MEETING OF THE PARLIAMENT

Thursday 4 March 2004

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Scottish Parliament

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

Presiding Officer's Ruling

The Presiding Officer (Mr George Reid): Good morning. Yesterday I undertook to give my views on issues of legislative competence and admissibility of amendments, which Dennis Canavan and Allan Wilson raised. It should be clear from what I said yesterday that any dispute about the admissibility of an amendment is a matter for the committee convener at stage 2 and for me as Presiding Officer at stage 3.

Under our rules, the legislative competence of an amendment is not a criterion for admissibility and is therefore not an issue for a convener or for me in ruling on any dispute. That means that there is nothing to prevent Mr Canavan from lodging the same—or a similar—amendment at stage 3, when the issue of whether to select it becomes a matter for me. That decision will not take into account any issues of legislative competence.

Business Motion

09:31

The Presiding Officer (Mr George Reid): The first item of business is consideration of business motion S2M-993, in the name of Patricia Ferguson, on behalf of the Parliamentary Bureau, which sets out a timetable for the stage 3 consideration of the Vulnerable Witnesses (Scotland) Bill.

Motion moved,

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

Groups 1 and 2 - no later than 45 minutes

Groups 3 and 4 - no later than 1 hour 10 minutes

Group 5 - no later than 1 hour 30 minutes

Groups 6 and 7 - no later than 1 hour 45 minutes

Group 8 - no later than 2 hours

Groups 9 to 11 - no later than 2 hours 30 minutes

Motion to pass the Bill – no later than 3 hours 20 minutes—[*Tavish Scott*.]

Motion agreed to.

Vulnerable Witnesses (Scotland) Bill: Stage 3

09:31

The Presiding Officer (Mr George Reid): The next item of business is the first part of stage 3 proceedings on the Vulnerable Witnesses (Scotland) Bill, for which members should have the bill—SP bill 5A, as amended at stage 2—the marshalled list, which contains all the amendments that have been selected for debate, and the list of groupings.

Each amendment will be disposed of in turn but, when we reach a series of amendments that have already been debated and that are consecutive in the marshalled list, I shall invite the minister to move them en bloc and, unless any member objects, shall put a single question on them. I will employ that procedure only if members agree; I am quite prepared to put the question on amendments individually, where that is preferred by the Parliament.

Any amendment that has been moved may be withdrawn with the agreement of members who are present. It is, of course, possible for members not to move amendments, if they so wish. The electronic voting system will be used for all divisions. I will allow a voting period of two minutes for the first division and thereafter I will allow a voting period of one minute for the first division after a debate on a group; all other divisions will last for 30 seconds. I hope that that is clear.

Section 1—Evidence of children and other vulnerable witnesses: special measures

The Presiding Officer: Group 1 is on the definition of vulnerable witnesses. Amendment 26, in the name of Jackie Baillie, is grouped with amendments 27, 1, 2, 4, 5, 50, 51, 20, 21 and 22.

Jackie Baillie (Dumbarton) (Lab): In speaking to amendments 26, 27, 50 and 51, I want first to recognise the huge change that will be brought about by the passing of the Vulnerable Witnesses (Scotland) Bill. In future, substantial numbers of children and vulnerable witnesses will for the first time have access to special measures in courts. Those special measures will not only make the process less intimidating, but undoubtedly help children and vulnerable witnesses to give their best evidence. In seeking support for my amendments, I do not dismiss any of that; the desire is simply to extend the principle to a much wider group of people, to ensure that no one slips through the net.

In the Justice 2 Committee, there has been much discussion about adding further categories to the definition of a vulnerable witness. It would be fair to say that I support the Executive's desire to avoid listing a further set of categories because, by taking the route of simply providing lists, we may end up unwittingly excluding people. At the same time, the committee was much taken by the views of Enable and the Law Society of Scotland, which suggested that automatic entitlement to special measures should be available to people with a learning disability or a mental disorder.

In balancing those arguments, the committee was minded to accept the case that there should be automatic entitlement to be considered for a special measure rather than automatic entitlement to a special measure. That would have the effect of ensuring that no one fell through the net, but it would also acknowledge the Executive's concerns. The underlying thinking is that, because non-visible disabilities can sometimes be the most difficult to identify and assess, witnesses with a mental health disorder or a learning disability should have a more robust entitlement than is currently provided for in the bill.

The committee was sympathetic to the concerns expressed by Rape Crisis Scotland and other organisations, which recognised that victims of alleged domestic abuse and alleged sexual offences could benefit in similar ways. I will leave that point to my colleague Maureen Macmillan to develop.

I am grateful to the Executive for the continuing dialogue over the past few months, which has allowed consideration of practical ways of giving effect to the relevant amendments. A range of other measures—which Hugh Henry helpfully set out in a letter to me and Maureen Macmillan on 29 January 2004—will ensure that vulnerable witnesses get the support that they need and deserve. I have discussed with the minister the need to review the legislation to ensure the efficacy of the definition and to establish whether it is being implemented consistently across the country.

There is a need for those who are responsible for implementation to receive training, particularly on learning disability—we know that it can be difficult to identify whether someone has a learning disability, especially if it is mild to moderate. It is also the case that people who appear to have little or no capacity can often communicate their views clearly, so it is evident that the potential exists for capacity to be overestimated and underestimated. Training for the police, the Procurator Fiscal Service, the courts and others will assist and I would be grateful if the minister accepted that the training should be informed by people with learning disabilities and should be user led, as those people are best placed to explain how and why they need to be supported.

I hope that the Executive will involve voluntary sector organisations such as Enable, because it is recognised that, for the legislation to be truly effective, we need a multi-agency approach. The Executive should also consider the provision of accessible information at all stages of the process. That is particularly important in civil cases. The vulnerable witness officer could have a role in providing early support for vulnerable witnesses in civil cases in which it is unlikely that the police or procurators fiscal will have a role. I welcome the Executive's commitment to consider creating a field in a standard police report that would identify the much wider range of vulnerable witnesses. Taken together, those measures will perhaps have the same effect as the amendments under discussion would.

I welcome amendment 2, in the name of Hugh Henry. It responds to concerns that were expressed by the Disability Rights Commission at stage 1, which related to definitions and the lack of an explicit link between the bill and the definition in the Disability Discrimination Act 1995. I am pleased that agreement with the Disability Rights Commission appears to have been reached, because amendment 2—like my amendments—will help to ensure that everyone with a special need is included under the terms of the bill.

I move amendment 26.

The Deputy Minister for Justice (Hugh Henry): I fully understand Jackie Baillie's view that some categories of witnesses should automatically be considered to be vulnerable. That view, which has been restated today, was also expressed by Maureen Macmillan at stage 2. I know that the issue was raised in the stage 1 report and during the stage 1 debate.

As Jackie Baillie has indicated, we have made some progress and have given certain commitments, which in many respects go in the direction in which Jackie Baillie and others wish to move. At stage 2, I gave an undertaking that the Executive would consider the matter again. Along with our colleagues in the Crown Office and Procurator Fiscal Service, we take such matters very seriously. We have thought carefully about whether the bill should be amended or whether the commitments that we have given are the best way to go. Our conclusion is that the bill as it stands probably represents the right way forward.

We have given certain commitments. As Jackie Baillie indicated, I wrote her a letter in which I raised a number of issues. I want to put on record the fact that we fully stand by the commitments that we made in that letter. If the letter would be helpful to members, it will, with Jackie Baillie's permission, be available for public consideration. The Executive considers that the letter probably does as much as is required.

During the discussions, the Executive identified some significant practical measures that we consider will help to ensure that witnesses are given proper consideration for special measures and that vulnerable witnesses do not slip through the net. Jackie Baillie and Maureen Macmillan have been right to say that we need to sensitise the system so that it is better at identifying people who need additional help to give evidence, whether because of a mental disorder or for any other reason. Organisations throughout the justice service are already aware of the Executive's commitment to making the bill work and to ensuring that genuinely vulnerable witnesses do not fall through the net. We want to ensure that agencies and organisations work together to raise awareness so that such people are identified and their needs are recognised. However, we do not believe that it is right to do that by legal definitions in the bill or simply by labelling people as vulnerable.

The Crown Office and Procurator Fiscal Service plays a pivotal role and I wish to put on record two commitments that it has made, which the Executive believes will go a long way towards ensuring that vulnerable witnesses are identified. First, the Lord Advocate has given a commitment to issuing instructions to the police on the identification and reporting of vulnerable witnesses. That will have the effect of building issues of vulnerability into the work of the police and will require the police to consider issues of vulnerability for each witness. Jackie Baillie mentioned the field in the standard police report. That will make a significant contribution, but it will be backed up by training and guidance, so that police officers are aware of what to look out for when considering issues of vulnerability.

Users should be able to influence the shape of training, not only of police but of other staff involved in the delivery of justice. We should consider the skills, experience and expertise in the voluntary sector that can be brought to bear. A number of organisations—Jackie Baillie has mentioned some, including Enable—have a valuable contribution to make in helping to shape and potentially to deliver training where that is appropriate, although that would be a decision for those directly involved. I would welcome their full participation in the training process.

Secondly, and complementary to the commitment on training, there is the Crown Office's guidance to procurators fiscal and other staff. The Crown Office will be updating its guidance to staff as a result of the bill and it has made a firm commitment to involving the interested organisations in the process of developing that guidance. It will consult a range of appropriate interest groups, such as Enable, the Scottish Association for Mental Health, the

Scottish Rape Crisis Network, Scottish Women's Aid and others, so that their concerns are fully considered, their knowledge and expertise are utilised and they have the opportunity to influence the shape and the content of the guidance.

The Crown Office is anxious to enlist the invaluable experience of those groups in preparing the instructions and in equipping prosecutors with the skills and information that are required to identify or recognise different types of vulnerability, including latent non-visible disabilities. The Crown Office also intends to make publicly available as much of its internal guidance as it can, consistent with its public interest duties and the exemptions afforded under freedom of information legislation. That is likely to mean that the majority, if not all, of the guidance relating to vulnerable witnesses will come into the public domain in one form or another and will be open to scrutiny. The Executive hopes that that will be an additional way of increasing public confidence about the way in which the prosecution service deals with vulnerable people.

The Executive expects that, if support groups are aware of the contents of the guidance, having contributed to its drafting, they will be able to advise and refer the witnesses whom they support and will be in a position to draw the attention of the authorities to relevant information. I echo Jackie Baillie's point about the role of vulnerable witness officers in supporting those who need support, in helping with identification and in providing counselling support and advice.

The Executive wants to work at raising awareness on the civil side, so that parties and solicitors acting in those cases are aware of the need to make applications for special measures for vulnerable witnesses. In the sheriff court, any necessary changes to the rules of court will be a matter to be considered by the Sheriff Court Rules Council. The Executive expects that the council will be keen to consult relevant interest groups when it is preparing the information and guidance necessary to raise awareness and to ensure that the new procedures and rules operate effectively.

09:45

I hope that members can agree that those commitments demonstrate the Executive's determination to make a real difference. On the basis of the reassurance given, both today and in the letter that Jackie Baillie referred to, I hope that Jackie Baillie will consider not pressing her amendments.

Amendments 1, 2, 4, 5, 20, 21 and 22 deal with definitions of disability. Proposed section 271(2), which the bill will insert into the Criminal Procedure (Scotland) Act 1995, lists the factors that the court can take into account in determining vulnerability in criminal proceedings and section 7(2) of the bill does the same for civil proceedings.

One of those factors is any physical disability that the person giving evidence has. The Disability Rights Commission requested that the reference to physical disability in the bill be amended to refer to disabilities and impairments. Executive and non-Executive amendments on the issue were lodged at stage 2, but were all withdrawn or not moved on the basis that the Executive would continue its dialogue with the DRC and lodge an amendment at stage 3. We have done that and propose to change the reference so that, rather than referring only to a physical disability, the bill also refers to any other physical impairment that a witness may have.

It should be noted that the Executive lodged an amendment at stage 2 that will ensure that any other factors that could be relevant to an individual witness's vulnerability can be taken into account. Although we have ensured that any such factors can be considered, we agree that it is useful for the bill to refer to both disability and impairment. I am grateful to the DRC for its help on that issue and to Jackie Baillie for raising the matter at stage 2.

Maureen Macmillan (Highlands and Islands) (Lab): I wish to speak to those parts of amendments 26 and 50 that deal with the victims of sexual offences and the victims of alleged offences involving abuse as defined in section 7 of the Protection from Abuse (Scotland) Act 2001.

I appreciate what the minister has said and I thank him for it. It is important that the criminal justice system does all in its power to ensure that victims of sexual assault or abuse feel confident to report what has happened to them to the police, feel supported through the process of precognition taking and are recognised as vulnerable when they come to court. At the moment, the significant majority of rapes and sexual assaults are not reported to the police because of the perceived horror that awaits victims at the hands of the criminal justice system. Amendment 26 would mean that such victims would be automatically considered as vulnerable witnesses and be provided with appropriate support, although I recognise that such support can be given in other ways—for example, by the police and by the fiscals—if there is proper training. I thank the minister for what he has said on that.

It is important not only for the witness to have that support, but for the courts to ensure that the evidence from witnesses is not affected by fear engendered by the fact that the witness is face to face with the alleged abuser or rapist. The conviction rate for rape is low—about 10 to 15 per cent—and I hope that the measures proposed by

the minister will give witnesses the courage to come forward and the support to tell their story without fear or harassment.

I emphasise the necessity of providing support for vulnerable witnesses in civil courts, too, which are the subject of amendment 50. Victims of abuse may find themselves in the civil court seeking interdicts against their abuser. If the interdict is contested, the abused person might, without support, prefer to drop the case rather than face the abuser, so that the protection of the interdict falls. I thank the minister for his letter to me on those points, but I would like further reassurance about how solicitors will be trained to recognise that witnesses have that vulnerability. I understand why the minister does not wish to include victims of sexual offences or abuse into automatic entitlement. I thank him for the commitments that he has made on training, which is important, and particularly on involving in the training of the police and fiscals the organisations that support victims of rape and sexual offences or people who have been subjected to domestic abuse.

Hugh Henry: I am happy to give Maureen Macmillan the assurances that she seeks. She has raised a valid point. We would be concerned about any unintended consequences and we recognise that a failure to adopt and embrace what we are proposing could leave some people vulnerable. I am willing to place on record the fact that we are prepared to see through what I said in my letter to Maureen Macmillan. If anyone wishes to see a copy of that letter, we are happy, with her permission, to share it.

Jackie Baillie: I am significantly reassured by the package of measures that the minister, alongside the Crown Office, will be putting in place. That demonstrates that, although the Executive does not accept my amendments, its purpose remains identical to mine in relation to the support that it seeks to provide. In light of the minister's comments, I am sufficiently reassured, so I do not intend to press my amendments.

Amendment 26, by agreement, withdrawn.

Amendment 27 not moved.

Amendments 1 and 2 moved—[Hugh Henry]—and agreed to.

The Presiding Officer: Group 2 is on child witnesses and the expeditious taking of evidence. Amendment 28, in the name of Jackie Baillie, is grouped with amendment 52.

Jackie Baillie: I am grateful for this opportunity to speak to amendments 28 and 52, which are both in my name and which are supported by Maureen Macmillan. The purpose of the two amendments is to remove delays in the court process where child witnesses are involved. Although I appreciate the often Herculean efforts of the courts in bringing cases to trial as expeditiously as possible, the Justice 2 Committee nevertheless received substantial evidence highlighting problems with delays. Delays in cases coming to trial clearly have an impact on vulnerable witnesses.

