the Executive has taken the opportunity to speed up the process in the high courts. I look forward to support from Conservative members on that and on the work that we are attempting to do to ensure that there is both punishment of the guilty and a rehabilitative approach, so that people do not reoffend and community safety is improved. I look forward to future debates and to receiving the full support of Miss Goldie and those of her colleagues who are not here today.

Miss Goldie: The carefully dangled bait was not just tickled at, but swallowed in a most satisfying manner. I am glad that the minister raised the issue of police numbers. It is only because police numbers have plummeted under Labour that any increase looks dramatic. At the moment, we are marginally above operating levels for 1997. Although that is unimpressive in itself, it is even more disquieting when we consider the huge extra burden of responsibility that intervening legislation has placed on the police.

The Presiding Officer: Order. I know that you said you would start with a prickly bit. This is prickly, but it is not really within the scope of the bill.

Miss Goldie: Nonetheless, it is immensely enjoyable. Presiding Officer, I am trying to accommodate your desire to keep the chamber occupied for the duration of the debate.

I come now to territory that is a little more congenial to the minister. For witnesses who come forward and are vulnerable, the bill offers more structured and extensive support than has formerly been available. I echo the comments of Nicola Sturgeon and welcome that as a positive step. It is only part of a very big picture, but I am prepared to commend the bill on its merits. It is a worthwhile contribution to improving the court environment for vulnerable witnesses.

Although I speak as a Conservative front-bench spokesman on this issue, I am also convener of the Justice 2 Committee, which was responsible for stage 1 scrutiny of the bill and the ultimate publication of the stage 1 report. I take this opportunity publicly to thank our clerks for their invaluable support and guidance to the committee. They have shown remarkable capacity for unstinting work in the face of formidable time-scale challenges and displayed exemplary diplomacy in dealing with a convener of whimsical and carnaptious disposition. I am sure that the minister will not disagree with one word of that. I thank the members of the committee who are present for their constructive approach and the witnesses who made time to give evidence.

As I have indicated, the general principles of the bill have my party's support. Although my colleagues will wish to address particular areas, I propose merely to comment on the broad aspects of the bill, as indicated in the committee's stage 1 report, that require the Executive's careful consideration and which I hope will merit specific comment by ministers at the winding-up stage.

My first comment is a general housekeeping one—I am speaking as a lawyer who has practised in the Scottish courts—on the structure of the bill and the drafting, which is referred to in paragraph 90 on page 16 of the Justice 2 Committee's report. When the bill is enacted, it will be held in the hands of prosecution and defence lawyers or pored over by the presiding judge as arguments are addressed by solicitors. It is not user-friendly as a working tool in that environment. My plea is that the Executive has its drafting team examine the cross-references and consider whether greater clarity and transparency might be achieved by simply repeating ad longum the parts of the bill that are incorporated by cross-reference. It is extremely difficult to read the bill in a continuous manner as it is not cohesive.

I turn to what is critical to the success of the bill, which has already been alluded to: the early identification of vulnerable witnesses. Although the bill will extend to civil proceedings, I think that everyone anticipates that the provisions will be invoked most frequently in relation to criminal proceedings. The first point of likely identification of a vulnerable witness in that context will certainly be at the stage of the police's initial involvement when an incident is first reported or investigated. That will then have an on-going implication for the transmission of information to the Crown Office and Procurator Fiscal Service.

The committee report acknowledges that other agencies will have a role to play, but the two vital components of the police and the Crown Office and Procurator Fiscal Service in the criminal justice system will be the key to whether the bill will work without the introduction of further delays to the system. I draw to the minister's attention the

paragraphs on page 6 of the report that cover that aspect.

The other component that is essential if the bill is to work is resource. The minister will be aware that the Finance Committee flagged up that aspect on page 38 of its report and the Justice 2 Committee has drawn particular attention to it in paragraphs 98 to 103 of its report. There are two important aspects to the resource and implementation issue. One is that the resource must be in place to deal with the immediate consequences of the bill when it is enacted. The other is that, given the phased implementation of the bill, there must be total clarity on the part of the Executive in identifying the funds that are needed to meet its requirements.

In the time available, I have dealt only with broad issues, which are of singular importance if the bill is to work. I welcome the Executive's comments on those aspects. Three specific matters are of concern to me. One, which Nicola Sturgeon raised, is the important matter of the fair trial element to which the Faculty of Advocates referred. I do not think that that is a meaningless exercise in semantics; the faculty made a genuinely important point and I would welcome its being given further thought. The application form to have someone considered a vulnerable witness should have within it the specific reasons why the applicant seeks to have that status accorded. That is important, because unless the other side knows why the application has been made and understands the reasons behind it, we build in the potential for delay and disputatious conduct in the procedural aspects of the case. Nicola Sturgeon also covered the rights of parties to a hearing, which is another important technical element.

Subject to the comments that I have made, the bill is worth while and it will be helpful in encouraging witnesses to come forward. My party supports the general principles of the bill.

15:09

Mike Pringle (Edinburgh South) (LD): I am perhaps at a slight difficulty in having to follow two lawyers, because one thing that I am not is a lawyer. The two preceding members have far more expertise in the subject than I have. I am also a little disappointed that, as the convener of the Justice 2 Committee, Annabel Goldie chose today's debate as an opportunity to have a bit of a go at the Executive.

I regard the Scottish justice system as one of the best in the world. Many other judicial systems have used it as the basis for their systems. If it is, and was in the past, the best system, we must be prepared to examine and change our processes and to adapt them to the modern way of life.

The Vulnerable Witnesses (Scotland) Bill was introduced in June this year to address the increasing number of incidents that involve especially young people finding themselves in court. As the Justice 2 Committee was told by some of those young people, their experience of the judicial process and their time in court was not good. I will provide a few quotations to illustrate that:

"My friend went to court last year. She's still really upset and has awful dreams about it."

A 12-year-old girl said:

"I'm in a really bad situation—I'm worried about going to court and I can't sleep."

A 13-year-old said:

"My uncle raped me four years ago. He went to court but was found not guilty—no one believed me. Something else has happened; I'm not telling anyone this time."

Cases have been abandoned, have collapsed or have led to acquittals because young witnesses have not been sufficiently supported through the legal process. The bill addresses those problems and I believe that it will lead to better justice for such witnesses.

We are by no means the only country that is considering, or has considered, the position of vulnerable witnesses. By simply going on the internet, one finds that, in July 1990, Portugal introduced a bill governing the enforcement of measures on the protection of witnesses in criminal proceedings. In South Africa, the Criminal Procedure Amendment Act 2001 allows a competent person to act as an intermediary so that the witness can give his or her evidence through that person. In New Zealand, the Evidence (Witness Anonymity) Amendment Act 1997 allows orders to be made to permit witnesses to give evidence anonymously. In Namibia, a bill has been proposed that seeks to address that country's problem of one rape in every 60 minutes. The bill would involve relocating the trial venue, having someone to accompany the witness and using closed-circuit television outside the courtroom for the testimony of young people; out-of-court statements would be given by young people under 14. From looking at those other jurisdictions, I think it is clear that our bill has far more substance and addresses the problems to a greater extent than has been attempted elsewhere.

The idea of the bill was first proposed by Jim Wallace in his role as the Minister for Justice in May 2002, when he launched the paper "Vital Voices: Helping Vulnerable Witnesses Give Evidence", and it thereafter formed part of our 2003 manifesto.

The Vulnerable Witnesses (Scotland) Bill is the first bill that I have dealt with as an MSP and I am

pleased that it is a piece of legislation that I believe will make a real difference. As other members have done, I thank all those who came to give evidence to the Justice 2 Committee and I pay tribute to the outstanding work that the clerks did. The evidence that the committee received certainly gave me a much greater insight into the problems that the bill was seeking to address.

The key aim of the bill is to give more protection to young witnesses and witnesses with mental health disorders or learning disabilities. The bill proposes to abolish the competence test, which will mean that there will be no restriction on who is able to give evidence. The identification of a witness as someone who might be vulnerable at a very early stage in the case and the communication of that information to all who are involved will have to be given paramount importance so that no unnecessary delays occur in the court process.

I will give another quotation:

"He"—

the defendant—

"and the courts put me through hell for 14 months just waiting and waiting … I had got myself all prepared and then it didn't happen. It's devastating when you think it's nearly over and then it drags on for a lot longer. When I was told there was a further delay, I felt I could no longer do it. If it had happened when they first said it would—I would have felt ten times better. I could have given better and stronger evidence."

There are enough delays already and we must try to speed up the process for vulnerable witnesses.

The Law Society of Scotland argued that people with mental disorders should automatically qualify for special measures. The committee recognises the Executive's reluctance to list who is a vulnerable witness, as non-visible disability is often difficult to identify and assess. However, the committee hopes that the issues around that group of witnesses and the victims of sexual or domestic abuse will be looked at.

Another issue that provoked considerable debate was the question of when a child is not a child. The Scottish Human Rights Centre and Justice for Children argued that the age should be 18. At 16, we can leave school, we can get married and we are regarded as an adult. I think that the bill is right to judge a child as someone who is under 16.

A number of those who came before the committee were concerned about the right of the accused to a fair trial. Clearly, that is fundamental to our justice system, as Nicola Sturgeon mentioned. The conclusion was that the right to special measures must be open to judicial discretion and that the judge's decision on special measures must be in relation to a fair trial.

I was impressed by the evidence that was given by the Faculty of Advocates. As others have mentioned, the Faculty of Advocates had similar concerns in relation to a fair trial. I hope that the Executive will examine the detailed points that the faculty raised about several sections of the bill and respond at stage 2.

At present, the bill does not allow a supporter to be a witness. That problem has been highlighted by others, including Enable. To give an example, a parent should be able to give evidence beforehand and then act as the supporter for the child. Who else would the child want as their supporter? I am therefore delighted to have heard the minister say that that will be changed.

One improvement that is proposed in the bill concerns the quality of evidence that is given on commission. In response to the question whether the accused should be present when evidence is given, Scottish Women's Aid, Rape Crisis Scotland, the Equality Network and the Commission for Racial Equality all said no. The accused should be able to see or hear at a distance. For example, a television link could be used. I agree with the committee that, as Nicola Sturgeon also said, there should be no circumstances in which the vulnerable witness must give evidence in the presence of the accused. However, I accept the view of the Faculty of Advocates that the issue is one of judicial discretion. I accept that the Executive will examine that further.

I want to raise two other points concerning resources and implementation. If the bill is to work and be effective, there is no doubt that all the various agencies that are involved in this field—many of which gave evidence to the committee—will need to be involved in considering what training and guidance will be appropriate to help the process. I suggest that that will need to include the legal profession.

The bill will not work unless there are the necessary resources. The Executive is funding, to the tune of £850,000, a victims and witnesses unit. For the year 2003-04, £4 million is earmarked for the witness support service. There is also further money for the witness service in the High Court. However, resources will also need to be put into the courts themselves. Many courts are very old and will need to be adapted so that the bill can be implemented fully.

I believe that the bill will make a difference. I look forward to stages 2 and 3. In two or three years' time, when the legislation is assessed, I am sure that it will be shown to have been a positive thing for all those whom we hope to help, namely the vulnerable witnesses.

15:18

Karen Whitefield (Airdrie and Shotts) (Lab): I welcome the opportunity to participate in this afternoon's debate. Although the Conservatives' support for the bill has at times seemed grudging, I am sure that that is not the case and that there is genuine cross-party agreement that more needs to be done to protect and support our most vulnerable witnesses.

For too long, vulnerable witnesses have been let down by our legal system. Often, they have faced harrowing ordeals in our courtrooms. The sad truth is that that has led to an under-reporting of serious crime, including rape, child abuse and crimes of violence. That fact has been highlighted by Rape Crisis Scotland, which points out that only around 40 per cent of women who contact rape crisis centres have reported their experiences to the police.

