MEETING OF THE PARLIAMENT

Wednesday 25 February 2004
(*Afternoon*)

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CONTENTS

Wednesday 25 February 2004

Debates

SCOTTISH MINISTERS AND DEPUTY MINISTERS

FIRST MINISTER—Right hon Jack McConnell MSP
DEPUTY FIRST MINISTER—Right hon Jim Wallace QC MSP

Justice
MINISTER FOR JUSTICE—Cathy Jamieson MSP
DEPUTY MINISTER FOR JUSTICE—Hugh Henry MSP

Education and Young People
MINISTER FOR EDUCATION AND YOUNG PEOPLE—Peter Peacock MSP
DEPUTY MINISTER FOR EDUCATION AND YOUNG PEOPLE—Euan Robson MSP

Enterprise and Lifelong Learning
MINISTER FOR ENTERPRISE AND LIFELONG LEARNING—Right hon Jim Wallace QC MSP
DEPUTY MINISTER FOR ENTERPRISE AND LIFELONG LEARNING—Lewis Macdonald MSP

Environment and Rural Development
MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT—Ross Finnie MSP
DEPUTY MINISTER FOR ENVIRONMENT AND RURAL DEVELOPMENT—Allan Wilson MSP

Finance and Public Services
MINISTER FOR FINANCE AND PUBLIC SERVICES—Mr Andy Kerr MSP
DEPUTY MINISTER FOR FINANCE AND PUBLIC SERVICES—Tavish Scott MSP

Health and Community Care
MINISTER FOR HEALTH AND COMMUNITY CARE—Malcolm Chisholm MSP
DEPUTY MINISTER FOR HEALTH AND COMMUNITY CARE—Mr Tom McCabe MSP

Parliamentary Business
MINISTER FOR PARLIAMENTARY BUSINESS—Patricia Ferguson MSP
DEPUTY MINISTER FOR PARLIAMENTARY BUSINESS—Tavish Scott MSP

Communities
MINISTER FOR COMMUNITIES—Ms Margaret Curran MSP
DEPUTY MINISTER FOR COMMUNITIES—Mrs Mary Mulligan MSP

Tourism, Culture and Sport
MINISTER FOR TOURISM, CULTURE AND SPORT—Mr Frank McAveety MSP

Transport
MINISTER FOR TRANSPORT—Nicol Stephen MSP

Law Officers
LORD ADVOCATE—Colin Boyd QC
SOLICITOR GENERAL FOR SCOTLAND—Mrs Elish Angiolini QC

PRESIDING OFFICERS

PRESIDING OFFICER—Mr George Reid MSP
DEPUTY PRESIDING OFFICERS—Trish Godman MSP, Murray Tosh MSP

SCOTTISH PARLIAMENTARY CORPORATE BODY

PRESIDING OFFICER—Mr George Reid MSP
MEMBERS—Robert Brown MSP, Mr Duncan McNeil MSP, John Scott MSP, Mr Andrew Welsh MSP

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PRESIDING OFFICER—Mr George Reid MSP
MEMBERS—Bill Aitken MSP, Mark Ballard MSP, Bruce Crawford MSP, Patricia Ferguson MSP, Carolyn Leckie MSP, Tavish Scott MSP

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Enterprise and Culture	Alasdair Morgan	Mike Watson
Environment and Rural Development	Sarah Boyack	Eleanor Scott
Equal Opportunities	Cathy Peattie	Margaret Smith
European and External Relations	Richard Lochhead	Irene Oldfather
Finance	Des McNulty	Fergus Ewing
Health	Christine Grahame	Janis Hughes
Justice 1	Pauline McNeill	Mr Stewart Maxwell
Justice 2	Miss Annabel Goldie	Karen Whitefield
Local Government and Transport	Bristow Muldoon	Mr Andrew Welsh
Procedures	Iain Smith	Karen Gillon
Public Petitions	Michael McMahon	John Scott
Standards	Brian Adam	Mr Kenneth Macintosh
Subordinate Legislation	Dr Sylvia Jackson	Gordon Jackson

25 February 2004

Scottish Parliament

Wednesday 25 February 2004

(*Afternoon*)

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

Time for Reflection

The Presiding Officer (Mr George Reid): Good afternoon. Our time for reflection leader today is Habib Malik, who is a director of Multi Ethnic Aberdeen Ltd and Scotland area manager for Islamic Relief.

Habib Malik (Multi Ethnic Aberdeen Ltd and Islamic Relief): Islam, like many other major religions, has a strong ethos of charity and regard for others. As human beings, we have an obligation to care for all people, especially those in need. That concept is central to Islam because one of the five pillars of the religion is to give zakat—the poor-due—which is a fixed percentage of one's savings. However, over and above that, the spirit of generosity should not be far from a Muslim's heart.

Charity is not confined only to helping Muslims. A narration from the prophet Mohammed—peace be upon him—states:

"He who sleeps on a full stomach, while his neighbour goes hungry, is not one of us."

There is nothing there to suggest that we limit ourselves to aiding people who adhere to the same religion as we do, given that Islam is above all divisions that are based on race, gender or religion. Furthermore, we are told in the Qur'an that God

"divided mankind into nations and tribes, so that they may know one another."

Kindness to others is a mark of faith and can mean helping people with one's time, effort or money. Additionally, the Qur'an states that

"God has blighted usury and made almsgiving fruitful,"

as one profits from the misery of others, while charity benefits both the donor and the recipient. To provide benefit to others, either directly by helping the needy oneself or indirectly through charities such as Islamic Relief, is highly recommended.

Islamic Relief had its humble beginnings in 1984 and was established in response to the terrible famine in Africa. Now, with the support of generous individuals, communities and organisations, it operates in more than 30 countries worldwide. Over the years, the organisation's reputation has grown among key players in the international arena and Islamic Relief is recognised as a leading agency in disaster response, with a proven track record in Bosnia, Chechnya, Kosovo, Afghanistan and, more recently, Iraq and the Iranian city of Bam.

The areas of long-term development that Islamic Relief concentrates on include education, health and nutrition, income generation, and water and sanitation programmes. In addition, we have a long-established orphans scheme, providing one-to-one sponsorship and general projects relating to the welfare of orphans and their families.

Islamic Relief has worked as an implementing partner on various international platforms with organisations such as the United Nations, the World Food Programme, the United Kingdom Department for International Development, the Catholic Agency for Overseas Development, Oxfam and many more. We believe that all people have a right to lead dignified lives and not be dependent on others. Hence, many of our long-term development programmes are geared towards empowering people with practical skills and knowledge to enable them to support themselves.

Generosity is also a trait of the Scottish people, so let us join together and try our utmost to benefit those who need our help, whether they are here at home or abroad. We are one people and, regardless of race or creed, we ought to come together to help to make a difference in the lives of people who have suffered through natural disasters or man-made calamities.

Business Motion

14:35

The Presiding Officer (Mr George Reid): The next item of business is consideration of motion S2M-953, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out a revised programme for this afternoon's business.

Motion moved,

That the Parliament agrees a revision to the programme of business for Wednesday 25 February 2004, as follows—

after,

2.30 pm	Time for Reflection – Mr Habib Malik, a director of Multi Ethnic Aberdeen Limited and Scotland Area Manager for Islamic Relief
followed by	Parliamentary Bureau Motions

insert,

followed by	Ministerial Statement on Fresh Talent.—[*Patricia Ferguson.*]

Motion agreed to.

Fresh Talent

The Presiding Officer (Mr George Reid): The next item of business is a statement by Jack McConnell on fresh talent. The First Minister will take questions at the end of his statement, so there should be no interventions.

14:35

The First Minister (Mr Jack McConnell): I start by expressing the grief that we all feel following the death of Suhail Saleh. His mother had been granted refugee status in our country. That such a tragedy should occur so early in the new life of that family is particularly sad and our thoughts are with his mother and brothers today. His death will also be a loss for his school community, but All Saints is a good school, with a great head teacher, and I know that pupils, parents and staff will pull together at this difficult time and that they will have our support.

Today, I wish to make a statement on our new policy to attract fresh talent to Scotland. The policy is designed to tackle the most serious long-term issue facing our country. Scotland's population is falling; it is declining at a faster rate than that of anywhere else in Europe. That decline, coupled with a significant shift in Scotland's age profile, is making a serious problem even worse. By 2009, Scotland's population will fall below the symbolic 5 million level. By 2027, there could be, on current projections, a quarter of a million fewer people of working age in Scotland. Those projections are a result of there being more deaths in Scotland than births. We know that for centuries Scots emigrated throughout the world, but net emigration is almost insignificant now. Basically, fewer people leave Scotland, but only a few come to live here.

The challenge is now to counter demographic change, but before I lay out the details of our Government's plans to tackle Scotland's declining population, there is one message that I want to make very clear. The first priority of the Government in Scotland must always be to nurture and retain home-grown talent. Helping to meet the hopes and aspirations of the Scottish people should be the motivation of every one of us in this chamber. However, those hopes and aspirations will not be met if our devolved Government does not act to counter what I believe to be the greatest threat to Scotland's future prosperity.

Population decline is serious. Tax revenues will fall. Falling school rolls mean that local schools will close, other local services will become less sustainable and communities will become weaker. The labour market will contract, there will be fewer consumers to underpin a domestic market and our economy will be less dynamic and more likely to

contract overall. We can and must do something about that. Although future projections demonstrate demographic shifts of considerable magnitude, taken step by step the challenge looks easier to deal with.

Our first target must be to avoid our population falling below 5 million. To do that, we need an additional 8,000 people living in Scotland each year between now and 2009. We want to meet that target in three ways: by retaining home-grown talent within Scotland; by encouraging Scots who have moved away to come back home; and by attracting some who are completely new to Scotland—from the rest of the United Kingdom, from the European Union and from further afield.

Devolution was created for this precise purpose: to tackle a tough, long-term problem in our national interest. It is absolutely in the interest of every Scottish family that we create a country that is dynamic and growing, with opportunities for our children and our grandchildren. To do that, we need to attract and welcome new people. We need fresh talent. A more diverse, more cosmopolitan country is good for Scots. It will open minds and broaden horizons. It will stimulate ambitions and ideas—to travel, to see some of the world, to learn from others, but to come home, too. Some think that people will move only if there are job opportunities and others think that people locate only according to the quality of life. I believe that the truth is somewhere in between.

Of course, Scotland needs a growing economy and Scotland's economy is growing—not as fast as it could be, but there are signs that it will grow more quickly in the medium term. More ideas are coming out of our universities, there is increased commercialisation, there are greater levels of entrepreneurial activity and more Scots are learning, training and using their skills. There are more jobs and more vacancies and, in a few sectors, there are even shortages.

Scotland has a unique selling point. We are lucky that we are known to be one of the friendliest and most educated peoples in the world. We have a vibrant culture, stunning countryside, excellent schools, decent transport links and good public services. In short, it is good to live in Scotland. I believe that, in the modern world, businesses increasingly choose to locate in the places where the people whom they want to employ want to live.

Exactly a year ago today, I made the case that Scotland needs to attract fresh talent to our shores to secure future prosperity for Scotland. In 12 months, we have developed a national consensus that that must be a priority. I believe that the issue is too important to be party political. We cannot allow new people to be welcomed by some and not by others. We will not be able to attract fresh talent to Scotland if our country speaks with different voices. Although we in the chamber might debate the best way of attracting new people to Scotland, I hope that we can agree on one thing—Scotland's projected population decline is something that we must tackle and one important way of doing that is to welcome others to Scotland to contribute to our economy and to our country.

Therefore, today I am announcing an initial package of measures to attract fresh talent. We have published a policy statement, which is available to all members. First, we will get better at promoting Scotland—our people and our country. Later this year, we will step up our global effort to promote our country as a place to visit, a place to do business and a place to live and work. Here, we will establish a relocation advisory service, which will be operational from October, to assist and advise those who wish to live and work in Scotland. We seek, over time, to create a seamless service that streamlines UK, Scottish and local public services. That will make it easier for people to move here. We will also use the reorganised Friends of Scotland and global Scot networks to target the Scottish diaspora for tourism, for business and for fresh talent.

Secondly, I have agreed with the UK Government measures actively to promote Scotland as a destination for people seeking to use the work permit route to come into the UK. Work permits (UK) will actively promote itself within Scotland and will work with us to make the system easier for Scottish employers to access. Scotland will actively promote itself within work permits (UK) with literature, advice and internet services. Work permits (UK) will also be a partner in the new relocation advisory service. Because small businesses do not have access to the central resources of big business to use the work permit system to their best advantage, we will create a toolkit with them to help them to do so.

Thirdly, Scotland already has the fantastic advantage of being a net importer of students from the UK, the European Union and further afield. Around 50,000 non-Scots are studying in Scotland right now. Our universities are world class; they are diverse and creative and they generate a wealth of ideas and energy. Today, we send a clear message to all those students who come to Scotland. We would like them to stay after they graduate and we encourage them to consider making Scotland their permanent home. We want them to help us to grow the Scottish economy.

I can announce today that the Home Secretary, David Blunkett, has agreed to our request to allow all overseas students who graduate from Scottish universities, if they wish to live and work here, to stay an additional two years before residence. That will be in place from summer 2005. They will be allowed to stay in Scotland and seek any type

of work during that time. After that, they can switch into other legal migration routes for which they qualify. I believe that that is an immensely important signal. It is the first time that there has been such flexibility within the UK immigration system. Flexibility allows the management of migration into the UK to respond to local requirements.

I can also announce that the Home Office has agreed that we should work with it, as its policy of managed migration develops over time, on further flexibilities that would allow us to attract more talent to Scotland. To do that, we have created a joint working group of officials from the Executive and the Home Office. That is a perfect example of devolution working at its best in partnership with the UK Government.

We will provide central support to help Scottish higher education institutions to recruit from overseas in a more systematic way. The Scottish Government will also develop a scholarship scheme for overseas graduates, which will focus on the entrepreneurial contribution that those students can make.

The signal to would-be students across the world, to our universities and to business is strong and clear. We say to would-be students: "Scotland is the place to study; our universities are world class; our cities are thriving and our country welcomes you." We say to our universities: "Your track record is excellent and from today you should build on your strengths and increase your profile internationally." We say to business: "An increasing number of the tens of thousands of very bright graduates who leave Scottish universities each year will want to stay in Scotland and now they can do so; so if you want the best graduates to work for you, you will need to move to Scotland to get them."

I also have a clear message for the parents of Scottish teenagers: our announcements today do not threaten their university places. Opportunities for Scottish school leavers will always be at the top of our list. The fresh talent policy is about making sure that there are enough people to make our schools, public services and universities viable and sustainable in the longer term.

The fourth part of the initial package focuses on first impressions. We should talk our country up, promote the best of ourselves and encourage others to come to Scotland, but we must also be mindful of what others see when they come to Scotland for the first time. I regularly meet senior figures in Scotland's top companies who stress the importance of first impressions of this country. The fact that we are a welcoming country should be clearly reflected in our ports, airports and bus and rail stations. There needs to be a fresh approach and a national effort to achieve that.

As the policy develops and its success beds in, there will be further implications for public policy. To date, we have been preparing ourselves for inevitable population decline and for a dramatically aging population. From today, however, decline is no longer inevitable and we should prepare ourselves for the possibility of growth. There might specifically be an impact on projected housing demand. Margaret Curran, the Minister for Communities, will examine the implications of the fresh talent policy on our housing policy and consider how we should respond.

In conclusion, I believe that the proposals that I have outlined today represent a good start in demonstrating that Scotland is serious about growth. We want to grow our economy and we want our country to grow, too—in profile, in image and in stature. A policy of nurturing and retaining home-grown talent, encouraging ex-Scots to come home and attracting fresh talent to our country sends a strong signal to the world: Scotland is back on the map and is making her mark. This is a bold step for a small devolved country such as ours to take, but it is one to which I am confident that our people will rise. For centuries we have been welcomed overseas; now it is time for Scotland to be as welcoming in return. Our message today is clear. We are saying, "If you have ambitions, and if you want to live and work in a dynamic country with a good quality of life, this is the time and Scotland is the place."

The Presiding Officer: The First Minister will now take questions on the issues that he raised in his statement. I will allow around 20 to 22 minutes for that.

Mr John Swinney (North Tayside) (SNP): First, I associate my party with the sympathy that the First Minister expressed on the tragic death of Suhail Saleh. Our thoughts are with his mother, his brothers and his friends at All Saints Secondary School in Glasgow.

I unreservedly welcome the First Minister's statement and take this opportunity to acknowledge the journey that the First Minister has travelled on the issue. In his statement, he accepted for the first time the need for different approaches to immigration north and south of the border—and there was no mention of border posts or controls between Scotland and England. We can now assume that such talk will have no place in the lexicon of the First Minister or in that of his colleagues. The measures that the First Minister has announced have the full support of the Scottish National Party.

The First Minister said that he had reached agreement with the Home Secretary to allow students who graduate from Scottish universities to stay in Scotland for an additional two-year period. Does the First Minister accept that a

greater proportion of our young people go to university than is the case in the rest of the United Kingdom and that the problem is that the proportion of graduates in our work force is less than the proportion in the rest of the United Kingdom? Does he therefore accept that, although we might well take measures to encourage people to come to Scotland, the greater and more demanding challenge is to create the vibrant economic opportunities that will encourage young people to stay in Scotland on a permanent basis?

The First Minister said in his statement:

"We will not be able to attract fresh talent to Scotland if our country speaks with different voices."

I have assured him today of the SNP's full support for the measures that he has announced. He went on to say:

"we must also be mindful of what others see when they come to Scotland for the first time."

Does he agree that we will not attract fresh talent to Scotland if their first impressions of Scotland are of a country that is prepared to tolerate the imprisonment of innocent children in the Dungavel detention centre?

The First Minister: I welcome Mr Swinney's general welcome for the project. I look forward to sustaining an all-party approach to the project in the months and years ahead.

As I said in my statement and have said regularly in the past, I believe that it is vital that we retain our home-grown talent in Scotland and that we attract people who have gone overseas to come back to their home country. I also believe that that will not be enough—we must attract people who have come to Scotland from other lands to stay in Scotland, to be part of our community and to help us to grow our economy. Currently, a third of our non-Scots graduates choose to stay in Scotland either to continue to study or to work. That is not enough. We can increase the figure and the challenge is for us to do so using the new policies.

On Mr Swinney's final point, I do not believe that it is in the interests of creating a good impression of Scotland to separate children from their parents. I have made that point before in the chamber and I am happy to debate it with Mr Swinney on other occasions. I hope that today is not the day when we will go down that road.