We heard about the experiences of a number of people. It was apparent from the questionnaires that had been submitted and from the interviews that we conducted with young vulnerable witnesses that it was common for cases to be postponed or delayed at the last minute. I will give a couple of examples. As a reporter to the committee, I interviewed a number of young vulnerable witnesses, with support from Children 1st—the committee will wish to acknowledge the assistance of Children 1st in arranging the interviews.

One case involved a 12-year-old girl with learning disabilities, who had been sexually abused by her family. The trial had already been delayed three times. I do not think that we can even begin to imagine the impact that such abuse would have on any child. So frustrating was the experience that the girl even opted to dispense with special measures, because to have been assessed by a psychologist as required would have delayed the trial even further. That is hardly conducive to a child giving their best evidence and it is something that the bill seeks to change.

Another case involved a 16-year-old girl. The case had been postponed three times, once on the day before the trial was due to start. Undoubtedly, that is mentally and emotionally very draining. The case began when she was 15 and so entitled to special measures and she opted to have screens in court. Because of all the delays, she turned 16 and lost her entitlement to those special measures, which she felt that she needed. Again, that was hardly conducive to a child giving their best evidence.

I understand that the problem with delays may be dealt with in part by the Criminal Procedure (Amendment) (Scotland) Bill. I will have to rely on ministers and members of the Justice 1 Committee to clarify the matter, but it has been suggested that, rather than significantly reducing delays, the proposals will simply mean that witnesses are better informed that there will be delays. My colleague Karen Whitefield lodged a set of amendments at stage 2 to establish a simplified child witness notice procedure, which will significantly help with any prospect of delays.

I hope that I have, albeit briefly, illustrated the emotional and psychological impact of delays in the court process on vulnerable child witnesses. If we want to ensure that vulnerable witnesses give

their best evidence, we must not only provide special measures, but reduce delays where possible.

I move amendment 28.

Nicola Sturgeon (Glasgow) (SNP): I support the two amendments in Jackie Baillie's name. Many aspects of giving evidence in court are intimidating for a child. The nature of the case is often a factor. A child witness will frequently be giving evidence against an individual who has abused him or her. The adversarial nature of proceedings is alien to children and to all their experience of life. Even the strange practices, dress and language of the main actors of the process can make giving evidence a frightening experience for a child witness.

Sometimes the most distressing factor is none of those things, but the length of time for which a child might wait to give evidence in a trial. They might have been built up on several occasions to expect to give evidence and they might have been prepared for that experience only for the trial to be adjourned or postponed at the last minute. I heard a mother talking on the radio this morning about her child, who had been waiting for 18 months to give evidence in an abuse trial. The mother described how, every week of that 18 months, she had had to prepare the child for the prospect of giving evidence. Every week, the child was told that the trial would perhaps be that week, only to have that expectation dashed.

The reality is that, while a child is waiting to give evidence in what in most cases will be an extremely distressing trial, their entire life is put on hold. They cannot get on with the normal, day-to-day activities of being a child because they have an enormous black cloud hanging over them. Anything that we can do through the bill, and even outwith it, to expedite the whole process of giving evidence and to make it more certain—it is the uncertainty as well as the sheer length of time involved that can be so distressing—would be welcome. The two amendments would go some way towards that, which is why I am happy to support them.

Hugh Henry: I share the concerns that Jackie Baillie has raised. She is absolutely right to highlight some of the horrific consequences that can be caused by delays. She refers to the trauma and distress that undue delay can cause and the Executive is entirely sympathetic to what she intends to achieve. However, I do not think that the amendments would necessarily achieve the desired effect.

I do not wish to run ahead to amendments that we will be considering in groups still to come. However, although I sympathise with Nicola Sturgeon's desire to eliminate delays, I should point out that a set of amendments that we will come to later—some of which Nicola Sturgeon lodged—would, I believe, lead to further delays in the system. I hope that she will be able to reflect on the sincere point that she is making about the avoidance of delay.

Nicola Sturgeon: The minister's point is rather disingenuous. Does he agree that delays in trials are caused not by the due process of law, which is what my later amendments refer to, but by the repeated adjournments of trials due to a lack of preparation, usually on the part of the Crown? Trying to confuse the two is rather disingenuous and is perhaps an attempt to politicise the argument somewhat.

10:00

Hugh Henry: No, I am certainly not trying to politicise the argument. The repeated adjournments to which Nicola Sturgeon refers are also to some extent the consequence of the due process of law and we are considering that matter through a range of legislative measures. The question is how to minimise the unnecessary delays that are caused by the due process of law. Just because something is happening because of the due process of law does not necessarily make it right, nor does it mitigate the worst consequences for those who are affected.

We accept that there is a great deal of anxiety and uncertainty—Jackie Baillie is right to highlight the impact of delays on vulnerable witnesses. We have tried throughout the bill to minimise potential delays that could arise through the application for, or use of, special measures. For example, the bill as it is currently drafted has a streamlined procedure for child witness notices, which should help to reduce the possibility of delays, and it allows for hearings on child witness notices to take place only when the court is not satisfied with the notice. In addition, as Jackie Baillie indicated, we were happy to support Karen Whitefield's comprehensive amendments at stage 2, which will further streamline the procedure for many child witness notices where standard special measures are requested.

In passing, I remind members that the Executive is engaged in a range of work to tackle the issue of delays and constant adjournments. For example, the Criminal Procedure (Amendment) (Scotland) Bill contains proposals to improve the efficiency with which justice is delivered through the High Court. That bill should ensure that High Court cases proceed to trial only when they are ready. It is also intended to remove the culture of adjournment in those proceedings. The McInnes summary justice review is due to report soon with recommendations for more efficient and effective delivery of summary justice.

In principle, we agree that, wherever possible, parties that call child witnesses should have proper regard to the need to progress matters expeditiously. I am aware that the Crown Office already seeks to do so, as far as is consistent with ensuring the fair and effective conduct of proceedings.

It is also worth noting existing policy in the sheriff courts, as documented in the Cox Nicholson report on court programming, which states:

"There are certain categories of business in which evidence is led which … should be given priority in assigning a diet. These include criminal and civil cases involving children as witnesses or where children are the subject matter of the case in question … Similarly … such cases should be afforded priority on the day of the assigned diet, in the event that a number of cases are proceeding."

Again, that must be subject to certain caveats, but it demonstrates that the courts are alive to such issues.

However, we cannot support the amendments. We are grateful to Jackie Baillie for raising such an important issue and we understand and are sympathetic to her intentions, but we do not believe that the amendments would be workable in practice or that they would achieve the desired effects.

The amendments would place a duty on the court to ensure that child witnesses are dealt with quickly. Of course, we are keen to ensure that cases that involve children proceed with minimum delays—in the reforms that we are proposing for the High Court, the intention is that cases will be more effectively managed to ensure that time limits are met. However, the parties to a case and not the court decide which witnesses to call and when, depending on how they wish to present their cases. Therefore, although the amendments are well intentioned, their focus is misplaced.

Thankfully, the Crown and others are becoming increasingly aware of the need to manage cases with a sensitivity to the needs of child witnesses and I encourage all parties that call child witnesses to bear in mind the potential effects that long waits could have on them. That is one of the issues that is specifically covered in the guidance on questioning children in court that we published last year. That guidance, which we developed in partnership with the Crown Office, the Faculty of Advocates, the Law Society of Scotland and the Scottish Children's Reporter Administration, sets out best practice for all practitioners who are involved in calling child witnesses and should act as a benchmark against which practices are judged. Such quality standard setting, rather than changes to the law of evidence, is the best way forward to achieve improvements in practice.

It is also worth bearing in mind the fact that the amendments contain no sanctions for failing. Indeed, it is unclear what could be considered an appropriate sanction if the court fails in its duty to take a child witness's evidence expeditiously. The only effective sanction might be that the party would not be able to call the witness at all, but that would not be in the interests of anyone if it meant that the case had to be brought to an end and the child's evidence was never heard.

I hope that Jackie Baillie can be persuaded that changes that we are introducing and the change in culture and procedures that we are pursuing will have the same desired effect and that she will agree not to press the amendments.

Miss Annabel Goldie (West of Scotland) (Con): I applaud the spirit of Jackie Baillie's amendment 28, but am confronted by a technical difficulty. I am not sure what the sanction would be if there were a default in compliance with the proposal. Mr Henry made a fair point. Everybody desires to see criminal cases proceed as expeditiously as possible, but control of witnesses rests with the parties to the criminal case, whether prosecution or defence. My concern is that the only sanction might be that the case could fall, which would clearly be regrettable and certainly not in the best interests of the parties concerned or justice as a whole. Therefore, although I applaud the spirit of the amendment, I cannot support it. I endorse the sentiments that Mr Henry expressed.

Jackie Baillie: I say to Annabel Goldie and the minister that a possible sanction could be spending an afternoon with the Justice 2 Committee, convened by Annabel Goldie.

Miss Goldie: That might be regarded as a penal imposition by certain parties.

Jackie Baillie: I could never agree with that, although others might.

The minister detailed the much wider range of work that is going on to modernise the justice system and I accept that that will ultimately address the issue of delays. Given his assurances and the quality standards that are being introduced as a mechanism to reduce delays in the system, I will not press amendment 28.

Amendment 28, by agreement, withdrawn.

The Presiding Officer: Group 3 is on special measures and use of intermediaries. Amendment 34, in the name of Patrick Harvie, is grouped with amendments 45, 46, 48, 59, 64 and 65.

Patrick Harvie (Glasgow) (Green): I am grateful for the opportunity to speak to this group of amendments, which I lodged after discussion with Justice for Children. I am sure that many members are familiar with that organisation.

Unfortunately, I must mention up front that there are drafting errors in amendments 48 and 65, the effect of which would be to place a duty on intermediaries to relate a child's evidence back to the court and not merely to ask the child witness questions. The error is rather unfortunate and perhaps demonstrates the lack of understanding that exists about the issue. I am therefore grateful for the opportunity to raise the issue and I hope to explain clearly what the use of intermediaries is designed to achieve.

Intermediaries are not intended as a conduit for a witness's evidence; rather they are intended to protect from aggressive cross-examination child witnesses who may be traumatised or frightened in giving their evidence. Protection from such hostile cross-examination could prevent some of the most stressful and upsetting experiences that child witnesses have in court. Intermediaries would ensure that the substance of a question was preserved, but that inappropriate or aggressive language was removed. Questions would be put to a child witness in language that the child could understand and respond to so that they could give their best evidence.

I would like to read for the *Official Report* the experience of one young person, who said that a lawyer

"kept interrupting so I couldn't say what happened … I could never finish my sentence … I'd been big and brave enough to go to court, but I never got the opportunity to tell them what had happened. Child witnesses need to have the opportunity to tell their story to lawyers who can communicate with children. Children should be the priority."

Experience of the operation of an intermediary system comes from South Africa, where such a process has been in use for 10 years in an adversarial system of justice. Like Justice for Children, I believe that we should put such experience to use and make it available to the Scottish justice system. The Executive and all parties have accepted the principle of protection for child witnesses and other vulnerable witnesses and there are already examples in our system of people being questioned through, for example, an interpreter or a signer. The use of intermediaries for child witnesses would not contaminate evidence. Indeed, it would do quite the reverse; it would enable child witnesses to give their best evidence, which is one of the main reasons for the existence of the bill. The comparison that Justice for Children has made is that we would not send into an adult court a vulnerable child witness with a broken arm without getting medical treatment for the child. Emotional and mental trauma and fear should not be regarded as being any less significant.

I move amendment 34.

Colin Fox (Lothians) (SSP): The bill's aim is to ensure that evidence of the best quality is led in court and that extra resources are allocated for the introduction of special measures that will ensure that witnesses have the opportunity to give that evidence. The entire Justice 2 Committee supported that principle. However, although I support all the special measures that are set out in the bill, it goes without saying that they must not negate the right of a defendant to a fair trial, nor should they inhibit the likelihood of a sound verdict being reached in the due process of law.

I note the answer that the Deputy Minister for Justice gave to the Justice 2 Committee in December on the issue of intermediaries, although I was in Australia studying the law on transportation. He said that the Executive would await the outcome of a pilot study in England and Wales before reaching a conclusion on the matter. However, I am mindful of the bill's provisions about supporters. It states that supporters

"must not prompt or otherwise seek to influence the vulnerable witness in the course of giving evidence."

My concern is that the bill should focus on assessing how evidence appears to jurors. There is clear evidence to show that an intermediary is nowhere near as effective as a witness in giving evidence, in terms of the impact on the jury, convictions and sentences.

Patrick Harvie: Will Colin Fox give way?

Colin Fox: I will finish in a second.

The challenge is to find a way to increase the likelihood that witnesses will give the best possible evidence without our undermining the right of defendants to a fair trial.

Karen Whitefield (Airdrie and Shotts) (Lab): Although Patrick Harvie's amendments have some merit in allowing us to discuss the use of intermediaries, it is not appropriate for us to consider introducing intermediaries through the bill. The bill's fundamental principle is to ensure that witnesses are able to give evidence of the best quality, but some people in the legal profession would argue that the use of intermediaries could lead to a failure in the cross-examination of evidence, which is not what the bill seeks. Automatic entitlement to special measures will not prevent witnesses from giving evidence; rather, it will ensure that they are able to give good evidence.

Additionally, it is worth noting that a number of pilot schemes are running in England and Wales, so it would be premature for us to allow the use of intermediaries before we are able to judge how effective they have been there. I note that in Merseyside last month a pilot scheme began, which is specifically examining the difficulties that people with learning disabilities and

communication problems have in expressing themselves in court. We could learn much from that. Therefore, it would be inappropriate for us to accept Patrick Harvie's amendments.

Miss Goldie: I have a great deal of sympathy with the rationale that underlies Mr Harvie's amendments, but I am confronted by a technical concern. It is a cornerstone that the evidence in our criminal courts is given as directly as can be managed. That is critical to a fair trial and to a court's and jury's understanding of the evidence. I have a real concern that, if we depart from the purity of that structure—which is an important component of our criminal justice system—it may be possible for evidence to be diluted, albeit unintentionally and inadvertently. In that, I am confronted with a real problem and a significant concern, so for that reason I am unable to support Mr Harvie's amendments.

10:15

Hugh Henry: I understand fully the sentiment behind what Patrick Harvie says and a range of organisations in Scotland favour the use of intermediaries. However, if he had continued to read from the report that he quoted, he would have seen a page or two further on comments from the Minister for Justice, Cathy Jamieson, that suggest that she is sympathetic to the principle of what he proposes.

I gave an assurance to the committee at stage 2 that the Executive is not opposed in principle to the use of intermediaries. However, given the diversity of opinion on the use of intermediaries and the different ways in which they are used throughout the world, we believe that more work needs to be done before we can come up with a proposal that is suitable to the needs of witnesses in the Scottish context. Colin Fox highlighted some of the concerns that we need to address before we proceed with use of intermediaries. There is a great deal of sympathy for the idea, but we need to ensure that we get it right for the reasons that Annabel Goldie and Karen Whitefield outlined.

I said at stage 2 that we would consider the pilot schemes in England and Wales. My officials are in regular contact with the Home Office, and the Executive's new victims and witnesses unit will be informed of the progress of those pilot schemes. If Cathy Jamieson or I have the opportunity to do so, we will visit at least one of those—possibly the one on Merseyside—to see how well they are working and whether they could work here.