It is incumbent upon us to ensure that our justice system is fair to the victim, the witness and the accused. The bill is part of a larger process to create such a system and we all have high hopes that the bill will go some way towards rebalancing the scales of justice and provide greater protection for our most vulnerable witnesses.

One of the key principles of the bill is improving the quality of evidence given by vulnerable witnesses, particularly children. That is an important point. The bill is not just about protection and support; it is about improving the justice system. The evidence that was taken by the Justice 2 Committee demonstrated that there is broad support from all sections of Scottish society for the measures in the bill. In particular, most agencies welcomed the abolition of the competence test and the provision of an automatic entitlement to special measures to those under the age of 16; they also welcomed the widening of the definition of vulnerable persons. I am particularly pleased that the bill will ensure that all witnesses who have a mental health disorder will have discretionary entitlement to special measures.

That is not to say that there are no areas in which the bill could be improved or strengthened. I am sure that organisations such as the Scottish Child Law Centre and Victim Support Scotland will participate fully at stage 2. I would like the protection that is offered to children to be extended by the bill ensuring that, in crimes of violence, the accused should not be able to conduct his or her defence.

I highlight to the minister the importance that the committee placed on the need for early identification of vulnerable witnesses; that has been highlighted by Nicola Sturgeon and Annabel Goldie. If the bill is to succeed in reducing the distress that is caused to witnesses by lack of certainty about the circumstances in which they will give their evidence, it is vital that vulnerable witnesses are identified early and that they are informed of the protection that is available. As the Justice 2 Committee report points out, that is not only a matter for the police; other agencies such as Scottish Women's Aid can, and should, play an important role in the identification of vulnerable witnesses. I ask that some thought be given to simplifying the child witness notice procedure, so as to reduce the possibility of increased bureaucracy and delays.

I welcome the introduction of the Vulnerable Witnesses (Scotland) Bill and endorse its general principles. It has been a long time in coming. The consultation document "Towards a Just Conclusion" was published in November 1998. Now, in November 2003—exactly five years later—we have finally arrived at the point where the laws will be changed to properly protect and support vulnerable witnesses. As it stands, the bill deals with all the core problems that exist in relation to vulnerable witnesses. The bill is not perfect and, at stage 2, we will have an opportunity to further enhance it and tighten its provisions. However, I am confident that following stage 3, we will have a piece of legislation that is as important and positive as any that has been produced by the Parliament.

15:24

Mr Stewart Maxwell (West of Scotland) (SNP): I support the thinking behind the Vulnerable Witnesses (Scotland) Bill. After the completion of its passage through Parliament, it will be a valuable addition to the protection of vulnerable witnesses in Scotland and I welcome its introduction.

It is crucial that the Parliament ensures that everything is done to ease the trauma of appearing in court for the young and vulnerable. Appearing in court is a traumatic experience for everyone who appears as a witness in any case, regardless of whether they are vulnerable. It is therefore important that we put the measures in place to ensure that young and adult vulnerable witnesses are protected. However, I also appreciate that there is a difficult balance to be struck between the protection of vulnerable witnesses and the guarantee of a fair trial for the accused.

I will make a few side comments about the views of the Subordinate Legislation Committee, of which I am a member. I am pleased to report that the committee felt that the bill struck the right balance in relation to the powers that will be exercised through secondary legislation—statutory instruments—and primary legislation. It is not often the case that the Subordinate Legislation

Committee and the Executive agree on that point, but with this bill we do. However, there was some discussion in the committee about the fact that district courts are omitted, although I acknowledge that the power exists to extend the measures to other jurisdictions, in particular the district court. I hope that that will come in time.

Although I agree with the broad thrust of the bill, I have several points that I would like to be clarified. The bill states that a witness under 16 years of age is automatically entitled to benefit from special measures when they give evidence. We all know of 16-year-olds who have the emotional maturity of an 18-year-old or a 19-year-old—or perhaps someone older—but we also know of 17 and 18-year-olds who have the emotional maturity of a 14-year-old. Can the Executive guarantee that every effort will be made to ensure that vulnerable people such as those will be protected under the new legislation, because if they are over the age of 16 they will not have an automatic right to special measures?

I applaud the fact that any person with a mental disorder that affects their ability to give evidence is to be included as a vulnerable witness, but that right should be automatic for all adults with a mental disorder. If it is not to be an automatic right, what measures will be used to decide whether a witness's mental disorder affects their ability to give evidence? Why will some people suffering from a mental disorder not be given automatic entitlement to special measures? I am not convinced by the arguments put forward by the Executive and by the minister today on that point. Surely most, if not all, mental disorders will affect a witness's ability to give evidence to some degree. The Executive should re-examine that point.

Cathy Jamieson: In my speech I recognised that we need to ensure that the measures go wider than previous definitions, which limited the ability to use special measures. In particular, we need to ensure that people who may not have a defined mental disorder but who are vulnerable for a number of other reasons are caught up in the measures under the bill. Does Stewart Maxwell accept that I made that clear this afternoon?

Mr Maxwell: Absolutely. I apologise if I did not make that clear. I accept that the scope is much wider. I accept that it is not just about mental disorder, and that it will apply to other groups of individuals, for example those who have suffered particularly traumatic attacks. However, there is still a case to be made for the automatic inclusion of people over the age of 16 who are suffering from mental disorder.

I am encouraged to see that the Justice 2 Committee supported the view of the Scottish Association for Mental Health that making evidence of a witness's mental disorder public could be discouraging and stigmatising for the potential witness. I am pleased that the Executive has agreed to examine that issue and to produce further guidance in that area. However, I am unsure about how a vulnerable witness who suffers from a mental disorder will be protected from publicity arising from their entitlement to special measures, and I am concerned that that may breach a witness's right to confidentiality about their existing medical status. I hope that we all agree that all people, irrespective of their mental condition or any other matter, have a right to privacy concerning their medical status.

In its submission to the Justice 2 Committee, the Faculty of Advocates highlighted what may be the most difficult issue in the whole debate, which is the balance between the protection of the vulnerable witness and the right to a fair trial for the accused. Many members, such as Mike Pringle, Nicola Sturgeon, Annabel Goldie and others, have already spoken on that issue. It is a critical point. Under the bill, if special measures are used, the court has to weigh the perceived prejudice to a fair trial against the risk of prejudice to the interest of the child or other vulnerable witness, and then decide whether the significant risk to a fair trial outweighs the risk to the witness. The Faculty of Advocates asserted that, given those circumstances, the court would then be asked to legitimise a trial when it is already stated that there is a significant risk that the trial will be unfair. We must always bear that in mind. I accept that it is a difficult balance to strike—and I agree that in the bill the Executive has struck the right balance—but we must always be aware of the rights of the accused.

The Scottish Child Law Centre says that as long as the court is able to overturn an entitlement to special measures, it can be argued that the fairness of the trial will have been prejudiced. Would it not therefore be simpler and fairer to remove that provision from the bill, which would make it standard practice to give under-16s and other vulnerable witnesses their entitlement to special measures and would remove the danger of prejudicing a trial? In other words, the right should be made absolutely automatic.

When is an automatic right to special measures not automatic? When the court can decide to remove that right. If we agree, for instance, that witnesses who are under 16 are vulnerable and should have an automatic right to special measures, it is slightly strange to allow that right to be removed. I would like to hear what the Executive has to say on that.

I support fully the abolition of the competence test, which was an outmoded idea that often meant that evidence from children and other vulnerable witnesses was not even heard. It is

good that that is going. All witnesses—especially the most vulnerable—have a right to be heard and must be allowed to give their evidence. It is for the judge or the jury to decide on the reliability and credibility of evidence that has been given.

If I, an adult who would not fall into any of the categories in the bill, were a witness, the jury would decide whether I was lying, telling the truth, embellishing the truth, attempting to spin my evidence in some other way or trying to ensure that cognisance was taken of some facts in my evidence. The jury has the right to decide that and has an equal right to decide about the evidence of any witness, irrespective of their age or category. I am pleased that the competence test has been removed. It always seemed unfair and I am glad that the Justice 2 Committee agreed about that.

With the caveats that I have mentioned, I reiterate that I support the bill and I look forward to its becoming law in the near future.

15:31

Patrick Harvie (Glasgow) (Green): Like other members, I am pleased to lend my support to the bill's general principles. However, I need to voice several concerns about the detail of the bill that other members have also mentioned. I hope that the Executive acknowledges that those concerns remain to be addressed. Opportunities to do that will arise during the bill's progress through Parliament.

There is a strong case for including in the definition of vulnerable witnesses complainers in specific cases, such as sexual offence cases, because we are all aware that people's fears and anxieties about the courtroom experience often deter them from proceeding with a case or even from reporting their experiences to the police. That argument has not yet been drawn out. We are all aware of the low reporting rates of some serious sexual offences. Perhaps that means that the category of offence could make a stronger case than a witness's age alone for granting an automatic right to special measures.

As Stewart Maxwell said, the differences in maturity among many people at different ages show that there is not necessarily a single cut-off point and that we should not base automatic status on age alone if we are not willing to base it on categories of offence alone. As James Douglas-Hamilton has said, the situation is different in England and Wales, where the Youth Justice and Criminal Evidence Act 1999 ensures that automatic access to special measures is based on categories of offence.

Like Rape Crisis Scotland, I am concerned that the role of supporters could be spelled out more clearly, particularly in relation to the physical accommodation that could be required in a courtroom. If we can agree on the use of supporters—I am sure that we can—it is bizarre that a court might not even ensure that supporters are visible to witnesses while they give evidence. If reassurance could be given that that has been addressed, I would welcome it. If not, I hope that an attempt will be made to deal with that during the bill's progress through Parliament.

I was dismayed to read that, in civil cases, the party that cites a witness will bear the cost of any measures that are required. I hope that such a principle would not extend to charging for loop systems or lifts to be installed, for signing or for other measures that are required to overcome barriers for disabled people. The measures for vulnerable witnesses should be regarded in the same light and costs should be met as a matter of course.

Perhaps, in the long run, the same approach could be taken to special measures for vulnerable witnesses as we expect organisations to take for granted when it comes to disability discrimination. We expect organisations to be prepared routinely to cope with a wide range of access requirements and a wide range of people. We expect organisations to make reasonable adjustments—indeed, we do not expect that; we require it in law.

Surely all witnesses should be asked, as a matter of routine when they come to give evidence, what their requirements are. Should their wishes not be respected? Surely our courts should expect to encounter continually a wide range of people with a wide range of requirements in relation both to physical access and to the special measures that we are discussing today. I hope that some of those issues can be addressed during the progress of the bill.

I also hope that other issues will be addressed, including training for the people who work with children, young people and other vulnerable witnesses in the justice system, and the age limit for automatic vulnerable witness status, which is set at 16 instead of 18. There are also a few other details that I hope that we can look at during the progress of the bill. However, I am pleased to say that they do not prevent me from supporting the general principles of the bill.

15:36

Marilyn Livingstone (Kirkcaldy) (Lab): It gives me great pleasure to speak in this key debate today. The stage 1 debate on the Vulnerable Witnesses (Scotland) Bill has been long awaited.

Over the past few years, I have been the convener of the cross-party group in the Scottish Parliament on survivors of childhood sexual abuse. I work closely with my local agency,

Kingdom Abuse Survivors Project, which supports people who have been subject to sexual abuse whether that be recent or historic. I am also a member of the Fife domestic abuse forum. As a result of those interests, the letters that I receive and the two horrific constituency cases in which I have been involved, I am very aware of the issues that surround vulnerable witnesses. I am pleased to see the stage 1 debate on the bill today.

I support the broad principles of the bill. Like my colleague Karen Whitefield, I look forward to the bill being strengthened at stage 2. I welcome the Executive's commitment to improving the way in which witnesses are treated by the justice system. One of the strands that the cross-party group looked at was how the justice system deters people from coming forward to report what are sometimes dreadful and long-standing crimes.