My final point relates to Mr Swinney's question about growth in the Scottish economy. It is precisely because it is essential to have an active, dynamic economy to attract fresh talent that we have been striving to achieve just such an economy. As I said in my statement, Scotland's economy is now growing again. Indeed, there are signs that it will grow more quickly.

Our ambitions have to be greater. The signs tell us—in fact, the evidence tells us—of the ideas that are coming out of our universities, the increased commercialisation, the levels of entrepreneurial activity that were recorded earlier this week by the global entrepreneurial monitor, the number of Scots who are learning and using their skills in Scotland, the number of people in employment and the number of people elsewhere in the world who would like to be in employment in Scotland to fill the shortages in some areas. All those are indicators that Scotland is on the verge of what is potentially a very special time in our economy. Population decline threatens that, which is why we have to tackle it. I hope that together we might be able to do so.

David McLetchie (Edinburgh Pentlands) (Con): I begin by echoing on behalf of members on the Conservative benches the sympathies that were ably expressed by the First Minister and Mr Swinney in respect of the death of Suhail Saleh.

I do not think that anyone would disagree with the First Minister's identification that our falling population is a matter of genuine concern or that there is a need for us to join in giving a warm welcome to all those who choose to come and live and work in Scotland.

The basic problem with some of the proposals that were outlined by the First Minister today is that they put the cart before the horse. The First Minister and the Executive seem to think that adopting a range of micromeasures to encourage people to come and work in Scotland will somehow improve our economic performance. I suggest to him that people will come and stay in Scotland not because of any advertising campaign, but because Scotland is successful economically, which makes it an attractive place in which to live and work, with opportunities for advancement. I suggest to him that that is what we should be concentrating on.

We were told by the First Minister in his statement that the proposals build on those that were announced earlier this week by Mr Blunkett, with an added Scottish dimension. However, tinkering with United Kingdom immigration policy in that way sets a dangerous precedent and plays into the hands of the Scottish National Party, which wants a Scotland-only immigration policy, as Mr Swinney was quick to note in his remarks.

I have specific questions for the First Minister on the visa extension policy. Does the two-year visa extension for foreign students really apply only to those who graduate from Scottish universities? Are foreign students who graduate from English universities to be denied the extension, even if they want to live and work in Scotland? During the two-year period, what is to stop people moving to England if they are offered a job there? Will they

be granted, in effect, a Scotland-only work permit? Can the First Minister tell us whether the new visa rules will require legislation at Westminster, or can they be introduced simply with a stroke of the Home Secretary's ministerial pen?

What is the purpose behind all this playing with fire with immigration and employment policy? The First Minister said that 50,000 non-Scots are studying in Scotland right now, but when we take away students from other parts of the United Kingdom and from EU countries, who already have the right to reside and work here, we are left with only 13,000 overseas students, many of whom are sponsored by their Governments and aid agencies so that their skills as doctors, scientists and engineers can be used to develop their own countries. We know that the figure is not 50,000 students and that it certainly will not be 13,000 students, so perhaps the First Minister can tell us what his estimate is of the numbers who will actually apply every year for the Scottish visa extension, which will be available from 2005.

Finally, I suggest to the First Minister that he might be better sticking to his own job rather than doing David Blunkett's, and that putting our own house in order is the key to encouraging population growth and attracting skilled workers. [*Interruption.*]

The Presiding Officer: Order. Come on now.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Presiding Officer—

David McLetchie: Be quiet, Mr Rumbles. You might learn something.

Will the First Minister accept the evidence from overseas that the countries that offer the best economic opportunities are the most successful at attracting people? In other words, if we build those opportunities, people will come.

The First Minister: We are building them, and people are coming. Just this morning, I met a group of students and people working in research who have come from all over the world—from Mexico, France and Spain. I even met a young gentleman from Tenerife who came to Scotland—as perhaps tens of thousands of Scots go to his area every year. All those people were here because of the product that they were involved in creating, which is being used commercially not only by oil and gas companies throughout the world, but by the American navy to carry out subsea operations and investigations. They are proud of their work and are delighted to be in Scotland. They will become ambassadors for our country in the years to come. Those are precisely the kind of people we need in Scotland, contributing to our economy and giving Scotland a new place in the world.

I am afraid that if we in Scotland end up indulging in any party-political or nationalistic—with a big N or a small n—squabble over this policy, we will fail.

It is critical for Scotland that we reverse the decline. I would not have made this point today if it had not been for Mr McLetchie's contribution, but we must in particular reverse the decline of the 18 years up to 1997. We will not reverse that decline without an ambitious programme of going for growth. Investment in research and new ideas is creating the levels of commercialisation, entrepreneurial activity, new business start-ups and growth in our economy that will provide the jobs for the moment that will encourage others to come in the future.

Mr McLetchie asks a number of specific questions. Of course the visa programme will not apply to students who graduate from English universities, but if such students have a job in Scotland, their employers here will be able to apply for a work permit for them. As I outlined in my statement, the British Government will enthusiastically support applications for work permits in Scotland.

People who stay on to work in Scotland after completing their degrees and who at some point choose to go across the border to England will not somehow be trapped in Scotland. Our job is to motivate people to stay in Scotland and I am confident that we can do that. The proposals are about ambitions, not restrictions; they are about ensuring that Scotland is a desirable place in which to live and work. The Home Secretary has guaranteed that he will make the measures happen quickly. He has also guaranteed that he is prepared to look for further opportunities for flexibilities in the immigration system to ensure that we turn round the population decline in Scotland in the longer term.

I have one final point in response to Mr McLetchie's questions, which is that I believe that the proposals are an example of devolution inside the United Kingdom working in practice. There is no separate immigration policy for Scotland, but flexibility within the UK immigration policy will give us a competitive advantage to allow us to arrest population decline and create a growing economy in the years to come. I cannot believe that anybody who has ambitions, hopes, desires and dreams for Scotland is against that or finds it unsavoury—I would be shocked if that were the case. I hope that, out there, the Scottish public will put aside any concerns that they might have about tensions that may have existed in the past—here, as elsewhere in western Europe—and say that our country is welcoming and wants to go places and that we want people, wherever they come from, to be part of that.

The Presiding Officer: I have allowed the leaders of the two principal Opposition parties considerable latitude, but I must now ask for shorter questions and answers.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): I welcome the First Minister's statement, particularly given that constituencies such as mine face a sharp decline in population and the consequences that follow from that. The statement certainly outlined the opportunities and demonstrated the benefits.

Does the First Minister agree that if we are determined to make Scotland a destination of choice for young talent, it is vital to understand what attracts young people here and what pushes them away? Where better to start such a dialogue than at IBM in Greenock, which employs 1,000 foreign nationals? Those people, who are all expert in information technology and have language skills, are bridging the skills gap. Will the First Minister come to talk with some of those workers and extend a personal invitation to them to stay in Scotland?

The First Minister: I would be delighted to take up that opportunity, not least because Gordon Smith from IBM, who is the current president of the Confederation of British Industry Scotland, was a member of the group that devised the proposals and gave us considerable support. IBM is a good example, partly because there are so many such workers there, but also because IBM is in the heart of one of the few parts of urban Scotland that is suffering the sort of population decline that is faced, for example, in the Western Isles. I would be delighted to visit IBM in Greenock and to use it as an example to attract others to Scotland.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I welcome the First Minister's statement. As I am the member for Caithness, Sutherland and Easter Ross, nobody needs to tell me about the declining population. In some of the remotest parts of Scotland, we see its effects at their most awful.

One matter that will further discourage people from coming to live in the far north is the problem, which the First Minister knows about, with consultant-led maternity services, doctors and dentists in Caithness. As those people go, we will discourage people from staying in the far north or from moving there. Does he agree that the policy that he has outlined today will give us a chance to address that problem by taking those professions into the areas of Scotland where they are needed? Will he assure the chamber that he will encourage the relocation advisory service to think along those lines? Will he encourage it to work hand in hand with, for example, Highland NHS Board, the social work department and other agencies, so that there can be a complete overlapping of policy?

The First Minister: The Executive would want the relocation advisory service to work closely with public bodies that are recruiting specialists in those areas. That would particularly be the case in those parts of Scotland that are suffering shortages. I add one caveat to that: it is important that we in the developed world do not unfairly remove skilled workers, particularly in the public sector, from parts of the world that desperately need them. I am thinking of, for example, parts of Africa that are suffering substantial losses of doctors and teachers because of AIDS. At the same time, there are parts of the world and groups of professions from which we can attract people to work in this country to fill the gaps until we are able to train more doctors, consultants, dentists and others. In such cases, I would be very keen that we take up those opportunities.

Mark Ballard (Lothians) (Green): I welcome the First Minister's achievement of developing flexibility in the UK immigration system and his recognition that education is one of the key ways in which to attract people to Scotland. I would therefore like to know whether he and the joint working group that he mentioned will consider flexibility in the international students visa. As he is aware, the new international students visa charge was introduced last year with no consultation and only three weeks' notice. Each international student has to pay between £150 and £250 for their visa. Surely, as part of the move towards flexibility, it would be an important signal to would-be students that Scotland really welcomes them and the skills that international students studying in Scotland can bring if that charge were to be waived when they came to study in Scotland.

The First Minister: The issue of the international students visa is a complex one, because large numbers of such students are sponsored by their Governments or by private interests in their own countries to come here for initial training. I recognise that, in those circumstances, it is not unreasonable for our Government to recoup the costs. However, the issue of the costs associated with applying for a visa is one that the Executive might want to consider in future in the light of experience. We would certainly keep an open mind about whether there is a need for us to address that issue in order to secure sufficient numbers of students, and to retain them in Scotland.

Nicola Sturgeon (Glasgow) (SNP): I welcome the positive tone of the First Minister's statement at a time when, unfortunately, so much of the commentary around immigration tends to be negative. Does he agree that, as well as try to attract new people to Scotland, we should seek to use the talents that are already here? In that spirit, will he encourage the Home Secretary to restore to the thousands of highly educated and skilled

asylum seekers already living in Scotland the right to seek permission to work? Does he agree that that would be of benefit not only to the Scottish economy, in matching skills to labour shortages, but to the asylum seekers themselves, who desperately want to make a contribution to Scottish society and not to be forced to be dependent on state handouts?

The First Minister: That it is a reserved matter. I do not necessarily speak on behalf of the—[*Interruption.*] The member should listen to the point before intervening.

I do not necessarily speak on behalf of the whole coalition partnership, but my view is that the best way to assist asylum seekers is to determine their cases as quickly as possible so that work is available for those who have been granted asylum and refugee status in this country. As the member knows, we were involved in discussions with the Home Office last year to help with that process. When people seek asylum in this country, we do what we can to help them to integrate with the local community. The best way to have those who are genuine asylum seekers and those who will get refugee status in this country working is to process their cases quickly and to secure that opportunity for them.

Jackie Baillie (Dumbarton) (Lab): Like many others, I welcome the First Minister's statement. As someone who has a Portuguese father and a Scottish mother and was born in Hong Kong, I recognise the benefits that in-migration can bring to any country. Unlike the SNP, I think that what we are discussing is an example of devolution working at its best—a clear demonstration of strength in working together with our colleagues in the UK Government. The First Minister is to be congratulated on his efforts.

Given the First Minister's comments in response to the point that Jamie Stone made, will he consider specific measures, such as the international fellowship scheme and the global recruitment programme that the Department of Health at Westminster runs, to encourage consultants and other medical professionals from around the world to come to Scotland?

The First Minister: I think that those schemes are important, subject to the caveat that I mentioned earlier. There are pools of talent around the world that we can use in our public services, but this is also about a growing, vibrant, thriving private sector in the Scottish economy and ensuring that the skills are there to enable existing and new companies to grow and create the wealth that will fund public services.

Colin Fox (Lothians) (SSP): The fact has been welcomed that the First Minister—the same First Minister who remains silent over the imprisonment of children at Dungavel—has been vocal today about the need to attract more migrants to Scotland. Is not the tone of his remarks today in welcoming labour from abroad in stark contrast to that of those made in the past, when economic migrants were considered scroungers and undesirables? Is it not the case that the Executive is sending out the message today that it wishes to welcome the rich and talented, but reject the poor and needy?

The First Minister: Absolutely not. Those who will be able to make a contribution to our communities and to growing Scotland's economy in the years to come will come from many walks of life and many countries. We should not be selective and derogatory in the way that Colin Fox implies. I have never used the word "scroungers" in relation to anybody in our society, but I make the distinction between skilled migrants—people making a contribution to our economy whom we need to attract—and those who would come here simply to claim benefits. David Blunkett's announcements earlier this week struck the right balance between planning for managed migration that gets our economy growing and ensuring that migration does not become a drain on our economy. That is a good balance and it can win public support.

Murdo Fraser (Mid Scotland and Fife) (Con): I welcome the First Minister's commitment to tackling the issue of population decline, although whether his measures will be effective remains to be seen. I have a specific question for him on visas for foreign students, which is something about which my colleague David McLetchie asked him, although the First Minister did not answer the question. How many of the 13,000 eligible students does he believe will take up the offer? Given that the Executive is keen on targets, will he tell us what is his target for the number of foreign students who will wish to stay on in Scotland?

The First Minister: As I said earlier about our challenge, there is no target—we should not have limits on our ambitions in the same way that we should not have reductions in our targets. We need to retain or attract into the Scottish population on average 8,000 more people every year between now and 2009 in order to stop our population falling below 5 million. That is a good starting point and we should try to achieve it. To do so, we could ensure that the net outflow of migration from Scotland each year, which is approximately 2,000 people, is reduced between now and 2009. We could attract more of the 13,000 overseas students from outside the European Union to stay here—approximately a third do so just now. It would not take a huge increase to make a significant step towards that figure. We could also attract more people—both students and people who have not been

students—from inside the EU and the UK and from elsewhere in the world to make their contribution.

The students whom I met this morning in Edinburgh had done their degrees in Mexico, Spain, Belgium, Egypt and other parts of the world and had come to Scotland to carry out pioneering research, which they described as the best in the world. We should not limit our ambitions simply to attracting overseas students who are graduating here, but they are a key target market for us—if I can put it that way. They are a huge resource that we are not tapping sufficiently and that is why we have given them such priority as a starting point for the fresh talent project.

Irene Oldfather (Cunninghame South) (Lab): Will the First Minister agree to examine the opportunities that could be afforded to Scottish business and education by the recruitment of native linguists with experience and knowledge in particular of the new EU member states and their business and education cultures? Does he agree that that could open the way for future investment and economic partnerships with the accession countries at a time when their economies will be developing and attracting quite a lot of European regional development money?

The First Minister: Irene Oldfather's comments are valid. The point that she makes in relation to the eastern European countries that will join the EU is one that should not concern people in Scotland. People from Poland, Lithuania and other eastern European countries came here after the second world war, worked hard and became proud to be part of our communities. They have made a significant contribution to Scotland over the years. Whether people come from eastern Europe or from countries whose languages are more commonly used in Scotland, such as France and Spain, it is not only their linguistic skills but their connections that can be put to use. The professor leading the project that I visited this morning made a good point. He said that the researchers who are working for him are winning him contracts in France, Mexico and elsewhere not only because they can speak the languages but because they can promote Scotland in their home countries. That will be a powerful tool for Scottish business in the years to come.

Alex Neil (Central Scotland) (SNP): I welcome the First Minister's statement—in particular, I welcome the inclusion of many of the proposals that I included in my paper on depopulation three years ago.

I want to make two practical suggestions. One of our key objectives is to retain home-grown and foreign graduates in Scotland. Will the First Minister consider making greater use of the graduate placement programmes that are currently run successfully by Scottish Enterprise and Highlands and Islands Enterprise as a way of boosting the retention of graduates in Scotland and simultaneously helping small and medium-sized enterprises?

Secondly, the First Minister said earlier that this was an initial statement and mentioned the problem of a relatively low birth rate. Will he address that issue and learn the lesson of countries such as Sweden and France that have attempted to boost their birth rate by introducing more comprehensive child care policies so that parents can mix career and family? That is something to which I am sure that everyone in the chamber would want to make their own contribution. [*Laughter.*]

The First Minister: One has to be careful when talking about such subjects but I am sure that every member will want to join me in congratulating Paul Martin on today's addition to the Scottish population—a little girl who was born this morning at 10 o'clock, I believe. I hope that she is fresh talent.

Alex Neil's contribution was helpful. He is right to say that the programmes that are being run by Scottish Enterprise and Highlands and Islands Enterprise are good. They will certainly have a part to play in the initiative that I have outlined today.

On the issue of the birth rate, there is considerable evidence that the provision of additional child care does not necessarily encourage parents to have more children and that, in many cases, it can encourage people to stay on at work and not have more children. A mixed message can be sent by that proposal.

Any improvements in Scotland's birth rate would deliver an improvement in our working-age population in around 20 years' time. However, the problem that Scotland faces is immediate. I believe that we should follow the international examples that have worked best, which are those that have tried to attract fresh talent from abroad. As I said earlier, if we do that, we can succeed.

Criminal Procedure (Amendment) (Scotland) Bill: Stage 1

The Deputy Presiding Officer (Murray Tosh): The next item of business is a debate on motion S2M-473, in the name of Cathy Jamieson, on the general principles of the Criminal Procedure (Amendment) (Scotland) Bill.

15:20

The Minister for Justice (Cathy Jamieson): I am pleased to open this debate on the general principles of the Criminal Procedure (Amendment) (Scotland) Bill on behalf of the Executive. Our partnership agreement gives our clear commitment to reform the operation of the High Court. The outcomes that the bill will deliver are of crucial importance to every person who has an interest in our supreme criminal court functioning well—that is, to every man, woman and child in Scotland.

I begin by placing the bill in the wider context of what the Executive is trying to achieve. To deliver a stronger, safer Scotland we must have a public justice service that is designed around the needs of the law-abiding many and not for the law-breaking few. Modernising justice in Scotland means putting victims and witnesses at the heart of the criminal justice system. Radical, reforming measures are already under way: the Vulnerable Witnesses (Scotland) Bill will ensure that the courts consider the needs of the most vulnerable witnesses; the report by Sheriff Principal McInnes on his review of summary justice will be published next month; and the Crown Office and Procurator Fiscal Service has received significant extra resources to enable it to prosecute crime more effectively. A strategic review of legal aid is under way and is due to report in June with recommendations, and the Sentencing Commission, under the chairmanship of Lord MacLean, a High Court judge, is considering sentencing and bail issues.