It is right that we should await the outcome of those pilot schemes before we decide whether to introduce intermediaries in Scotland. As Annabel Goldie said, it would be a major step to introduce a procedure that prevents the legal representative for a party from directly questioning a witness. Because of that, the subject requires detailed consideration. I can, however, give an explicit assurance to Patrick Harvie and Parliament that the issue will not be forgotten by the Executive.

We are not ruling out the possibility of introducing intermediaries as a special measure in the future; however, we want to wait and see how they work. We also need to be clear about the best way in which they could be used within the Scottish justice system, which is very different not just to the English system, but to other legal systems elsewhere in the world in which intermediaries are deployed. The exact role of an intermediary in Scotland would need to be clearly determined before legislation could be drafted. There is a power in the bill to add special measures by way of statutory instrument, so intermediaries or other measures could be added once further work on the matter has been undertaken. That would be done by an instrument that was subject to the affirmative procedure, which would require full parliamentary scrutiny and an opportunity for debate.

We think that it would be better to wait and learn from others' experience before rushing into the introduction of intermediaries. We should try to get it right at the start. I hope that Patrick Harvie can take some reassurance from my comments, and I ask him to consider seeking to withdraw amendment 34.

Patrick Harvie: I am grateful for the opportunity to have this debate, and I thank members for participating in it. I hope that this short discussion will help to raise awareness of the concept of intermediaries and that it will perhaps reassure some of the people to whom Karen Whitefield referred, who are not yet convinced about the idea. I hope that they will engage with the concept and try to resolve their concerns.

Some of the direct criticism that members have made of the concept of intermediaries relates to the drafting error that I described earlier, regarding witnesses giving their evidence via an intermediary. That is not the intention of the amendments that I lodged, and it highlights the misunderstanding that surrounds the issue.

I look forward to the Executive taking a position in the future, once it has evaluated the experiences in the English system. I thank the minister for the assurance that he has given, and I seek permission to withdraw amendment 34.

Amendment 34, by agreement, withdrawn.

The Presiding Officer: The amendments in group 4 relate to special provisions for child witnesses who are under 12. Amendment 3, in the name of the minister, is grouped with amendments 10, 17 and 25.

Hugh Henry: The bill will give to all child witnesses an automatic right to special measures. Furthermore, in cases of sexual or violent crime, it will give extra protection to child witnesses under the age of 12. For those most vulnerable child witnesses, the bill creates a presumption that they should not have to attend court to give evidence. Moreover, as a result of amendments that were lodged by Karen Whitefield at stage 2 and supported by the Executive, there will now be a prohibition on an accused from conducting his or her own defence in cases of violence that would involve child witnesses under 12.

Amendments 3 and 10 seek to add to the list of cases where child witnesses under 12 receive extra protection the offences of plagium, which involves the theft of a child, and abduction. The amendments are based on helpful suggestions that were made by the Law Society of Scotland at stage 2 and I am grateful to the society for its input. If agreed to, the amendments will ensure that in such cases a child witness under 12 will not have to undergo face-to-face cross-examination by the accused, or have to attend the court to give his or her evidence.

On amendments 17 and 25, I have already said that Karen Whitefield lodged amendments at stage 2 that sought to create an automatic prohibition on the accused's conducting his own defence in cases of violent crime that involve child witnesses under 12. We supported that and said that we would lodge any necessary amendments to ensure that it would work in practice. One area that we have identified is that of precognition by the accused. Our view is that the new automatic ban could be undermined if the accused was allowed in person to precognosce a young child witness in such a case. As a result, amendment 17 seeks to ensure that the court may not grant a warrant for the citation for precognition by the accused in person of any child under 12 in the same cases as apply to the new automatic prohibition.

Amendment 25 is a consequential amendment to the bill's long title.

I move amendment 3.

Amendment 3 agreed to.

The Deputy Presiding Officer (Murray Tosh): Group 5 concerns the procedure for vulnerable witnesses other than child witnesses. I call Nicola Sturgeon to speak to and move amendment 37, which is grouped with amendments 38 to 42.

Nicola Sturgeon: This group of amendments relates specifically to criminal proceedings and vulnerable witnesses who are not child witnesses. All members agree that protection of vulnerable witnesses is important; however, we must also ensure that under our adversarial criminal justice system the rights of the accused are not undermined.

As the bill stands, when someone applies for the use of special measures, the court will order a hearing only when it is not satisfied that an order authorising the use of special measures should be made. However, when the court makes that initial decision, it will have only the views of the applicant and will not be aware of the views of the other party, who in most cases will be the accused. If it is decided initially that an order should be granted, the other party—the accused—will never have the opportunity to be heard. A hearing at which both parties will have the right to be heard will be ordered only if the court is not satisfied at that initial stage.

Such an approach departs from current procedure. For example, under the Act of Adjournal (Criminal Procedure Rules) 1996, the court will not determine an application for the use of a television link without first hearing from the parties to the case. That principle should also apply to this bill.

If the court is to possess all the relevant information in deciding whether to make an order for special measures, the parties to the case must have an opportunity to make either written or oral representations to the court to ensure that a balanced approach is taken. The amendments in this group offer two alternative methods of achieving that aim. Amendment 38 seeks to provide that when a vulnerable witness application is made, the court shall appoint a hearing at which it will determine whether special measures should be used. That hearing would provide an opportunity for all parties to address the court.

Amendment 41 seeks to ensure that hearings would proceed only where it is required that an issue be resolved. I understand and share members' reluctance to build delays into the system—indeed, I shall return to that point later. However, under amendment 41, if the other party has no objection to the vulnerable witness application, the court would have the power to dispense with the hearing. That said, if any objections were raised, the due process of law would demand that they be heard.

Amendments 37 and 39 set out the second method. They seek to allow the other party to lodge objections in writing to a vulnerable witness application, which would provide the court with both sides of the argument. If the court decided to grant the application and make an order, the other party could request a hearing, which would ensure that both parties had the right to be heard. Amendments 40 and 42 are consequential.

In concluding, I want briefly to address the minister's earlier point that the amendments would

necessitate and inevitably result in delays in the system. I absolutely refute that contention. Neither approach that I have proposed would inevitably result in such delays; in fact, that was the view of witnesses from the Law Society of Scotland, Victim Support Scotland, the Faculty of Advocates and many others who gave evidence to the Justice 2 Committee at stage 1.

The hearing that is proposed in both approaches could be easily combined with other existing diets. For example, the new preliminary diet that is envisaged for the High Court presents an ideal opportunity for matters such as applications for special measures to be considered. I therefore believe that the hearings can be accommodated within existing court procedure without additional delay and would result in a more balanced approach between protecting the rights of vulnerable witnesses, to which we are all absolutely committed, and ensuring that in an adversarial system of justice in which the accused is innocent until proven guilty, the rights of the accused are not unwittingly compromised in the process of protecting vulnerable witnesses.

With those remarks, I move amendment 37 and ask the minister to consider all the amendments in the group.

Miss Goldie: I am sympathetic towards Nicola Sturgeon's argument. Indeed, I am minded to support amendment 37, because if it is not accepted the legislation will contain a potential Achilles' heel. This bill must not interfere with the fundamental requirement that a trial be fair, which is essential to the whole framework. However, it is technically possible that the concept of a fair trial could be prejudiced by measures that the court might adopt in relation to the provision of procedures for a vulnerable witness. It would be regrettable if the only facility for addressing that issue were to be either at trial or on appeal on conviction.

Amendment 37 sets out a sensible technical provision that seeks to allow any such concerns to be addressed before the case gets anywhere near trial. As a result, those concerns can be identified early and the court can make a proper determination about how to deal with them. Under the concept of natural justice, it is desirable that if one party seeks to do something in any court proceedings the other party should have the opportunity to comment.

I agree with Nicola Sturgeon that her amendments are not an attempt either to delay or to obstruct the expeditious process of proceedings—they represent a sensible safeguard that will avoid trouble further down the line. As a result, I support amendment 37.

Maureen Macmillan: I do not support amendment 37 because I am afraid that, despite its best intentions, it would cause delays. If the defence had the automatic right to object to a vulnerable witness application, they would exercise it every time. Indeed, we would not have a single case in which an objection was not raised, because the defence lawyer would feel that he had to do so on behalf of his client.

We must also realise that this bill seeks not to do down the accused but to allow people to give their best evidence.

Nicola Sturgeon: Will the member give way?

Maureen Macmillan: I have said more or less all that I have to say. The member will probably return to my two points when she sums up.

In summary, if amendment 37 were agreed to objections would be raised automatically in every case. Moreover, we are seeking to secure best evidence, which would best be done through the structure that is set out in the bill.

10:30

Hugh Henry: The amendments would mean that hearings would have to be fixed in all applications for special measures unless they had been dispensed with by the court on the application of parties. Similar amendments were lodged by Nicola Sturgeon at stage 2, when I said that I would give the matter further consideration.

We have considered and reconsidered whether the bill strikes the right balance and whether the concerns that Nicola Sturgeon and Annabel Goldie have expressed are sufficient to warrant our changing direction and considering whether the party not calling the witness should be able to object to a vulnerable witness application. However, we still have concerns that the creation of such a right would strike at the very heart of the bill—it is not an incidental issue. The vulnerable witness application provision is about enabling our most vulnerable witnesses to get the help that they need in court, which is what is driving us. Therefore, I wonder whether we should send out the signal that that provision is something to which people can object.

I agree with Maureen Macmillan that a right to object could also lead to further delays in cases if more hearings were required and to greater uncertainty for vulnerable witnesses. Maureen Macmillan is right because what we might reasonably expect to be the exception in relation to an appeal would, I suggest, very quickly become the norm because lawyers would believe that by appealing in cases involving vulnerable witnesses, they would be doing the best for their clients. We have heard during the debate about

the need for cases involving vulnerable witnesses to be heard as quickly as possible. Jackie Baillie and other members spoke about the terrible pressures and stresses that are associated with giving evidence.

I suggest that amendment 37 could, unfortunately, be a backward step in the drive to achieve our aim, although I accept that that is not Nicola Sturgeon's intention. A right to object would also add another layer of bureaucracy and could have an adverse impact on court programming because assigned hearings would have to be dispensed with at the last minute.

Amendment 39 appears to be a stand-alone amendment that would enable the party not calling the vulnerable witness to seek a review against the decision that had been taken by a court to allow the use of special measures. The bill already allows a hearing to be fixed—at which the parties would be heard—when a court is not satisfied about a witness's vulnerability.

As I said earlier, the bill's provisions are trying to ensure as far as possible that witnesses who are identified as being vulnerable receive the help that they need to give their evidence. If a culture change is to be brought about, parties should begin to view special measures as simply extra support that certain witnesses need in order to be able to speak up, which will not affect a trial's conduct or fairness. Even when the use of special measures is allowed, it will not affect a party's ability to question adequately or test the evidence of a vulnerable witness.

Therefore, all Nicola Sturgeon's amendments are unnecessary. They could unwittingly undermine the support that vulnerable witnesses should receive as a result of the bill. I recognise that Nicola Sturgeon has the best of intentions, but I ask her to consider seeking to withdraw amendment 37. If she does not do so, I hope that members will oppose amendment 37.

Nicola Sturgeon: I listened carefully to the minister's comments, as I did at stage 2. I respect the fact that there is an honest difference of opinion on the matter and I am not sure that we will resolve that in the context of the debate. I will make three points to conclude my discussion on the amendments.

First, we should reflect, as members always should, on the fact that the Justice 2 Committee recommended in its stage 1 report that the bill be amended as amendment 37 seeks to amend it. The committee recommended that after hearing evidence from a range of witnesses, who were not just those whom we might expect, such as the Faculty of Advocates and the Law Society of Scotland. We also heard evidence from Victim Support Scotland, who thought that what amendment 37 seeks would be an important protection to add to the bill.

Secondly, I accept that if a procedure is available lawyers will tend to use it on behalf of their clients—they would probably take the view that it would be remiss of them not to do so. However, it is not a logical conclusion to draw from that that delays will be inevitable. After the Criminal Procedure (Amendment) (Scotland) Bill is passed, all criminal courts in Scotland will have intermediate diets that will be designed to deal with a range of procedural matters. I am not sure why such diets could not be used—they will be held anyway—to accommodate the kind of hearings to which amendment 37 refers.

Thirdly, in debating the bill we are, rightly and understandably, focusing almost exclusively on genuinely vulnerable witnesses. We all want to give them protection and to help them. However, just as it is human nature that lawyers will try to exploit court procedure, so is it human nature that there will be cases—I hope that they will be rare—in which witnesses will try to exploit the bill's provisions. Witnesses will apply to be treated as vulnerable witnesses when, in fact, that position will not be justified. My concern is that, as the bill stands, the accused in a criminal trial will have no right at all to question an application for special measures, even in cases in which it may be manifestly clear that the application is not justified. We could say that it will be for the judge and the court to decide on that, but if the court hears only one side of the story, can we be sure that a balanced judgment will be arrived at?

What I am trying to get at with amendment 37 would not be a diminution of the rights that we are trying to afford vulnerable witnesses; rather, it would ensure that, in trying to do the right thing by vulnerable witnesses, we do not unwittingly dilute the accused's rights in a criminal trial. Even after the bill goes through, we will still have an adversarial system of justice in this country in which the accused is innocent until proven guilty. I believe that with that right goes the right to challenge all aspects of what happens in a trial. I agree with Annabel Goldie that the danger is that there will be an Achilles' heel in an otherwise excellent bill that may, indeed, end up undergoing human rights challenges. It would be a shame to mar the bill by including such a flaw in it, which is why I will press amendment 37.

The Deputy Presiding Officer: The question is, that amendment 37 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Aitken, Bill (Glasgow) (Con)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Curran, Frances (West of Scotland) (SSP)
Davidson, Mr David (North East Scotland) (Con)
Ewing, Mrs Margaret (Moray) (SNP)
Fox, Colin (Lothians) (SSP)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gibson, Rob (Highlands and Islands) (SNP)
Goldie, Miss Annabel (West of Scotland) (Con)
Grahame, Christine (South of Scotland) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Johnstone, Alex (North East Scotland) (Con)
Lochhead, Richard (North East Scotland) (SNP)
MacAskill, Mr Kenny (Lothians) (SNP)
Martin, Campbell (West of Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (SNP)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Milne, Mrs Nanette (North East Scotland) (Con)
Mitchell, Margaret (Central Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Morgan, Alasdair (South of Scotland) (SNP)
Mundell, David (South of Scotland) (Con)
Robison, Shona (Dundee East) (SNP)
Scanlon, Mary (Highlands and Islands) (Con)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

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)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
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)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
McMahon, Michael (Hamilton North and Bellshill) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
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)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 33, Against 64, Abstentions 0.

Amendment 37 disagreed to.

Amendments 38 to 42 not moved.

Amendments 4 and 5 moved—[Hugh Henry]—and agreed to.

Amendments 45 and 46 not moved.

The Deputy Presiding Officer: Group 6 is on the taking of evidence by a commissioner and the presence of the accused. Amendment 47, in the name of Mike Pringle, is in a group on its own.

Mike Pringle (Edinburgh South) (LD): There was considerable debate during—[*Interruption.*]

The Deputy Presiding Officer: Order, let us allow the member to speak without interruption.

Mike Pringle: Perhaps my voice is not loud enough. When we took evidence, there was considerable debate about whether one should allow the defendant to be in the room when a witness is giving evidence on commission, which is when a witness gives evidence away from the court under special circumstances. I and other committee members felt strongly that that should not be allowed and that the accused should not be allowed to be present at any time during the commission process.