I believe that the bill will enable better protection of and assistance to vulnerable witnesses, particularly child witnesses and adults who were the victims of crimes when they were children. The intention behind the bill is also to support the development of a culture in the justice system that will enable children and other vulnerable witnesses to participate fully. Like many members, I believe that training has a large part to play. I will return to that subject later in my speech.

I particularly welcome Cathy Jamieson's announcement this week of £850,000 to establish a network of vulnerable witness officers. The officers will support children and vulnerable adults who come into contact with our justice system. I have noticed the disparity in the support that is available in different geographical areas and the lack of communication between agencies. The pilot will allow co-ordination and support among the various agencies that are involved. That kind of initiative, alongside some of the key measures in the bill, will help to support the most vulnerable in our society—who are, after all, the people whom the bill is intended to support.

I want to highlight some of the issues that are of key importance to the debate. The first is the provision to allow witnesses under 12 in criminal cases that involve sexual assault or violence normally to give their evidence by means that do not require their personal attendance in court. That measure will go a long way to reassure young people who are very frightened about giving evidence in court. The second is the widening of the definition of a vulnerable person to include anyone whose ability to give evidence might be diminished if they are not allowed the special measures.

We have heard quite a bit about balance today. I believe that we have hit the right balance. I have come across many adults who had a crime committed on them 20 or 30 years ago. Those people are very vulnerable. I welcome the Executive's commitment to them.

I welcome the fact that protection will be provided for children and young people against the unfair use of character or sexual history evidence about them in sheriff court proceedings. I also welcome the ending of the competence test, which up to now has meant that the court has not been allowed to hear the evidence of some witnesses such as young children or people with learning difficulties.

It is very difficult to raise all the issues that I would like to within the allocated time. However, I will say that I particularly welcome the fact that the use of a supporter will be a statutory special measure and the minister's commitment that a supporter can be a person who has previously given evidence. Like my colleagues, I believe that a very young witness would probably want his or her parent to be a supporter. We need to consider how we support witnesses through what is probably the most traumatic experience that they will have.

The committee's report highlights the crucial issue of early identification of a vulnerable witness. I hope that if more people know from the outset that they will receive such support, they will come forward as witnesses. The report also expresses concern that the bill's provisions should not exacerbate the problem of delays and postponements of cases. I wonder whether the minister will address that issue in his winding-up speech, because I have found that it is one of the major causes of stress to witnesses. We have all heard examples of or seen at first hand the pressure placed on young people and adults because of continued delays in the system and we must ensure that the issue is tackled.

I should also mention the issue of training for all those who work with children and young people. Indeed, in its briefing, Children 1st has made it clear that such training is an important part of the jigsaw. The implementation group that will oversee the proposed legislation will also examine the need for training and guidance and will ensure that such training is appropriate to the needs of all agencies involved. In that respect, I ask the minister to indicate the resources that will be made available for training, because I truly believe that the issue is important if we are to achieve cultural change in the system and that resources must follow it.

The bill is our chance to make a major difference. As its implementation will mean a safer, stronger Scotland through an effective justice system that is founded on the principles of fairness and equality, I ask the Parliament to support its principles.

15:42

Margaret Mitchell (Central Scotland) (Con): I welcome the bill's proposed measures, which are intended to improve protection of and assistance for vulnerable witnesses. Notwithstanding Stewart Maxwell's concerns, I particularly welcome the provision that everyone under 16 will automatically be classed as a vulnerable witness and entitled to special measures. It represents an important and encouraging step forward in attempting to ensure that the justice system enables children to participate fully.

The same is true of adults who fall into the discretionary category of vulnerable witness status, namely those who suffer from mental disorder and those who are deemed to be in such fear and distress that it risks their ability to give evidence. It is essential that vulnerable people are adequately supported in the justice system and that the measures to achieve that aim are accurately costed.

That said, those measures must be viewed as only part—albeit an important part—of the bigger picture of measures and resources that are necessary to restore confidence in our system of justice. Such confidence will in turn encourage witnesses to give evidence. It is little wonder that the system is being undermined, what with delays in cases coming to court; alleged offenders being released on bail and going on to reoffend; and offenders serving only a fraction of their sentence as a consequence of automatic early release. Those fundamental issues impact on witnesses' willingness to give evidence and must be tackled.

As a justice of the peace with more than 10 years' experience on the bench in the district court, I am fully aware of the stress, nervous tension and—at times—distress that some witnesses feel when they are called on to give evidence in cases that within the scheme of things are relatively minor compared with cases that are tried in the sheriff court or the High Court.

As the gravity of the offence increases for those witnesses, so does the trauma of being required to give evidence. That trauma is exacerbated by delays in the system as the result of cases being rescheduled. That fact is recognised by Children 1st, which states that a culture of urgency is an essential part of measures to improve the situation for child witnesses. Children 1st points out:

> "A delay of a year or more in bringing a case to court, can be difficult enough for an adult witness but is often intolerable for a child witness—particularly if the child giving evidence is a victim of crime."

Such delays have a particular impact on child witnesses because they take up a disproportionate amount of children's lives, which adds hugely to the trauma that they experience. In addition, they undermine the quality of evidence that children are able to give.

If those delays are to be properly addressed, more resources must be ploughed into the Crown Office and Procurator Fiscal Service—which is currently straining at the seams—in order to increase the number of fiscals available to tackle the huge work load.

Furthermore, the Scottish Executive has in its gift the ability to end automatic early release, which undermines the criminal justice system and the public's confidence in it. By restoring honesty in sentencing so that 10 years means 10 years and any remission is strictly limited to that earned by good behaviour and participation in rehabilitation programmes, the Scottish Executive would give the public and witnesses the necessary reassurances that they require and deserve in order to encourage witnesses to be active participants in the fight against crime.

If the Scottish Executive continues to sidestep dealing with those important issues, then, sadly, the excellent measures in the bill run the risk of becoming mere window-dressing, masking the Executive's stubborn refusal to do what is required to improve our justice system in order fully to support vulnerable witnesses and the general public.

15:47

Jackie Baillie (Dumbarton) (Lab): I add my voice to others in the chamber, aside from the prickly, slightly discordant note coming from Annabel Goldie and the hint of an echo from Margaret Mitchell, who failed to work up as much steam as Annabel did.

The bill is indeed welcome. The aim of improving the treatment of witnesses in the justice system, particularly the treatment of children, is laudable. When we put aside party politics, that view is shared by members across the chamber.

Nicola Sturgeon rightly said that we recognise that our legal system is adversarial in nature. It is absolutely right that every area of evidence and every contention should be open to challenge in the interests of fairness and justice. However, in having a robust system of justice, we should never lose sight of the fact that for many people, giving evidence is a frightening and intimidating experience. If the witness is in some way vulnerable—a child or an adult with a disability—we can perhaps begin to imagine the trauma for them.

Margaret Mitchell: Is the member prepared to put aside party politics to the extent that she will recognise that delays in cases coming to court add

to the trauma of child witnesses and other vulnerable witnesses?

Jackie Baillie: In that spirit, I take it that the member welcomes the minister's proposals for the reform of the High Court. I take her lack of response as assent. [*Interruption.*] I will make progress now because I do not take interventions from members in a sedentary position.

If the witness is in some way vulnerable, one appreciates the trauma that can be caused. Ultimately, that trauma has an effect on the quality of the evidence given, which is undesirable. That is what the bill attempts to address by enabling the use of special measures for vulnerable people when giving evidence, whether it is the use of a TV link, the use of a supporter or the use of screens.

I was particularly struck by the positive evidence that was taken by the Justice 2 Committee from a wide range of interests—Children 1st, Enable, the Law Society of Scotland or the Faculty of Advocates, to name but a few. Without exception, they welcomed the principles of the bill. However, as the minister would no doubt expect the committee to point out, there are a number of areas of detail on which there are differing views, some if not all of which have been rehearsed already in the chamber this afternoon. I therefore run the risk of boring members once again, but I would like to explore a few areas of detail.

First, on the thorny issue of definitions, who will automatically be considered as a vulnerable witness? I welcome Nicola Sturgeon's conversion to extending categories of vulnerable witnesses with automatic entitlement. It is clear that the power of the argument has convinced her and I hope that it will convince the minister.

There is unanimous agreement that children under the age of 16 should automatically be treated as vulnerable witnesses and should be automatically entitled to special measures. However, other vulnerable witnesses, such as those with mental health problems or those who are likely to experience significant fear and distress in giving evidence will have only a discretionary entitlement.

I accept the presumption against listing each and every category of vulnerable witness. One can potentially exclude by listing, but there is a genuine concern that, unless there is automatic entitlement, people will be missed and the application of entitlement will be inconsistent between courts and between judges.

Members should consider, for example, those with a learning disability or those with a mental health disorder whose disability is not visible. As Mike Pringle said, vulnerability is often much more difficult to identify and assess in such cases. If there is automatic entitlement, we must ensure that no one in such categories falls through the net. Enable and the Law Society made those points well. Equally, the Disability Rights Commission called for the definition in the bill of a vulnerable witness to reflect the much more inclusive definition of disability that is set out in the Disability Discrimination Act 1995—that again deals with the issue of non-visible disabilities. I gather that the Executive is considering that matter further.

I echo what many people have said about the need for the early identification of vulnerable witnesses. We have heard that the committee called for a duty to be placed on agencies and the police in particular in respect of considering early identification, but I wonder whether the minister sees the network of vulnerable witness officers—about which she made an announcement earlier in the week—assisting with that early identification process.

Like others, I welcome what the minister said about the use of supporters. The committee received compelling evidence that supporters are likely to be a key special measure and that there should be no impediment to the ability to act as a supporter, providing that the person has given evidence. The minister was right to mention an argument about consistency. Like others, I am pleased that she has spoken about changing that section of the bill.

The final issue that I want to touch on is delays in the system, which other members have also mentioned. The minister mentioned constant adjournments. I acknowledge that the proposed High Court reforms will undoubtedly help in that regard and hope that other parties are gracious enough to acknowledge that, too.

Margaret Mitchell: Will the member take an intervention?

Jackie Baillie: No, not at this stage.

On behalf of the committee, I spent time with vulnerable young witnesses and am grateful to Children 1st for its assistance, as I am sure that other members of the committee are. Apart from a lack of information about the progress of cases or trials in which vulnerable young witnesses took part, the key problem that all of them raised was delays. In one case, a trial was delayed three times and only 24 hours' notice was given. A 12-year-old child was involved. Members can only begin to imagine the trauma that such delays would cause to that young person. Whatever we do to protect vulnerable witnesses and whatever special measures are in place, we must ensure that we eliminate delays in the system, particularly for children. Doing so will go a considerable way towards improving matters.

The bill is welcome. There are a couple of minor caveats—which I am sure we will negotiate our way through at stage 2—but it gets the balance right and I am sure that it will make a positive difference to the experience of vulnerable witnesses in Scotland.

15:54

Alasdair Morgan (South of Scotland) (SNP): We have certainly moved on in our treatment of witnesses. As a lawyer said to me recently, the traditional approach to witnesses in court was to put the fear of God into them not only metaphorically, but literally—they had to take the oath—in the hope that they might occasionally tell the truth. As Nicola Sturgeon said in her speech, someone who is terrified is hardly likely to present their evidence in the best light or to give clear evidence. It seems to me to be much more sensible to adopt the approach that no witness's ability to give evidence should be diminished because of fear, intimidation or any other factor that arises from their personal circumstances or their age.

I will talk about the financial memorandum, which has not been mentioned so far. The Finance Committee noted the detailed nature of the financial memorandum and the amount of information that is given in it. I was a member of the Finance Committee in the previous session and one of the issues that we complained about constantly was the total dearth of information or figures in financial memoranda on bills that were going to make a call—a call that was not specified—on the Executive's budget. I welcome, therefore, the amount of detail in the financial memorandum.