Our plans to reform the High Court are a key part of our package of reforms that will modernise the criminal justice system from top to bottom. Let me remind members why that is so important. The High Court of Justiciary should be a model of efficiency to all those who come into contact with it; people should feel that they are being treated fairly and sensitively. However, in reality, the High Court has fallen well below that ideal in recent years. For example, the number of motions to adjourn High Court trials increased sixfold between 1995 and 2001, mainly because parties were not fully prepared. It is not uncommon for a High Court case to be adjourned four times and for it to be called in a different city each time. I have heard horrific stories from victims and witnesses who have been caught up in the delays and who have prepared themselves for court time and again, only to find cases not called. Stress and frustration build up, which leads to a loss of faith in the system rather than a sense of justice being delivered.

In 2001, four out of every 10 sentences that were passed by High Court judges could have been passed by a sheriff—we need to address that.

Bill Aitken (Glasgow) (Con): Will the member take an intervention?

Cathy Jamieson: I will comment more on that point, but if the member has a specific question I will try to address it.

Bill Aitken: Table 13 in Lord Bonomy's excellent report highlights the high percentage of cases in which a sheriff court disposal was allocated, but nowhere is it defined for us the state of the indictment on which the judge sentenced, namely deletions, findings of the jury and so on. Are those figures available?

Cathy Jamieson: I will come back to that point later in the debate.

The Criminal Procedure (Amendment) (Scotland) Bill is part of our response to the various difficulties that we have experienced. We want to introduce greater certainty into proceedings—that is a particularly important outcome for victims and witnesses—and to foster a culture that encourages better communication between the Crown and the defence and earlier preparation by both parties. Those objectives have not been plucked out of thin air; they follow from the extensive consultation and discussion by Lord Bonomy and his committee and further consultation by the Executive.

I would like to record the Executive's thanks to everyone who has contributed to the process. What has struck me about the consultation to date is that, although there might be different views about some of the detailed elements of the package, there is a powerful consensus across the spectrum of stakeholders about the key goals and a genuine willingness to listen and to engage with each other.

I am grateful to the Justice 1 Committee and its staff for considering the bill so carefully and producing such a clear and thorough report. I am encouraged that the committee endorsed broadly the key goals of the legislation and the wider reform programme. I am especially pleased that the committee and many of the witnesses that it interviewed accepted our arguments for changing the time limits. Those changes are the cornerstone of the bill and will be crucial in improving the court's efficiency. However, it would have been

surprising if the process had not raised questions. Stage 2 will provide an opportunity for close scrutiny of the issues. As stage 2 progresses, we will listen carefully to committee members and maintain a dialogue with stakeholders.

I will respond to three of the main issues that the committee's report raises. First, I will talk about the increase in sheriffs' sentencing powers. The case for increasing capacity in the High Court by transferring cases to sheriff courts is compelling. We are fortunate that a mechanism is available to enable that to happen quickly. Section 13 of the Crime and Punishment (Scotland) Act 1997 provides for sheriffs to impose sentences of up to five years. Last summer, the white paper "Modernising Justice in Scotland: The reform of the High Court of Justiciary" made clear our intention to commence that provision in spring 2004 subject to discussion with sheriffs principal, who have responsibility for business planning in the sheriff courts.

I know that the committee has concerns about early commencement. The sheriffs principal have been consulted on the potential impact of that commencement and, in the light of their views, I am reassured that with the necessary degree of stability in the provision of judicial resources and with careful planning and management of judicial, staff and court resources, the sheriff courts will be able to accommodate the estimated increase in solemn business. The Executive remains committed to commencement in spring 2004. However, I will take time to reflect on what the committee has said. I have asked officials to continue to discuss the implications of early commencement with the various interests, including the relevant trade unions. I will make an announcement on timing as quickly as I can.

The provisions that extend the use of electronic monitoring to support bail conditions respond to views that were expressed in an earlier consultation on electronic monitoring in Scotland. The consensus was that monitoring should be targeted on the small number of cases in which it could provide the additional security that would allow someone who would otherwise be remanded to remain in the community. Before extending the availability of electronic monitoring in bail cases, we will use a pilot scheme to test its impact.

I note the committee's concerns about tagging witnesses. I will return to the overall context that I set out initially. We need to strike a balance that recognises the needs of victims as well as those of others in the system. I am well aware that most witnesses attend court proceedings, no matter how reluctantly. However, some people are obstructive and deliberately do not attend, which causes trials to be adjourned and causes distress to victims and their families. At present, there is often no choice in such cases but to imprison a reluctant witness. Tagging will give the court an alternative to imprisonment—it will restrict the person's movements and provide the means to monitor compliance with those restrictions.

I am well aware that our plans to allow trials to take place when the accused is absent have been controversial, but they are an important element in helping us to rebalance the system in favour of victims. We are not talking about a trivial number of cases. In 2002, 90 trials were abandoned in the High Court because the accused failed to appear. In the sheriff court, the figure was 430.

Of course, safeguards are needed to ensure that trial in the accused's absence happens only when every avenue has been pursued to try to find the accused, but we must bear in mind the perspective of victims, to many of whom justice is denied when an accused absconds. I note what the committee's report says and I welcome the fact that the committee at least accepts the principle that if evidence has been led and the accused absconds, the trial should be concluded. We will continue to consider the committee's comments carefully. Officials will continue to discuss the concerns that have been expressed by others, including the Law Society of Scotland.

I have had only a short time to introduce the debate and I will now make a few concluding points. I welcome the committee's recognition that High Court reform is not simply a matter of legislation. A deep-seated culture change is needed among all High Court practitioners to ensure that we have an efficient and effective court system that is fair for the accused and for victims and witnesses. I am very pleased that there appears to be a shared willingness to embark on that radical culture change. Officials from the Justice Department, the Crown Office and the court service are already working closely with all the relevant interests to ensure that implementation of the legislation will take place smoothly and on schedule in April 2005. A programme board is driving that process and it will develop plans for training, monitoring and evaluation of the reform programme.

Scotland deserves a world-class criminal justice system. The reform of our High Court is a vital component in our package of reforms. By agreeing to the principles of the bill, Parliament will take a vital step forward in delivering a justice system that is fit for the 21st century. I ask for Parliament's support for my motion.

I move,

That the Parliament agrees to the general principles of the Criminal Procedure (Amendment) (Scotland) Bill.

The Deputy Presiding Officer: I am obliged to the minister for sticking to the time limit. The time for the debate will be very tight indeed.

15:30

Michael Matheson (Central Scotland) (SNP): Scrutiny of the bill proved to be a complex piece of work and I am grateful for the assistance that was provided by our advisers, Paul Burns and Professor Christopher Gane, in keeping us right on court procedure in Scotland's High Court.

As the minister stated, the background to the bill is Lord Bonomy's review, which was thorough; the process of the review ensured that those who were stakeholders in the High Court system had an opportunity to give their input. The broad aims of the bill are welcomed. It was clear from the evidence that the committee received that the bill has the potential to reform our High Court system in a beneficial way.

The principle of early disclosure is key to ensuring that the bill is effective in delivering the changes that are proposed for our High Court. The bill will introduce measures that depend on improved communication between the Crown and the defence at an early stage. A considerable body of evidence that was received by the committee emphasised the importance of early disclosure from the Crown to the defence to allow early preparation of cases.

Unfortunately the bill, as drafted, does not implement Lord Bonomy's recommendation on the practice of disclosure. In giving evidence to the committee, everyone—including the Crown—acknowledged the need to improve the process of early disclosure to the defence. However, I do not believe that the Executive's approach—that the issue can be dealt with sufficiently by using a practice note—is the best way to go about ensuring that early disclosure takes place. The Law Society of Scotland was correct to point out in its evidence that early disclosure is the bill's key provision in relation to preliminary hearings, which will not be effective without it. I hope that the Executive will reconsider the possibility of ensuring that the bill will provide for early disclosure to take place, in line with Lord Bonomy's recommendations.

As it is proposed in the bill, the new preliminary hearing is the centrepiece of a package of measures that will build upon the anticipated early communication and disclosure to which I have referred. Integral to the preliminary hearing is the switch from a sitting system to a system of fixed trial dates. Although switching systems might appear on the surface to be straightforward, members should not underestimate the practical implications that that would have for the daily workings of our courts. The committee and I are aware that extensive work is going on to ensure that that can be implemented adequately.

The committee has outlined its concerns in paragraphs 54 to 58 of its report. I welcome the fact that the minister is already committed to reconsidering section 83 at stage 2. It is crucial that our court administration system, those on the bench, the Crown, and the defence have the resources and systems in place to prove the preliminary hearing system to be effective.

I turn to the new time limits that the bill seeks to introduce. Section 9 will amend section 65 of the Criminal Procedure (Scotland) Act 1995, which contains the time limits for proceedings on indictment in the High Court and sheriff court. Prior to considering the bill, I was opposed to the creation of a new 140-day rule that would end the long-standing 110-day rule, which requires that the trial of an accused who is remanded in custody must start within 110 days of full committal. The 110-day rule has often been referred to as the jewel in the crown of the Scottish criminal justice system. The bill proposes that the 110 days should be extended to 140 days and that the preliminary hearing should take place by the 110th day. That would provide an additional 30 days beyond the 110 days within which the court would have to fix a trial date.

The Justice 1 Committee received mixed evidence on the proposed change to the 110-day rule. The Law Society of Scotland, the Scottish Human Rights Centre and the Howard League for Penal Reform in Scotland all opposed the planned change. However, as the committee took evidence, it became apparent that the 110-day rule can be a moving target. The 110th day can move from day to day if the time limit is extended. Surprisingly, even if the 110th day is moved forward, it is still called the 110th day. Therefore, what is often referred to as the 110th day is not necessarily the 110th day after full committal for trial.

The balance of the evidence that was presented to the committee was that, if we are to address effectively the delays within the High Court system, we will require a package of measures including those that deal with timescales. I continue to hold reservations about extending the timescale. The 140-day limit must be the outer limit. Every effort must be made to ensure that trials take place as early as possible. Any further extension of the timescale would be entirely inappropriate.

The evidence that the committee received raised serious questions about the practicalities of the proposal to allow trials in absence of the accused. The evidence also suggested that the failure of an accused to appear for trial is not a significant problem. That view is held by both the Law Society of Scotland and prosecution practitioners. As the Scottish Human Rights Centre highlighted, the simple problem with the proposal is that we will be unable to identify the accused in the dock

because the accused will not be there. Furthermore, the Sheriffs Association believes that such a trial would be a waste of time because, once the person who had been convicted was eventually arrested, they would appeal against their conviction. The majority of the evidence that was presented to the committee—including the evidence of the Lord Justice General, Lord Cullen—was opposed to the proposal for trial in absence of the accused. I hope that the minister will reconsider the matter at stage 2.

The bill contains many good things and the SNP supports the general principles of the bill at stage 1.

15:38

Margaret Mitchell (Central Scotland) (Con): The Criminal Procedure (Amendment) (Scotland) Bill is extremely important as it seeks to introduce greater certainty into the proceedings of the High Court of Justiciary by introducing measures that, for the most part, were recommended in Lord Bonomy's report "Improving Practice". At the heart of the measures is the requirement to develop a more managed system that promotes better communication between the prosecution and the defence and earlier preparation by both parties. We welcome the general principles of the bill and congratulate the Scottish Executive on recognising and prioritising the need for the legislation.

Lack of preparation by the prosecution or the defence and late submission of evidence—mostly by the Crown—are the two main reasons for delays in business in the High Court. To address those delays, there must be improved communication between the Crown and the defence at the earliest possible stage. In other words, there must be early disclosure of evidence to provide the opportunity for the exchange of information to assist with the early preparation of cases and to identify cases that are ready to go to trial.

The Procurators Fiscal Society has confirmed that, at present, disclosure does not happen in a consistent manner. There must be a fundamental change of attitude on the part of both the Crown and the defence so that a culture of early disclosure is embraced. The monumental shift in thinking that that will require should not be underestimated. Although I am encouraged that the Crown Office representatives state that they are already embracing the early-disclosure culture for complex cases, I am deeply concerned that there is still a tendency for cases that, on the surface, appear to be straightforward not to be subject to the same early-disclosure culture.

By far the best way of resolving issues in the early-disclosure process and of assisting in the preparation of a case for trial is for a meeting—referred to in the Bonomy report as a "managed meeting"—to take place between the prosecution and the defence. The prosecution and the defence would be required to meet prior to the preliminary hearing to establish which issues required to be resolved if the case was to be disposed of or to allow it to go to trial at the earliest opportunity. I believe that for the meeting to have maximum effect, it should be held face to face. Videoconferencing equipment that is to be introduced for vulnerable witnesses could be introduced in courts throughout Scotland to allow face-to-face meetings to take place.

With an early-disclosure culture and a managed meeting having taken place, the aim should be for the mandatory preliminary hearing to become merely a ticking and bumping exercise, confirming that the parties are prepared for trial and allowing the judge to set a trial date. Early disclosure and the managed meeting are the real key to ensuring that the system works. The Justice 1 Committee recognises that and is concerned that the bill does not include proposals for early disclosure of evidence and does not mention or specify arrangements for the managed meeting. I hope that the Scottish Executive will rectify that omission.

Other areas on which the committee disagrees with the Scottish Executive include the proposals relating to trial in the absence of the accused, reluctant witnesses, bail conditions—including the appropriateness of remote monitoring as a condition of bail—and timescales for the shift of business to the sheriff court. Underlying the committee's comments on those proposals and suggestions for change is the recognition of the absolute necessity of ensuring that the measures that are proposed in the bill are adequately resourced.

I share the committee's concerns and agree with its recommendations. I pay particular tribute to the Justice 1 Committee convener, Pauline McNeill, and the committee clerks and advisers for the work that they have done. If the issues that have been highlighted and the committee's recommendations are taken on board, the efficiency and effectiveness of the bill will be improved greatly.

The one issue on which I differed from my colleagues on the committee was the proposal to extend the 110-day rule for those who are remanded in custody. The principle that an accused person is innocent until proven guilty is enshrined in the Scottish legal system. It is therefore unacceptable for an accused person to be denied their liberty for any longer than is absolutely necessary. Quite simply, justice delayed is justice denied. With early disclosure

and managed meetings, there is no reason that indictments in the majority of cases—apart from the most complex cases—should not be served well before the 80th day, with the subsequent mandatory preliminary hearing being set at a time that would enable the trial date to fall within the 110 days. In complex cases, that may not always be possible and there may be a delay. At present, that happens in only 25 per cent of cases. The new early disclosure and managed meetings should ensure that that percentage is reduced.

In these circumstances, the exception should not dictate the rule. In effect, that is what is proposed by the extension to 140 days of the time that an accused person can be held in custody. Implementing the extension of the 140-day rule provision could result in the accused being held in custody for up to 12 months if bail is refused. That is unacceptable.

The Conservatives support the Justice 1 Committee's recommendations, with the exception of the proposal to extend the 110-day rule, which would delay justice unnecessarily. We are firmly of the opinion that the case has not been made for ditching the rule, which has existed for centuries and has become, and should remain, the cornerstone of the Scottish criminal justice system.

15:44

Margaret Smith (Edinburgh West) (LD): I welcome the bill, which has attracted general support from all parts of the criminal justice system and forms a key part of the Executive's reforming justice agenda.

The Justice 1 Committee has been scrutinising the bill for several months. I thank not only our committee convener and clerks, but our excellent advisers, Professor Christopher Gane and Paul Burns. I thank the bill team and the many individuals and organisations who have given us evidence, both formally and informally, at committee and on court visits. I also thank Lord Bonomy for his initial work.

The bill is designed to introduce greater certainty into High Court proceedings and to help develop a culture of a more managed system with the emphasis on better communication between the Crown and the defence and on earlier preparation by both parties. Crucially, that better communication and earlier preparation will be assisted greatly by early disclosure, which is critical if there is to be effective dialogue. The Procurators Fiscal Society has admitted that there is no standard system of disclosure at present. I will return to that in a moment.

One of the key parts of the bill is the establishment of preliminary hearings, which will have a central role in the better management of court time and in the reduction in the number of adjournments. Lord Bonomy found that 33 per cent of High Court cases in 2001 were adjourned at least once. In such circumstances, victims are victims twice over—once at the hands of the criminal and then again at the hands of the criminal justice system. If preliminary hearings are used effectively, they will introduce greater certainty, although it is clear that no system will deliver absolute certainty and we should not underestimate the practical problems in introducing a shift to a more fixed trial system.

The preliminary hearings system should increase the number of early guilty pleas; that has been found to be the case in the sheriff court. In the High Court, 65 per cent of pleas are tendered at trial, whereas in the sheriff court that figure reduces to 30 per cent. That situation is made more likely with early disclosure so that the defence can make an early decision about the strength of the Crown's case. That is why the committee suggested that the Executive consider inserting a provision in the bill to reflect Lord Bonomy's recommendation that the Crown should provide the defence with information about material developments in the investigation of the case as they occur and let it have access to all relevant evidence as it becomes available. It is important that the preliminary hearing is as meaningful as possible and we welcome the concept of the managed meeting in order that the two parties can have the earliest possible discussions.

It is clear that greater resources will be required in the justice system to fund the changes. The new system will require greater judicial management of cases; there will also be a greater fiscal work load as a result of managed meetings, the need for a written record and preliminary hearings.

One of the most contentious issues has been the extension of the 110-day time limit in custody cases. The reforms are about the introduction of a realistic system that can be delivered. Introducing a further 30 days to accommodate the preliminary hearing and to better reflect the greater complexity of many modern High Court trials seems sensible. The prosecution will still have to indict the accused at 80 days, but the extra days should reduce the number of adjournments, many of which are currently requested by the defence because of the late delivery of evidence by the Crown. It became clear to the committee that the so-called jewel in the crown—the 110-day rule—was already unattainable and was a moving target. The average additional length of time that was spent in custody was 34 days, which suggests that the 140-day target should be achievable.

The committee heard mixed evidence on the matter, including concerns that were raised by the

Law Society of Scotland, but in the end, the vast majority of us, with the principled exception of Margaret Mitchell, were persuaded that 140 days was a more realistic limit and that it still represented a much shorter period than is in operation anywhere else, as the Faculty of Advocates pointed out. However, every effort must be made to ensure that 140 days is the exception rather than the rule and that the situation is monitored closely.