The amendment was moved at stage 2 and then withdrawn with assurances from the minister that he would consider it. The minister had concerns that, in exceptional circumstances, it might be appropriate for the accused to be present, for

example, when evidence was taken in a hospital or in some other situation. However, I still have concerns that courts might not view the matter as seriously as the committee did, which is why my amendment seeks to add the words "on special cause shown". The use of that legal term means that circumstances would have to be exceptional for the accused to be present when evidence was taken on commission.

I move amendment 47.

Nicola Sturgeon: I support Mike Pringle's amendment. We are in a rather strange situation because we have just debated an area of the bill that did not provide for the proper protection of the rights of the accused. In the area currently under discussion, the balance goes too far in favour of the accused. We should try to pull the balance back.

The committee discussed the matter at some length. I support amendment 47 because it would make it more taxing for the accused to be given the right to be present when a vulnerable witness gives evidence on commission. Many witnesses give evidence on commission, not because they are vulnerable, but because they are incapacitated in some way—they might be in hospital or have a broken leg. But for that incapacity, giving evidence in open court would not be a problem. In those circumstances, there is no problem with the accused being present while the evidence is given because in other circumstances they would be present in open court anyway.

However, that logic does not apply to vulnerable witnesses, when the reason for giving evidence on commission is the vulnerability of the witness, because going into court in the presence of the accused would prevent the witness from giving his or her best evidence. The same must apply to giving evidence on commission: if the accused were present, the vulnerable witness might be just as unable to give their best evidence.

I cannot envisage any circumstances in which the accused would be allowed to be present when a vulnerable witness gave evidence on commission. I appreciate that that would not be the effect of amendment 47, but the amendment would build in an added safeguard that would, at the very least, make the accused show good cause for being present. It is worth injecting that safeguard into the bill.

10:45

Miss Goldie: I am uneasy about amendment 47 because it seems that section 1 contains the necessary safeguard as drafted, in that there is a presumption that the accused will not be present. If the defence agent thought that there could be prejudice to the accused, the accused could apply to the court for permission to be present. No doubt the defence agent would then present the necessary arguments in support of that proposition. It is wrong to seek to interfere further in the discretion of the court by placing an additional directive. At the end of the day, we must respect the discretion of the court to make a decision on presentation of the arguments.

It is not for the bill to try to sway the discretion of the court one way or another, particularly when the bill expressly creates a presumption. I cannot support amendment 47.

Colin Fox: I support the special measure of taking evidence on commission, but it is necessary to protect all parties and to ensure that they have the right to see and hear that evidence being led. That does not mean that they have to be present in the room, but they should be able to see it on live television or observe remotely.

I agree with Annabel Goldie about the discretion of the court in the application of the measure. I am sympathetic to the measure being made widely available to witnesses who need it, but I am acutely aware that no two cases are the same and that a certain amount of discretion is necessary.

Nicola Sturgeon: My point concerns parliamentary procedure. I listened to Colin Fox and Annabel Goldie opposing amendment 47 and I wonder why both of them agreed a Justice 2 Committee report that said that under no circumstances should an accused person be present when a vulnerable witness gives evidence on commission. There seems to be an inability to tie up what is said and signed up to in committee with what is said in the chamber.

Colin Fox: I am happy to take advice from Nicola Sturgeon on parliamentary procedures; she has been here a lot longer than I have. I have a great deal of sympathy with Mike Pringle's argument and I am trying to make clear my position, which I hope will be clearer still when I have finished speaking.

As Nicola Sturgeon knows, the only evidence that was critical of the bill in its entirety was the submission from the Faculty of Advocates. As far as I recall, it questioned the need for the bill on the basis that many of the provisions for the courts are already in existence and the courts can use them at their discretion. The Law Society of Scotland made a similar case. I make it clear to Nicola Sturgeon that I rise not to oppose the amendment, but to make clear my position, and I will be happy to support amendment 47.

As good as the bill is, I fear that it is in danger of making little difference in the real world unless the Crown Office and Procurator Fiscal Service is properly resourced. As Nicola Sturgeon, Mike Pringle and other committee members know, the

point was made that, above all, there is a great need for a culture change.

Hugh Henry: I do not know how to follow that contribution. I can understand members' concerns about an accused being present when evidence is taken on commission. In particular, I thank Mike Pringle for his involvement in highlighting the matter.

We share those concerns, which is why we lodged an amendment at stage 2 to ensure that the court rather than the commissioner decides whether the accused should be present. The bill as drafted sets out the general rule that the accused should not be at a commission. It is our view that it would be only in exceptional cases that an accused would be allowed to be present for evidence on commission. There must be a very good reason for the accused to be allowed in before that would happen. For example, the witness could be a defence witness whose vulnerability has nothing to do with any relationship to the accused, and who might even prefer the accused to be there. Amendment 47 would be a useful addition to the bill because it would allow flexibility to have an exception, when needed, to allow the accused to be present during evidence on commission.

Mike Pringle's amendment would further strengthen the aim that there needs to be a very good reason for the accused to be present and I am happy to support it.

Mike Pringle: I am grateful to the minister. There was considerable concern about the issue, but it has been resolved well and I am delighted that, in future, when vulnerable witnesses give their evidence, the defence will allow the accused to be present only in the most exceptional circumstances.

The Deputy Presiding Officer: The question is, that amendment 47 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
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)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
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Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
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)
Ingram, Mr Adam (South of Scotland) (SNP)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lochhead, Richard (North East Scotland) (SNP)
Lyon, George (Argyll and Bute) (LD)
MacAskill, Mr Kenny (Lothians) (SNP)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Campbell (West of Scotland) (SNP)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (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)
McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
McNulty, Des (Clydebank and Milngavie) (Lab)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (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)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Welsh, Mr Andrew (Angus) (SNP)
Whitefield, Karen (Airdrie and Shotts) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
Davidson, Mr David (North East Scotland) (Con)

Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Goldie, Miss Annabel (West of Scotland) (Con)
Johnstone, Alex (North East Scotland) (Con)
Milne, Mrs Nanette (North East Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
Mundell, David (South of Scotland) (Con)
Scanlon, Mary (Highlands and Islands) (Con)

The Deputy Presiding Officer: The result of the division is: For 81, Against 10, Abstentions 0.

Amendment 47 agreed to.

Amendment 48 not moved.

The Deputy Presiding Officer: Group 7 is on the application of vulnerable witness provisions to proceedings in the district court. Amendment 6, in the name of the minister, is grouped with amendments 7, 9, 12 and 19.

Hugh Henry: During the bill's progress, Mike Pringle and others asked whether its provisions should apply in the district court. There are good reasons why we think that that would not be appropriate at this time, not least of which is the fact that Sheriff Principal McInnes is undertaking a review of summary justice.

However, the bill gives ministers the power to extend special provisions to the district court, subject to the approval of the Scottish Parliament. It also contains provisions that allow for the prohibition of the accused from conducting his or her own defence, and we believe that we should provide for the possibility that those provisions could be included in the power to extend special provisions to the district court, in case it was appropriate to do so at some point in the future.

Amendment 6 will therefore delete the provision to extend special measures to the district court and amendment 19 will replace that power with a more comprehensive power, which will cover both special measures and the prohibition of an accused from conducting his or her own defence.

Amendments 7, 9 and 12 are minor, technical amendments which complement the extended power that is created by amendment 19 and are simply designed to clarify that the bill's provisions do not apply to the district court. Amendment 7 will ensure that the provisions in section 2 that relate to consideration before the trial of matters relating to vulnerable witnesses apply only to intermediate diets and to summary proceedings in the sheriff court and not to intermediate diets in the district court. Amendment 9 will ensure that new section 288ZE of the Criminal Procedure (Scotland) Act 1995, which prohibits an accused from conducting his or her own defence in certain cases involving child witnesses under 12, does not apply to proceedings in the district court. Similarly, amendment 12 will ensure that new section 288E, which gives the court the discretion to prohibit an accused from conducting their own defence in a case involving vulnerable witnesses, does not apply to proceedings in the district court.

I move amendment 6.

The Deputy Presiding Officer: I call Annabel Goldie.

Miss Goldie: I might be speaking out of turn, Presiding Officer. I wanted to speak about amendment 19, which I thought was in the group to which the minister just spoke. If the amendment is not in that group, I will deal with it later.

The Deputy Presiding Officer: Amendment 19 is in the group.

Miss Goldie: As members will appreciate, amendment 19 is very technical. Indeed, it has all the lucidity of the ancient dialects of Chinese dynasties. I want the minister to reassure me that it is entirely technical in import and adjusted purely for other statutory provisions.

Hugh Henry: I am happy to give that assurance.

Mike Pringle: I raised the question of district courts very early in the discussions on the bill. I was concerned about the matter, as I had sat in the district court for a number of years—as I have probably said before—and I thought that it was quite important that the district court be brought into the bill, if not now, then in the future, should that become necessary. I am delighted that the minister has lodged the amendments on the matter.

Amendment 6 agreed to.

Section 2—Consideration before the trial of matters relating to vulnerable witnesses

Amendment 7 moved—[Hugh Henry]—and agreed to.

After section 5

The Deputy Presiding Officer: Group 8 is on restrictions on evidence relating to the provision of therapy to children. Amendment 49, in the name of Patrick Harvie, is grouped with amendment 68.

Patrick Harvie: Attentive members will remember that I used the example of a witness with a broken leg when I spoke to an earlier group of amendments. Truly observant members will have noticed that that image should have been included in my speaking notes for amendments 49 and 68, so I ask members to recall it now. The example relates, of course, to the comparison between the provision of medical treatment, which we would never deny to someone who had a broken leg or other physical injury and who had to go to court as a witness, and the provision of therapy, such as counselling, to address emotional

or mental stress or trauma. Amendment 49 would ensure that such therapy could be made available.

I refer briefly to a statement that Cathy Jamieson made at a conference in November, just a few months ago. The minister said that the provision of therapy to child witnesses is

"a very complex area. Counselling may be beneficial and it is the responsibility of the child's carers to decide upon."

We are all aware of the need for therapists to avoid the risk of contaminating evidence and that brings us to the central issue. I believe, as does Justice for Children, to which I have referred, that the fear, distress and emotional trauma that child witnesses suffer risk contaminating evidence and endangering justice. Therapy such as counselling is intended to ensure that a child witness is treated compassionately, to enable them to participate fully in the legal process.

I am aware that ministers have been considering the issue further since November and have met interested organisations with a view to issuing further guidance. I hope that ministers will regard amendments 49 and 68 as a helpful prompt and will agree that they offer a constructive way forward. The amendments would ensure that children genuinely had a right to access the therapy that ministers have acknowledged as being important and that such therapy would not taint their evidence.

Further delays on the issue would have a negative impact on the many children who are currently in our courts system. If ministers cannot agree to the amendments, I hope that they will give us a concrete commitment to progress the issue at an early opportunity.

I move amendment 49.

Maureen Macmillan: I ask the minister to endorse what he said in a letter to me about adults who receive therapy or are supported by organisations such as Rape Crisis Scotland or Scottish Women's Aid before they go to court. There is concern that the very fact that witnesses have been supported and helped by such organisations somehow contaminates their evidence. I would like the minister to put on the record what he said in his letter, which reassured me that the matter is being considered and that the victims and witnesses unit will give guidance on the matter in due course.

Bill Aitken (Glasgow) (Con): Like everything else in the bill, the matter is a question of balance. Although I have some sympathy with some of the views that Mr Harvie expressed, I am unhappy about the portent of amendment 49. As I understand it, he is attempting to ensure that when a child has undergone therapy after a fairly traumatic experience, evidence that the child underwent that therapy can be introduced during the trial. There is a real danger that such evidence could be contaminated. In many instances, for example in cases of sexual assault, the issue for the court to determine is whether or not the accused person—the person in the dock on that charge—carried out the assault. The question of whether the child has undergone therapy would certainly not be relevant to the identification of the accused. There are real dangers in that respect.

On a general point, when the minister addresses the matter, will he confirm that the expert evidence of psychologists or psychoanalysts in relation to an offence would attempt to inform the court about the normal or abnormal reactions of witnesses who experience such crimes? Would there be an indication of whether the complainer's reaction is the normal reaction expected when a person of that age and vulnerability has undergone such an experience, or is an exaggerated reaction?

11:00

Hugh Henry: I understand the sentiments behind Patrick Harvie's amendments and I know that a number of organisations have raised concerns that therapy is often discouraged before a child witness gives evidence. I realise that it is sometimes felt that inconsistent advice is given on whether therapy should be put on hold until after the child has given evidence. One of the main aims of the bill is to ensure that child witnesses get the help and support that they need to give their best evidence. It is equally important that they should get any help that they need before the trial. I assure Patrick Harvie that the Executive takes the matter very seriously.

As part of producing the child witness consultation document in 2002, we have already consulted on a draft code of practice on the provision of therapy to child witnesses in criminal trials and children's hearings court proceedings. As a result of that consultation, we have established a multi-agency steering group on the provision of therapy to child witnesses. The purpose of the group is to revise and finalise guidance on pre-trial therapy for all those involved with children and the law. It is intended that the guidance will clarify that therapy should not be discouraged and will establish guidelines on how therapy can be provided while avoiding the risk of contaminating evidence. I hope that that addresses some of Bill Aitken's points.

Bill Aitken: Yes.

Hugh Henry: The group has had its first meeting, so progress is already being made on this important matter. The valuable work of the group should meet the concerns that lie behind amendment 49. It is far preferable that this issue be addressed in that way rather than in legislation.

In response to Maureen Macmillan's concerns, I am happy to put on record the commitment that was given to her in my letter of 7 January 2004. With Maureen Macmillan's permission, I am happy for the letter to be made a public document and to be made available to anyone who wishes to scrutinise it. I hope that she will accept that doing that will confirm our commitment on the points that she raised.

Based on my assurances, I hope that Patrick Harvie will feel able to withdraw amendment 49.

Patrick Harvie: I am grateful to the minister for some of the detail that he has given of the on-going work. However, we currently allow witnesses to give evidence in a state of fear, distress and trauma. That in itself contaminates evidence, and that issue has not been addressed. Therefore, I press amendment 49.

The Deputy Presiding Officer: The question is, that amendment 49 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Mrs Margaret (Moray) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Grahame, Christine (South of Scotland) (SNP)
Harvie, Patrick (Glasgow) (Green)
Ingram, Mr Adam (South of 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)
Maxwell, Mr Stewart (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Sheridan, Tommy (Glasgow) (SSP)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
Welsh, Mr Andrew (Angus) (SNP)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Eadie, Helen (Dunfermline East) (Lab)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
Fraser, Murdo (Mid Scotland and Fife) (Con)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Goldie, Miss Annabel (West of Scotland) (Con)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
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)
Milne, Mrs Nanette (North East Scotland) (Con)
Monteith, Mr Brian (Mid Scotland and Fife) (Con)
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)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (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)
Wallace, Mr Jim (Orkney) (LD)
Watson, Mike (Glasgow Cathcart) (Lab)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 26, Against 69, Abstentions 0.

Amendment 49 disagreed to.

Section 6—Power to prohibit personal conduct of defence in cases involving vulnerable witnesses

The Deputy Presiding Officer: The ninth group of amendments is on proceedings in which personal conduct of the defence by the accused is

prohibited. Amendment 8, in the name of the minister, is grouped with amendments 11, 13, 14, 23 and 24.

Hugh Henry: The Vulnerable Witnesses (Scotland) Bill gives the court a discretionary power to prohibit the accused from conducting his or her own defence in cases involving vulnerable witnesses. Karen Whitefield lodged an amendment at stage 2 to prevent automatically an accused from conducting his or her own defence in violence cases involving child witnesses under 12 years of age. The Executive was happy to support that amendment.