I note that the on-going costs, once the measures in the bill have been established, will be about £4 million per annum. That is a substantial sum in anybody's arithmetic. I do not question the reasoning or justification behind it, but it provides the object lesson that good governance—in particular good administration of the justice system—does not come cheap. When we hear all the clarion calls for reform of the justice system, we should bear it in mind that all such reforms come with price tags attached.

I will comment on two specific provisions in the bill. The first is in section 5 and it will allow, in sex offence cases, expert evidence to be admitted to explain the subsequent behaviour of the victim and so rebut any inference that might be made that would affect the victim's credibility or reliability. I note that the Justice 2 Committee's report refers to the Faculty of Advocates' evidence and its query as to why no expert evidence can be led on the other side to support such an inference, but can be led only to rebut such an inference. There seems to be potential unfairness in allowing a type of evidence to be used by the prosecution but not by the defence. I understand the Executive's argument that it does not wish proceedings to descend into "battlefields for the experts". I sympathise with that view; experts of any kind, especially self-styled experts, are quite frankly one of the curses of society today. However, I still have concerns about that committee's acceptance of the Executive's position in that respect.

My second point is about the commencement provisions in section 20 of the bill. I speak as a current member of the Subordinate Legislation Committee—I am obviously a sad person, because I have moved from the Finance Committee to the Subordinate Legislation Committee. The point that I will make is different from that which Stewart Maxwell made. He said that the balance between subordinate legislation and primary legislation in the bill was about right. I am not arguing with that. What I will argue about is the type of subordinate legislation that is involved in section 20. Section 20 makes provision for different commencement dates for different types of courts, different proceedings and even different geographical courts. On different geographical courts, it strikes me that having different commencement dates for the bill's provisions' coming into force depending on where the court is will mean that we will end up with different standards of justice in different parts of the country at the same time.

I understand the reason why that provision is in the bill; it is to do with training, provision of physical facilities and accommodation, and the need to learn from experience as the provisions of the bill are rolled out. However, I emphasise first that the number of different commencement orders should be minimised as much as possible. The main point to be made—the Subordinate Legislation Committee made it—is that the commencement orders are subject to no parliamentary procedure whatever, not even the negative procedure. That seems to be insufficient, especially when different commencement dates may be used to test procedures, as the Executive has suggested, or to implement in one area of the country benefits that will not be available in other areas. Parliament should have a role, however minor, in scrutinising those commencement orders. I ask the minister to revisit that issue.

My final point is on the more general issue that the Justice 2 Committee raised about the complexity of the bill and the number of cross-references that it contains. Annabel Goldie picked up on that point, but I am not sure that I agree with it. Clearly, the bill is not simple, but on the other hand, it does not strike me that it is much more complex than the average bill. Even if it were,

Annabel Goldie's solution—to replace the cross-references with bits brought in from other acts "ad longum", to use Miss Goldie's phrase—would not help the situation.

The bill will not be considered on its own; it comprises mostly amendments of, or insertions into, the Criminal Procedure (Scotland) Act 1995, which was passed by our friends the Conservatives and which is a huge piece of legislation. I have not looked at that act lately, but given that the bill will insert into it new section 288E, the act must have at least 287 sections, although I suspect that it has a lot more. We do not want to lengthen the legislation further, as Annabel Goldie suggests.

I welcome the bill.

16:01

Dr Elaine Murray (Dumfries) (Lab): I am normally cautious of gobbling up the titbits that are offered to me by the Conservative party, not least because they are likely to contain an emetic and would, from some quarters, probably be heavily laced with strychnine.

I am sorry that Annabel Goldie is not in the chamber at the moment, because I cannot let her away with her comment that a quarter of Scots are not safe outside their front doors. A quarter of Scots may feel unsafe, but that does not mean that they are unsafe, and part of the reason why they feel unsafe is that people such as Annabel Goldie tell them that they are about to be attacked every 1.2 minutes. The culture of fear that is engendered by such scaremongering adds to the problems that we are trying to tackle through the bill. That culture means that people who see something happen are scared to go to the police or to court in case the perpetrators of the crime or their friends get back at them.

Margaret Mitchell: Does the member dispute the fact that a crime is committed every 1.2 minutes?

Dr Murray: That is what the Tories tell us, but I have no evidence of that, other than that the Conservatives like to say it. Part of what we must tackle is the perception of and fear of crime. We should encourage people to stand up for themselves and their communities, to report crime and to support one another when they do so. The Tories' way of tackling the situation is not terribly helpful.

To get to the topic on which I am supposed to speak I, like all members, welcome the bill, which will widen the categories of people who may be considered to be vulnerable witnesses, and will provide such witnesses with measures that will support them and improve the quality of their evidence. We are all aware of high-profile cases that have collapsed because of the stress that has been placed on vulnerable witnesses, which made the evidence unsafe. That is highly undesirable, from the standpoint of both the complainant and the defendant. Although a guilty accused person may escape justice in such cases, equally, an innocent accused person may be prevented from clearing their name.

I am sure that all MSPs are aware of the problems that the police and procurators fiscal have in progressing cases because witnesses are too frightened to go to court. In the past four and a bit years, I have had many conversations with constituents who have come to my surgeries to tell me about drug dealers or antisocial behaviour in their areas. I often have fairly robust conversations with such people about the need to tell the police and to be prepared, if necessary, to go to court. One of the problems in enforcing justice is people's fear that they will not be able to cope with the court experience.

One important feature of the bill is that it will allow external circumstances to be taken into account when determining whether a witness is eligible for special measures. That is helpful, especially as the circumstances include those in which fear or distress may diminish the witness's ability to give evidence in the normal manner.

I want briefly to draw attention to a matter that has been raised with me. It is not directly within the scope of the bill, but is more to do with reform or upgrading of the courts estate. Witnesses are often intimidated when they attend court if they have to wait in a waiting room with the friends, relatives and supporters of the accused. That needs to be addressed in order to make it easier for witnesses to come forward. The minister has also stated that she will enable other witnesses to act as supporters to vulnerable witnesses. I am pleased to hear that.

My involvement with the bill has been principally as a member of the Finance Committee. I will, therefore, raise some of the points that were made in our evidence taking. One was the difficulty in estimating the potential number of vulnerable witnesses. That was referred to by Annabel Goldie and Alasdair Morgan, to some extent. The Scottish Legal Aid Board was concerned that if, in summary criminal cases, there were more procedural steps than there are at present, there could be greater attendant costs and, therefore, pressure to submit those cases to the board as being exceptional. The legal aid budget is demand led and is therefore difficult to control. The board fears that, if additional hearings are required because a witness is vulnerable, solicitors might be inclined to submit their expenses as being exceptional.

The Executive officials responded to that concern by pointing out that legal aid fixed fees are reviewed regularly and that such issues may be taken into account during review, although they did not feel that that was necessary at this stage. Both the Legal Aid Board and the Executive felt that the extent of the pressures could not really be identified until we see what happens in practice. Therefore, I hope that the Legal Aid Board will work with the Executive on those issues during implementation of the bill.

I am sorry that John Swinburne is not in the chamber. In a characteristically trenchant way, he has made the point that certain aspects of the legal system seem to be a gravy train. It is important to recognise that, although there may be genuine pressures, the requirement to change and modernise does not, in itself, require additional long-term resources. It may be possible to finance that change within existing resources by using moneys differently.

The Finance Committee was also concerned that only nine of the 52 courts in Scotland have closed-circuit television, although the financial memorandum budgets for a further 10 courts to be upgraded. We were advised, in evidence taking, that those 19 courts handle 80 per cent of all court business and that, if CCTV facilities were required at more remote court locations from which business cannot be transferred to a larger centre, mobile facilities would be made available. We were told that there are no specific plans to allocate funding to introduce CCTV into all courts, although that might eventually happen as the courts estate is upgraded. I feel that it is particularly important that vulnerable witnesses in remote and rural areas be provided with the same level of assistance in giving evidence as are vulnerable witnesses in more populated locations.

It is important to recognise the fact that the bill is part of a series of measures—as the minister said, a "jigsaw" of measures—that will modernise and improve practice. Some of the new procedures may involve additional work, but others are about going about things differently. I do not think that I am being unduly unfair in observing that the public are sometimes cynical about lawyers and their fees in general, and about the legal aid remuneration system in particular. I dare say that they are even more cynical about politicians and their expenses. However, it is important that our justice system is seen to be efficient and effective and that the public trust that it will be so.

As the minister and other members have said, the bill promotes a cultural change. The minister has illustrated the fact that that change is happening in the Executive, but it has to happen throughout the justice system to enable better participation by witnesses. With regard to its financial implications which, as Alasdair Morgan said, have been well documented in the financial memorandum, I believe that it will be money well spent.

The Deputy Presiding Officer (Murray Tosh): We go now to closing speeches. We are about 25 minutes ahead of the clock.

16:09

Margaret Smith (Edinburgh West) (LD): As a member of the Justice 1 Committee, I have to confess that that committee has not been considering the bill. I therefore defer to my colleagues who have done all the hard work to date throughout stage 1, and I thank them for their sizeable input into the report that I am sure all members have read from cover to cover. The report has been helpful to those of us who, unfortunately, have not been able to take evidence.

I welcome the bill, as will all members, as a step in the right direction towards giving greater protection, reassurance and support to a wide range of vulnerable people.

The minister made quite a comprehensive statement and set the bill in the context of a wider Executive agenda, which includes not only the victims and witnesses unit, but the necessary and welcome investment in vulnerable witness officers and the legislative proposals on reform of the High Court, which the Justice 1 Committee will be examining in the next few weeks. Mike Pringle and many others talked about the devastating impact that delays in the court system have on all witnesses, but particularly on vulnerable witnesses and young children. We should do everything that we can to eradicate delays in the system.

Two wider positive impacts that will benefit the justice system as a whole will come from the bill. A number of speakers, including Karen Whitefield, Marilyn Livingstone and Patrick Harvie, picked up on the first, which is that the bill will encourage people who would not currently come forward to do so, in particular victims of sex offences. That is to be welcomed, because their not coming forward is a major problem. Nicola Sturgeon mentioned the second benefit: the bill will deliver better, more accurate evidence, which should be to the benefit of all partners within the judicial system.

Many of the bill's specifics have been welcomed by all parties. The ending of the competence test and the opening up of special measures to those who have mental disorders or learning difficulties, and to those who—as the minister laid out—suffer fear and distress because they are victims of sex offences, domestic abuse or hate crimes are to be welcomed.

However, although I welcome the automatic entitlement to special measures for those who are aged under 16 and the additional protection that will be given to under-12s, who will be able to give evidence by television link or on commission, I also agree with the committee that automatic entitlement should be open to people who have mental disorders and to others. I can understand that the minister does not want to draw up prescriptive lists for automatic entitlement but, like many other members, I fail to see why extending such entitlement, backed up by discretionary support for other witnesses, would do anything other than strengthen protection for the most vulnerable people in society. I also agree with Rape Crisis Scotland, the Equality Network, the Commission for Racial Equality and Scottish Women's Aid that the accused should not be present when evidence is given on commission.

It seems that among the issues at the heart of our discussions today have been the points that the Faculty of Advocates made about the right of the accused to a fair trial, which Nicola Sturgeon, Mike Pringle and many others mentioned. The matter is surely about getting the correct balance between the rights of vulnerable witnesses and the rights of accused persons. Alasdair Morgan raised an important concern about the role of expert witnesses, particularly in sex offence trials. We need a balance and a sense that there is a level playing field—a sense that the same options are open to both sides of the argument.

I welcome the minister's change of heart on supporters, which has been welcomed by all parties. Children will want to be supported by a parent, who might also be a witness in the same trial. That is right, and the minister's acknowledgement of that has rightly been welcomed. That is what I like to see—a listening Executive.