Trial in the absence of the accused was the committee's major concern with the bill. Section 11 allows a solemn trial to go ahead in the absence of the accused and makes provision for the court to appoint a legal representative in the accused's absence. The committee and the overwhelming majority of the witnesses to whom we spoke had problems with that section, not only on issues of principle, but in practical terms. The minister said that the Executive's intention was to save victims and witnesses having to go through trials twice. She admitted that, last year, warrants were made out for the recovery of 90 people who absconded, but we are unclear about the details behind that figure. We believe that there are important principles at stake and that the accused would not get a fair trial in their absence.

After taking formal and informal evidence from legal practitioners, we were convinced that the proposal on trial in absence is not workable. However, we saw some merit in allowing a trial to continue when all the evidence had been laid. Practitioners to whom I spoke said that it would be more effective to increase the length of time that could be added to a sentence, if an accused does a runner, from two years to 10 years.

The committee was concerned about aspects of section 12, which will introduce measures to deal with reluctant witnesses. I heard what the minister said about the measures being a pilot scheme. However, having heard evidence on the issue, the committee felt that much more could be done to support all witnesses with witness packages. We ask the minister to look again at the issue.

The committee generally agreed with the proposals to shift business from the High Court to the sheriff courts and to increase sheriffs' sentencing powers from three years to five years, although, again, we heard mixed evidence. I am sure that sheriffs are capable of dealing with the sorts of cases that are likely to be shifted. However, the committee has concerns about legal aid and feels that those who have the right to representation by counsel in the High Court should have the same right when business is shifted to the sheriff courts.

Generally, I welcome the bill, but it is difficult in six—or even seven and a half minutes—to do justice to a complex and important bill.

The Deputy Presiding Officer: We move to open debate. The time limit for each speech is a strict six minutes.

15:51

Pauline McNeill (Glasgow Kelvin) (Lab): I, too, thank the clerks, our advisers, Chris Gane and Paul Burns, and the committee members. I can vouch for the fact that the bill is the 10th one with which I have been involved; that is probably also the case for Michael Matheson. Members worked hard on the bill because we wanted to do a thorough job. Therefore, we welcome the positive comments that the minister made this morning. It is fair to say that the bill is probably the most complex one with which I have been involved. When we went to see Lord Bonomy, I was pleased to find that he, too, thought that the bill was a complex construction—so we did not feel so bad.

The backdrop to our report was our consideration of a strong Finance Committee report on the bill, which asked us to consider the bill's resource implications and whether a new procedure was needed in the High Court.

The question of the culture change that the bill will make is important. We were all struck by the consensus on the issue among witnesses. They said that they wanted changes and supported the introduction of the new preliminary hearing, which will be more than just a procedure. As we said in the report, the new preliminary hearing will be the centrepiece of an important process that is designed to ensure that there is early disclosure, particularly of the Crown's case, so that parties are more ready to continue when a trial comes about because witnesses and others who would normally attend a trial much earlier will be relieved of doing so, as issues will have been agreed much earlier in the process.

As has been said by others, early disclosure is believed to be the key aspect of the process. We heard evidence from the Law Society of Scotland and others that an early disclosure provision should be included in the bill. We asked the Executive to consider providing stronger mechanisms to ensure that early disclosure takes place and is not left to chance. For the same reason, when we considered the managed meeting, which is part of the process, we said that the presumption should be that there will be face-to-face meetings. We understand the practicalities of doing that, but we are trying to think of ways of ensuring that, early in the process, there are mechanisms that not only facilitate positive thinking and a culture change but ensure that there will be face-to-face meetings.

It is clear to me that there is a great onus on the Crown Office to make early disclosure work. A trail

of witnesses blamed the Crown Office for submitting late evidence, which was a bit unfair. I admire the Crown Office's commitment to making the early disclosure procedure work and we want everyone to recognise that commitment. However, the committee wants resources to be put in place for the procedure. We also suggested that, as a gesture of good will, the defence should be required to issue its list of provisional witnesses at the same time as the Crown Office. That would be just a small gesture that would indicate that the defence, too, was committed to the culture change.

Fundamental to the change is the question of deadlines, which is an important issue because some deadlines will change. Seven days prior to a preliminary hearing, everyone will submit their evidence and a judge will assess whether there is agreement or not. To that extent, it is important to note the changing role of judges in the process. They will be much more hands-on and will need the resources to be able to guide the system in its early days.

Witnesses repeatedly mentioned the Crown Office's use of section 67(5) of the Criminal Procedure (Scotland) Act 1995 as a mechanism for submitting late evidence. My strong feeling on that is that the bill is about creating certainty. It should not be about upsetting the balance of the interests of justice and there is a real danger of that if we do not fix that problem properly in the bill, to allow the Crown to submit late evidence where there are special circumstances. We have heard that forensic evidence in particular can delay a case. We wrote to Strathclyde police to ask for any guidance that they could give us on any changes to the system to ensure that forensic evidence was available to the Crown when it should be, and we got a very important response to that inquiry.

The question of time limits has already been addressed by Michael Matheson. It is quite a complex issue and it took us rather a long time to get our heads round some of the details. The proposal involves moving the 110-day limit, but it took us much longer than that to understand the details and just when we thought we understood it we realised that there was still a bit more to the problem. It is important to note that there are fundamental changes from the old provisions to the new provisions, because whereas an accused was free for all time after 110 days—a provision that I support—now, in each circumstance, an accused is entitled to be admitted to bail. I would like to say something about the phrase "admitted to bail". We presumed that that meant an automatic entitlement, but we need to be clear about the fact that, in the bill, that phrase means that there will be a hearing, not simply that someone will be released on bail.

Other members have talked about trial in the absence of the accused. We understand why the measures are in the bill. They are all measures designed to reduce delay, but we had difficulty getting support for some of them. There are issues around bail conditions that we feel need to be examined much more closely, particularly with regard to remote monitoring of bail conditions. We had difficulty pinning down the Executive and its bill team on where that provision was focused. If the provision is to allow a small number of cases—perhaps women offenders who do not need to be in jail—to be handled differently, we would have liked to know that, but at the moment we do not feel that it stacks up.

Finally, I would like to comment on moving business from the High Court to the sheriff court. I am concerned about the work-load issues involved, although we did not have problems with the sentencing powers. I have looked at the question every which way. I am not a mathematician, but I cannot accept that moving 20 per cent of business down to the sheriff courts results in 7 per cent more work for those courts. I know that that is a trick and that the extra work load must be in the system somewhere. It is important that the timing is handled properly. The Procurators Fiscal Society of Scotland told us that it was not involved in talks with the Crown Office. That concerned me, because if the people in the front line are to ensure that there is a smooth translation, they must be involved.

15:57

Mr Stewart Maxwell (West of Scotland) (SNP): I join fellow members of the Justice 1 Committee in thanking the witnesses who came along, the advisers and the clerks for helping all of us out in handling a complex piece of legislation. It is not my 10th piece of legislation but my first, and I found some difficulty in getting my head round it at the start.

The reform of the High Court is a major piece of work and the Criminal Procedure (Amendment) (Scotland) Bill is a major bill. It is critical that we get it right. If we make a mistake at this stage, that mistake will be with us for quite some time to come, so it is important that we get the basics right when making this change. I certainly welcome the general thrust and the general principles of the bill and its intended changes, but its success is dependent on all the different elements of the bill working together, as well as the measures that are not in the bill. Also, and most important of all, there must be a change in the general culture of all parties working in the system.

One of the most important aspects of the changes is early and full disclosure by the Crown to the defence. That is critical to the success of the

bill, but it does not form part of the bill. Perhaps the Executive should reconsider its opposition to that matter and accept the committee's view that a provision should be inserted into the bill that would reflect Lord Bonomy's recommendations in that area. One specific problem relating to early disclosure is that of police witness statements, and that issue arose on several occasions. Lord Bonomy recommended that a working group be established to look into the issue, but the Executive has so far rejected that proposal.

That issue has been discussed for decades. As I understand it, the debate has been going on for some 25 years without any progress being made, so it is time that we came to a conclusion on the matter and made some progress. I believe that the best way forward is for a working party to be established with a tight remit and a short timetable for completing its work, as Lord Bonomy suggested. I urge the Executive to change its mind on that matter and implement that recommendation as soon as possible.

One of the other critical factors in changing to the new system is managed meetings. Managed meetings are one of the proposed reforms but, yet again, they do not form part of the bill. Managed meetings will allow the parties to discuss some of the outstanding matters and the outcomes of meetings will be recorded and produced to the court. Given the importance of the managed meetings and the fact that they will pave the way for the preliminary hearings and will assist in making those hearings a success, they must be mandatory and should, wherever possible, be face-to-face meetings rather than conducted by telephone or e-mail.

The introduction of preliminary hearings is probably the most crucial change to the current procedure and the one that could be of most benefit to the system. A series of benefits should flow from the hearings. Those will include clearing up any outstanding issues between the parties, such as relevancy and competency; dealing with special defences; dealing with some issues surrounding the admissibility of evidence; dealing with vulnerable witnesses; addressing the state of preparation of the parties; dealing with the availability of witnesses; getting early pleas, which are very important—if we get early pleas in a reasonable proportion of cases, that will make a big difference; and establishing fixed trial dates.

Preliminary hearings are the centrepiece of the bill and their introduction is almost universally welcomed. However, introducing preliminary hearings means that it is necessary to change the 110-day rule to 140 days. When we started consideration of the bill my instinct was to oppose that change, as I was concerned about the possibility of prolonged incarceration of accused persons beyond 110 days. However, like some other members, I was unaware that the 110-day rule was a bit of a misnomer as in effect a trial could begin on the 114th day or, it seems to me, any other day beyond 110 days.

Bringing people to trial in as short a period as possible is central to our system of justice. After listening to the evidence, I am on balance persuaded that including the change to 140 days will not erode that principle. However, we need to monitor the situation closely to ensure that people are not being held for longer periods. A genuine concern is that there will be an upward drift in periods of incarceration. I accept the change to 140 days to gain the prize of the preliminary hearings, but we must ensure that that helps to speed up justice and does not slow it down.

On fixed trial dates, I certainly welcome the move away from sittings. However, there is concern that we may end up with the continuation of sittings by default if there is not a presumption of fixed trial dates. That concern was raised because of the possibility that there will be overuse of the provision that allows trials to be fixed from day to day—in other words, floating trials. I know that people do not like us to call them that, but trials that are being fixed from day to day seem to me to float. There must be a presumption in favour of genuinely fixed trial dates in the proposed new section 83A of the Criminal Procedure (Scotland) Act 1995. I think that the Minister for Justice has already said that the Executive will consider the matter again. I certainly welcome that assurance.

I am concerned about the courts' ability to fix trial dates. It is clear that many people expected that an electronic diary would be the answer to the problem of co-ordinating diaries between all the different parties involved. However, the evidence that we received indicated that the electronic diary is at the development stage and is some distance away from being implemented.

I do not want to say a great deal about trials in the absence of the accused. I fully support the comments on that proposal in the report. There is little support for the proposal and I believe that it would not be in the interests of justice if it were implemented.

I do not believe that the tagging of reluctant witnesses is a measured response to a perceived problem. It treats potential witnesses in the same way as convicted persons who have been tagged as part of their sentence. I commend the evidence given to the committee by the witnesses from the University of Wolverhampton and in particular their comments on the provision of witness care programmes. That would surely be a better way forward than tagging people.

On the issue of increasing the sentencing power of sheriffs, I am concerned—as are others—about the possibility of an upward sentencing drift in sheriff courts. I also share the concern of others about the removal of automatic representation by counsel for cases that are transferred to the sheriff courts from the High Courts. On the face of it, that seems to downgrade certain cases and to lead to a loss of rights for the accused persons. I ask the Executive to support what the committee has recommended in its stage 1 report.

The bill is a very important piece of work. It is a shame that we have only six minutes in which to speak. There are a lot of good recommendations in the committee's stage 1 report and I hope that the Executive will take them on board.

16:04

Bill Aitken (Glasgow) (Con): Lord Bonomy's excellent report on the running of the High Court painted an alarming yet honest picture of a system that is filled with delays and is in danger of being overwhelmed by the number of cases. His proposals contain a number of excellent suggestions. The proposals on increased judicial management of cases, the treatment of witnesses and High Court locations are all aspects with which the Conservatives could go along 100 per cent.

However, I want to highlight one or two issues in relation to which there are potential difficulties. First, the increase in the sheriff court's sentencing powers will undoubtedly reduce the High Court's case load but will inevitably lead to a corresponding increase of approximately 22 per cent in the sheriff court's case load. Like Pauline McNeill, I cannot quite get my head round how the measure can be implemented without placing considerable pressure in the short term on the sheriff court, which is already overburdened in places such as Glasgow. Although I accept that Sheriff Principal McInnes might well recommend an increase in summary sentencing powers to 12 months, along the lines that I suggested when we debated the criminal justice system, I recognise that there will be a difficulty in that respect. If the goal of the bill is to alleviate the burden on the High Court, it should succeed, but why should the lower court pay the price?

Public protection in relation to sentencing and plea bargaining issues must also be considered closely. Frankly, the appropriate time to plead guilty is at the intermediate diet in the lower courts, but of course the increase in diets that Lord Bonomy has recommended should lead to a reasonably satisfactory conclusion, in terms of an increased case throughput.

However, should someone get a substantial discount for a guilty plea? Early pleas symbolise the acceptance of responsibility and justify discounted sentences, but the bottom line is that it is unacceptable and outrageous that accused persons should be able to play the system—as currently happens—and exploit delays in the court system, to achieve delays in the time period during which they should face justice and to ensure that they receive a reduced sentence.

The abolition of the 110-day rule—or the extension to 140 days—is probably the most controversial and detrimental suggestion for the Scottish justice system. As the Deputy Minister for Justice will cheerfully confirm, I am all for locking people up, but I happen to like them to be guilty before they are locked up. That is a serious civil rights issue: the time that someone should spend in custody awaiting trial should be the minimum possible and if we do not have the resources to ensure that trials can start timeously—and clearly there is a problem, due to the number of adjournments that the Crown has to request—we must examine the system. We must change working systems and practices to make them more efficient and we must consider the resources. Frankly, not only is the proposal contrary to natural justice but it will damage the justice system. We have prided ourselves for many years on having a system that is fair to everyone.

Pauline McNeill: The Justice 1 Committee asked one witness whether we should preserve the proposal for preliminary hearings and stick with the 110-day rule. It was accepted that if the limit were not moved back, the Crown would have 30 fewer days in which to prepare its case—it would have 50 days. Does the member want to retain the preliminary hearing and the 110-day rule or does he want to dispense with the preliminary hearing in order to protect the 110-day rule?

Bill Aitken: We seek to expedite the system in a way that is consistent with the principle of fairness to the accused person. Clearly we want the system to be so organised as to minimise the time delay, so we would seek to confirm the earlier aspect. That is the way in which we must operate.

There is an important principle here: an accused person should not be in custody for any more than the minimum time necessary for the case to proceed. The 110-day rule places an added discipline on the Crown to ensure that that happens.

There is much in the committee report with which we can go along. We must examine the operation of the High Court and accept that the existing system is not working in the way in which we would like it to work. I think that there is a general acceptance of that on the part of the Executive. The voluminous document contains many evidently commonsense proposals that we will certainly support as the bill progresses.

The basis of the increased sentencing powers for the sheriff courts, however, leads to a degree of unease. The increase might happen in time, certainly but, in the short term, if we seek to implement the proposals too speedily and expeditiously, we will end up with a bottleneck at the sheriff court, which will be contrary to the smooth running of the system. Certainly, I think that the Minister for Justice and the Lord Advocate require to look again at the matter.

Margaret Mitchell quite correctly described the 110-day rule as the jewel in the crown of the Scottish legal approach to matters. Anything that would upset a system that has been in place for centuries has got to be looked at carefully first.

16:10

Bill Butler (Glasgow Anniesland) (Lab): I will preface my remarks by stating my appreciation, as other committee members have done, of the hard work, advice and thoroughgoing professionalism that was displayed throughout the preparation of the stage 1 report by the committee clerking team. I also add my sincere thanks to our two excellent advisers, Professor Christopher Gane and Mr Paul Burns—believe me, their help was invaluable.

As indicated in the report, our scrutiny of the bill was far from straightforward. As we said, the bill is a complex piece of work. I believe that the committee's labours have proved worthwhile.

A warm welcome has been accorded to the aims of the bill. The Sheriffs Association, the Law Society of Scotland, the Faculty of Advocates, police organisations and Safeguarding Communities-Reducing Offending indicated their view that the objectives of the bill are positive and, if realised, will reduce delays and inefficiencies.

As members have said, the bill is the result of wide-ranging consultation that arose in the main from the recommendations that were contained in Lord Bonomy's report, which was published on 11 December 2002. The Bonomy report demonstrated the urgent need for reform. Between 1995 and 2001, there was a 23 per cent increase in the number of new indictments that passed through the High Court. As a consequence of that, the culture of adjournment had grown to the degree that 56 per cent of trials at Glasgow High Court last year were adjourned. That is a wholly unacceptable state of affairs.

It is widely acknowledged that adjournments cause anxiety and distress for victims and witnesses and that they undermine public confidence in the criminal justice system. The reason why the bill is before the chamber today at stage 1 is to address such shortcomings.

In general terms, the bill seeks to introduce measures that will depend on improved communication between the Crown and the defence at an early stage. The guiding principle behind the main provisions that are contained in the bill is to create a culture that offers witnesses and victims greater certainty about matters such as the date on which a trial will proceed and so prevent unnecessary adjournments. I believe that that laudable, overarching objective of the bill is one to which every member in the chamber can subscribe.

The report highlights a number of elements in the bill that were met with general approval. As other members mentioned, those include the need for early disclosure, the managed meeting, the creation of preliminary hearings, the necessity for fixed trial dates, a more intensive role for judges in respect of the management of cases and the extension of time limits to 140 days. All those elements are viewed as essential to the construction of a more modern and more efficient Scottish justice system. The committee is in agreement on all the elements in the bill except for the dissent on time limits that was evinced by Margaret Mitchell.

In the short time that remains to me I will concentrate on one proposal on which the committee's judgment diverges from that of the Executive. I am referring to the provision that is contained in section 11 for a solemn trial to proceed or to be concluded in the absence of the accused. In her opening speech, the minister acknowledged that the provision was controversial; she was correct in saying so. Paragraph 135 of our report makes it abundantly clear that the

"Overwhelming evidence presented by practitioners and other witnesses suggests that it would be difficult for the person appointed to represent the interests of the accused to conduct the case in the absence of any information about lines of defence."

That very practical impediment is only one aspect of what the committee views as a worrying proposal.