However, we have identified that the bill as drafted does not extend either the automatic or the new discretionary ban to any proofs that are required as a result of victim statements. That could mean that, although an alleged victim has been given the extra protection of not being cross-examined by the accused in person at the trial, he or she could still have to face questioning by the accused at a proof relating to his or her making of a victim statement. Amendments 8, 11, 13 and 14 close off that possibility by ensuring that, when an accused is prohibited from conducting his or her own case as a result of the Vulnerable Witnesses (Scotland) Bill, he or she may not conduct his or her own case at any proof relating to victim statements either. That is the approach already adopted in sexual offences cases as regards victim statements.

Amendments 23 and 24 are consequential amendments to reflect those changes in the long title.

I move amendment 8.

Colin Fox: I wish to support amendment 8 but to highlight a couple of things and put the amendment in context. On the withdrawal of the right of defendants to represent themselves in cases involving children under the age of 12 and in other cases involving vulnerable witnesses, will the minister confirm that it is exceedingly rare for somebody to represent themselves in a Scottish court? It happens in perhaps one in 1,000 cases. When it happens, it generally reduces the chances of an acquittal, given the complexities of the law and the way in which proceedings are conducted and the law is applied.

The withdrawal of this right for defendants comes against the background of the withdrawal of defendants' rights in sexual assault cases, which the minister mentioned, and the withdrawal of rights in preliminary hearings, which the minister mentioned last week during the debate on the Criminal Procedure (Amendment) (Scotland) Bill.

I support amendment 8 but wish to highlight the fact that the reduction in defendants' right to represent themselves should be seen in the context of three or four other recent withdrawals of rights. I ask the minister to keep the complete picture, and the direction in which we are moving, in mind.

Hugh Henry: Colin Fox is right to highlight the fact that the measures in the amendments are not being taken in isolation. We want to ensure consistency in all matters relating to court proceedings. Too often, we have seen the tragic consequences of inconsistency.

It is right to give protection. In a number of cases, as has been highlighted, there have been very traumatic and distressing occurrences in court, which have led to distressing and tragic consequences. I am happy to put on record the fact that Colin Fox is right to highlight some of the other work that we are doing. The amendments are part of a package.

Amendment 8 agreed to.

Amendments 9 to 14 moved—[Hugh Henry]—and agreed to.

The Deputy Presiding Officer (Trish Godman): Group 10 is on pre-trial procedures for vulnerable witnesses and other issues. Amendment 15, in the name of the minister, is grouped with amendments 16 and 18.

Hugh Henry: Amendment 16 amends sections 71, 71A and 72A of the Criminal Procedure (Scotland) Act 1995, as a consequence of new sections 288ZE and 288E of the 1995 act as inserted by the bill.

Section 288ZE makes it mandatory that an accused must not conduct his own defence in certain types of offences that involve a child witness under the age of 12 who is to give evidence in the trial. Section 288E gives the court a discretionary power to prohibit an accused from conducting his own defence in a case involving a vulnerable witness, where the court is satisfied that it is in the interests of the witness to do so.

Currently, section 71 of the 1995 act provides for the court at a first diet in the sheriff court to establish whether an accused who is prohibited from conducting his own defence has legal representation for the trial. That applies in all sexual offence cases.

Section 71A of the 1995 act provides in sexual offence cases for a further pre-trial diet to follow a first diet in the sheriff court where it is established at the first diet that the accused is legally represented, but his or her solicitor is subsequently dismissed or withdraws. Such a solicitor will be under a duty to notify the court of what has happened. The court will then fix a further pre-trial diet that the accused will be required to attend.

The effect of the amendments to sections 71 and 71A of the 1995 act is to extend the existing provisions so that they relate not only to sexual offence cases, but to cases involving vulnerable witnesses under new sections 288ZE and 288E of the 1995 act as inserted by the bill.

Currently, section 72A of the 1995 act makes it mandatory for the holding of a pre-trial diet in all sexual offences cases to be tried in the High Court, unless dispensed with by the court following an application by the accused's solicitor. The amendment to section 72A of the 1995 act will extend the existing provision so that pre-trial diets will also be mandatory in other High Court cases in which an accused is prohibited from conducting his own defence.

Section 2(4) of the bill, as it is currently drafted, provides that in summary proceedings the court must check at an intermediate diet whether there are any vulnerable witnesses in the case. It does that by inserting the relevant provisions into section 148 of the Criminal Procedure (Scotland) Act 1995. Intermediate diets are mandatory in summary proceedings in the sheriff court in most parts of the country, but not in some of the smaller outlying courts. We intend to plug that gap by providing that, if an intermediate diet is not held in summary proceedings, the court must consider those matters at the trial diet before the first witness is sworn. The bill already does something similar with regard to the High Court when there has been no preliminary diet. Amendment 18 creates an equivalent provision for summary proceedings in the sheriff court in which there has been no intermediate diet.

Amendment 15 is consequential to amendments 16 and 18.

I move amendment 15.

Amendment 15 agreed to.

After section 6

Amendments 16 to 19 moved—[Hugh Henry]—and agreed to.

Section 7—Interpretation of this Part

Amendments 50 and 51 not moved.

Amendments 20 and 21 moved—[Hugh Henry]—and agreed to.

Section 8—Orders authorising the use of special measures for vulnerable witnesses

Amendments 52 and 59 not moved.

Amendment 22 moved—[Hugh Henry]—and agreed to.

Section 13—The special measures

Amendment 64 not moved.

After section 17

Amendment 65 not moved.

After section 19

The Deputy Presiding Officer: Group 11 concerns child witnesses and the training of court personnel. Amendment 66, in the name of Mike Pringle, is grouped with amendment 67.

11:15

Mike Pringle: Training is a hugely important factor in the bill. Clearly, children are different from adults and they have to be treated differently. My view is that, up to now, children have not been treated differently in court from adults. Advocates and others view children as witnesses just like adult witnesses, which is not right.

If a young child is asked a question, they will give an honest and straightforward answer. If the question is repeated several times thereafter, however, one finds that the child begins to think that they should not have given that answer. They begin to question whether it was the right answer and to wonder whether they should give a different one. The child starts to doubt the answer that they gave, which can bring their evidence into question.

It is important that we train all the people who are involved in dealing with young people in our courts. It is fundamental that young people are treated in a different way. Advocates and others need to realise that it is important that they too can learn; none of us is too old to learn new ways of doing things. That applies in particular to advocates and others. It is important that good training is put in place and that it is put in place as soon as possible.

I move amendment 66.

Miss Goldie: I understand the thrust behind what Mike Pringle said. I accept that an important point is involved, but I am concerned that the effect of amendment 66 would be to freeze implementation and, quite frankly, I would be very unhappy about that. The sooner that the act comes into force, the better it will be for all classes of vulnerable witnesses. I am unable to support amendment 66 for that reason.

Karen Whitefield: I understand Mike Pringle's concerns on the issue. I am sure that all of us want to see that everyone who is involved in dealing with the provisions in the bill does so properly and is properly trained. As Annabel Goldie rightly pointed out, amendment 66 could lead to serious delays. Its effect would be to cause

the bill not to be implemented as an act. The benefit and importance of the bill far outweigh the need for appropriate training, which it would be difficult to prescribe. I do not support amendments 66 and 67.

Hugh Henry: The issue of training has been raised a number of times during stages 1 and 2. The Executive is in no doubt that training and awareness raising are of vital importance to the successful implementation of the bill. That is why training and awareness raising will be a key priority for the victims and witnesses unit.

I am keen to ensure that all the professionals and volunteers who are involved in supporting vulnerable witnesses are given opportunities to improve and enhance their skills at identifying the needs of witnesses. That has to be done by ensuring that they give proper consideration to witnesses and that they provide witnesses with the right help to enable them to give their best evidence.

There is a great deal of expertise, knowledge and good will across Scotland and the unit will look to bringing that together so that people can share best practice. The unit will also want to ensure that every organisation is involved in training its staff. We will aim to ensure that there are clear training guidelines and that the relevant organisations are engaged in developing them.

I am aware of examples of good practice that are taking place already. For instance, Sheriff Principal Morrison, director of judicial studies, has said that the Judicial Studies Committee is developing training on child and vulnerable witnesses. The committee will use the guidance on questioning children in court, which we published last year, to help with that.

The Executive has been in discussion with the Faculty of Advocates, the Crown Office and others to ensure that significant attention is given to the provision of training for people who are engaged in the process. We believe that the collaborative approach is the best one and that it is not necessary to impose duties by statute.

In practice, it is not clear that amendment 66 would achieve the desired effect of ensuring that training takes place. I agree entirely with Annabel Goldie that, in the worst-case scenario, the amendment could even hold up the bill's implementation. From discussions with Mike Pringle, I know that that is not his intention. I hope that I have given him sufficient reassurance on the record to enable him to withdraw amendment 66.

Mike Pringle: I am grateful for the minister's comments. My intention was not to delay the bill, but to raise the important issue of training, which is vital for us all. I beg leave to withdraw amendment 66.

Amendment 66, by agreement, withdrawn.

Section 20—Commencement and short title

Amendment 67 not moved.

Long Title

Amendment 23 moved—[Hugh Henry]—and agreed to.

Amendment 68 not moved.

Amendments 24 and 25 moved—[Hugh Henry]—and agreed to.

Vulnerable Witnesses (Scotland) Bill

The Deputy Presiding Officer (Trish Godman): The next item of business is a debate on motion S2M-699, in the name of Cathy Jamieson, that the Vulnerable Witnesses (Scotland) Bill be passed.

11:22

The Minister for Justice (Cathy Jamieson): I am delighted to speak in the debate. As members will be aware, the reforms that the Vulnerable Witnesses (Scotland) Bill will put in place were first proposed in the consultation document "Vital Voices: Helping Vulnerable Witnesses Give Evidence". That title sums up exactly what the bill is about: it is about enabling the voices of our most vulnerable witnesses to be heard, so that they can fulfil their vital role in the justice system.

Witnesses are an essential part of our justice system and we must ensure that they are treated with the sensitivity and respect that they deserve. The bill is another significant step forward in putting the needs of victims and witnesses at the heart of our justice system. Today, we will put into practice the Executive's commitment to reform by delivering on our promise to improve the way in which vulnerable witnesses are treated.

The interests of justice are, of course, best served by ensuring that individuals who need extra help to give their best evidence receive that help. The bill respects the needs of the most vulnerable people and children—each one is treated as an individual—and it will ensure that real people who face real situations receive the support that they need to give evidence when they have to appear in court. I believe that that is right. I have been heartened by the comments that I have heard today and I trust that Parliament will agree to give its full support to the bill.

Many people have contributed to the process that got us here today. A wide range of organisations and individuals have engaged with us on the bill, including voluntary sector organisations, professional agencies and many more. I place on record my thanks to each and every one of them. Those organisations contributed their time, energy and ideas and their participation was invaluable. Many of their views and concerns are reflected in the bill as it stands, and it is better for that.

I thank the Justice 2 Committee members and staff for their hard work in giving detailed consideration to the principles of the bill and for their scrutiny and input at stage 2. The committee produced a thorough and carefully considered stage 1 report, and the Executive was happy to support a number of amendments that committee members suggested at stage 2. I also thank the bill team for its hard work in preparing the bill and the accompanying material. A considerable amount of work was done between the bill team and the committee to ensure that views were taken on board.

We listened to and considered carefully concerns that the bill, as originally drafted, did not go far enough. We understood the need to support amendments such as those that were lodged by Karen Whitefield at stage 2 and by Mike Pringle today, which have strengthened the safeguards for child witnesses. We consider that the bill as it stands strikes the right balance: the fairness of judicial proceedings has been not weakened, but strengthened, by measures that will ensure that the court hears the best available evidence.

We should not underestimate the changes that the bill will bring about. When it is fully implemented, thousands of Scots will have access to extra support to help them speak up in court. In some cases, because of the abolition of the competence test, vulnerable witnesses will be heard for the first time. Without the bill, that would not be possible. From previous personal experience of supporting child witnesses and vulnerable adult witnesses, I know just how daunting court processes can be. That was described in the evidence sessions at stage 1 and as the bill made its way through the parliamentary process, including this morning. Over the years, many people have argued and campaigned for the real and practical measures that are in the bill.

It is important to recognise that the bill is part of a much wider programme of work on victims and witnesses that the new victims and witnesses unit in the Executive is undertaking. Victim statement schemes are being piloted; further guidance for the child witness guidance pack is being finalised; and proposals are being developed to pilot vulnerable witness officers to provide on-going support to agencies and to help ensure that the needs of all vulnerable witnesses are met.

Our radical court reforms will also help, and I was pleased that members recognised that this morning. Last week, Parliament agreed to the general principles of the Criminal Procedure (Amendment) (Scotland) Bill, which, as I have said before, is a key part of our reforms to improve the efficiency of the criminal justice system. As was graphically described this morning, constant adjournments and delays are not efficient. We know that they can be particularly stressful for victims and witnesses, which is why we are taking action to improve procedures and to eliminate practices that cause delays, so that cases proceed as smoothly as possible.

I understand fully Jackie Baillie's motivation in raising the issue of delays. I am glad that she was reassured on that point and I am sure that she agrees that it is particularly pleasing that the Parliament strongly supported the principles of the Criminal Procedure (Amendment) (Scotland) Bill. During the debate on that bill, many members made the point that we must end unnecessary delays.

The rights of victims and witnesses are now firmly on the justice agenda; indeed, they are central to it. We continue to argue strongly that everyone in the system should make the culture changes that are needed. My deputy, Hugh Henry, recently addressed a seminar on child witnesses that was organised by the Faculty of Advocates and which was aimed at raising awareness of the issues among advocates. I am pleased that the Law Society of Scotland intends to have a vulnerable witness conference at the end of this month.

The Scottish Court Service is engaged in a wide range of work that will help vulnerable witnesses. On recent visits to courts, I saw two practical examples of the differences that can be made through a culture change; not necessarily by spending huge sums of money, but by demonstrating a will to be receptive to the needs of victims and witnesses.

Separate secure entrances are available for vulnerable witnesses at the High Court in Glasgow, for example. The witnesses are met by witness support staff and accompanied to separate waiting accommodation. Sofas and easy chairs are available and toys and games are given to younger children. When I visited the court in Aberdeen, I was pleased to note that there was a range of children's toys, books, magazines, televisions and videos in the witness rooms. I noticed that brightly coloured posters advertised a selection of video tapes. Such little touches make a difference to people who have to spend time in a place where they might prefer not to be. A customer care team regularly reviews the items that are available to ensure that they are up to date and in good order.

The fact that the treatment of vulnerable witnesses is being taken seriously by such organisations shows that the culture change that we have discussed for so long is taking place. Such approaches demonstrate that taking the time to think about what can be done to make things better for victims and witnesses will often produce ideas for relatively small, simple and easily achieved changes that can make a big difference to people's experience of the court system. One's personal experiences shape one's opinions of the justice system and determine whether one believes that justice has been delivered.

Where do we go from here? Today's consideration of the Vulnerable Witnesses (Scotland) Bill is not the end of the matter, of course. It has been stressed time and again this morning that we are committed to ensuring that the bill is implemented successfully. Early identification, training and monitoring of the provisions will be vital in ensuring that the bill is as effective as we want it to be.

As Hugh Henry mentioned, the Lord Advocate has committed to issuing instructions to the police on the identification and reporting of vulnerable witnesses. That will be backed up by training and guidance, so that the police will know what to look for when considering issues of vulnerability. The Crown Office intends to update its guidance to staff as a result of the bill and will include interested organisations in that development process.