Another key point is the early identification of vulnerable witnesses. Many members have raised the fact that that is a key role for the police. In fact, when the police gave evidence to a joint meeting of the Justice 1 Committee and Justice 2 Committee on the budget, they flagged up that they were already starting to do some preliminary work on the matter. The police will have a particular role to play in early identification, as will many other partners in the justice system. That emphasises the need for the bill to be resourced properly, not only for upgrading the courts estate, but for training.

Annabel Goldie began on a prickly note: I will end on a prickly note. The bill is very good, but we can tinker around the edges and make it even better, and I am sure that my colleagues in the Justice 2 Committee—and those of us in the Justice 1 Committee—will keep an eye on the process to ensure that we make the bill even better. Our robust committee system is one of the Parliament's strengths—I was privileged to spend four years as the convener of the Health and Community Care Committee. During those four years, I do not think that I ever used up half the time that was available to me to discuss a bill that I welcomed by making cheap party-political points, which in fact amounted to no more than scaremongering. If I might offer Annabel Goldie a quiet word of advice, because she might need her troops behind her on the committee to support her over the next four years—

Margaret Mitchell *rose*—

Margaret Smith: I am about to finish. Members should address proposed legislation that they welcome by welcoming it, rather than by spending half their time having a go at it for no good reason whatever.

16:15

Lord James Douglas-Hamilton (Lothians) (Con): Both Margaret Mitchell and Margaret Smith were absolutely right to concentrate on delays, which can greatly increase the trauma that vulnerable witnesses experience. The matter needs to be addressed, because if justice is to be effective it needs to be reasonably speedy.

I should mention that I am a non-practising Queen's counsel; my interests are as registered in the "Register of Interests of Members of the Scottish Parliament".

The bill is extremely welcome. Although it is not, and does not claim to be, a complete answer to all justice problems, it focuses on an extremely important part of court activity. Stewart Maxwell and Elaine Murray were right to point out the strength of support for the bill that exists across the party-political spectrum. It is, of course, important to strike the right balance between the interests of justice, the need to protect victims and vulnerable witnesses, and fairness to the accused.

I say that because on one occasion I witnessed a small boy giving evidence in the High Court in a murder case that involved a crowd's having kicked a man to death. The child indicated that one of the accused had done it but then, under questioning, withdrew his evidence on the ground that he was saying only what a relative had told him to say. At the time, I thought that the defence counsel might be going too far in cross-examination but, as it turned out, he was vindicated by the child's evidence. We have come a long way since then and it is right that children should be dealt with sensitively and in an understanding manner. At the same time, however, we must remember that children can make mistakes from time to time, just as adults can.

It is essential that there be adequate support for vulnerable witnesses and that the courts be adequately resourced. With regard to special measures for vulnerable witnesses, I pay tribute to Norman Godman, the husband of one of our deputy Presiding Officers. I can say without fear of contradiction that no one in the House of Commons asked more questions or made more speeches than he did on the cases for video evidence and for protecting vulnerable witnesses. As I was involved in bringing in some of the measures in the House of Commons—partly because I believe in them and partly because of Norman Godman's repeated intercessions—I ask the minister for her comments on how well four of the measures have worked out, because we need to review them in the light of experience.

The first measure is CCTV, which was introduced in 1990; provisions for it were contained in the Criminal Procedure (Scotland) Act 1995. A live TV link is used from a room that is within the court but separate from the courtroom. The system is often used in cases where there has been physical or sexual abuse of children. I understood the minister to say in her constructive remarks that CCTV has worked reasonably well. I believe that it should be continued.

The second measure is video evidence on commission, which means that the court appoints a commissioner to take evidence and both sides send their lawyers to cross-examine the vulnerable witness, with the commissioner assuming the role of the judge. I was given that task once or twice when I was practising, but not in relation to vulnerable witnesses. It seems to be a fair method, with the accused being allowed to witness the proceedings by TV link or on video tape, which can then be produced at the trial, as the minister mentioned. Again, I would be grateful if the minister will confirm, when she winds up, that that system has worked well in practice and that there is, as Nicola Sturgeon said in her remarks, absolutely no need for the accused to be physically present.

Thirdly, screens were introduced by the Prisoners and Criminal Proceedings (Scotland) Act 1993. Screens conceal accused persons from the vulnerable witness who are giving evidence in court, but the accused person must be able to see and hear the evidence being given. I understand that that is done by way of either a one-way screen or a TV monitor. Again, will the minister say how much use has been made of the technique and whether it works well?

In its briefing, Children 1st provides a number of key examples. It states:

"In one case, screens were not permitted for an 8 year old girl who had been sexually abused. The girl's social worker applied for screens, supported by the procurator fiscal, on the grounds that the abuser had told the girl that no matter what happened to him, he would come back and kill her. Though the girl was terrified by his threat and by the prospect of seeing him in court, the sheriff turned down the application for screens without explanation."

That issue must be examined very seriously. If there is an unreasonable decision, should there be a right of appeal, for example?

Mr Maxwell: Does the comment that Lord James Douglas-Hamilton has just made not support comments by other members, including me, who have suggested that the rights of under-16s must be automatic? It is a concern that in cases such as the one that the member cites rights can be taken away, in effect, by a decision of the sheriff.

Lord James Douglas-Hamilton: Automatic eligibility is an issue that should be considered in committee. Patrick Harvie mentioned the lack of automatic entitlement for adult complainers in sex offences cases. That entitlement is available south of the border, but not in Scotland. It is very unsettling for women in sex offences cases to find out whether they can have access to special measures only about a week before a court case begins. That is an area of concern. The minister did not provide a final response on the matter, but I am grateful to her for agreeing to examine it.

The use of supporters for vulnerable witnesses is very important. The judge or sheriff has absolute discretion in deciding whether a vulnerable witness can have a supporter, and may determine what form the support should take. Apparently, a supporter may or may not be allowed to comfort a distressed witness, depending on the judge's view of the circumstances. However, it is clear that when a supporter is present he or she is not allowed to discuss evidence with the witness with a view to prompting that witness.

A number of sensible suggestions have been made this afternoon. Marilyn Livingstone suggested that parents should be allowed automatically to assume the role of supporter, unless there is very good reason why that should not happen. In this matter, experience that has been built up over months and years is extremely important. I would welcome the minister's comments on how the role of supporter could best be developed.

My final point relates to the admission of prior statements, which are not restricted to vulnerable witnesses. I hope that we can take it that such statements assist the legal process, whatever the potential outcome of the case, and have an important role to play.

Children 1st concludes its briefing by saying:

"The willingness to bear witness is a cornerstone of our justice system and of any democratic society and it is

essential that MSPs act to end the distress which is all too often experienced by children who are witnesses."

We all have an interest in ensuring that traumatic and searing experiences are removed from the court scene, because they are totally unnecessary.

We warmly welcome the bill and the constructive approach that ministers have taken. We believe that vulnerable people need at all times to have sufficient support, and we hope that we will be given satisfactory reassurances concerning sufficiency of funding.

16:24

Michael Matheson (Central Scotland) (SNP): I congratulate the Justice 2 Committee on producing a thorough stage 1 report on the Vulnerable Witnesses (Scotland) Bill. This has been a useful and informative debate for me, as I am not a member of that committee. A number of good speeches have been made, although we got off to a prickly start with Annabel Goldie's contribution. On hearing the exchange about dangling bait and swallowing bait, people might have thought that they had walked in on another fishing debate in the Parliament.

Contributions have been made to the debate by all parties, with the exception of the Scottish Socialist Party, whose absence is rather disappointing. However, I suspect that the headlines are elsewhere today and not with the bill. I hope that the SSP members would support what is an important bill, despite their failure to take part in the debate.

In the first session of Parliament, the needs of victims were highlighted to the Justice 1 Committee, of which I am still a member, as an issue that had to be addressed at an early stage. I think that I am on record congratulating the Executive on addressing a number of those issues; in the criminal justice field as a whole, the Executive has made considerable progress in addressing victims' needs. However, we should acknowledge the significant role that victims' organisations have played in pushing forward that agenda and in ensuring that the Parliament is receptive and sensitive to the issues that they have highlighted. The bill is a further step in that process. Much has been done to address the needs of victims in our criminal justice system, but it is equally important that we address the needs of vulnerable witnesses.

A number of members have said that we need to strike a balance between the need to protect vulnerable witnesses and the right of the accused to a fair trial. As members are aware, all legislation that is passed by the Parliament must comply with the European convention on human rights. There are concerns about whether the bill strikes an appropriate balance and whether a challenge might be brought under article 6 of the ECHR in future. Ministers must take all necessary action at stages 2 and 3, as a belt-and-braces approach, to ensure that there is no such challenge.

As is clear from the stage 1 report and the debate, it is crucial that vulnerable witnesses are identified at the earliest stage to allow arrangements to be put in place if there is a need for special measures. I have concerns about the way in which the bill is drafted in that respect and I hope that the minister will consider amending it at stage 2 or stage 3 to take account of the Justice 2 Committee's suggestion that the police should have a statutory role in identifying vulnerable witnesses at an early stage.

The bill will have a significant impact on our criminal justice system in three key ways. First, I believe that the bill serves the interests of justice as a whole. We have all heard of cases in which witnesses are reluctant to come forward because they are concerned about the process that they might have to go through. We have also heard of cases at the other end of the spectrum in which witnesses have gone through the process but have said that they would never do so again, because it was so traumatic. If witnesses become reluctant to come forward and appear before the courts, that will not serve our justice system well. That is why I believe that, by providing for special measures, the bill will serve the interests of the Scottish justice system overall.

Secondly, the bill will provide a number of opportunities for additional evidence to be presented to the court in ways that might be difficult under present arrangements. It will also ensure that the quality of evidence given by vulnerable witnesses is better. That is particularly important and is in the interests of those who are defending a case as well as of those who are prosecuting it.

Thirdly, the bill will give due recognition to the role that witnesses play in our criminal justice system. Not many cases would be taking place today in the courts around the Parliament if it were not for the witnesses who are prepared to appear in them and make their views known.

I hope that the minister will take on board the committee's concerns about the definition of vulnerable witnesses, which a number of members, including Jackie Baillie, Nicola Sturgeon and Mike Pringle, have highlighted in the debate. I welcome the fact that the minister has taken on board what was said about a witness's right to a supporter. I hope that the Executive will ensure that there are sufficient resources to enable the early identification of vulnerable witnesses. If the minister is inclined to follow the Justice 2

Committee's recommendation about the role of the police in that process, it is important that the police are given the training and support that they need—and that they have at their disposal the necessary resources—to carry out what will be an important job in making the bill effective.

It is unfortunate that, because of a shortage of time, I have not had the opportunity to consider the financial memorandum. However, I am sure that the comments of my good colleague Alasdair Morgan are worthy and will prove to be accurate; I hope that the minister will take them on board. I fully support the general principles of the Vulnerable Witnesses (Scotland) Bill.

The Deputy Presiding Officer: I call Hugh Henry to wind up the debate for the Executive. You have the rest of the afternoon, Mr Henry, so there is not too much pressure on your time.

16:30

The Deputy Minister for Justice (Hugh Henry): That is a dangerous offer to make; I do not think that my minister would allow me that indulgence.

The debate has been excellent and some highly thoughtful and pertinent comments have been made. I thank and congratulate not just the members of the Justice 2 Committee for their excellent work in producing a thorough and detailed report, which gives significant consideration to the matter and makes some useful suggestions, but the many voluntary organisations that have taken the opportunity to contribute to the committee's deliberations and to contact individual MSPs. I know from conversations that I have had that members have found that information and evidence useful in helping them to understand what some of the issues are about.

As with the passage of any legislation, it is inevitable that, in spite of the best efforts of many of those organisations, there will be issues on which we cannot agree. However, although there might be areas in which there are still differences between us, we should not diminish the significant contribution that such organisations have made. We should also appreciate the effort that they have put in to bringing the vulnerability of witnesses to the forefront of political and public attention.