The committee's worries spring from much of the evidence that it heard when the matter was discussed. For instance, the Law Society is not in favour of the provision and the Sheriffs Association expressed "very clear reservations", particularly if the accused is absent throughout the whole trial.

I realise that, although the overall percentage of people who fail to attend for their trials is small—in High Court cases it is about 3.5 per cent—it leads to the situation in which around 1,630 witnesses who were cited to give evidence required to be cited again.

I accept what the Deputy Minister for Justice said in his evidence to the Justice 1 Committee on 14 January. He said:

"The victim and society have rights."—[*Official Report*, *Justice 1 Committee*, 14 January 2004; c 505.]

He also said that justice must be delivered not frustrated. That was reiterated and echoed by the Minister for Justice in her opening speech. However, along with all members of the Justice 1 Committee, I remain extremely sceptical about the appropriateness of the proposal, given that justice must be not only swift but balanced. We feel that the proposal lacks that proper sense of balance. I note that the Minister for Justice said in her speech that it is the important element in helping to rebalance the system in favour of the victims. We are all for that, but what good does it do victims if someone who has absconded is apprehended and a retrial is ordered on appeal, and the victims and witnesses have to go through the whole process again? That is a serious consideration.

It is for that reason and for others that the committee felt obliged to reject the proposal that an accused can be tried in their absence from the outset. I was glad to hear the minister state that the Executive will continue to consider the committee's comments on that matter. I hope that the Executive will consider the proposal and reflect on it during the next stages of the bill.

Notwithstanding that concern, and despite other concerns that have already been referred to, I am pleased to lend my support as a member of the Justice 1 Committee to the motion before us today to agree the general principles of the Criminal Procedure (Amendment) (Scotland) Bill.

16:16

Colin Fox (Lothians) (SSP): It is a remarkable coincidence that the debate is taking place on the same day and at the same time that the United Kingdom Home Secretary decides to continue to detain 14 people without charge or trial in Belmarsh prison in London for yet another year. The debate also takes place against the background of hundreds of people—as the minister knows—being held on similar grounds at Guantanamo Bay, in breach of international law and judicial process.

The Executive, having identified problems in the efficiency of the courts and the length of time it takes for cases to come to trial, all too often proposes to amend the judicial process and impinge upon the current rights of accused persons as its solutions. There are dangers of which we must beware.

For me, this is primarily a debate about judicial resources and their management: other members have mentioned that. The policy memorandum makes it clear that it is important that the Executive wishes to strike a balance between the rights of the accused and the rights of victims and witnesses. Bill Butler stressed the importance of striking the right balance when he spoke. Every member in the chamber would agree with that.

However, on all too many occasions and according to all too many key tests, it appears to me that defendants are losing out because their right to a fair trial is being reduced. That reduces our reputation for civilised justice and brings our justice nearer to that of countries whose legal habits we have rightly sought to criticise over a long period. Under the proposals, accused persons will lose the right to be tried under the present timetable. They will lose the right to be freed if the state has not brought them to trial within one year, they will lose the right to trial in their presence and they will lose the right to represent themselves. Those are important considerations.

Before I offer my two key concerns, I make it clear that there is much in the bill that I welcome; there is much in it that attempts to improve the efficiency and effectiveness of the High Court. The principle of early disclosure of information is welcome although, as Lord Bonomy freely admits, that will be more dependent on a culture change in the profession than on anything else. Equally, the preliminary hearing—the keystone of the entire bill—is welcome because it will provide greater certainty that cases will proceed on the date on which it has been decided they will proceed. The roles of managed meetings and written notes are part of that.

Estimates vary as to how much may be saved, but it is suggested that perhaps as many as one third of all cases may meet an early disposal with an early guilty plea. That is a welcome initiative—we might wonder why it has not been tried already.

In the rest of the meagre time that has been allotted to me, I will highlight two of my concerns about the bill. I have spoken out previously against increasing the time limit of the 110-day rule. For me, that rule is a key principle in Scots law and is among the most forward-thinking of such rules in the world. The rule means that Scots law, if it has any part to play in the 21st century, is regarded throughout the world as forward thinking. That key principle is now under sustained assault. Why do we have this proposal? Is it because the pressure on the system is too great, or because some defendants walk free on a technicality—even though the number of cases in which that happens is, as the minister knows, negligible—or because the time limits are in practice missed in 25 per cent of cases? Those are key questions; they allude to the failure to apply resources to the process.

I agree with Margaret Mitchell that the 110-day rule is a keystone and that it has an important part

to play. The Executive has rejoined by saying that the 110-day rule is not the issue and that the 80-day rule is the jewel in the crown. However, the 80-day rule is also under attack, given that the proposals will undermine defendants' right to release, which will become simply a right to be considered for bail. For me, modernising time limits seems to be a euphemism for extending the length of time that defendants may spend on remand. That is modernisation at the expense of the accused's rights.

In evidence, the Faculty of Advocates compared the situation here to that in England, where people

"can languish in jail for a year before someone gets round to trying them."—[*Official Report*, *Justice 1 Committee*, 7 January 2004; c 417.]

The proposals are an unnecessary month-long step in the direction of a similar slippery slope. I was aghast when I saw the evidence that the Faculty of Advocates gave about a case in Belgium in which a defendant has been held in custody without trial for eight years. The Faculty of Advocates highlighted the fact that the European Court of Human Rights says that no breach of human rights has taken place in that case. Thank God that Scots law is miles ahead of the European Court of Human Rights in some regards.

There is no need to change the 110-day rule. If we need to introduce the preliminary hearing, we should have it at 50 days and we should provide more resources, rather than take away defendants' rights.

Trials in the absence of defendants are too high a price to pay. Many lawyers have said that they will not queue up to take cases in which the defendant is absent. The Law Society for Scotland has made it clear that appeals are likely to succeed and that retrials may take place. I am glad that the minister said that she will pay heed to the grave concerns that have been expressed in the debate and in evidence, and that she will take on board the need for changes to the bill.

16:23

Mike Pringle (Edinburgh South) (LD): I am pleased to speak in support of the bill, which is part of the Executive's commitment to improving the justice system in Scotland. The bill is about delivering good justice through cutting delays and reducing uncertainty in the High Court. It has been welcomed by judges, jurors, lawyers, police, witnesses and victims of crime.

The policy memorandum states that the bill is designed to introduce much greater certainty into High Court proceedings, and to help to develop a more managed system and a culture that emphasises better communication between the Crown and the defence and early preparation by both parties. If that aim can be achieved and all parties are prepared to consider the proposals as an opportunity to make real improvements in the High Court, that can only make our justice system better.

The bill will deliver greater certainty for victims, witnesses and jurors, but I hope that it will also deliver a system of justice in which members of the public have greater faith, and in which they are therefore more willing to take part. There can be no doubt that, at present, the experience of having once given evidence leads to many witnesses' reluctance ever to come forward again.

The minister and others have mentioned that, in 2002, 90 warrants were issued for the apprehension of accused persons who failed to attend the High Court for trial. As members have said, that amounts to 3.5 per cent of High Court cases. In an attempt to reduce delay, section 11 of the bill will provide for trials to proceed or to be concluded in the absence of the accused. A legal representative would act on behalf of the accused at the trial, and the accused would have the right of appeal—although they would not have the right to be tried again. That radical proposal has been widely criticised. The Law Society of Scotland stated that the accused failing to appear for trial was not a significant problem. However, I suggest that it was a problem in those 90 cases. A total of 1,630 witnesses were cited to give evidence in those cases, so there was clearly a problem for them in that their turning up time and again was a waste of their time.

There was a clear example of the problem during a recent sensitive case that involved two young girls. The evidence had finished and the prosecutor and the defence had made their speeches to the jury; all that remained was the judge's charge. The court was adjourned for the weekend, but the accused absconded. The witnesses then faced the ordeal of going through the whole process again, knowing that the perpetrator was free.

However, a trial in the absence of the accused must be used only as a last resort. If the accused thought that his sentence might be increased because of it, his absence might be discouraged. If the accused failed to turn up for the trial, making an adjournment necessary, his or her legal representative could then be told that, if the accused failed to turn up a second time at a newly arranged trial date, the trial would go ahead without them. As I suggested, the accused would know that that could result in a longer sentence if they were found guilty.

Lord Bonomy reported citation problems with witnesses as a major reason for the Crown's seeking adjournments, which causes delays in the High Court. The High Court is currently

empowered to detain a witness who has deliberately avoided citation or who has absconded. The bill proposes an additional option of releasing a witness on bail on condition that they be electronically tagged. Studies at the University of Wolverhampton found that the number of non-attendees was relatively small. I accept that. Furthermore, the researchers believe that the best way in which to reduce non-attendance is by creating better systems throughout the criminal justice system and by offering better support, rather than by criminalising witnesses.

The Justice 1 Committee was unconvinced by evidence that suggested that the option to tag reluctant witnesses is necessary. Furthermore, it was noted that failure by a witness to attend court might be related directly to fear and intimidation, rather than its being a demonstration of their disrespect for the court. In relation to that, it was proposed that the bill should state clearly that section 12 relates to recalcitrant witnesses rather than to reluctant witnesses. With regard to genuinely reluctant witnesses, the Justice 1 Committee suggested that the Executive provide witnesses with an adequate support package to enable reluctant witnesses to testify.

Another problem with tagging witnesses is this: how do we keep in touch with them? We seem only to be able to track them at home. Any reluctant or recalcitrant witness would be aware of that and would not be at home on the day of the trial. You can take a horse to water, but I am afraid that you cannot make it drink. The way to encourage people to give evidence is to have a better system. The bill proposes such a system and offers better support for witnesses.

Finally, I would like to comment on the proposal to increase the sentencing powers of sheriff courts. In 2001, four out of 10 sentences that were passed by the High Court could, under existing powers, have been passed by a sheriff court. To increase the sentencing power of sheriff courts from three years to five years is a sound proposal. Strong evidence suggests that a guilty plea is much more likely in a sheriff court. That would save considerable court time and—perhaps more important—witness time. Those are not bad reasons for transferring certain cases to the sheriff courts.

The suggestion that judges should take into account early pleas, and that they should state when passing sentence whether consideration of when the guilty plea was made has led them to discount the sentence could also save court and witness time.

The aim of the bill is to improve High Court procedures: it will do just that. It also aims to improve the system for witnesses and it will do that as well. That is perhaps the most important aspect of the bill.

16:29

Marlyn Glen (North East Scotland) (Lab): I will make use of discussions in committee about understanding time limits and say that I regard the three minutes—now two minutes—that have been allowed to me as an outside limit, not as a target. I mean to concentrate on one aspect of the proposals, so I hope to be able to keep my comments inside the new time limit, in the same way as we would all encourage courts and court services to keep within the time limits that are set out in the bill.

The intention behind the bill is to improve the experience of justice in Scotland. Most people do not come into contact with the law on a day-to-day basis but, when they do, it is essential that their experience is not negative and confusing. It is essential that the lay person's experience of justice is not one of unexplained delays and inexplicable procedures.

To highlight one radical proposal, it seems to me that talk of electronic diaries rings harshly in Parliament hall across the road, where customs go back to a different century and culture; for that reason, we do not have to continue to have them. In fact, the Scottish courts are already changing by embracing new technology including video links, laptop computers and recordings to consider evidence. A culture shift is already happening and the bill's intention is to facilitate it.

As has been said, one of the problems in an increasingly busy environment is delays. Among the recorded reasons for delays are motions to adjourn that are caused by problems with witnesses. Witnesses can be expert witnesses from the police or medical profession, but there has been a concentration on trials' being delayed because of non-professional witnesses' not attending.

I emphasise that it is misleading to divide witnesses into two categories, because we are talking not about a dichotomy but, as in so many other fields, a spectrum. This spectrum has vulnerable witnesses at one end and recalcitrant witnesses at the other. Between the two extremes are many different witnesses who have different problems, which range from fear of intimidation to their not having been properly served notice to appear. I find the label "reluctant witness" to be too broad and inexact for it to be helpful. It is essential that it is made clear that section 12 of the bill relates to recalcitrant witnesses and there needs to be more conclusive evidence on how electronic tagging will improve the situation.

I commend the study of witnesses that was carried out by the University of Wolverhampton: it

debunks the modern myths of witnesses' having lives that are too chaotic for them to turn up in court and cites factors such as child care, travel and time off work as reasons for non-attendance of witnesses. That aspect of changing the culture is hugely important, not least because of its effect on public perceptions of the whole justice system. We need to address not just the waiting, but people's not knowing why there is a wait.

16:32

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): I welcome the opportunity to be the final Liberal Democrat speaker in this short but effective stage 1 debate on the Criminal Procedure (Amendment) (Scotland) Bill. Many good and long overdue reforms are outlined in the bill, one of which is on time limits. I am happy to see that if time limits are breached, the accused will not simply be set free as happens currently, but will be entitled to be considered for bail. Even if bail is granted, the accused will be subject to trial within the 12-month time limit. That is an important improvement that will restore some public faith in the justice system.

I turn to one or two issues about which my Liberal Democrat colleagues and I have serious concerns, some of which have already been highlighted. Our major concern is about holding trials in the absence of the accused. Section 11 of the bill allows a trial to go ahead in the absence of the accused and makes provision for the court to appoint a legal representative in the accused's absence. The committee, and indeed the overwhelming majority of witnesses who gave evidence, also had problems with that provision, not only on issues of principle but for practical reasons.

The Deputy Minister for Justice told the committee that the Executive's intention was to save victims and witnesses from having to go through trials twice. Mike Pringle quite rightly highlighted that issue. The minister admitted that last year 90 people had warrants made out for their recovery because they had absconded, but we are a little unclear about the details around that figure. We believe that important principles are at stake and that accused persons would not get fair trials in absentia. We agree with the Law Society for Scotland and with Lord Rodger that to cite the R v Jones case in England or other European cases is to fail to recognise the substantial differences in criminal procedure between jurisdictions. Many of us on the Liberal Democrat benches are convinced that the proposal, as it stands, is not workable.

However, we see merit in allowing a trial to continue when all the evidence has been led, after identification, after counsel has been appointed and instructed on an on-going basis in response to evidence, and far enough on in the trial that the presence of the accused is not necessary. There is a subtle difference between that and what is proposed in the bill. We look to the Executive to lodge an amendment that will encapsulate that.

I turn to the issue that prompted me to speak in the debate. Having read through the Executive's proposals and the Justice 1 Committee's report, I was struck by the issue of police witness statements. Members might know that I am not a member of the committee and that I therefore speak about the issue from a distance, as it were. However, I was amazed to read that police witness statements are not currently routinely issued to the defence. I first came across the matter last year during my experience of the criminal court system, although I stress that I was taking part as a witness and not anything else. When I gave evidence to the police, I was amazed that the fact that there were several accused persons meant that I had to go over the same evidence many times to different people. I cannot believe that police witness statements are not currently issued to the defence. To do so would save everybody an awful lot of trouble.

On early disclosure of evidence, Lord Bonomy stated that, in order to prepare their cases and advise their clients what plea to tender, defence lawyers need notice of the case that is to be presented against the accused. He recommended that the Crown should routinely issue to the defence a provisional list of witnesses shortly after initiating petition procedures in the sheriff court; that it should provide to the defence information about material developments as they occur in the investigation of events; and that it should provide access to all relevant evidence as it becomes available and provide a copy of the indictment and all documentary productions and other evidence.

As the committee said in its report—I commend the committee for its good work—the bill does not implement the recommendations that were made by Lord Bonomy on the practice of disclosure. The minister commented that we want to retain flexibility in the system, which is fair enough, and the Crown Office has accepted the need for improved disclosure to the defence. Of course, there are degrees of improvement—I would be happy if disclosure were greatly improved and I would be unhappy if it were not. The committee agreed that early disclosure is the key to ensuring early preparation of cases, but was not convinced that a practice note can guarantee delivery of early disclosure.

The Deputy Presiding Officer (Trish Godman): You have one minute.

Mike Rumbles: Gosh! Time flies.

The committee recommends that the Executive should consider inserting in the bill a provision that would closely reflect Lord Bonomy's recommendation that the Crown should provide to the defence information about material developments in the investigation of the case as they occur, and that it should let the defence have access to all relevant evidence as it becomes available. In this stage 1 debate, I would say that that would be natural justice. The defence needs to know what the charges are and what the evidence is so that it can prepare a proper defence.

This bill is about reforming the system and making it more effective and efficient. As I said, coming to the issue from afar, I commend the committee for its work.

16:38

Miss Annabel Goldie (West of Scotland) (Con): This has been a useful debate, even if it has been held under unfortunate time constraints. We would all agree that the administration of criminal justice in Scotland has, in recent years, become a field that is increasingly strewn with boulders and that among the significant boulders are, undoubtedly, the problems of delays, adjournments and lack of preparation, to which numerous speakers have referred, including the minister, Michael Matheson, Pauline McNeill, Margaret Mitchell, Bill Aitken and others. That issue is at the heart of the embryonic formation of the problems.

The bill tries sensibly to address some of those issues. The mandatory preliminary diet is sensible but, if that diet is sensible, it is my view that the managed meeting is absolutely critical. Nothing will focus the minds of the accused and his law agent more than a fixed trial date: lawyers and accused persons are human beings and—unless they are aware of when the sword of Damocles might fall—they are unlikely to consider with urgency when preparations should be made, when thought should be given to certain matters and when questions should be asked.

Critical to how we address the matters of preparation and early disclosure is a change of attitude on the part of the Crown Office and Procurator Fiscal Service. I was having a look at the increased volume of work in the High Court between 1995 and 2001, which saw an approximately 23 per cent increase in new indictments. That increase is significant, but I say to the Lord Advocate that it is not formidable; it is no more than many other organisations have had to cope with. In coping with such increases, those organisations have had to consider their procedures, management, technology and so on and they have had to think about how they can better progress and more swiftly process their business. The Crown Office and Procurator Fiscal Service is no different and issues that relate to such aspects need to be considered.

I have a lot of sympathy for early disclosure's being included in a mandatory framework. I have an uncomfortable feeling that a code of practice might prove to be a limp directive—again, the matter is about focusing minds and making people who are crucial to the provision of this vital service for society realise that there are specific checks and balances that must be observed.

Capacity is another boulder. The High Court has been under strain and it may be that, in theory, transfer of business to the sheriff courts is the way forward. I do not disagree with that in principle, but the biggest boulder of all would then roll into place. That boulder is resources. Without significant resources, the transfer of business simply will not work. Pauline McNeill and Bill Aitken spoke eloquently to that point.