We are committed to implementing the bill in full. That will take time, so it will be done in phases. It makes sense to focus attention on the most serious cases first, to take time to ensure that implementation is effective and to learn lessons from one phase to the next. We want appropriate protection and support to be given to vulnerable witnesses in High Court and sheriff court criminal cases and in civil proceedings, including children's hearings referrals.

It is easy for public attention to focus on big, headline-grabbing High Court cases, but there can be vulnerable witnesses in other cases. Maureen Macmillan has referred in the past, and did so again today, to the problems of vulnerable witnesses in civil cases such as matrimonial interdicts or protection from abuse interdicts. She argued that the nature of the relationship between parties in such civil cases could lead to people being vulnerable in such circumstances. The bill extends special measures to civil proceedings for those precise reasons. We will not lose sight of such issues when the bill is being implemented.

I thank everyone who has been involved in bringing the bill through Parliament. I do not doubt that the bill will make a real difference to vulnerable witnesses' experience of the justice system. I am delighted to commend the bill to Parliament and I ask members to give it their full support.

I move,

That the Parliament agrees that the Vulnerable Witnesses (Scotland) Bill be passed.

11:34

Nicola Sturgeon (Glasgow) (SNP): I intend to be relatively brief, to allow other members to participate in the debate. The Vulnerable Witnesses (Scotland) Bill, which we are about to

pass into law, is important. Like the minister, I thank those involved in the progress of the bill, particularly those behind the scenes, such as the bill team and the clerks of the Justice 2 Committee. I thank everyone who gave evidence, orally or in writing, to the Justice 2 Committee at the earlier stages of the bill. That essential evidence enabled the committee to produce a report which, although not all its recommendations were taken on board, has influenced the final shape of the bill in a positive manner.

The minister alluded to the fact that the Vulnerable Witnesses (Scotland) Bill is just one piece in the jigsaw of court reform. Other bills that we will consider later in this parliamentary session are equally important. It is important to stress, as the minister did, that legislation alone will not deliver all the reforms that are required in the courts system.

Our courts are steeped in centuries of tradition, much of which is worth protecting and retaining. Some aspects of the way things are done in the courts need to be brought into the modern age, to have a much greater public focus and to take account of the needs and wishes of the victims of crime and those giving evidence. The bill will help in that regard, but the minister is right to speak of the need for a culture change, which is already emerging. We should avoid complacency, however, because the culture change will have to continue if the bill's intentions are to be translated into practice.

The bill is important for the reasons that have been outlined at all stages of its progress. It is right that witnesses who are vulnerable because of their age or disability, or simply because of the nature of the case in which they are giving evidence, should be supported. Vulnerable witnesses can apply under this bill to avail themselves of a range of special measures, such as live television links or the right to give evidence from behind a screen or with a supporter sitting next to them. Such measures should help witnesses to give evidence in a way that is less stressful than the normal method of getting in the witness box and being examined and re-examined in the full glare of everyone else who is present. In criminal cases, a person accused of committing horrific violent or sexual crimes against a witness may be present when the witness gives evidence.

The experience of child witnesses will be significantly improved as a result of this bill. A number of the amendments that were proposed would have allowed the bill to go further, but nevertheless we should reflect on how far we have come.

Perhaps the important point that the bill serves the wider interests of justice has been lost. A witness who is terrified, for whatever reason, by the prospect of giving evidence in court is unlikely to be able to get into the witness box to tell their story in a clear and lucid manner. Courts in this country, particularly criminal courts, rely on the presentation of honest and accurate evidence. It is in the interests of everyone involved in court cases—the Crown and the accused in criminal cases and the pursuer and the defendant in civil cases—that witnesses are helped to give their best evidence.

Although this is an important bill that deserves support, we should ensure that it strikes a fine balance, especially in criminal cases. The balance between protecting vulnerable witnesses and ensuring the right to a fair trial of a person accused of crime has been discussed already this morning. Under this country's adversarial system of justice, everyone is innocent until proven guilty. As there is an onus on the Crown to prove beyond reasonable doubt that a person is guilty, accused persons have the fundamental right to test to the full the evidence presented against them in court.

Throughout this legislative process, we have had to ask whether the necessary balance has been struck in the right place in the bill. I think that overall, in broad terms, that balance has been struck, although the amendments that I proposed today suggest that I have some residual concerns. I fear that we may not have heard the last of the debate about the right of the accused to be heard on vulnerable witness applications. I suppose that we will have to wait and see about that.

I would like to speak about the early identification of vulnerable witnesses and the related issue of resources. At its heart, the bill relates to court procedure. If it is to work properly, it must have the active co-operation of all the agencies involved in the justice system. The bill puts the onus on lawyers to apply for special measures on behalf of witnesses. This will involve the procurator fiscal in most cases, but it often happens that the procurator fiscal does not meet the witness until the first day of the trial. In practice, early identification will depend less on lawyers and much more on other agencies, precognition agents, the police and voluntary organisations such as Victim Support and Women's Aid. One theme that ran strongly through the Justice 2 Committee's consideration of the bill is that all those agencies must be trained—the minister made some comments about training—and adequately resourced, to enable them to identify and support vulnerable witnesses. If we do not do that, there is a danger that the bill will not make the difference that we all think, and hope, that it is capable of making.

With those comments, I am happy to support the passage of the Vulnerable Witnesses (Scotland) Bill.

11:40

Miss Annabel Goldie (West of Scotland) (Con): I, too, shall be brief. My concept of brevity may be slightly different to the previous speaker's—I will do my best.

Unaccustomed as I am to supporting the Executive on justice matters in Scotland, I find myself in the slightly unusual position of welcoming the Vulnerable Witnesses (Scotland) Bill, which has the support of Conservative members. There is no doubt that for witnesses who come forward and who are vulnerable and in need of support, the bill offers more structured and certainly more extensive measures than have previously been available. The bill is to be welcomed as a worthwhile contribution to improving the court environment for vulnerable witnesses.

I thank the minister for her remarks about the Justice 2 Committee. I think that I speak for all members of the committee when I say that we found it an interesting bill with which to be involved, and I am glad if our scrutiny and discussions assisted with the clarification and drafting of the bill.

There is an important issue in relation to resource, and I reiterate the concerns that were expressed at stage 1 by both the Finance Committee and the Justice 2 Committee, and indeed the admission of the Executive even at that stage that some of the costs might be higher than the estimates. It would be regrettable if the legislation ended up being either obsolete or unworkable because proper resourcing was not in place, and I urge the minister to be cautious and careful about ensuring that resource is there when the bill is enacted and its provisions are implemented.

In relation to the point that Nicola Sturgeon mentioned, evaluation will also be important. I would welcome a commitment from the minister if, for example, the Lord Advocate was prepared to assess the working model of the legislation as it proceeds, and if any difficulties are identified they should be quickly picked up on and noted. I hope that the absence of the right of the accused to question an application for a witness to be treated as a vulnerable witness will not impugn the integrity of the succeeding trial, but only time will tell—there are important issues lurking in that.

I make a plea about draftsmanship; I raised the point at previous stages of the bill. I have to say that the bill, as a working tool for practitioners and judges in court, is not user friendly. About 14 fingers and 10 pairs of eyes will be required to assimilate the provisions quickly, particularly where practitioners refer to the provisions in submissions to judges, and similarly where judges consider the submissions of practitioners. If I have a plea to the parliamentary draftsmen, it is that it is far better to be simple, even if that extends the length of legislation, because that makes bills simpler to read and more readily understood.

As Nicola Sturgeon indicated, the bill is part of the broader framework of the criminal justice system in Scotland. The legislation is predicated on witnesses being available. Of course, witnesses will not be available if the law-abiding public are in any way apprehensive about the efficacy of our criminal justice system and if, having witnessed an offence, they are concerned about whether it is worth while to come forward. Delays, lack of resource and—dare I say it—the prospect of automatic early release are all factors that influence the law-abiding public's willingness to be witnesses. I urge the minister to have regard to that broader picture.

The bill is welcome and I have pleasure in supporting it on behalf of the Conservatives.

11:44

Mike Pringle (Edinburgh South) (LD): The Vulnerable Witnesses (Scotland) Bill is the first big piece of legislation in the justice field that the Parliament has had to deal with in its second session. There is no doubt that the Executive has set its sights on improving the judicial system in Scotland, and several other important measures will follow this one.

Like Nicola Sturgeon and others, I thank all those who worked extremely hard on the bill, including the bill team. I thank the members of the Justice 2 Committee, on which I sit. As members know, this is my first term and this is the first major piece of legislation that I have been involved in. I thank all the members of the committee for helping me through the process—I found their help extremely useful.

Improvements to the judicial system began in the previous session of Parliament. In early 2003, the then Minister for Justice, Jim Wallace, announced 62 audiovisual units for Scottish courts. The Executive has already given £850,000 for a new victims and witnesses unit to co-ordinate support from a range of professional agencies, including the police, fiscals, solicitors and social workers, and the Scottish Executive has earmarked £4 million for the witness support service, which is much to be welcomed.

The bill is a continuation of that work. It aims to improve how witnesses are treated by the justice system. It will provide better protection for children and vulnerable witnesses, many of whom are victims of crime. It will also allow vulnerable witnesses to give their best evidence in the best possible circumstances. There is a wide range of

new measures—we all know what they are, and I welcome them.

The emphasis of the bill will change how criminal cases are dealt with. In the chamber last week, I said that we have to make things better for witnesses in general. There is no doubt that the experience of witnesses throughout the judicial system is not good. Many of us know of cases in which even the smallest trials have been delayed endlessly and people have had to give up huge amounts of their time to give evidence. We should do anything that we can to make that experience better for people. If people are prepared to give their time and go to court as witnesses, that helps the justice system and gives us all better justice. The bill will make things better for vulnerable witnesses in future cases, and I welcome it.

11:46

Karen Whitefield (Airdrie and Shotts) (Lab): I begin by thanking the clerks of the Justice 2 Committee for their hard work and diligence in supporting the committee during the passage of the bill. Their efforts often go unnoticed by members of the public, but I assure them that MSPs recognise the vital part that they play in the smooth running of the legislative process in the Parliament. I also thank the groups and organisations who gave evidence to the committee at stage 1. It is vital that legislation is shaped and influenced by the experience of those whom it will directly affect.

The Parliament is often criticised—unfairly, in my view—for not dealing with the priorities of the people of Scotland. There is no doubt that the bill will make a difference to people in Scotland. I can honestly say that the issue was not raised often by people on the doorstep in last year's election campaign. However, the most important issues are not always those that are most talked about, and the bill tackles exactly the kind of issues that the Parliament was established to deal with. In all likelihood, the bill would never have found legislative time at Westminster, yet it will make a real difference to ordinary men, women and children throughout Scotland. It will increase protection for the most vulnerable citizens in Scottish society and it will help to improve our criminal justice system.

For too many years, witnesses have faced the possibility of a continuation of their abuse in court. In the worst cases, victims have faced prolonged periods of interrogation by their alleged abuser. Along with other criminal justice measures, some of which have already been passed by the Parliament, the bill will help to redress the balance of our criminal justice system towards supporting the rights of victims and witnesses.

I am sure that all members agree that it is right to take every step to protect our most vulnerable witnesses, including children, people with learning disabilities and those who have been the victim of violent and sexual assaults. I am convinced that providing a more secure and less threatening environment for such witnesses to give evidence will help to ensure that they can give their best and most accurate evidence. That will allow the justice system to do its job and to secure convictions where appropriate. Of course, it is also important to protect the right of the accused to a fair trial. That issue has attracted considerable debate during the bill's passage through Parliament. However, the bill continues to protect that fundamental right.

I welcome the Minister for Justice's announcement that the Executive has established a victims and witnesses unit. It makes perfect sense that support services for victims and witnesses should come under the auspices of a single agency. As the Deputy Minister for Justice said in his letter to the Justice 2 Committee's convener, the unit will play a vital part in the bill's implementation, monitoring and evaluation.

The Scottish Executive is committed to building a more efficient and effective justice system that is founded on the basic principles of fairness and equality. By providing greater protection for our most vulnerable witnesses, the bill contributes to that commitment. I welcome the passing of the bill, which represents a vital and significant step towards achieving our goal of a fairer and more just criminal justice system. I have great pleasure in supporting the bill.

11:51

Stewart Stevenson (Banff and Buchan) (SNP): The fact that we are making more rapid progress than the timetabling motion suggested is no reflection on the serious way in which the Justice 2 Committee and the Parliament have considered the bill. I congratulate all those who were involved in developing the bill, as it is a worthwhile addition to the improvements that are being made for victims and witnesses in the criminal justice system. Victims and witnesses have long been a neglected and largely forgotten part of the criminal justice system.

I recall being a witness when I was seven. Fortunately, I did not have to go to court. I witnessed a minor matter that involved a bus reversing into a car. Just being interviewed by a policewoman in quite a relaxed way was daunting for a seven-year-old. It would have been much more so if I had been older and had had to go to court, although those were circumstances of no particular pressure. The bill is a welcome development.

Excellent developments have been made to protect victims of sexual offences, on which I have commented. Mike Pringle properly focused on the need to give training a priority and the deputy minister gave us assurances about that. The amount of change in the criminal justice system and in the operation of courts presents the formidable challenge of bringing sheriffs and all who are involved in courts up to an appropriate level of behaviour and experience and of understanding of the legislation. We will watch that with considerable care.

The introduction of victim statements after verdicts and before sentencing was a useful change that was made in the previous parliamentary session, as was the requirement to notify victims when serious offenders are to be released and when they are to be considered by the Parole Board for Scotland. That is all good and adds to the list of worthwhile improvements that have been made.

Annabel Goldie referred to witnesses' concerns and fears in some circumstances. While considering the Antisocial Behaviour etc (Scotland) Bill, the Communities Committee has deliberated a range of issues that are associated with antisocial behaviour and crime in our communities. We will debate the bill next week. I will not tread on the toes of that too much, but one element that has emerged from those discussions and which is worth thinking about is the role of professional witnesses when repeated and serious intimidation occurs. The Executive might wish to consider developing further the role of professional witnesses in some circumstances and the Communities Committee will no doubt return to that subject next week.

As a layman rather than a lawyer, I have always found it slightly bizarre that in our criminal justice system, the Crown Office acts as a neutral arbiter of the balance between the victim and the accused. The situation is different in other countries, where the prosecutor represents the victim. That has further scope for consideration. Such a move would be part of supporting witnesses and victims.

The bill is welcome. I will take great pleasure in supporting it come decision time.

11:55

Maureen Macmillan (Highlands and Islands) (Lab): I am pleased to support the bill. I declare an interest as a long-time member and a present director of Ross-shire Women's Aid; I have seen at first hand the traumatic effect of the criminal justice system on women who have suffered abuse. Fear of confronting an abuser in court has often made women refuse to be witnesses when their partner has assaulted them. Fear has caused them to refuse to give evidence against their abusers. Members should make no mistake—women in those circumstances find the whole process intimidating and terrifying, as do the Women's Aid workers who support them.

In its evidence to the Justice 2 Committee, Rape Crisis Scotland provided dreadful statistics about rape and sexual assault victims' engagement with our justice system. Of the women who contact rape crisis centres, 80 per cent do not report the incidents to the police. When incidents are reported, the conviction rate is low—it is between 10 and 15 per cent—yet only between 2 and 4 per cent of complaints are found to be false. Those dire statistics are a result of how the police, fiscals and lawyers have treated rape and sexual assault victims. I am glad that attitudes are changing, thanks in no small way to the Executive and the Parliament's engagement with the issues. That is also due in large part to the number of women in Parliament who have pressed the agenda.