Alasdair Morgan, in responding to Annabel Goldie's point about the structure and the drafting of the bill, referred to the previous legislation. It is worth putting on record the fact that, although we are seeking to improve existing law and believe that the bill will make a marked improvement to it, we do diminish what went before. It is right to put on record, as James Douglas-Hamilton has done, the efforts that have been made in another place by colleagues such as Norman Godman, who made such a significant contribution over a long period. It would also be wrong to diminish the role that James Douglas-Hamilton played in ensuring that the earlier legislation was passed; in his usual modest way, he downplayed his role in that process.

We are talking about addressing some of the fears and legitimate anxieties that people who, as Michael Matheson said, are fundamental to the judicial system often have when they are asked to make their contribution. It is a bit unfortunate that questions that might better have been considered during the committee process have been posed during the stage 1 debate, but we may well come back to some of those at stage 2.

Our fundamental concern is to ensure that the best interests of justice are served by ensuring that those who have the information and who have been witness to the events in question can give their version without intimidation, fear or prejudice. That is something that will benefit the interests of justice.

We will return to some of the specific points that have been raised today at stage 2. Nicola Sturgeon, Stewart Maxwell, Jackie Baillie and others talked about definitions and Mike Pringle mentioned visibility. We are sympathetic to the calls for a better definition of what constitutes a vulnerable witness. Indeed, we have been in discussions with our colleagues in the Disability Rights Commission on that. However, we still have anxieties about what some members have asked for. We will reconsider the issue, but whether the definitions are to do with mental health and mental disorder or whether they relate to matters that affect the victims of sexual crimes, our concern is to ensure that the widest range of people are practically and fairly included. In whatever we do, we want to ensure that that happens.

Trish Godman (West Renfrewshire) (Lab): The bill defines a child as someone under 16, but for a social worker a person is defined as a child until they are 17. A schedule 1 offender—a person who is an offender in terms of schedule 1 to the Children and Young Persons Act 1933—is a child until they are 17. Can the minister clarify why that difference exists?

Hugh Henry: We considered that issue in committee. We were persuaded that, in Scots law, 16 is the age of responsibility for many matters. Some people argued that the age should have been 18 rather than just 17, but other issues had to be taken into account relating to the fact that our legal system considers 16 to be the critical age. We were persuaded by that. However, we will return to the debate about definitions at stage 2. Whatever we do, it will not be sufficient for us to

do something just for the sake of saying that we have done it; what we do has to be of practical benefit.

Issues have been raised about evidence on commission. The point was well made about people not being able to challenge such evidence. Mike Pringle, I think, asked whether the final decision in that respect should be made by the judge or the commissioner. The committee addressed that issue previously and we will consider it before we come to stage 2. The Minister for Justice has already dealt with the issue about supporters.

Several members highlighted the need for early identification. It is in everyone's interest to ensure early identification, but simply passing legislation to oblige people to make early identification would not necessarily deliver the desired effect. Those who seek to put such a legal obligation on police and other agencies need to ask what penalty they would impose if there was a failure to make early identification. It is not enough to legislate for such a requirement without identifying the sanction that would go with the failure. So far, we have not been persuaded that that can be easily done.

I will not have the opportunity to address in detail all the questions that were raised, but I will in passing deal with Stewart Maxwell's concern about the removal of the automatic right to protection. The bill requires that whatever we do must be done with the best interests of the child at heart. Any conclusion that we reach will be arrived at from that perspective.

Marilyn Livingstone and others mentioned delays—Jackie Baillie dealt with that issue well in her speech. We are determined to tackle delays wherever they occur in the judicial system because it is not in the interests of justice to allow them to happen.

Marilyn Livingstone also asked about training. We have been in discussion with the Faculty of Advocates, the Crown Office and others to ensure that significant attention is given to the provision of training for those people who are engaged in the process.

I will not dwell on the matter, but I thought that it was unfortunate that, in a debate on a bill that has been welcomed not only by everyone in the chamber but by many outside it, the Conservatives took the time to try to score cheap and inaccurate party-political points. That diminishes the debate and the issue and, frankly, it diminishes the Conservative party. I am sorry that Conservative members chose to act in that way.

Elaine Murray talked about the courts estate, which is a telling issue. Too many cases are still heard in courtrooms where people are not being given sufficient protection when they turn up to give evidence and to play their part. We have been investing to tackle that problem.

The questions that James Douglas-Hamilton asked have been and are being properly addressed. CCTV and video evidence, as well as screens, are working well. However, I will come back to James Douglas-Hamilton on that issue in more detail at a later stage.

The debate has been a good one and it has made a useful contribution. I look forward to taking up some of the points that have been raised at stage 2. I hope that we can accommodate some of the useful suggestions that have been made. For example, Karen Whitefield made good suggestions about the need to simplify the child witness notice procedures and about the accused conducting their own defence. We will come back to and consider those and other useful contributions. We can have a successful stage 2 debate and I hope that, by the end of the process, we will have legislation that will make a difference to the operation of justice in our country.

Vulnerable Witnesses (Scotland) Bill: Financial Resolution

16:41

The Presiding Officer (Mr George Reid): The next item of business is consideration of motion S2M-224, on the financial resolution in respect of the Vulnerable Witnesses (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Parliament resulting from the Vulnerable Witnesses (Scotland) Bill, agrees to any increase, in consequence of the Act, in expenditure charged on, or payable out of, the Scottish Consolidated Fund.—[*Hugh Henry.*]

Business Motion

16:42

The Presiding Officer (Mr George Reid): The next item of business is consideration of motion S2M-624, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, which sets out a business programme.

Motion moved,

That the Parliament agrees the following programme of business—

Wednesday 26 November 2003	
2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Debate on Previous Procedures Committee's 3rd Report 2003 (Session 1): The Founding Principles of the Scottish Parliament
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 27 November 2003	
9.30 am	Executive Debate on Violence Against Women
12 noon	First Minister's Question Time
2.30 pm	Question Time
3.10 pm	Executive Debate on Physical Activity: The Need for Improvement and the Cost of Failure
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Wednesday 3 December 2003	
2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Executive Business
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 4 December 2003	
9.30 am	Scottish National Party Business
12 noon	First Minister's Question Time
2.30 pm	Question Time
3.10 pm	Executive Debate on Protecting Bathing Water Quality
followed by	Parliamentary Bureau Motions

5.00 pm Decision Time

followed by Members' Business.—[*Patricia Ferguson.*]

Motion agreed to.

Motion without Notice

16:42

The Presiding Officer (Mr George Reid): It is now 4.42 pm. I am inclined to use my discretion to take a motion without notice, under rule 11.2.4. of standing orders, to bring forward decision time.

Motion moved,

That Decision Time on Wednesday 19 November be taken at 4.42 pm.—[*Patricia Ferguson.*]

Motion agreed to.

Decision Time

16:42

The Presiding Officer (Mr George Reid): There are two questions to be put as a result of today's business. The first question is, that motion S2M-193, in the name of Cathy Jamieson, on the general principles of the Vulnerable Witnesses (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Vulnerable Witnesses (Scotland) Bill.

The Presiding Officer: The second question is, that motion S2M-224, in the name of Andy Kerr, on the financial resolution in respect of the Vulnerable Witnesses (Scotland) Bill, be agreed to.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Parliament resulting from the Vulnerable Witnesses (Scotland) Bill, agrees to any increase, in consequence of the Act, in expenditure charged on, or payable out of, the Scottish Consolidated Fund.

Fairtrade

The Deputy Presiding Officer (Trish Godman): The final item of business is a members' business debate on motion S2M-502, in the name of Sarah Boyack, on Fairtrade.

Motion debated,

That the Parliament warmly welcomes moves by the City of Edinburgh Council to endorse the Fairtrade Towns Initiative supported by organisations including Oxfam, the Catholic Agency for Overseas Development, Traidcraft and the World Development Movement; pays tribute to the Fairtrade Foundation that exists to ensure a better deal for marginalised and disadvantaged producers in developing countries and to ensure that products marked with the Fairtrade logo meet internationally recognised standards of Fairtrade, and acknowledges the commitment of local authorities, churches, schools and universities across Scotland that are working towards achieving the Fairtrade mark.

16:44

Sarah Boyack (Edinburgh Central) (Lab): Fairtrade is a way in which we can all get involved in helping to provide direct support to reduce poverty in the developing world. I welcome the initiatives that have been taken by the City of Edinburgh Council to make Edinburgh a Fairtrade city, building on a lot of work by organisations such as Oxfam, the Catholic Agency for Overseas Development, Traidcraft and the World Development Movement. It is important to put that on record.

Every one of us potentially will spend around £1 million in our lifetime. That is a huge amount of resources. If we can use some of that on products that carry the Fairtrade mark, such as coffee, chocolate, tea, honey and bananas, we will directly help to ensure that farmers in the developing world are paid a fair wage without exploitation. The Fairtrade mark guarantees a better deal for producers in developing countries. The Fairtrade Foundation's aim of tackling poverty enables disadvantaged producers from poor countries to receive a better deal. It means that they can afford to educate their children and that they will have better working and living environments. It also means that consumers know that they are buying goods the production of which has not used child labour.

A Fairtrade city is one in which a community has signed up to support fair trade and to support disadvantaged farmers and workers in developing countries. Every community—whether it is a church, a school, a college, a university, a town or a city—can help to raise awareness and be part of the movement to support fair trade. In such a community, Fairtrade products will be widely available, bought and used. A commitment will also have been made to build support through promotional and educational activities.

I got involved four years ago to the month, when I wrote to the then Presiding Officer asking him to ensure that we had Fairtrade tea, coffee and chocolate in the Parliament's canteen. A lot of members will remember that we had a visit from representatives of the fair trade movement. They arrived with Fairtrade chocolate bars—which tasted excellent—jars of coffee and tea bags. Making a statement seemed like such a simple thing for us to do as Scottish parliamentarians in our own Parliament. I was delighted that Fairtrade goods were introduced to the canteen. I suspect that, since then, hundreds upon thousands of cups of tea and coffee have been sold and drunk in the Parliament.

In the previous session, we debated the progress made across Scotland in establishing Fairtrade towns. That progress continues and this debate marks the progress made with the sign-up of Edinburgh, our capital city.

I will rehearse the five Fairtrade city goals. It is important that we recognise them, because everyone in the chamber can go back and encourage their local authority to sign up. First, the local authority must pass a resolution supporting fair trade, and must agree to serve Fairtrade coffee and tea at its meetings and in its offices and canteens. The City of Edinburgh Council passed a motion in support of fair trade at its meeting on 16 October, which had cross-party support. I am proud to say that the initiative was taken by the Labour party and by our executive member for finance and sustainable development, Maureen Child, but it had cross-party support.

In a sense, signing up was the easy bit for Edinburgh. The hard bit is convincing shops to sell Fairtrade products and convincing cafes, restaurants and bars—of which Edinburgh has a plethora—to sign up to the campaign. It should be easy for local people in Edinburgh to find Fairtrade products as they do their everyday shopping in health food and wholefood shops, supermarkets and Fairtrade shops. In my constituency, the One World Shop in St John's church in Princes Street, the Palestinian shop Hadeel in St George's West church, and a number of supermarkets already stock Fairtrade coffee and tea.

The third step is to get at least 20 other local businesses and organisations to sign up. Those can include schools, colleges, universities, large offices and organisations.

The fourth step is to get media coverage. We need popular support for the campaign and we need the media to get behind it. The organisations that choose to sign up to the campaign will get

positive publicity, which is a key benefit of their involvement.

One of the key things that we have to do is the fifth step: to establish a local fair trade steering group to ensure that there is a monitoring process, so that we have an annual assessment to see how we are doing in Edinburgh in meeting the five goals.

Colleagues will already know that towns across the United Kingdom have signed up. Cities such as Newcastle, Nottingham, Croydon, Chester and Plymouth are signed up to fair trade. We have already marked progress in Scotland in towns such as Strathaven and Aberfeldy, and Aberdeen has also signed up. Edinburgh is not the first, but as it is our capital, I hope that it will be an important symbol.