Although I accept that the bill genuinely seeks to get some of the boulders out of the field, it is important that we do not crush healthy activity in the process or—which would be equally alarming—deposit other rubble in place of the boulders that we remove. I will consider one or two of the bill's specific proposals. I have concerns about the proposal to allow those who are refused bail to apply for bail while they are electronically tagged. It seems to me that an individual who has been refused bail and who has been deemed to be a danger to the public will be a danger with or without a tag.

Like Mike Rumbles, I am concerned about the provision to allow a trial to go ahead in the absence of the accused. Important principles are at stake and there is a grave danger that the accused would not receive a fair trial in his or her absence. I also have difficulty with the plans to force judges to give discounts for early guilty pleas. Again, that might be a sensible proposal, but surely it is watered down by the current system of automatic early release. If offenders know that they will get early release, they might be less likely to plead early because they will not serve the full sentence that is handed down by the court.

I turn to one of the most significant areas that is at risk and which is in danger of being crushed under the bill; that is, the removal of the 110-day rule. I understand that Lord Bonomy found that only 25 per cent of cases require extensions to the 110-day rule, which does not seem to me to justify abolition of the rule; it means, rather, that 75 per cent of cases proceed timeously under the current arrangements. It seems to me that with early service of the indictment, managed meetings and preliminary diets can be adjusted to cope with the procedure. Colin Fox made that point well. I say to

the Executive only that the 110-day rule is one of the most valued and respected embodiments of our criminal justice system in Scotland. Fairness to the accused is vital and it seems to me to be illiberal for an innocent accused person to be detained for longer than is necessary. I must say that the proposal is regrettable and that I have not heard any compelling argument that justifies removal of this essential safeguard: I do not think that there is any problem that cannot be addressed intelligently by other mechanisms. We would thereby retain something of which we should be proud. The 110-day rule is an important component of safety for the accused in our criminal justice system.

That said, the bill offers a variety of mechanisms that will improve the administration of justice in Scotland so—subject to my earlier comments—I endorse and welcome its general principles.

16:44

Nicola Sturgeon (Glasgow) (SNP): Like every other speaker in the debate, I think that there are many sensible provisions in the bill—in fact, I consider most of them to be basic common sense. In time, if not immediately, they have the potential considerably to speed up justice and to deliver a much better system for the victims of crime and those who are accused of it.

However, certain things have to happen if the bill's intentions are to be translated into practice. First, as Annabel Goldie and others have said, clear rules on early disclosure of information by the Crown to the defence are vital. I share Mike Rumbles's disappointment that Lord Bonomy's proposals have not been translated into the bill. That is a missed opportunity that the Executive might care to correct at stage 2. It is important to reflect on the fact that although the vast majority of motions to adjourn trials are made by defence agents, those motions are more often than not necessitated by the Crown's late preparation or late delivery of productions and lists of witnesses. The early disclosure rules are crucial to the bill's successful operation.

I support in principle mandatory preliminary diets, but I inject a note of caution. As Stewart Maxwell said, the preliminary diet's success will depend on two conditions. It is obvious that the parties to the case will have to be prepared for the trial to proceed when the preliminary diet takes place, but the preliminary diet will also depend to a great extent on judges' willingness to be more proactive and hands-on in managing cases. We all know that, but perhaps we should not take it for granted that it will happen when the bill comes into force. More effort might be needed to ensure that it happens.

Intermediate diets in sheriff court summary trials, of which I have limited experience, have not always speeded up the progress of cases. If preliminary diets are supposed, roughly speaking, to perform the same function, it will do no harm to examine practice and to learn lessons, if there are lessons to be learned, from the operation of intermediate diets in sheriff courts.

I have three concerns, all of which other speakers have talked about at length. The first is the extension of the 110-day rule. I note from the Justice 1 Committee's report that several witnesses—Michael Matheson mentioned the Law Society of Scotland and the Scottish Human Rights Centre—and the committee had reservations about the extension. Like Michael Matheson, I share those reservations. I accept that the committee decided on balance to support the extension but, like Margaret Mitchell, I retain a lingering doubt that a bill that is intended to speed up the administration of justice is no place for a measure that will extend time limits. However, rather than argue about 110 days versus 140, I will comment on a potentially more fundamental concern, which others have touched on and some have approached from different perspectives.

I agree that when a time limit is breached, the result should not be that the accused gets off scot free; I think that everybody would agree with that. However, I believe equally that it is fundamental that we have a maximum time for holding any accused person in custody awaiting trial. The bill does not guarantee that time. I share some of the concerns that Colin Fox expressed. When the 140-day rule or the 80-day rule is breached, the accused has the right to apply for bail. However, as Pauline McNeill said, that does not mean an automatic right to bail—it is a right to make an application, which can be opposed and denied. The Crown can instead apply for the 140-day rule to be extended. The length of an extension and the number of applications for extension are unlimited so, in theory, accused persons could be held in custody awaiting trial for very long periods. That involves an issue of principle and I ask the deputy minister not only to comment on it during summing-up but to reflect further on the point.

I will touch on the increase in sheriffs' sentencing powers, because I welcome Cathy Jamieson's comments on that. Like Pauline McNeill, I am concerned not about the principle but about the practicality of increasing sheriff courts' work loads. I echo the committee's concern about early implementation and the risks of progressing with the change before we know what Sheriff Principal McInnes is likely to recommend at the opposite end of the sheriff court scale. I welcome the minister's commitment to take the matter away and to reflect on it further. That is an important concession.

The final area to touch on is the one that has, surprisingly, proved to be the most controversial, which is trial in absence. It is surprising to me because the measure would impact on so few people but, in the same way as others—particularly Bill Butler—I think that the issue is one of principle. I also note that various witnesses have expressed concern. I have mulled the matter over and my view is that no matter how worthy the intention—I accept that it is worthy—trial in absence would be practically difficult if not practically impossible, except perhaps in cases in which all the evidence has been led. The committee made that point.

The evidence of the Law Society of Scotland and solicitors on that issue is particularly compelling. I cannot imagine the circumstances in which any solicitor anywhere in Scotland would agree to represent and conduct a trial on behalf of an accused person who was not present. The issue is one of principle, but there is also a serious issue of practicality that the Executive must consider.

The bill should be welcomed. That said, there are issues of principle and practicality that require further consideration. I hope that the Executive will now reflect on some of those points before we move to stage 2 consideration of the bill.

16:51

The Deputy Minister for Justice (Hugh Henry): This has been a good, albeit unfortunately short, debate on a bill that represents significant progress and will make the most fundamental changes in 20 years to our solemn criminal procedure.

People have used the term “foundation stone” in relation to certain aspects of the justice system. The bill is important because it lays the foundation stones for building a safer and stronger Scotland. It is critical that we restore public confidence in our judicial system and ensure that the needs of victims and witnesses are given due weight and proper consideration. Unfortunately, those needs are sometimes overlooked and neglected.

I have been heartened by many of the constructive comments made by members of the Justice 1 Committee, who did a power of work in considering a complex proposal, as well as by other members who have come relatively fresh to the debate. There is a shared will in the Parliament that justice should be improved and delivered. Everyone wants us to have a system that can work well in practice.

I am also heartened by the fact that the emphasis of the debate has shifted since first we made our proposals. People have started to acknowledge some of what is being suggested and to recognise that Lord Bonomy has proposed sensible measures that can make a practical difference to dealing with some of the delays and other problems that plague our High Court.

Public confidence is eroded when cases are repeatedly put off, when people give up their valuable time to turn up and are then sent away, when people have to wait an inordinate length of time for justice to be considered, never mind delivered, and when people have to psych themselves up to come to court—a difficult experience for many—only to have to go through that traumatic experience not once or twice, but perhaps three, four or five times. That is a disgrace, because it puts people off the justice system and diminishes their ability to contribute to it. Those are issues that we have to address.

We are also trying to deal with issues such as witnesses not turning up. People who fail to turn up are trying to avoid playing their part in the justice system, sometimes because of fear and intimidation, but sometimes in a deliberate attempt to thwart justice. I will return to that issue later, but I remind members that there are people who, at a very late stage in the process, abscond in order to prevent justice from being delivered. We want to tackle all those matters.

We also want to change the adjournment culture in the High Court, to which several members referred. We want to make that culture a thing of the past by creating a degree of certainty that trials will proceed. We will strive for that as a key objective. A number of measures will be part of that process—I have not time to go into the details of those today, although we will return to some of the issues at stage 2—but judicial management of cases is an important one. Several members referred to the significance of the preliminary hearing and of having fixed trial dates that are set by the judge. We also want to give the accused the opportunity to plead at a point before trial, as a number of members suggested.

Perhaps it is for those reasons that many people have now generally been persuaded of the merits of our proposed changes to the time limits. However, I recognise that the formidable combination of Colin Fox, Bill Aitken, Annabel Goldie and Margaret Mitchell—it would be a brave person who would take on such a combination—may be the reason why Nicola Sturgeon was having second thoughts even at this late stage. Even though we are faced by such formidable opposition, I think that we are doing the right thing, as many members have recognised.

The provision for trials in absence of the accused has probably been the most contentious issue. As members have indicated, we do not expect many such trials, but we recognise that trials are sometimes postponed because the

accused does not turn up at all or because, in some cases, the accused flees justice either at an early stage during the trial or, occasionally, at a very late stage. Mike Pringle graphically described one case in which the accused absconded during the last weekend of the trial. Not only did that have a huge impact on a large number of witnesses, but it left two young people exposed to the possibility that they might be required to go through the whole traumatic process again. The accused absconded after all the evidence had been led.

Mike Rumbles: There is a large measure of agreement on the particular point that the minister makes, but people are a little more concerned about a complete trial in absentia.

Hugh Henry: I welcome that agreement. I think that there is still a case to be made for the broader measure, although we will give consideration to several of the points that have been raised. In the interests of justice not only for the accused but for witnesses and victims, these issues need to be given proper consideration. We cannot allow one individual to undermine the whole justice process at a very late stage in the trial.

The tagging of witnesses was also mentioned. Marlyn Glen and others highlighted the need to distinguish between reluctant and recalcitrant witnesses and we will reflect on that. However, the aim of the bill is to allow the tagging not of victims who are just reluctant to give evidence but of people who potentially face jail if they refuse to turn up and give evidence.

I think that there has been some misunderstanding of the disclosure issue. A number of members claimed that the Executive has departed from Lord Bonomy's proposal. Paragraph 7.7 on page 36 of Lord Bonomy's report states:

"The normal rule should be that intimation of all material to be used by the Crown at the trial should be given to the defence with the indictment."

However, he made no recommendation about disclosure. He said only in recommendation 2(c) that

"The Crown should also provide to the defence information about material developments in the investigation of the case as they occur, and let them have access to all relevant evidence as it becomes available."

In fact, the Crown is going further—it is proposing to disclose witness statements, to which the defence would not be entitled under our current procedure. We are not departing from the Bonomy report, but are proposing to go further.

I will deal quickly with Stewart Maxwell's point about the need to establish a working party. Discussions between the Crown Office and Procurator Fiscal Service and the Association of Chief Police Officers in Scotland are on-going and we should wait to see what those deliver. However, we are doing what a working party would expect to be done. I am not sure that a working party is needed when that is happening.

I have run out of time and must conclude. This has been a good debate and some valid and forceful points have been made. I appreciate the wide support and welcome that have been given to the proposals. Before stage 2, we will reflect on the specific points that members have made. However, like Cathy Jamieson, I am heartened by the support that exists and the chamber's intention and desire to modernise our justice system and to advance a set of proposals that we think will make a considerable difference.

Criminal Procedure (Amendment) (Scotland) Bill: Financial Resolution

17:01

The Presiding Officer (Mr George Reid): The next item of business is consideration of a financial resolution. I ask Andy Kerr to move motion S2M-536, on the financial resolution in respect of the Criminal Procedure (Amendment) (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Criminal Procedure (Amendment) (Scotland) Bill, agrees to any increase, in consequence of the Act, in expenditure payable out of the Scottish Consolidated Fund.—[*Mr Andy Kerr*.]

Business Motion

17:02

The Presiding Officer (Mr George Reid): The next item of business is consideration of motion S2M-952, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, setting out a business programme.

Motion moved,

That the Parliament agrees—

(a) the following programme of business

Wednesday 3 March 2004	
2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Stage 1 Debate on the National Health Service Reform (Scotland) Bill
followed by	Financial Resolution in respect of the National Health Service Reform (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Thursday 4 March 2004	
9.30 am	Stage 3 of the Vulnerable Witnesses (Scotland) Bill
12 noon	First Minister's Question Time
2.30 pm	Question Time
3.10 pm	Continuation of Stage 3 of the Vulnerable Witnesses (Scotland) Bill
followed by	Motion on Companies (Audit Investigations and Community Enterprise) Bill – UK Legislation
followed by	Motion on Civil Contingencies Bill – UK Legislation
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time
followed by	Members' Business
Wednesday 10 March 2004	
2.30 pm	Time for Reflection
followed by	Parliamentary Bureau Motions
followed by	Stage 1 Debate on the Antisocial Behaviour etc. (Scotland) Bill
followed by	Financial Resolution in respect of the Antisocial Behaviour etc. (Scotland) Bill
followed by	Business Motion
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time

followed by	Members' Business

Thursday 11 March 2004

9.30 am	Scottish Senior Citizens' Unity Party Business
followed by	Scottish Socialist Party Business
12 noon	First Minister's Question Time
2.00 pm	Question Time
3.00 pm	Executive Business
followed by	Parliamentary Bureau Motions
5.00 pm	Decision Time

and (b) that the rota for departmental themes for Question Time, to run for a trial period from 11 March 2004 to the summer recess, be as follows:

Week 1	Enterprise, Transport and Lifelong Learning; Justice and Law Officers;
Week 2	Education, Tourism, Culture and Sport; Finance and Communities;
Week 3	Environment and Rural Development; Health and Community Care.—[*Patricia Ferguson*.]

Motion agreed to.

Parliamentary Bureau Motions

The Presiding Officer (Mr George Reid): The next item of business is consideration of seven Parliamentary Bureau motions. I ask Patricia Ferguson to move motions S2M-947, S2M-948, S2M-949, S2M-950 and S2M-951, on the designation of a lead committee.

Motions moved,

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2004.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2004.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Advice and Assistance (Scotland) Amendment Regulations 2004 (SSI 2004/49).

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Civil Legal Aid (Scotland) Amendment Regulations 2004 (SSI 2004/50).

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2004 (SSI 2004/51).—[*Patricia Ferguson*.]

The Presiding Officer: I ask Patricia Ferguson to move motion S2M-946, on the approval of a Scottish statutory instrument.

Motion moved,

That the Parliament agrees that the draft Budget (Scotland) Act 2003 Amendment Order 2004 be approved.—[*Patricia Ferguson*.]

The Presiding Officer: I ask Patricia Ferguson to move motion S2M-945, again on the approval of an SSI.

Motion moved,

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Order 2004 (SSI 2004/21) be approved.—[*Patricia Ferguson*.]

The Presiding Officer: I understand that Mr Brocklebank wishes to speak against motion S2M-945, which relates to amnesic shellfish poisoning.

17:03

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): As we have indicated previously in the chamber, Conservative members do not accept that SSIs are the right way of dealing with the problem of amnesic shellfish poisoning. We will continue to oppose what we see as unnecessary and irrelevant measures, which directly affect our fishermen, who are trying to scrape a living.

17:03

The Deputy Minister for Health and Community Care (Mr Tom McCabe): Members are at risk of being bored by the arguments that are exchanged time and again about such orders. However, some of the points are worth repeating.

The SSI that we are debating is predicated on the need to protect public health and consumer safety. There is a fundamental difference between the philosophy of the Conservative party and the demands and expectations of the general public that there should be an independent assessment that reassures people that the food that is presented to them as consumers is safe. The Food Standards Agency is involved in providing that assessment.

We do not want to return to the days when the actions of the Conservatives led to the near destruction of the meat industry in this country. That situation led to the creation of an independent Food Standards Agency that takes on board the best independent scientific advice, without reference to ministers, and makes that publicly available so that the public can make informed decisions about the food that they wish to consume.

That is what we are involved in in this case. What this debate and all the previous debates have told us is that, after 18 years of not caring what happened, the Tories have not learned a thing. We say now what we will say on the next occasion when they raise the issue and on the occasion after that: we learned, we listened and we have acted. That is why we are recommending that the Parliament approve the statutory instrument.

Decision Time

17:05

The Presiding Officer (Mr George Reid): There are nine questions to be put as a result of today's business. The first question is, that motion S2M-473, in the name of Cathy Jamieson, on the general principles of the Criminal Procedure (Amendment) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)

Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (West of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Byrne, Ms Rosemary (South of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)

The Presiding Officer: The result of the division is: For 112, Against 0, Abstentions 3.

Motion agreed to.

That the Parliament agrees to the general principles of the Criminal Procedure (Amendment) (Scotland) Bill.

The Presiding Officer: The next question is, that motion S2M-536, in the name of Andy Kerr, on the financial resolution in respect of the Criminal Procedure (Amendment) (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (West of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)

Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McFee, Mr Bruce (West of Scotland) (SNP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Mundell, David (South of Scotland) (Con)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robison, Shona (Dundee East) (SNP)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, John (Ayr) (Con)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stevenson, Stewart (Banff and Buchan) (SNP)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Sturgeon, Nicola (Glasgow) (SNP)
Swinburne, John (Central Scotland) (SSCUP)
Swinney, Mr John (North Tayside) (SNP)
Tosh, Murray (West of Scotland) (Con)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Byrne, Ms Rosemary (South of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)

The Presiding Officer: The result of the division is: For 112, Against 0, Abstentions 3.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Criminal Procedure (Amendment) (Scotland) Bill, agrees to any increase, in consequence of the Act, in expenditure payable out of the Scottish Consolidated Fund.

The Presiding Officer: I propose to put the questions on motions S2M-947, S2M-948, S2M-949, S2M-950 and S2M-951 en bloc. Does anyone object?

Members: No.

The Presiding Officer: There is no objection. The question is, that motions S2M-947 to S2M-951, in the name of Patricia Ferguson, on the designation of a lead committee, be agreed to.

Motions agreed to.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2004.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2004.

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Advice and Assistance (Scotland) Amendment Regulations 2004 (SSI 2004/49).

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Civil Legal Aid (Scotland) Amendment Regulations 2004 (SSI 2004/50).

That the Parliament agrees that the Justice 2 Committee be designated as lead committee in consideration of the Criminal Legal Aid (Fixed Payments) (Scotland) Amendment Regulations 2004 (SSI 2004/51).