The bill will make another step change in our justice system, which has for too long been the preserve of lawyers and the police. Our justice system is for the public, who need to feel comfortable and confident about giving evidence in court. We must remember that the bill is intended to support witnesses to give their best evidence—not to be soft on witnesses. The balance is right between witness support and the rights of the accused.

The quality of the training that is given to the police, fiscals, solicitors in private practice and advocates will be important in rolling out the legislation. I am content that the Executive will ensure that training is given to the police, fiscals and sheriffs, and that organisations such as Rape Crisis and Women's Aid will advise on that training. However, in civil cases, all will depend on the solicitor or advocate applying for special measures. I hope that the Law Society of Scotland and the Faculty of Advocates will meet their responsibilities through their continuing professional development courses.

I thank the clerks to the Justice 2 Committee for their hard work at all stages of the bill and I thank the many organisations that gave evidence to the committee and informed our discussions. I have great pleasure in supporting the bill.

The Presiding Officer (Mr George Reid): Jackie Baillie can make a speech of a couple of minutes.

11:58

Jackie Baillie (Dumbarton) (Lab): In the short time that is left I will say that, like many in the chamber, I support the bill, which will make a

substantial difference to the experience of children, young people and vulnerable adults in our courts. I am reassured and encouraged by the deputy minister's comments about people with non-visible disabilities and about dealing with delays in the system. I am convinced that the potential for realising the bill depends on the need to encourage the culture change to which the Minister for Justice referred, whether through training or guidance or by involving witnesses. What is important is monitoring the effectiveness of implementation.

The bill was introduced for the children and young people throughout Scotland who are likely to be vulnerable witnesses. It is a breath of fresh air in the justice system and ministers are to be commended for bringing it to the Parliament.

The Presiding Officer: I bid a warm welcome to the Ceann Comhairle, Dr Rory O'Hanlon, and the rest of the delegation from the Irish Parliament. A Chinn Chomhairle, tha Parlamaid na h-Alba a' cur fàilte—ceud mìle fàilte—oirbh uile. [*Applause.*]

First Minister's Question Time

11:59

The Presiding Officer (Mr George Reid): Eight seconds early, we come to First Minister's question time.

Cabinet (Meetings)

1. Mr John Swinney (North Tayside) (SNP): To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-684)

The First Minister (Mr Jack McConnell): The next meeting of the Cabinet will discuss our progress towards implementing the partnership agreement.

Mr Swinney: In January 2003, the Executive started to study the financial impact that the introduction of top-up fees in England would have on Scottish universities. Shortly afterwards, a formal review was announced. In June last year, the review was set up. From that day to this, we have been told that the review would have all the answers. Solutions would be provided and policy would be announced. Today the report tells us that it is a starting point. After 14 months of review, what new policy will be announced today and how much in the way of new resources will be provided for the university sector in Scotland?

The First Minister: We have explained in the chamber on a large number of occasions that the review was designed to provide the background evidence for our decisions on higher education funding. The involvement in that review of universities, colleges, students and other interests has given us a document that will be published this afternoon by the committee that agreed it, simultaneously with the Deputy First Minister. We will use the document to make the right decisions for the future of higher education. As Mr Swinney knows, the review was never designed to determine the decisions of Government that will need to be made over the next six months. However, it will provide us with extremely useful information to help us to ensure that those decisions are the right ones.

Mr Swinney: Will the First Minister do Parliament the decency of answering a couple of questions about the contents of the report that is to be published this afternoon but which the Deputy First Minister has been broadcasting for most of the morning? First, will the review endorse the Deputy First Minister's claim, made at last year's Universities Scotland conference, that the only way out of the funding crisis in Scotland's universities is for the universities to work a bit harder? Secondly, will it give a ringing

endorsement of the First Minister's claim—often made—that Scottish universities enjoy a 20 per cent funding advantage over universities south of the border?

The First Minister: The document will be published this afternoon. We need to pay due respect to those who prepared and spent a lot of time on it—from universities, student organisations, colleges and other bodies. They have the right to publish the document this afternoon without my pre-empting that and quoting from it here.

Mr Swinney is aware that the level of funding of universities in Scotland is higher than that in England in the way that he described. We are extremely proud of the quality of the work that is being done in our universities—not just the teaching, studying and research but, increasingly, the commercialisation of that research and the contribution that it makes to the wider Scottish economy. The vital contribution that our universities make will drive us over the next few months to ensure that they have the right level of resources not just to compete in higher education but to help Scotland's economy compete at the same time.

Mr Swinney: The First Minister talks about paying due respect to the organisations that have produced the report—none of which has accepted that it endorses the policy positions set out in it—and will not give me a specific answer in Parliament. However, all morning the Deputy First Minister has been broadcasting the report to the world, showing no respect to the people who were involved in producing it and no respect to this parliamentary institution.

In addition, the First Minister has failed to give an answer to my question about a point that he has made often enough—that universities in Scotland are 20 per cent better funded than universities in England. I am reliably informed that that point is not endorsed by the report that is to be published this afternoon. After 14 months, there is no clarification on money and no clarification on policy. The First Minister's claim about funding has been proved to be false and the review has so enthused its participants that they have just set up a website to publish the information that the Executive would not publish in the first place. After 14 months of stalling, why will the First Minister not accept that it is time for the Executive to put its money where its mouth is and to support our universities as the engine of Scotland's economy?

The First Minister: Mr Swinney should not misrepresent the Deputy First Minister's position in that way. He misrepresents both what was said in November and what is being said today.

There is a wider issue to consider. Our approach to the proper consideration of important financial issues is different from Mr Swinney's. If he thinks that it would be right and proper to say today that we should take more than £100 million—in fact, some £400 million, if I take what I believe are the figures in the report—away from budgets that could be allocated to schools, hospitals, housing, the environment and tackling enterprise in this country and allocate it today, without due consideration, to Scotland's universities, he is not living in the real world.

Scotland's universities rightly have a competitive advantage over their counterparts in England and they compete with the best universities in the world. Our universities need to have further resources and we have committed to providing them with such resources at the end of the current spending review—something that we would never normally do in relation to a spending review. We will review spending properly; over the next few months, we will consider the different priorities of all the many organisations that make submissions to us for funding, not just Universities Scotland. When we make those decisions, we will make decisions that are right for the long-term future of Scotland, not those that are right for short-term headlines.

The Presiding Officer: Briefly.

Mr Swinney: The impact of top-up fees will be felt in the next two years. The First Minister has had 14 months to come up with a starting point for the Government's consideration of the issue. Does he not understand the frustration that is felt throughout Scotland at his Government's prevarication? Why will it not take action to support a critical sector in Scotland's economy?

The First Minister: Because when we take action, we will take the right action. We will have considered the situation properly, we will have considered the implications for the other parts of public services in Scotland that deserve proper financial investment at the same time and we will ensure that all the implications are taken into account. It is precisely because of all those implications that we established the review in the first place.

The review is not just about one organisation—Universities Scotland—demanding £400 million for the university sector alone; it is also about the implications for Scottish students who might want to go and study in England and for English students who might want to come and study in Scotland. The review is about all the implications for the future of our higher education service. That is why the review was important and that is why it will be considered properly and timeously by ministers. We will make the right decisions for the long term and will ensure that our universities remain world class and can compete not just in the United Kingdom, but on the world stage.

Prime Minister (Meetings)

2. David McLetchie (Edinburgh Pentlands) (Con): To ask the First Minister when he next plans to meet the Prime Minister and what issues he intends to raise. (S2F-691)

The First Minister (Mr Jack McConnell): I met the Prime Minister last weekend. Mr McLetchie will not be surprised to hear that we held a number of discussions, which were very productive. I have no immediate plans to meet him in the next few weeks.

David McLetchie: When the First Minister and the Prime Minister next meet, they might again discuss enterprise. I notice that in his speech to the Scottish Labour Party conference at the weekend, the First Minister claimed that he wanted his party to be the party of enterprise and economic growth throughout Scotland. Words are cheap. Is it not about time that the First Minister learned that talking a good game is not the same as doing the business on the pitch, which is what the business community in Scotland is crying out for? As he well knows, the litmus test for the business community is the issue of business rates in Scotland, and the litmus paper is still Labour red. Why is the business rate poundage in Scotland for next year going up to 48.8p in the pound when it is already significantly higher than the business rate poundage in England and Wales?

The First Minister: Mr McLetchie is aware that the decisions that we have taken both last year and this year have reduced the real-terms take of business rates in Scotland to below the take in England, on the basis of the revaluation that was carried out in the Parliament's early years.

Mr McLetchie mentioned the general issue of enterprise. The direct improvements that have taken place in Scotland since 1997 and, indeed, since 1999 are one reason why the parties in the coalition partnership now have a much better record on enterprise than Mr McLetchie's party has. We have the lowest unemployment and the highest levels of employment that have been seen in my adult life. Our universities are now doing a proper job of commercialising their research and turning it into products that can be sold at home and worldwide. We have a totally different economy than that over which Mr McLetchie's party presided and in which his leader was employment secretary. If Mr McLetchie wants to debate enterprise, I am happy to do so anywhere, anytime, so let us start here.

David McLetchie: I am happy to accept the First Minister's challenge. He will of course reflect on the fact that, on the issue of business rates, we established a common rate poundage throughout the United Kingdom, which his Administration has destroyed. He talks about revenues from business rates. Will he confirm that the Scottish Executive has underestimated consistently the revenues that it derives from business rates? Last year, which was typical, the Scottish Executive set a rate poundage of 47.8p and based its budget on predicted revenues of £1,570 million. In fact, business rates last year brought in £1,710 million—an extra £140 million, which is equivalent to 4p in the pound. Given that, year on year, the Executive already raises more revenue from business rates than it budgets for, why do we need further to penalise our businesses by increasing the rate poundage yet again?

The First Minister: There is a very clear reason why. The income from business rates was higher than was predicted. Mr McLetchie will remember the many statements that he made over the past few years about what a miserable state the Scottish economy was in, what a disaster that was for business, how low growth was and how many problems there were. The take from business rates in Scotland was higher than predicted precisely because of the buoyancy and success of the Scottish economy over those years and because the Scottish economy had recovered from the Tory years, employment was at its highest level ever, unemployment was at its lowest level ever, new business was being created and we were having success. Mr McLetchie might not like that, but it is good news for Scotland that it happens.

David McLetchie: The patterns of last year and the year before are exactly the same. The Executive is using business in Scotland as a milch-cow for its extravagant spending plans. Is it not the case that the surpluses over budget predictions would have been enough to reduce business rates in Scotland to the same level that our competitors in England and Wales have had over the past two years and that there is no need whatever to increase the rate poundage for the forthcoming year?

The First Minister: Mr McLetchie makes bold statements about taxation reduction, but of course he does not admit in his speeches that the way that he would finance that would be to reduce our enterprise budgets and all the other budgets that contribute to the success of the Scottish economy and to the quality of life in Scotland, which is helping us to ensure that the economy remains a success. The reality is that corporation tax and all other business taxes in the United Kingdom are lower than they were in all those Tory years—Michael Howard might want to bring them back, but we are going to try to ensure that he does not have that chance. There are now incentives for Scottish companies and universities to invest in research and development in a way that never existed in those Tory years. We now have a

business climate in Scotland in which Scottish businesses can grow, supported by a tax system that gives them incentives to do so. That is something that we are all proud of and we are going to march on with it in the years to come. I am happy to debate that with Mr McLetchie on any occasion.

The Presiding Officer: There are two urgent questions. I call Trish Godman.

Trish Godman (West Renfrewshire) (Lab): Yesterday was both a good and a bad day for me. In the morning, Ferguson Shipbuilders was awarded an order for a Scottish Fisheries Protection Agency vessel. Two hours later, I was informed of the closure of the Automobile Association office in Erskine, with the possible loss of 230 jobs. As a local member, I know that the sudden decision of the AA to close the office comes as very bad news for its loyal and hardworking employees and is a serious blow to the local economy. I ask the First Minister and the Scottish Executive to support that fine work force by engaging in discussion with the company to persuade it to stay in Scotland and particularly in Erskine.

The First Minister: Trish Godman raises two issues. The Deputy First Minister and the Enterprise, Transport and Lifelong Learning Department will of course engage with the AA, both before the decision is implemented—in the hope that the company might perhaps review its decision—and, if it is implemented, in the same positive way in which we have been able to assist people in the same situation into new employment and training in many other parts of Scotland.

With Trish Godman, I welcome the decision to allocate the work on the new fisheries protection vessel to the Ferguson yard in her constituency. I hope that not only will that vessel, when it is built, sail the seas with pride for Scotland, but that the yard will have a successful future in years to come.

Nicola Sturgeon (Glasgow) (SNP): What assessment has been made of the capacity of Scotland's already overcrowded jails to deal with the transfer of disruptive prisoners from Northern Ireland? Although it may be the case that Scotland should strive to accommodate such prisoners as a contribution to the peace process, does the First Minister agree that such a decision should be taken in this Parliament after very full consideration, rather than being railroaded through under the Sewel convention, which denies this Parliament the opportunity for proper scrutiny of what is a devolved matter?

The First Minister: Use of the Sewel convention is an entirely appropriate way to make the decision. The outcome of the measure—if the Parliament supports it—will be to institute a system whereby no prisoner will be transferred to a Scottish jail without the express permission of the Scottish Executive's Minister for Justice and her agreement to the decision.

I normally have more respect for Ms Sturgeon than I have for some members of her party, but I found yesterday's incitement on the issue absolutely despicable. The peace process in Northern Ireland is at a delicate stage, dealing with difficult issues including those relating to prisoners. If we in Scotland can help with those issues and play our part, we should do so, and do so willingly. For Ms Sturgeon to state that

"Scottish prisons are already heavily overcrowded"

and that ministers

"want the power to import some of the UK's worst terrorists into Scottish jails"

incites a reaction that I think makes her remarks so wrong from a democratic politician that she should withdraw them. She should take them back and take part in the Northern Ireland peace process. What she said was shocking.

Cabinet (Meetings)

3. Tommy Sheridan (Glasgow) (SSP): To ask the First Minister what the top three priorities will be for the next meeting of the Scottish Executive's Cabinet. (S2F-697)

The First Minister (Mr Jack McConnell): The agenda for the next meeting of the Cabinet will be finalised tomorrow.

Tommy Sheridan: Can I respectfully suggest that the issue of low pay and women workers is shifted to the top of the agenda for the next Cabinet meeting? Thousands of women workers—nursery nurses—have been compelled this week to withdraw their labour in pursuit of a reasonable national pay agreement. Those women workers, who have not had their pay reviewed for 16 years, have been trying to negotiate with the Convention of Scottish Local Authorities for the past two years, and are now compelled to take all-out strike action. Will the First Minister come off the fence on the issue? Will he back those essential workers, who deliver a national education and child care strategy and who therefore deserve a national pay agreement?

The First Minister: I want to make it clear, as I have done in the chamber on many previous occasions, that I believe that nursery nurses do not just a fabulous job, but a very important job throughout Scotland, whether they work in the private sector, the voluntary sector or the public sector. They assist with the delivery of services to the youngest children in our society, who need the best possible start before entering primary school.

The negotiations over wages between the employers and the nursery nurses are a matter for the local authorities and trade unions, which should be involved in negotiations. I do not seek to allocate blame to either side, but they should get round the table locally and, if necessary, nationally, to discuss the way out of the current situation. It is not satisfactory in the modern world for parents and young children to be disadvantaged by situations such as the present one. I strongly urge both COSLA and Unison to get round the table, to get the dispute resolved and to get our children back to enjoying once again the service that nurseries provide.