I particularly welcome the groundbreaking work of the Co-operative movement in the UK. I highlight the Co-op's work because, as members know, last week it became the first supermarket to convert its entire own-brand coffee stock to Fairtrade coffee. Members will have met Co-op representatives when they visited the Parliament last week. The Co-op has taken a huge step. My colleague Johann Lamont has lodged a motion of congratulation and I hope that all members will sign it.

The Co-op's work builds on the conversion of all its own-brand chocolate bars to Fairtrade last year, so what I described is not a one-off or a quick hit. That step is a real development. The Co-op is using its purchasing power to make a change in developing countries.

For coffee that is sold with the Fairtrade mark, coffee growers receive a fair price, which is currently double the global market price for some coffee beans. Under conventional agreements, coffee growers receive just over half the cost of growing beans, which means that, in effect, they subsidise our coffee drinking. Harriet Lamb, who is Fairtrade's executive director, described the situation well when she said:

"Most people love coffee, but they would be appalled if they knew how bad life is for coffee farmers in many countries".

In Nicaragua, former coffee workers now beg by the road. Earlier this year, thousands of them took part in a march of the hungry, during which 14 of them died. We are discussing a tough issue for people in developing countries. The poverty that coffee workers have experienced is due to the dramatic fall in world coffee prices, so the Co-op's decision will help some coffee co-operatives to build a better future. It gives us, as Britain's shoppers, a choice and it sends a wake-up call to the worldwide coffee industry.

Earlier this week, I spoke to students who are members of the University of Edinburgh's people and planet group. They are running a campaign to sign up the university as Scotland's first Fairtrade university. They plan to go further than the only Fairtrade university in the UK—Oxford Brookes University—because they want Fairtrade coffee not only to be available, but to be the default coffee. When people ask for coffee, they will be given Fairtrade coffee. If they really want another coffee, they will have to ask specially for it. That would be a superb move forwards.

Mr Brian Monteith (Mid Scotland and Fife) (Con): I heard what the member said about chocolate in Co-operative supermarkets and about default coffee. Is it the intention that that should be exclusively the choice, so that no choice is available other than what the member calls Fairtrade coffee?

Sarah Boyack: An exclusive choice is not a choice. It is intended that a choice of coffee will be available, but that the average coffee will be Fairtrade coffee. I welcome what the students are doing. The university manages to drink its way through 1,700kg of coffee a year, so it has much purchasing power. The students' argument is that 1p or 2p extra per cup could make a difference to people's lives, and that is a wonderful message.

Today, I hope that we will build support among people in all sorts of organisations, including key public sector organisations such as local authorities and health boards. Many will know of Unison's campaign to improve the quality of our food. The union wants fair trade to be part of that agenda.

Much work is being done and there is much more that we can do. We should ensure that the Parliament and the Executive support fair trade. Last year, we heard about the moves that the Executive has taken to promote Fairtrade tea and coffee in the Executive. I hope that the minister will talk about how he intends to broaden that procurement change to other public sector organisations and to build on the partnership commitment to a co-operative development agency.

Much is being done and there is much more still to do. As our capital city, Edinburgh is taking the lead. I hope that that will have a ripple effect throughout Scotland. I am sure that the interest of the members who are present tonight will help to develop the campaign. I am delighted to have secured a debate on the motion and that so many members have turned up for the debate. Let us take the campaign another step forward.

16:54

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I last spoke about fair trade in Linda Fabiani's members' business debate towards the end of the previous session. Then, I spoke of being encouraged by a Church of Scotland minister's wife to get into Fairtrade products. I was unaware that the debate was coming before us, but only last week I went to buy my Fairtrade coffee and I simply could not get over the choice that is available at the Co-op. I totally applaud Sarah Boyack's remarks about the Co-op. I have a divvy card too—here it is.

I congratulate Sarah Boyack on securing the debate. I say that slightly tongue in cheek, given the thrashing that her team gave my team in the quiz last night. If I am not mistaken, her team went on to win, but I will forgive her anything.

We can contrast the situation at the Co-op today with the ugly, market-driven 1980s. [*Interruption.*] I do not know where Mr Monteith is coming from, but his early intervention on Sarah Boyack's speech was more like someone breaking wind in the manse. It was singularly inappropriate—perhaps he would like to develop that one.

The Co-op puts people before profit, which is absolutely laudable. It is also worth praising the role of the churches in Scotland. They have led the campaign from the very start.

In building on the idea of Fairtrade cities and towns, Sarah Boyack is right to make an issue of the need to take the campaign further, so that it becomes uppermost in every person's mind. We need to take the campaign into our schools and households so that people will go further and seek out Fairtrade products. I say to Sarah Boyack that, as well as Fairtrade coffee and bananas, there is very good Fairtrade wine to be had. I earnestly recommend it to her.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Does the member agree that the next step forward could well be to support agencies such as Transparency International in their work of having transparency in all trading practices and deal making? Is not that an area into which the Scottish Executive, especially with Scottish Development International, could direct some of its effort?

Mr Stone: Indeed. I know that Jeremy Purvis—and Sir David Steel—take a particular interest in Transparency International. Unless I am mistaken, we are talking about getting rid of backhanders and—I am covered by parliamentary privilege—the bribes that so often snooker attempts to create a level playing field.

I want to broaden out the debate a little by talking about the Farm Crisis Network. Although that interesting organisation has a long way to go, it is trying to bring fair trade principles into this country so that small farmers can sell their products to consumers at a fair price.

Linda Fabiani (Central Scotland) (SNP): I cannot miss the opportunity to give Strathaven another plug. Members might be interested to know that, when Strathaven drew up its constitution for Fairtrade town status, it had the only fair trade constitution that applied fair trade principles to home producers. Indeed, that might still be the case. That measure is important.

Mr Stone: That is welcome news.

Fair trade is not an easy subject. How do we deal with the issue of United Kingdom subsidies, for example? However, fair trade is a goal that is worth achieving. If we go for raw market forces and raw globalisation, the little guy in central America gets only 8 cents as opposed to 8 dollars, which is what people have to pay for a pound of coffee in the States. It is the little guys who lose out.

I also believe that, if we think about the subject carefully, we can deliver something for our own farmers. We need to get around the backs of the supermarket multiples. If one asks where the subsidies in this country are going, the answer is that, in the end, they form a large part of the supermarkets' profits.

I congratulate Sarah Boyack on her debate today.

16:59

Rob Gibson (Highlands and Islands) (SNP): I thank Sarah Boyack for securing the debate. We cannot emphasise these issues too often. As a result of hearing about Strathaven last year, our local community attempted to discuss the question of the businesses in our village using Fairtrade produce. However, it became obvious that, in our fragile economy, people find it difficult to buy Fairtrade products. I am glad that the Co-op might make that easier in some cases, but other Fairtrade products are much more difficult to get—I am thinking of the basic products that people who run tea rooms require.

In our initial discussions with people, we found that the fragile state of our local economy made people less than willing to have a go. I hope that we can ask those people to rethink their approach and join in with what Edinburgh is doing just now and what Strathaven has already done. However, people in Edinburgh itself will find it impossible to run their small businesses unless they get the cheapest products.

That is the nub of the problem both at home and abroad. The idea of fair trade is hampered by the

neo-liberalism that has narrowed down both the number of products and people's choice and which has excluded many of the most vulnerable people we are speaking in support of tonight. It is important to recognise that, in the first place, farmers must be able to choose to do what they want to do. After all, sustainable farming offers the degree of quality that consumers demand and involves a social dimension, economic efficiency and respect for consumers and nature. It is up to those of us who seek a fair price for coffee produced by people in developing countries to ensure that they, too, can practise sustainable farming, as I am sure they would wish to. Indeed, the fact not only that can we do our bit with the money in our pockets but that, through international organisations, we can allow people to choose sustainable farming methods brings the issue of added value into the debate.

In a week in which there has been much emphasis on international affairs, we must recognise that with all the debates on war, on having a more peaceful world and indeed on having a world where trading is freer, the free part of that trade must genuinely be free. We must not have the kind of free trade that we had in the 1980s. As a result, I recommend that people listen to this debate and take home to every part of the country the ideas that have been raised. We must recognise that, as José Bové and François Dufour have said, the world is not for sale and it is up to us to ensure that the quality products that farmers produce reach the consumers who want them.

I am also glad that the issue of transparency was mentioned earlier in the debate and I underline the fact that transparency in all aspects of purchasing, production, processing and sale of agricultural produce is a key part of free trade. However, although that forms part of the French peasants confederation's sustainable farming agenda, I do not see it necessarily forming part of Scotland's forward strategy for agriculture. I hope that we can address such issues in the debate.

17:02

Murdo Fraser (Mid Scotland and Fife) (Con): I commend Sarah Boyack for lodging the motion and securing the debate, which I welcome.

The Conservatives have the pleasure of welcoming the commitment of local authorities, community organisations and the Fairtrade Foundation to the fair trade cause, because it demonstrates the free market at its very best. Indeed, as an entirely voluntary project, the fair trade scheme is essentially capitalist. We all know that the market price of any commodity does not come down to the cost of production but to the amount that people are prepared to pay for that product. In that respect, the fair trade movement has very successfully cultivated the Fairtrade brand and has also been successful in persuading consumers not only to buy but to pay more for Fairtrade products. In much the same way, people will pay much more for tee-shirts with brand names such as Tommy Hilfiger and Calvin Klein than for other tee-shirts.

I heard Jamie Stone refer to raw market forces. Fair trade works because of such forces and because of consumer power. After all, consumers have the choice of buying Fairtrade products, and fair trade works because they are prepared to exercise that choice. If we did not have markets, fair trade would not be a success. As a result, Fairtrade is a brand worth supporting.

Mr Stone: Does the member not accept that if we had let raw market forces prevail in their most extreme form, what has happened with fair trade would not have happened? It has happened because fair trade appeals to a higher sense in human beings—indeed, people are making an almost moral decision when they buy such products. I do not think that the matter has much to do with absolute raw market forces, because if it did, farmers would not have a hope. For example, in central America, they would continue to get 80 cents for a pound of coffee beans.

Murdo Fraser: Mr Stone completely misunderstands my point. Because we have a market, consumers have a choice—and exercise their choice—to buy Fairtrade products. They will happily pay more for those products because they know that more of their money will go to the producers. As a result, the market delivers success for Fairtrade producers.

Johann Lamont (Glasgow Pollok) (Lab): Murdo Fraser might be attempting to make a compelling case for compassionate capitalism, but I ask him to explain this to me. The Co-operative movement, in particular the retail sector, operates as a business. The Co-op recognises that it has cut its margin in order to live by its principles. He is talking about choice, but there is no evidence that any other retailer has gone down the same route. People in the Co-op have demonstrated the importance of the co-operative and mutual sector, as they live beyond mere raw profit and understand that there is a broader social objective to what they do. Would he not commend them and urge those who operate in a more crudely capitalist market to follow what the Co-op has done?

Murdo Fraser: I am sure that the Co-op will find the Fairtrade brand a success and that its profits will increase as a result of selling that brand. Why has the Co-op been running an advertising campaign promoting Fairtrade? To attract people into its shops. People will come into the shops to buy Fairtrade products, and they will spend more

money on other things at the same time. Everybody is a winner from fair trade, so what is the problem? That is why I commend the Fairtrade mark.

Let us remember that fair trade is about more than the Fairtrade mark. It is about ensuring fair and open trading conditions for all producers in the developing world. By forming an exclusive trade block, the European Union is guilty of creating a barrier to trade with the developing world. Is that fair on producers in third-world countries? The common agricultural policy has proved particularly damaging to people in developing countries, where 90 per cent of the work force depends on farming for a living. By choosing to protect our markets with vast amounts of annual subsidy, the EU economies stand accused of restricting market access, depressing produce prices and discouraging investment.