The Presiding Officer: The next question is, that motion S2M-945, in the name of Patricia Ferguson, on the approval of a Scottish statutory instrument, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baird, Shiona (North East Scotland) (Green)
Baker, Richard (North East Scotland) (Lab)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Harvie, Patrick (Glasgow) (Green)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)

Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Scott, Tavish (Shetland) (LD)
Smith, Elaine (Coatbridge and Chryston) (Lab)
Smith, Iain (North East Fife) (LD)
Smith, Margaret (Edinburgh West) (LD)
Stephen, Nicol (Aberdeen South) (LD)
Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
Swinburne, John (Central Scotland) (SSCUP)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Davidson, Mr David (North East Scotland) (Con)
Douglas-Hamilton, Lord James (Lothians) (Con)
Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Leckie, Carolyn (Central Scotland) (SSP)
McGrigor, Mr Jamie (Highlands and Islands) (Con)
McLetchie, David (Edinburgh Pentlands) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)
Scott, John (Ayr) (Con)
Tosh, Murray (West of Scotland) (Con)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Cunningham, Roseanna (Perth) (SNP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Martin, Campbell (West of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Matheson, Michael (Central Scotland) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Swinney, Mr John (North Tayside) (SNP)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 70, Against 22, Abstentions 23.

Motion agreed to.

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (Scotland) Order 2004 (SSI 2004/21) be approved.

The Presiding Officer: The final question is, that motion S2M-946, in the name of Patricia Ferguson, on the approval of an SSI, be agreed to.

Motion agreed to.

That the Parliament agrees that the draft Budget (Scotland) Act 2003 Amendment Order 2004 be approved.

General Medical Services Contracts

The Deputy Presiding Officer (Murray Tosh): The final item of business is a members' business debate on motion S2M-728, in the name of Alasdair Morgan, on general medical services contracts. The debate will be concluded without any question being put.

Motion debated,

That the Parliament is concerned that the provisions made for contracting-out out-of-hours care from GPs to local NHS boards may be insufficiently funded to meet the unique challenges encountered in rural practices; believes that rural practices thus unable to opt out will have serious difficulty in recruiting new doctors, and considers that the Scottish Executive should re-examine the level of funding allocated to NHS boards providing these services in rural areas.

17:10

Alasdair Morgan (South of Scotland) (SNP): I am grateful that the Parliament has the opportunity to debate the issues arising from my motion on the implementation of the new contracts for general medical services, particularly as they affect the provision of out-of-hours services in rural areas of Scotland. I thank the members who signed my motion.

The issue is important not only for individuals, but for the viability of rural communities, which are under so many other threats at this time. I do not think that any of us would disagree with the motivations that led the British Medical Association side in the recent negotiations to achieve a position whereby most of its general practitioner members would be able to opt out of the out-of-hours service. It is reasonable that, for most GPs, the days are gone when, in addition to working a full day, they are expected to contribute to out-of-hours services, at a disproportionate cost to their own quality of life. I acknowledge that some GPs, particularly those in very remote areas, might feel that they can and want to provide on-call care as well as daytime provision but, to quote Michael Forsyth's words in another context, I think that many GPs feel that it is time to get a life.

The changed nature of society means that what is acceptable in terms of professional duty has changed considerably over the years. It is also the case that, in many instances, the public are putting much higher and sometimes unreasonable demands on out-of-hours services, with the result that on-call cover has become increasingly unpopular among GPs.

The problem has not been keeping GPs happy, because in rural areas potential recruits to the profession increasingly have been voting with their feet and not joining practices in which on-call cover is part of the package. The difficulty in getting GPs to apply for vacancies in rural practices, and to stay in them once recruited, has been serious for some time and is getting worse. Therefore, the status quo is not an option.

I do not believe that the public are in any way ready for the magnitude of the change that is about to hit them. I remember attending, before I was elected in 1999, a public meeting that had a large audience. The meeting's purpose was to discuss the introduction of an out-of-hours co-operative service among the GP practices in the Castle Douglas area. The public reacted to that modest proposal almost as if their medical services were being eliminated altogether. There was considerable concern about the length of time that it might take a called-out GP to travel from Castle Douglas or Kirkcudbright to Dalry, for example, which would be a distance of 15 or 20 miles.

Whether that concern was reasonable is one issue, but we are talking about an entirely different situation when we measure the distance between Stranraer and Langholm, which is more than 100 miles. I have not picked those two towns to exaggerate the case because they give me the longest possible journey that can be undertaken between any two houses in Dumfries and Galloway. In fact, that distance of 100 miles is far from being the longest possible journey in the area. I picked those two towns because they give one of the longer distances between two substantial towns, one of which has 10,000 people, while the other has well over 2,000. I do not wish to diminish the problems that other members may raise about their own areas and constituencies, but a particular factor in Dumfries and Galloway is that not only is the area to be covered by the out-of-hours service a large one, but the population is well distributed throughout the area rather than being concentrated in any one part. That raises substantial extra challenges in the provision of any public services.

Distance is not the only problem associated with rural areas. The lack of public transport, which is non-existent for much of the out-of-hours public, is another factor that exacerbates the out-of-hours situation. Although car ownership is higher in rural areas, 25 per cent of households in Dumfries and Galloway still have no vehicle, and the percentage in the Highlands is much the same. In addition, the percentage of the population aged over 60 is also more than 25 per cent—significantly higher than the Scottish average. The age profile of the population in the region makes the frequency of needing medical intervention higher, and the proportion of people who need the intervention to come to them—rather than the other way round—is also high. Against that background, members

will be well able to understand the level of public concern that was caused by the recent statement by the medical director of the local health board that, as a minimum, there would be two on-call doctors available in Dumfries and Galloway—two people to cover two towns that are 100 miles apart and all the towns in between.

The minister has assured me in correspondence that all will be well and that the new national standards for out-of-hours services are being developed. The working group for that includes representatives from NHS 24 and the Scottish Ambulance Service. One might infer that those bodies will have a significant role to play in the new service. Certainly, we accept that NHS 24 can assist in the triage of cases, especially given the perception that an increasing number of call-outs are not strictly necessary. However, NHS 24 cannot cut the number of real emergencies. I cannot speak for other areas, but in Dumfries and Galloway the ambulance service is already operating pretty much at the limit of its budget and capacity. I and other members in the area have raised concerns about the level of cover that the service is able to offer over such a wide area even without its being given any additional responsibilities.

The BMA says that, historically, the provision of out-of-hours services has been subsidised by GPs and that its cost has not reflected the true cost of providing such services. It would say that. However, to a layman, it seems credible that the 6 per cent that will be deducted from a practice's global sum when it tries to opt out of 24-hour cover is not the true cost of the service. If there is any truth to that, it is understandable that health boards are saying that they will be insufficiently funded for the new service even with the extra money that will be allocated to the out-of-hours development fund.

There is still some time to go. The transfer of responsibility for the out-of-hours service will not happen until 1 January next year. However, the deadline is fast approaching. Our constituents need more than simple reassurance that their levels of service will not deteriorate when the deadline arrives.

The Deputy Presiding Officer: There is a long list of members who wish to participate in the debate; therefore, I shall restrict speeches to three minutes.

17:18

Mr David Davidson (North East Scotland) (Con): I congratulate Alasdair Morgan on securing the debate on this motion. I was delighted to sign it, as it flags up a major national problem.

A piece of legislation has been introduced that was worthy in its cause. Doctors deserve a reasonable quality of life and patients deserve medical staff looking after them who are rested and capable of carrying out their duties to the utmost per cent. However, it has been a bit of a rush job.

At the Health Committee's away day near Oban, we met members of the public, community councils, GPs, GP practice nurses and GP managers who all asked, "What about us in the remote areas?" It appears that they do not know whether they will get support to opt out of out-of-hours services—quite apart from the feeling of pressure they have from living in small communities but working all the hours that God sends. They do that willingly, but there is a limit to the cover that they can get for quality of life or further post-graduate education.

The only thing that is missing from Mr Morgan's motion is the statement that the issue is not just about money. I would like the minister to tell us where the medics are going to come from, even if the health boards have the money and get the resources and a top-up—which is undoubtedly needed, as the 6 per cent transfer is simply not enough. Health boards throughout the country tell us that there are demands through new burdens on their resources and that their main problem is capacity. Where will they find the bodies from? We have had evidence from Glasgow that some GPs are going to opt out of daily GP life and move to work out of hours in an enclosed area. That is fine, but who will replace them in working the everyday hours of a general practitioner's facility? We need to know those answers. We know that regulations are about to come out, but we have not seen the colour or the quality of them. People in rural and remote areas, such as where I come from in Grampian, are very concerned.

It has been pointed out that there is evidence that accident and emergency departments in the cities are still getting bigger hits than ever, despite the fact that NHS 24 now exists. On a visit that I conducted recently, NHS 24 told us of patients who would phone two or three times and still end up trying to get a GP to come out.

As was mentioned, the Scottish Ambulance Service is stretched. As the Minister for Health and Community Care has said, paramedics may run an out-of-hours accident and emergency facility in north Aberdeenshire, but frankly that is not enough.

In the light of the figures that we have been given this week and the debate that we will have tomorrow about manpower in the health service, this debate is opportune. The motion flags up the concern throughout Scotland that the provisions in the GMS contracts may provide for some GPs but

will not provide for all of them and certainly do not appear to provide for rural patients.

17:21

John Farquhar Munro (Ross, Skye and Inverness West) (LD): The new GMS contracts, which are being introduced Scotland-wide, have generated quite a debate. I have attended several meetings that have shown that there is much concern not only among medical professionals but, more important, among rural communities throughout Scotland. People are concerned that the medical services that they currently enjoy will not be sustained under the new GMS arrangements.

GP professionals have expressed their concerns, in particular where general practices are located in remote, rural areas where distance and isolation are seen as an absolute disincentive to attracting qualified GPs, as Mr Morgan said. It appears that where it is possible and appropriate to form a group practice, many currently operate. In such cases, there is a rota system that allows regular time off duty and the out-of-hours system seems to work and meet with the general acceptance of the profession and the public. However, in many remote areas of Scotland it is not possible to have co-operative practices. Where such arrangements have not been possible—in isolated areas that have single-GP practices—there are fears that medical provision will not be sustained. That is exercising the minds of many people in those areas because they have come to expect a first-class service and they expect and hope that such a service will continue. Their fear is that it will not.

If those fears are to be allayed, the Executive and health trusts—supported by the medical profession—must listen to the concerns of their dedicated staff and to the voices of vulnerable communities. General practitioners in a single or small practice find themselves on call 24 hours a day, seven days a week. That is an unreasonable work situation that cannot be allowed to continue. Like many members, those people may have young families, and they are entitled and expect to enjoy family time together. We must ensure that they are suitably resourced and that they have physical and financial support so that we can retain their valuable contribution to our rural society.

17:24

Maureen Macmillan (Highlands and Islands) (Lab): I was on the phone to Highland NHS Board this afternoon and I was told that it thinks that it will have to spend somewhere between £3 million and £6 million on out-of-hours services. A disproportionate amount of that money will go to remote rural areas.

I have received numerous letters from GPs in remote rural areas. They complain that they are being forced to opt out of providing a service when they want to work in their own practice. They want not to join up with other doctors in neighbouring practices, but to be given the same status as GPs on some of the islands, who are told that they cannot opt out and are given particular support by the health board.

I can give an example from Applecross, where the practice is to join up with those in Torridon and Lochcarron. The doctor in Applecross tells me that it is quite impossible for her to keep to the 45-minute guideline for getting to patients, in particular in winter or if she has to go across the Bealach na bà. Mobile phones do not work well in that area and there is only one ambulance, which is in Lochcarron. In Applecross, there is not even a police car for emergency use, so there is no infrastructure to support doctors. The doctor would be quite happy to carry on doing what she has done for the past 13 years and look after patients from her own practice, with support, and she fears that her independent practice is earmarked to disappear in time.

An Argyll GP writes that the lack of appropriate transport is a major safety consideration. Air ambulances are based in Glasgow and Inverness. If out-of-hours services are to work in remote rural areas, we must consider—and afford—better air ambulance provision that would be based in the west Highlands. A GP from Shetland tells me that there is no solution to emergencies in outlying areas: a fast four-wheel drive has been mooted, but it would still take an hour for a GP to get to the hospital from her practice and they cannot afford a helicopter. Perhaps we will have to afford helicopters or air ambulances if we are to provide the service that remote rural areas need.

The doctor in Shetland would rather be told by the health board that her practice cannot opt out of out-of-hours care. I want to ask the Executive: what are the criteria for such decisions? The Health Committee's report accepted that there would be situations—and not just on the islands—in which practices would be told that they could not opt out, because of their remoteness, but I have yet to hear of a doctor in a remote area who has been told that they cannot opt out and I want to know why. The situation will create extra expense for health boards and I fear that more money will have to be spent on transport, too.

17:27

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): Alasdair Morgan set out in a moderate and fair way the problems that rural

GPs, in particular, face. There are no simple solutions.

I represent Inverness East, Nairn and Lochaber and it seems to me that if those doctors who work single-handedly on islands such as Eigg are required not to opt out of out-of-hours care, they might find that, if they want to retire in a few years' time, it will be extremely difficult to attract anyone to take over the practice. They know that they are working round the clock instead of being off duty from 6 pm to 8 am and at weekends, as other doctors are. As Alasdair Morgan said, it is difficult enough to recruit doctors to remote rural areas. I am pleased to say that in Laggan we recently managed to find a new GP, but I think that there were only two applicants for the post, when we would have expected many more.

There is great concern in other parts of my constituency, in particular in Lochaber, where a meeting of three community councils—Arisaig, Mallaig and Morar—took place earlier this month to discuss the implications of the loss of round-the-clock GP services in relation to the threat that consultant-led facilities at the Belford hospital might be downgraded.

There is also the prospect that the new system, which I think has been designed without adequate thought, might cause resentment and a form of medical apartheid, dividing doctors who decide not to opt out from those who do. For example, I understand that the practices in Nairn and Ardersier have indicated that they will not opt out. Their general manager has recently opined that the number of GPs in the Highlands who work out of hours will drop from the current figure of 70 to only 10. Highland NHS Board has proposed that it should provide alternative care in about 10 areas, which is difficult enough to do.

I heard from one GP about a new breed of GPs who will work solely out of hours. Although what I was told was anecdotal—the minister might be able to put his own figure on it—I understand that the new breed of GP might be able to earn in excess of £150,000 a year.

Although the change is necessary, the impact has not been thought through. Much more work is needed if people in rural Scotland are to continue to receive the first-rate service to which they are entitled.

17:30

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I thank everybody for the comments that they have made. The trouble is not only that the new contract has not been truly thought through, but that the finances are not in place.

Rural GPs have a lack of choice. Thought is being given to the recruitment of GPs, but at present it is very difficult for GPs in rural areas to get another GP to provide locum cover so that they can have a holiday. I do not see anything in the new contract that will improve the situation or that will enhance the prospects of GPs who want to work in rural areas. Last night, I spoke with an ex-GP. He is a young man who has gone into another field—something that many city-based general practitioners are doing. People are getting out of general practice because of the depression that results from working in it and the lack of finances.

No GP likes doing 24-hour cover. That is not because they do not like their patients; the fact is that the number of hours that GPs have to work is growing and being a GP is very hard work. In rural areas, one night call could take a GP all evening.

As Fergus Ewing said, when we think about out-of-hours provision in rural areas, we also have to think about the lack of consultant services. If someone lives or wants to live in a rural area—or in any community—they need to have work and housing, health care and education services. General practitioners need all those things for themselves as well as for their patients. People might have broadband and be able to work from home, but why would they want to do so if they do not have adequate medical services?

It is extremely difficult for general practitioners in rural areas to work round the clock. It is also extremely difficult for them to get to their patients. That said, I believe that rural patients are not as taxing on their general practitioners as patients in the cities are. The job of a rural GP is quite different from that of a city GP.

A friend in Orkney sent me an article from *Orkney Today*; the article was written by a general practitioner and expresses his concerns. He emphasises the differences in the situations of rural and urban GPs. I would not say that one is better than the other, but rural and urban GPs are two different animals that need different training. The article emphasises that fact. I wonder what Orkney NHS Board is going to do about the situation that the GP describes.

My friend also sent me a cutting about patients who were sent from Orkney to Aberdeen only to be told when they arrived at Aberdeen royal infirmary that NHS Orkney did not have the money to pay for their treatment in Aberdeen. If things are that bad I wonder how health boards are going to work out the out-of-hours service provision. We still do not know how many GPs are going to opt out. It is not possible for GPs who practise in rural areas to opt out—those GPs do not have that choice. The Executive has to go back and think again—carefully—about the new contract.

17:33

Eleanor Scott (Highlands and Islands) (Green): Because of the shortage of time that is available to me and because there is a lot of consensus, I will not say some of the things that I was going to say about the present problems, including those that have been thrown up by the new GMS contact.

Following on from what Jean Turner said about recruitment in general practice, it is true that we are talking about different types of job. We should look at the undergraduate training of doctors and give undergraduates experience of rural medicine. I know that that is done in other countries, including in Western Australia. I heard of an experiment in that part of Australia in which selected students—usually those with a rural background—spend a fair chunk of their undergraduate training in a rural setting. The experiment means that those students do not only their general practice but all their subjects in a rural setting during that chunk of their training.

In Norway, new graduates have to spend at least a year in a rural practice immediately after graduation. As I said, we should look at medical training. There comes a point at which it is not possible simply to throw money at a recruitment problem. We have to look at the kind of people whom we are recruiting in order to see whether we are selecting the right people for the job.

Practising medicine in rural areas is entirely different. In connection with that, the remote and rural areas resource initiative—RARARI—is coming to its end, and it is not clear what will replace it. We have discussed that issue quite a bit in debates. We need something that builds on the expertise that was built up with RARARI, in terms of a faculty of rural medicine. Rural medicine is a specific form of medicine that some people would like to practise, but it is not part of the undergraduate curriculum and people do not know about it. The Executive could consider that in connection with medical schools.

On the current problems, I would like the minister to say something about inducement practices. I understand that progress has been made, but that the details have not been announced.

I echo what a lot of members have said. Relatively recently there were reports in the papers of a quite high-profile case involving somebody who left an island practice because she had been on call without a break for 18 months. Clearly, such situations are not on. However, I accept Jean Turner's point that in comparison with urban patients, rural patients make different demands on their GPs. For the right people, rural practice can be very rewarding in its own way.