Linda Fabiani: Will the member give way?

Murdo Fraser: I am sorry, but I will not give way, as I have already taken interventions and will shortly run out of time.

If we are serious about tackling deprivation and poverty in the developing world, we must be equally serious about creating fair trading conditions for its producers. That might mean removing advantages from some home producers. Fortunately, we do not yet produce tea, coffee or the raw materials for chocolate in these islands—although we might do soon enough with some more global warming.

Mark Ballard (Lothians) (Green): Will Murdo Fraser take an intervention?

Murdo Fraser: I am sorry, but I am already over time and am anxious to come to a close.

If we are to open up fair trade across the board, we must face up to the possibility of home producers with much higher costs being forced out of the market. Although United Kingdom food producers are fairly efficient, people on this continent might have to pay the price—unless we are prepared to defend the common agricultural policy, which is not something that I think we should do in the long term.

Essentially, this is a moral argument. Is it right to protect producers nearer to home if that protection means condemning others around the globe to poverty and starvation? I cannot pretend to know the answers to such questions, but I commend Sarah Boyack for lodging her motion and giving us the opportunity to debate these issues.

17:08

Donald Gorrie (Central Scotland) (LD): I am obliged to Sarah Boyack for having lodged her motion. Anything that makes me feel good about drinking coffee is welcome. Drinking coffee is one of my main vices and to feel that one's vice is more moral is very helpful.

I agree with Murdo Fraser on one point: we have to sort out the European common agricultural policy. At the moment, we are almost as bad—but not quite—as the Americans on protectionism, which has a negative effect on poorer countries.

Mark Ballard: Will the member give way?

Linda Fabiani: Will the member give way?

Donald Gorrie: No—I think that I will proceed with my argument.

People have to get organised. That is the only way in which we make progress on anything. History consists of groups of people getting organised to sort out a person or a group with far too much power—somebody always has far too much power. It can be a question of the nobles ganging up on the king, of the common people ganging up on the nobles or of people ganging up through trade unions against manufacturers. People have always organised themselves to get their fair share. At the moment, poor farmers in developing countries are totally disorganised, and they are ground into the dust by the unacceptable face of capitalism.

We live in a capitalist society, governed by market forces. It should be a moral, market-force, capitalist society, however. It should also be transparent and other good things; at the moment, however, it is a bad thing. The people who have far too much power are the multinational organisations that drive American policy. The oil people, the arms-manufacturing people and the trading people drive public policy and ensure the continued poverty of people in poorer countries. Therefore, as well as supporting fair trade and doing something rather than just talking about doing something, we must keep up relentless pressure in order to reduce poorer countries' debts and encourage fairer trade with them to get them out from under the heel of the big multinational organisations.

Obviously, a fair trade approach helps a few people, but Fairtrade is not big yet as a world player, albeit that a fair trade approach can have a huge cumulative effect. If such an approach is part of an overall way of doing things to produce a moral basis for capitalism, it will be really worth while. Almost everybody would agree with that, although I am not sure about some Conservative members.

17:10

Robin Harper (Lothians) (Green): I congratulate Sarah Boyack on bringing the motion

to the Parliament. My support for it does not seem to have been registered, but I assure her that I warmly support it.

Sarah Boyack said that 1,700kg of coffee are consumed by University of Edinburgh students every year, which makes one wonder whether they can ever sleep. I welcome members of that university's people and planet group, which Sarah Boyack mentioned, to the debate. On Friday at 12 o'clock, there will be a photoshoot for supporters of its campaign for the university to become a Fairtrade university. I believe that we should go to the student centre at Bristo Square and await our instructions—they should nod their heads if I am right. They would welcome the support of any MSP in the chamber.

I have supported most Fairtrade functions that I could attend in the past four years and I spoke at the Glasgow Fairtrade fair earlier this year. The Green party has supported the promotion of Fairtrade products in the Scottish Parliament, which Sarah Boyack mentioned, and we promote Fairtrade products at all our conferences.

As Sarah Boyack said, one of the most important things that we should do is promote a Fairtrade culture. I am proud to say that there is evidence of Fairtrade purchases on the shelves of my kitchen at home. Fairtrade products need to be on the menus of schools, hospitals and council offices and Fairtrade clothing and craft products should be in evidence wherever possible. In that context, I would like to pay tribute to a couple of other shops that Sarah Boyack did not mention—the Oxfam shops in Rose Street and Morningside.

The Green party recognises that the Scottish Parliament's powers over international affairs and trade are extremely limited, but we believe that much can be achieved by encouraging positive attitudes and by using every power that we have to change the world to the best of our abilities. We cannot have too much effect on the outcome of the general agreement on tariffs and trade talks or on the macroeconomic policies of the European Union and the G8, for example, but we will continue to campaign for debt relief and the complete abolition of the debt of the world's 40 poorest countries, in line with Jubilee 2000's proposals.

I welcome Murdo Fraser's criticisms of the EU and the CAP. The fact that many third-world farmers are being put out of business by the dumping of the EU's heavily subsidised surpluses, particularly in Africa, is an absolute obscenity.

Linda Fabiani: Did Robin Harper find it bizarre—as I did—that the Conservatives had such a go at the EU, as they openly promote the cause of the World Trade Organisation, for example?

Robin Harper: That confused me, too. I wondered what line the Conservatives would take. I do not know whether to applaud—

Mr Monteith: I would like to illuminate the member. The WTO and the various rounds of negotiations have sought to tackle the various subsidies that the member finds so abhorrent. Does he agree that the WTO should be supported in that aim?

Robin Harper: I do not think that I am particularly illuminated and I certainly do not feel lit up by that intervention.

I will go back to looking at some positive developments. I think that Linda Fabiani met the cocoa farmers from Nigeria whom I met—I do not know whether she will speak about them. Under normal trading conditions those farmers lived from hand to mouth and were ruthlessly exploited by the national cocoa market. However, after 400 or so farmers combined and formed their own marketing association that linked up to Fairtrade, within a couple of years roads appeared where there had been tracks, schools were built and dispensaries and medical services appeared. The farmers were able to pay for all that once they were able to get a fair and proper price for their product.

In the Green party we have a motto that "small is beautiful". Those small but secure trading arrangements could, if they were adopted on a big enough scale, revolutionise the way that we relate to the third world. They could empower people in the third world and link them to us not only with economic bonds but with bonds of friendship and understanding. I welcome Sarah Boyack's motion.

17:16

The Deputy Minister for Enterprise and Lifelong Learning (Lewis Macdonald): The debate has been illuminating and I think that we have all enjoyed it.

I congratulate Sarah Boyack on securing the debate, and I congratulate the City of Edinburgh Council and others on seeking to join the ranks of those throughout Scotland who support, and have given a commitment to support, fair trade.

I note that, as has been said, many of the issues around international trade and international development are reserved, but of course Scotland's devolved Government takes a close interest in fair trade and supports the principles of ethical trading and employment on which the Fairtrade mark is based.

I have long taken a personal interest in the fair trade agenda. At about this time last year, I spent a Saturday morning staffing the Fairtrade stall at the farmers' market in Aberdeen. That confirmed

clearly how much interest in and support there is for the fair trade principle.

Mr Stone: Will the minister take an intervention?

Mr Monteith *rose—*

Lewis Macdonald: I will take Mr Stone's intervention.

Mr Stone: I secured the advantage by being in an Executive party.

The minister mentioned aid and development. Does he agree that rather than encouraging a dependency culture in third-world countries, going down the fair trade route—Robin Harper was right to mention people who generate money themselves to build roads and so on—is a more correct method? If one wants, in a non-capitalist way, to have a Government policy of intervention by giving money to third-world countries—as we do—putting the Fairtrade mark on that policy would make it still more effective.

Lewis Macdonald: I certainly agree about the importance of encouraging development in developing countries on the basis of trade rather than aid. That is precisely what fair trade can help us to do. It is worth noting that the UK Government has, through its membership of the World Trade Organisation, emphasised the point that development must be based on trade and on the economic strength of developing countries rather than on subsidy or anything else.

It is important to note what support from communities in Scotland for fair trade has done and can do to support small producers in developing countries. In addition to the immediate practical and financial benefits that producers in developing countries can gain through better trading terms and price guarantees, support for fair trade can play a major role in encouraging UK companies to support higher standards of corporate social responsibility and to manage their supply chains in ways that benefit rather than exploit primary producers.

Mr Monteith: The minister talks about corporate social responsibility and mentioned support for fair trade. Does he believe that, by definition, anything that is not fair trade is in fact unfair trade?

Lewis Macdonald: What I am clear about is that we should seek to apply the highest principles of corporate social responsibility in our operations and that we should encourage others to do precisely the same. I do not want to enter into a bandying around of words on the issue; I want to make it clear that principles are at stake and that it is appropriate that we stand by those principles.

Johann Lamont: On the issue of corporate responsibility, I heard Robin Harper's comments about small being beautiful, but is not the significance of what the Co-op has done that it is a mainstream business that has recognised that it is possible to have a real impact by making such decisions? The issue is not about persuading the already persuaded among small groups who operate on fair trade principles, but about offering a challenge to those who wish to be seen to have corporate responsibility—the gauntlet should be thrown down to them.

Lewis Macdonald: I agree with that entirely. As has been said, the Co-operative movement is to be congratulated on its efforts and the initiatives that it has taken. That takes us back to the point that a principle is at stake. The Co-op has drawn the link between the co-operative principles that are applied at home and the principles of fair trade that are applied internationally. Because of those efforts, as Sarah Boyack mentioned, the Executive parties have given an undertaking to introduce a co-operative development agency that will promote at home the co-operative principles that lie in line with the international principles of fair trade. We have made progress on that commitment and will consult on the structure and remit of the co-operative development agency in the next few months.

The issue of producers nearer to home was raised, particularly with reference to agriculture. It is worth noting that the Fairtrade Foundation, which organises the Fairtrade mark in this country, is talking to organisations in the agriculture sector in Scotland that share its approach, such as the Scottish Agricultural Organisations Society, which promotes co-operation in agriculture, about how they can reinforce one another's messages and support one another's work. However, the Fairtrade Foundation is rightly keen to ensure that its focus on producers in developing countries is not in any way diluted or undermined, although the foundation works on some issues with people who are involved in agricultural production in Scotland.

We have a responsibility for higher education provision in Scotland. Our higher education institutions are often clearly focused on matters of international trade and, in particular, fair trade.

Jeremy Purvis: I welcome the minister's comments about the Executive's role, but given that the public sector in Scotland is one of the larger employers and contains the largest institutions, is the minister confident that no procurement rules count against Fairtrade purchasing for our public services?

Lewis Macdonald: I will quickly finish my point about agriculture and higher education, which is simply that the issue of fair trade is covered in the Scottish Agricultural College's course on agriculture.

On the important issue that Jeremy Purvis raises, the Executive's response is similar to a point that Sarah Boyack made, which is that we do not wish to, nor could we, impose a requirement that the Executive or other public bodies should provide Fairtrade produce exclusively. However, through our themes of sustainable development and environmental responsibility, we are keen to encourage all bodies in the public sector with which we have relations to take an approach that promotes the choice of fairly traded produce.

The focus of Sarah Boyack's motion is on the City of Edinburgh Council, but it has been mentioned that Strathaven, Aberfeldy and Paisley have received Fairtrade accreditation because of their efforts to promote fair trading, not only by the local authority, but by retailers and others in the local economy. My city, Aberdeen, and Dundee are working towards Fairtrade accreditation and I am delighted to report that a significant number of communities, both large and small, are seeking to go in that direction. We believe that that sends a clear signal to fellow citizens in Scotland and to the citizens of the world about the responsibility that we should take for ensuring fair terms of trade and that producers, wherever they are, should get a fair reward for the work that they do.

Meeting closed at 17:24.

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