I have issues with the way in which medical students are recruited, because there is too much emphasis on the academic, rather than on the caring side of people's characters. We should consider more mature students and late entrants, and examine the kind of people we are recruiting in the context of the kind of primary care health services that we want to deliver. We should also examine the undergraduate programme and include a rural element in it.

17:36

Carolyn Leckie (Central Scotland) (SSP): I thank Alasdair Morgan for raising this subject for debate. My concerns about the new GMS and GP contracts are well-documented and consistent. I am afraid that my fears are now being realised in consultations, such as that in Lanarkshire. Today we are talking about the specific impact of rural issues, but we should consider the overall picture.

I am sure that members will be interested to know something about the Lanarkshire proposals for putting the GMS contracts into practice. Ninety five per cent of GPs in Lanarkshire said that they would opt out; only 33 per cent have said that they might opt into any new provision for which the health board has responsibility. What does that mean in practice for the service models that Lanarkshire is proposing? It means that for a population of 576,000 people, out-of-hours services will involve, according to the preferred option, three primary care centres to cover the whole of Lanarkshire, with one GP in each, and five GPs in cars to provide home visits. The ratios for overnight primary care contact work out, on average, at one GP for 72,000 people. The ratio is worse in North Lanarkshire, because there is only one GP for the whole of North Lanarkshire. For home visits, there is one GP for 115,000 people. That is the practical impact of the contract. I fear that it has not been thought out, planned for or resourced.

I quickly pulled off the internet the GP to population ratios in Africa. We are not exactly comparing like with like because these figures are not about out-of-hours services, but in Tanzania, the figure is 1:26,000 and in Uganda it is 1:6,000. That is the context. Those figures should be put alongside the commitment to make home visits only to housebound and terminally ill patients, and alongside transport times of 40 minutes, which does not include how long it takes for a GP to get to the patient, for the person to be transferred, or for child care to be arranged, nor does it include the waiting time at the other end in the primary care centre. The implications for young children and families are horrendous.

It is time to step back and understand the practical implications of the contracts, and to

redraw, rethink and resource properly before the impact is felt badly by patients who will not be served. I hope that, as the issue concerns the minister's constituency, he will ensure that the ratios that I have discussed are not those that we end up with.

17:40

Christine Grahame (South of Scotland) (SNP): I congratulate my colleague Alasdair Morgan on securing the debate, and I echo many of the points that he made about transport links and age profiles. The situation is even worse in the Scottish Borders, an area that goes from Coldstream in the east to Peebles in the west. The longest travel distance that will be involved in out-of-hours provision is 44 miles, either to Newcastleton or to Eyemouth. The demographics and topography of rural areas make the issue a special one for them. I support Maureen Macmillan's point about the particular difficulties in winter. In fact, just two winters ago, the A68 was closed at Soutra for four days. That gives members an idea of the prevailing conditions in the Borders; it is not only in the north and north-east that there are blizzards and snow-blocked roads. The issues are special to rural areas such as the Borders.

When the Health Committee considered the Primary Medical Services (Scotland) Bill, a GP from the Hay Lodge hospital in Peebles said in evidence:

"it is completely unacceptable. Over-tired GPs … who are probably not even fit to drive, never mind treat patients … have to go out and treat patients, because there is no alternative. The new contract will offer much greater scope for GPs to limit their working hours, so that they do not turn up at a surgery at 9 o'clock in the morning exhausted and sleep-deprived."—[*Official Report*, *Health Committee*, 2 September 2003; c 74.]

Hear, hear. That is a worthy principle and it is what we want to happen. Unfortunately, as many members have said, the working out of the structure of the services that will be put in place has been rushed.

The services will require multidisciplinary teams to take over the work that, in some cases, is done by GPs. Some teams are in place already, but the system is still to be developed. The existence of such teams in large areas will create special difficulties for personnel. For instance, it will take pharmacists or practice nurses much longer to reach people than it would in urban areas.

I have looked at Borders NHS Board's local health plan, which shows that the board is well aware of the funding difficulties that it will have. At present, the board has an annual budget of £127 million, but it already carries a recurrent £3 million overspend, even though Scottish health authorities are not allowed to overspend. Of course, as has happened with many other boards, the board has been allowed, with the Executive's consent, to borrow for the next five-year period. However, the board is already in financial difficulties. Its fear is that savings will have to be made—not expenditure, but savings. There are plans to reduce the number of hospital beds in the Borders and hints about the possible reduction of community hospitals. That is not the way we want to go. The concern has been raised elsewhere.

The minister must consider the special issues for rural areas and accept that additional funding will be required.

17:43

David Mundell (South of Scotland) (Con): I welcome Alasdair Morgan's motion, which I signed. The debate throws up several serious issues, many of which have been touched on. The general underlying concept is that the proposals are ill thought out and will have many repercussions. The impression that one gets in areas such as Dumfries and Galloway is that the system is being made up as people go along.

For example, take the provision of out-of-hours cover by taxi service. As Alasdair Morgan said, many people do not have access to public transport. It appears that we will have a fleet of taxis for night-time use throughout Dumfries and Galloway, although I do not know where they will come from. We must also factor in the point that there is supposed to be a first aider in each taxi. Where will those first aiders come from? The inevitable consequence is that, when people are faced with the choice of phoning for a taxi or for an ambulance, they will phone for an ambulance, which will put added pressure on the Scottish Ambulance Service. In the eastern part of Dumfries and Galloway, that cover would not be deliverable, given that the Scottish Ambulance Service has reneged on its plan to invest in Annan's ambulance service and turn it into a 24-hour facility.

A local GP raised a concern with me yesterday about admissions to Dumfries and Galloway royal infirmary. It will take a very brave GP to send somebody back 40-odd miles to Langholm in the middle of the night having said, "No, I'm sorry, but I'm not going to admit you." Overnight, we will find that the admissions wards of hospitals such as Dumfries and Galloway royal infirmary are clogged up. People these days are very conscious of the legal implications of what they do. Such aspects have been particularly ill thought out.

Local GPs have raised the concern that, whether or not GPs opt out, what will happen is that, if people know that a GP lives in their

community, they will knock on that GP's door in the middle of the night rather than face a lengthy journey to a GP in a centre. Many GPs will feel that they need to respond to such knocks on the door.

The Scottish Executive is in a cleft stick. For people who are currently able to get out-of-hours visits from GPs, things in the health service are not, Mr McCabe, getting better; they are getting worse. Everybody understands why there are difficulties in recruiting rural GPs, but the Scottish Executive must be a lot more honest in telling people what will happen. The Executive must think out its policies much more before implementing them.

17:46

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Alasdair Morgan's motion focuses on the fact that local NHS boards may be insufficiently funded to meet the unique challenges that are encountered in rural practices. In answer to a written question from David Davidson back in November, Malcolm Chisholm said:

"There will be an unprecedented increase in funding for the new contract of 33% over three years."—[*Official Report, Written Answers,* 19 November 2003; S2W-3462.]

In an answer to Sandra White at a different time, the minister said that the out-of-hours development fund would be increased from £6.3 million last year to £10 million next year.

On the Health Committee's visit to Loch Melfort, I do not recall GPs who approached us talking about their problems in the way that David Davidson described. They talked about their problems with the minimum practice income guarantee. That was their focus, rather than the issue of not being able to opt out of 24-hour care. The GPs in the islands, in particular, pride themselves on the fact that they look after their patients 24 hours a day. That is a point to be remembered.

On the minimum practice income guarantee, Malcolm Chisholm said in the chamber during the passage of the Primary Medical Services (Scotland) Bill not so long ago that all practices would be at least as well funded and that most would be much better off.

The brief that we have received from the BMA claims—I think that this is what has prompted this debate—that local medical committees report that many health boards claim that they have insufficient funds to provide an alternative out-of-hours service.

I have a sense of déjà vu. I hope that, over the next few months, we will not hear the same sort of arguments that we have heard between the Executive and local government over local government finance. The Scottish Executive says, "We are giving this money," but the BMA says, "The local health authorities haven't got the money." Somebody is not playing the game. Somebody is not being open and honest and I want to know who it is. When the debate goes back to what Alasdair Morgan was talking about, the Scottish Executive should re-examine the level of funding that is allocated to NHS boards that provide services in rural areas. I would have no hesitation in supporting that. I hope that Tom McCabe and Malcolm Chisholm will go back and re-examine the level of funding. If, as they are saying, they are allocating the funds, what is going wrong? That is what I would like to know.

17:49

Stewart Stevenson (Banff and Buchan) (SNP): I would like to speak about some local issues in my constituency, starting with GP vacancies. We have two GP vacancies in Banff; two in Fraserburgh; one and a half in central Buchan; and, on the fringes of my constituency in a practice that is used by many of my constituents, two vacancies in Turriff. That is a huge number of GP vacancies, and most of them have existed for more than two years. That shows the problem against which we have to consider the out-of-hours provision. I suspect that things can only get worse. Some GPs in my constituency are telling me most vigorously that they fear that we will slip into the situation that we have with dental provision. I accept that the health board has a duty to provide GPs to those who cannot find them for themselves and that no such duty exists in dentistry. However, given the number of GP vacancies in the area that I mentioned, there is a real problem.

For Grampian NHS Board, which supports 10 per cent of Scotland's population, but receives only 9 per cent of health service funding, the provision of out-of-hours cover is a particular problem, given the rurality of the area. It is likely that costs for providing the service in Grampian will rise faster than they will in urban areas. There is no sign that the money that is provided will solve that problem.

My father was a GP. He used to have Dr Wilson come down from St Fillans to Cupar every year to be his locum. It is not without relevance that Dr Wilson was the grandson of David Livingstone—today we are looking for some new missionaries to fill the gaps in rural areas. The key point is that my father had to pay 17 per cent of his income to Dr Wilson each year to cover a gap of 7 per cent of his time. Out-of-hours cover is expensive relative to everything else.

We are coming up to the deadline. We do not know how the out-of-hours service will be provided

and serviced. When I met representatives of NHS Grampian a few weeks ago, I found that the plans were pretty damn fluid.

GPs are concerned that the change in the contract will lead to their referring more injuries to accident and emergency units because they will not be paid to deal with them. That puts GPs in a difficult position.

GPs in my constituency want categorical assurance that there will be money for personnel to provide out-of-hours care. They want to know how we are going to address the problem in our rural areas. It is clear that transport will be a big issue. My father used to drive a Mini Cooper S and he occasionally took patients directly to hospital in Edinburgh, there being no other way. There are none of those cars around and my father has been dead many years. We need to hear from the minister.

The Deputy Presiding Officer: We will hear from the minister now, because I call him to respond to the debate.

17:52

The Deputy Minister for Health and Community Care (Mr Tom McCabe): I thank colleagues for the contributions that they have made to the debate and I acknowledge that Alasdair Morgan brought the subject to the Parliament. The debate is important and the Executive and I welcome the opportunity to have it, because we recognise that change to out-of-hours responsibilities under the new GMS contract should be the subject of serious discussion—I emphasise the word "serious"—not only in the chamber but in the public meetings organised by health boards throughout the country.

I emphasised the word "serious" because I want to return to part of Carolyn Leckie's speech. I have said before in the chamber that at the end of this parliamentary session we will be spending £9.3 billion on our health services in Scotland, so to draw comparisons with parts of Africa is ridiculous. The health service produces miracles for the people of Scotland day in, day out.

Carolyn Leckie: Will the minister take an intervention?

Mr McCabe: No, I will not. Carolyn Leckie has said quite enough. The question that we should ask ourselves is how the people in the countries that Carolyn Leckie mentioned would feel to have £9.3 billion spent on their health care each year. I think that I know the answer to that. It is ridiculous to draw comparisons between the service in third-world countries and the service that we provide here. Moreover, I say to Mr Mundell, with the greatest of respect, that I will take no lessons from him on honesty, given the outrageous scaremongering in his speech tonight.

The new GMS contract introduces a major change in primary care. The new right for GP practices to transfer to health boards the responsibility for providing cover in the evening, at night and at weekends is a key element of the contract. The change is not about cutting services. Anyone who needs access to primary medical services outside normal hours will get it. That is an absolute guarantee.

Carolyn Leckie: How long will it take?

Mr McCabe: I am listening to noise from the sidelines, Presiding Officer. I do not know whether I have to put up with that while I am speaking.

Carolyn Leckie: If the minister would take an intervention, he would not have to put up with it.

Mr McCabe: I will not be taking Carolyn Leckie's interventions; I have told her that.

The Deputy Presiding Officer: There is no requirement on anybody to take an intervention.

Mr McCabe: As I said, that access is guaranteed. The change is about improving patient care by providing services in a different way. I was pleased to hear Alasdair Morgan acknowledge that no one should expect a tired GP who has worked all day to work through the night as well. It was never right to impose that burden and we are in the midst of creating a system that will end that unfair burden.

We know already that 75 per cent of patients in Scotland are covered by out-of-hours co-operative arrangements and that out-of-hours services are complemented by NHS 24, which, as members will know, is a confidential 24-hour nurse consultation service.

Alasdair Morgan: Will the minister acknowledge that the concern is that the new system will lead to an out-of-hours service that covers a far greater area and that will be manned by fewer GPs than the current out-of-hours co-operative service is?

Mr McCabe: I am perfectly happy to acknowledge that the change is about providing a comprehensive service in a different way. One of the greatest lessons that we have learned in the NHS in the past few years is that we have a range of allied health professionals who have much more to offer than has ever been asked of them in the past—in particular, nurses across the country are teaching us that lesson.

Paramedics can also teach us that lesson. Some of our paramedics are now equipped with telemedicine that allows an image to be relayed to a consultant so that the consultant can take a decision to administer clot-busting drugs. In

Tayside, for example, the administration of such drugs takes place some 40 minutes earlier than previously. Things are happening all the time to broaden the number of allied health professionals who can play a part in the delivery of the service in the way that we envision.

Sometimes, the new way of delivering the service might not involve as many GPs as previously but, quite frankly, there are many circumstances—particularly the most serious ones—where people need not a GP rushing to their door, but a paramedic or an ambulance that can get them to the most appropriate treatment. A mature attitude will help us to rethink our approach to out-of-hours services.

Transferring responsibility for out-of-hours care to health boards gives the boards the opportunity to build on those developments and to co-ordinate the efforts of the clinical team, linking ambulance staff, nurses, GPs and hospital staff in health centres and accident and emergency units. That will forge an integrated approach to all emergency care outwith normal working hours, ensuring that patients get the right response in every case.

Our proposals are fundamentally about delivering better patient care. The new contract will mean for the first time that any new out-of-hours service must meet new mandatory accreditation standards. That will ensure that anyone who provides out-of-hours services is fit for purpose. Those standards will be available for public consultation in March.

We have heard some scare stories today about the lack of funding. The truth is that boards are still at the early stages of planning and have not yet determined definitive costings. We would not expect them to have done so at this stage. People have said that we are approaching the deadline, but the deadline is 31 December 2004, which means that boards are not required to assume responsibility until the end of this year and that they therefore have the opportunity to plan for the developments within the record uplifts in allocations that they will be receiving from this April.

Carolyn Leckie: Will the minister take an intervention?

Mr McCabe: No, I will not.

I stress that the spending on general medical services will increase from £433 million to £575 million.

As he does regularly, Mike Rumbles made a good point, the answer to which is that I fully expect the BMA to make the representations that he refers to when I meet its representatives in Inverness at the end of the week. The BMA negotiates on behalf of its members and is perfectly entitled to do so. We are in the midst of a negotiation process, whether we like it or not, and that process will continue for some time. I have no problem with that, but I think that, in order to give some context to some of what we hear about costings, we need to bring that process into the forefront of our minds.

The changes must be well planned and carefully managed. That is why the Executive has set up a national working group to support boards in sharing best practice as they develop their plans. The group brings together all the key stakeholders, as has been said in the debate. Boards are beginning the process of sharing their plans with the communities that they serve. The public will therefore have the chance to make their voice heard and to shape the out-of-hours service that is provided in their area.

We are also making more money available to help the boards. As Mike Rumbles rightly said, the out-of-hours development fund will increase from £6.3 million to £10 million in 2005-06. Boards will also have money paid back to them from each GP who decides to transfer responsibility. If 90 per cent of GPs decide to opt out, a further £15.1 million will return to out-of-hours services. Of course, all that is against the background of the substantial increase in general medical services expenditure, which will reach £575 million.

Presiding Officer, I know that I am over time, but I want to take a few moments to focus on rural areas. For many GPs in rural areas, the change in out-of-hours responsibilities will be pivotal to sustaining their practices. They can at last expect a reasonable work-life balance, which means that general practices in rural areas will become a more attractive place to work. In response to Maureen Macmillan, I stress that we must be clear that no practice will be forced to opt out of out-of-hours arrangements. Any practice that wants to continue with its existing arrangements will be allowed to do so—that is a perfectly feasible option. We expect that all but the most isolated practices will be able to opt out. However, we recognise that, for a few practices in the most isolated locations, that will be impossible, not because of a lack of funding for the service, but simply due to the geography in the most isolated parts of rural Scotland.

Maureen Macmillan: My point is that there are some very remote practices—they are not island practices—that are being told that they are not allowed not to opt out. They are being told that they must go into a group of three practices to provide out-of-hours services even though they would prefer to provide the service on their own, as they have always done.

Mr McCabe: I hear what Maureen Macmillan says. I would be delighted to hear details of those situations and I will do my best to address those concerns as soon as I receive the information.

Where practices cannot opt out for reasons of geography, they will be fully supported. They will of course retain the out-of-hours money and they will receive a share of the out-of-hours development fund and any increased investment in that fund. They will also receive a further payment to cover any differential between the total of those payments and any locally agreed premium that is payable for providing out-of-hours services, so they will certainly not lose out financially. Rural boards will have greater flexibility to employ salaried GPs to provide out-of-hours services directly throughout their area. Those salaried doctors could be used to provide additional support and cover to the most isolated practices.

As I said at the outset, I welcome the chance to debate this important issue. No one denies that the changes are challenging, particularly for rural practices. We are under no illusions that some testing times lie ahead for all those who are involved in delivering the reforms. We are alive to that and we are working with the boards and the professions to rise to the challenges. In doing so, we firmly believe that we will help to bring lasting benefit to rural GPs, to their practices and, most important, to their patients. We will do that by re-invigorating rural general practice and delivering sustainable and improved services to patients throughout Scotland around the clock.

Presiding Officer, I thank you for your indulgence.

Meeting closed at 18:04.

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