Tommy Sheridan: The First Minister has once again avoided the question. There is no need for and no point in nursery nurses getting back round the table with COSLA if COSLA rejects the very principle of a national pay agreement.

I have asked the First Minister several times—and ask him again today—whether he believes that a nursery nurse in one part of Scotland deserves the same salary as a nursery nurse in another part of Scotland. In other words, does he agree that there should be a national pay agreement? Some 81 per cent of the nursery nurses who were balloted voted for all-out strike action. I say to the First Minister that they voted with regret and with heavy hearts, but they were left with no alternative. The nursery nurses of Scotland and Unison believe in a national pay agreement. Will he say today that he agrees that there should be a national pay agreement?

The First Minister: I want the dispute to be resolved and nursery nurses to be properly rewarded for the job that they do, but whether there is a national agreement or a series of local agreements is a matter for the nursery nurses' employers and their trade union. I understand that the trade union at a local level reaching local agreements in a number of areas but not in others is a difficult situation for the union and the employers, but they have a duty and a responsibility to get round the table and to resolve the dispute. Again, I urge them to do so. It is right that they take that responsibility seriously and act on it.

Personal Communication (Interception)

4. Pauline McNeill (Glasgow Kelvin) (Lab): To ask the First Minister whether the interception of personal communication in Scotland is limited and appropriate. (S2F-704)

The First Minister (Mr Jack McConnell): Yes and yes. The authorisation of interception by Scottish ministers is strictly controlled and limited by law to the prevention or detection of serious crime. Independent oversight is provided by the interception of communications commissioner. The commissioner's most recent report makes it clear that Scottish ministers have issued warrants only where their use is absolutely justified and in accordance with the law.

Pauline McNeill: The First Minister will be aware that there is concern about the increase in the number of requests to grant or modify warrants to intercept communications and the implications for the civil right to privacy. Does he agree that as much information about his decisions as possible should be in the public domain, without compromising the original reason for the warrant? More important, will he assure the Parliament that he will grant warrants only in accordance with the Regulation of Investigatory Powers Act 2000 and that, critically, there will be no repeat of the decisions that were taken in the 1980s, when the communications of trade union leaders such as Joan Ruddock and Campaign for Nuclear Disarmament campaigners were intercepted simply because of their campaigns against the Government of the day?

The First Minister: I have the responsibility and the legal right to sign warrants for interception only if those warrants are associated with serious crime. Neither the First Minister nor any other Executive minister signs warrants on the ground of national security, which is a matter for ministers at Westminster, or for any matter other than one that relates to serious crime.

However, where we have an opportunity through signing an interception warrant to assist the police in tracking, catching or monitoring the activities of those who are involved in serious organised crime, I assure members that we sign such warrants, and will continue to do so, under the strictest conditions and in the interests of the population of Scotland, their safety and security and in the interests of tackling serious organised crime. Each time I sign such a warrant, I think of those who are affected by the crime, drugs, violence, threats and intimidation that happen in too many communities throughout Scotland. When we sign such warrants, we do so with the duty to look after the population that we represent uppermost in our minds.

Margaret Smith (Edinburgh West) (LD): Will the First Minister discuss with the Home Office and the Home Secretary the advantages and potential disadvantages that can result from the use of phone-tapping evidence in court, including protecting the sources of the conversations from exposure?

The First Minister: The position that has been adopted is that the information that is secured through interception warrants is not admissible as evidence. We will keep that position under review over the years. I am sure that members will understand that it is partly for that reason that we

do not go into detail on individual cases or on the general use to which the warrants are put. I assure the Parliament that the information that is obtained through interception warrants is vital to the police forces in Scotland in the execution of their duties. It is used carefully but deliberately to ensure that we tackle serious organised crime.

Corporate Killing

5. Mike Pringle (Edinburgh South) (LD): I am sure that the First Minister will join me in welcoming to the public gallery a group from the Royal National Institute of the Blind from across Edinburgh.

To ask the First Minister whether the Scottish Executive has any specific plans to introduce a law on corporate killing. (S2F-695)

The First Minister (Mr Jack McConnell): Ministers are currently considering the recent appeal court judgment in the Transco case, which decided that the charge of culpable homicide against Transco was irrelevant in law. If we conclude that the law in relation to corporate homicide needs to be changed, we will not hesitate to change it.

Mike Pringle: I welcome the positive approach that is being taken to this area of law. However, although traders can be prosecuted for selling contaminated meat, companies are rarely held to account for accidents that are entirely their responsibility. Will the Executive ensure that any proposed legislation will make clear the responsibilities that managers and directors have—that they will be found guilty of corporate killing if a tragedy occurs? Will the Executive also ensure that such legislation will allow for the prosecution of individual directors when they are genuinely at fault, that it will not simply lead to a bureaucratic paper-chase to find out who did, or did not, do what, and that lessons will be learned from such tragedies?

The First Minister: We have said before, in response to questions from Karen Gillon on the Transco case, that this is a complex area of law. We are considering exactly those kinds of issue to ensure that any new provisions that we might require are effective and properly targeted at those who are at fault.

In response to Mike Pringle's second point, I can say that we do not want to add to the bureaucracy. An important factor in dealing with any tragedy is trying to prevent it from happening again, and that will be uppermost in our minds when we make decisions on the matter.

Karen Gillon (Clydesdale) (Lab): Notwithstanding the complexities of the legal case, does the First Minister accept that there is a real desire in my constituency for there to be a change in the law because people do not believe that the current law adequately allows the Crown to hold companies accountable for their actions, or inactions, that result in the deaths of individuals? Will he undertake to ensure that ministers and law officers conclude their discussions as quickly as possible to ensure that this loophole in the law is closed, so that other families who—God forbid—find themselves in the same situation as the Findlay family are not left feeling that the deaths of their loved ones were in vain and that the legal system is not able adequately to address their concerns?

The First Minister: I am happy to give Karen Gillon that assurance. We are studying the matter and will reach conclusions on it as quickly as we can. We will do so in a responsible and reasonable way, taking account of all the implications of any decisions that we might reach. As soon as we have reached our conclusions, the Parliament will be the first to know.

National Waste Plan

6. Mark Ballard (Lothians) (Green): To ask the First Minister what progress the Scottish Executive is making on the national waste plan in respect of reducing the amount of waste being produced and landfilled. (S2F-698)

The First Minister (Mr Jack McConnell): Scotland produces too much waste, and Scottish local authorities send too much waste to landfill. It is a challenge for businesses and individuals alike not only to reduce the amount of waste that is landfilled, but—importantly—to minimise the amount of waste that we produce. The strategic waste fund is helping to fund waste minimisation initiatives, and levels of both recycling and composting are now increasing.

Mark Ballard: I recognise that there has been a welcome increase in recycling and composting. Nevertheless, the Executive has abandoned its 1999 target of a 1 per cent annual reduction in waste production. As well as having a major environmental impact, the ever-increasing amount of waste being produced and landfilled has a major social impact. The villages of Greengairs and Wattston in North Lanarkshire are home to Europe's biggest landfill site. The First Minister is well aware of the dire situation that the residents of those villages face, because he promised them environmental justice when he visited them in February 2002. It is not justice to give these villages another landfill site.

The Presiding Officer: Question!

Mark Ballard: When will the First Minister recognise the need for an annual reduction in the amount of waste that is being produced in Scotland? Moreover, when will he return to

Greengairs to explain to the people there why the Scottish Executive is minded—

The Presiding Officer: Come on, Mr Ballard.

Mark Ballard: —to approve another landfill site?

The First Minister: It is precisely because of our concern for the community of Greengairs that we did not allow North Lanarkshire Council to agree the planning application in question when it wished to do so. Indeed, we called in the application to ensure that appropriate conditions were being imposed on any such application.

Mr Ballard will understand that, given the legal constraints that are on me, it is difficult for me to comment on the application. However, I will address the two issues that he has raised, the first of which is waste. We must first stabilise the level of waste that is being created in Scotland. Moreover, we have to realise that individuals and businesses throughout Scotland must play their part in achieving that aim, because it is not something that Government alone can do. We have to change the culture in Scotland with regard to the creation of waste. Furthermore, we must secure better ways of dealing with that waste not just through recycling and composting but by reducing landfill and other damaging ways in which waste leaves a bad legacy across our countryside.

We must also ensure that we learn lessons from past mistakes. It is precisely because of the conversations that I had with people in Greengairs two years ago that we now have a commitment to improve environmental information, to reform planning laws and to ensure that the national waste fund has more money and makes a bigger contribution than ever before. This Executive is committed to improving the environment and environmental justice for Scotland's communities over a range of issues.

The Presiding Officer: That concludes First Minister's question time.

Point of Order

12:32

Margo MacDonald (Lothians) (Ind): On a point of order, Presiding Officer. This point of order is further to the one that I raised with you a fortnight ago. I promised then that I would revisit the matter.

With reference to the relevant parts of the Parliament's standing orders, will you rule on whether it is competent for an MSP to lodge a parliamentary question to the Executive on a decision that was taken by MSPs following a debate in which this Parliament might have been misled about the legality of the action that was proposed by the Executive and subsequently supported by the majority of MSPs?

The parliamentary question that I had ruled out by the chamber desk this week did not imply that the First Minister had responsibility or should be accountable for a reserved policy area. However, in light of the doubt that eminent lawyers in the UK are now casting on the legality of the war with Iraq, is the First Minister not enabled by this Parliament's principles of accountability and transparency to confirm or correct his assurance to MSPs in the debate on Iraq last March that, even without a specific United Nations resolution, war with Iraq was legal? Surely the First Minister has a general responsibility under rule 13.3.3 of the standing orders to ensure that statements that he makes and that Parliament votes on are founded on legality and, if doubt is cast on that, to investigate the matter so that it might be corrected if necessary.

The Presiding Officer (Mr George Reid): I was intending to give you a quick rule 13.3.3(b) answer. However, because your point of order was so long, I would like to read and reflect on it and, as usual—[*Interruption.*]

Order. I shall come back to the member on her point of order this afternoon.

12:34

Meeting suspended until 14:30.

14:30

On resuming—

Question Time

SCOTTISH EXECUTIVE

National Health Service (Overseas Workers)

1. Dennis Canavan (Falkirk West) (Ind): To ask the Scottish Executive what steps it is taking to ensure a fair rate of pay for overseas workers employed in the national health service. (S2O-1423)

The Minister for Health and Community Care (Malcolm Chisholm): Rates of pay for all NHS Scotland staff, regardless of origin, are set nationally by the appropriate functional Whitley council.

Dennis Canavan: Will the minister investigate the recent *Sunday Mail* reports about a recruitment agency called Bankvale Associates Ltd, which charges Filipino nurses £400 for job interviews? The agency gets £800 from the NHS for every nurse recruited, but the nurses are left with only £8 per day, after deductions for loan repayments and rental charges that are up to three times the norm. Will the minister take urgent action to stop such gang masters exploiting overseas workers, which is making a mockery of the Scottish Executive's fresh talent initiative?

Malcolm Chisholm: There is an issue for the NHS, and in particular for South Glasgow University Hospitals NHS Trust, about which agency, if any, it uses for recruitment purposes overseas. That apart, however, all the other issues to which Dennis Canavan referred are not the responsibility of the health service. I know that there is an issue about how much rent was charged and I understand that a tribunal is forthcoming about that, but the rent levels were not set by the NHS. Equally, any loans that the nurses took out in the Philippines are nothing to do with the NHS. However, as I said, I accept that there is an issue for the NHS about which agency, if any, is used. I know that this afternoon South Glasgow University Hospitals NHS Trust is meeting the agency that Dennis Canavan referred to. I have asked the trust to present me with a report promptly after that meeting, so I will look further into the particular issues that are the concern of the NHS.

Shona Robison (Dundee East) (SNP): Is the minister aware that, according to the Royal College of Nursing, the number of nurses who are joining the NHS from abroad may be starting to decline, yet the number of nurses who are leaving Scotland is very much on the increase, which, together, means fewer nurses for the Scottish NHS? Does he accept that in a global nursing market we will continue to lose experienced staff to other countries if we do not give them appropriate terms and conditions to retain them here in Scotland?

Malcolm Chisholm: First, nurses from overseas get exactly the same terms and conditions as any other nurses, as I indicated in my first answer. Secondly, Shona Robison's arithmetic hardly reflects the record increase in the number of qualified nurses in the work force. As last week's statistics showed, there were more than 1,000 extra qualified nurses in the work force last year. I have looked back to 1984 and can tell the member that that was the biggest increase by far in all that time.

There are issues, of course. Because we are expanding the work force and improving the health service, we want still more nurses. International recruitment is part of that, but it has to be done within an ethical framework, so that we attract people only from countries that can afford to lose nurses. We in Scotland have been observing that practice pretty strictly. However, within those parameters, I accept that it is legitimate and important to recruit from overseas.

Mr David Davidson (North East Scotland) (Con): What packages is the minister offering to health boards to attract people such as foreign-registered dentists to come to Scotland and serve an introductory period for registration to work in the health service?

Malcolm Chisholm: David Davidson asked that question of Tom McCabe and my answer will be no different. We are looking at the whole issue in relation to the current consultation on the dental work force. David Davidson knows that there are no special packages at the moment, but the matter will be considered within the broader picture.

Fisheries

2. Richard Lochhead (North East Scotland) (SNP): To ask the Scottish Executive what progress has been made in seeking to address "unintended consequences" of the December European Union fisheries negotiations. (S2O-1414)

The Deputy Minister for Environment and Rural Development (Allan Wilson): We expect the Commission to propose significant improvements to the haddock special permit arrangements this month.

Richard Lochhead: There has been no timescale for some time now, so will the minister say exactly when the decisions will be made? Does he appreciate that this is a difficult time for

Scotland's fishing communities, whose livelihoods depend on substantial changes being made to the discriminatory and draconian deal that was signed in Brussels? Is he seeking to scrap the haddock permit system and to take the traditional haddock grounds out of the cod protection area? Is he seeking to take more days at sea per month for the fleet and, if not, given that the fleet will be in a worse position than it was last year, will he introduce an aid package?

Allan Wilson: The fleet is not in a worse position than it was last year, because we secured a 49 per cent increase in its haddock quota. I cannot tell Richard Lochhead precisely when the Commission will announce its proposals, because that is a matter for the Commission, not for me. The regime is not draconian or discriminatory. We are trying, with some success to date, to secure necessary amendments to the cod protection area boundaries; significant adjustments to the ratio of United Kingdom haddock quota that can be taken inside and outside the cod protection area; a mid-year review of the special management arrangements, in conjunction with the Norwegians; pragmatic accounting arrangements to deal with all haddock catches; and a pragmatic approach with national discretion to take into account small bycatches of haddock taken in other fisheries, especially the nephrops fishery.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): What progress has been made in resolving the absurd anomaly that I raised in the chamber nearly two months ago whereby 30 skippers from the Fife Fish Producers Organisation had already exhausted their haddock quota from the cod protection zone? They are mainly prawn fishermen but, without permits, whatever haddock they take as bycatch anywhere in the North sea are judged automatically to be from the protection zone. Will the minister tell us how long those fishermen will be denied unrestricted access to fish for prawns in their traditional grounds? Will he further tell us what contribution to conservation is made by allowing the prawners access to the protection zone only if they dump any haddock that they take as a bycatch, given that the whole point of the zone is to protect cod stocks?

Allan Wilson: One of the reasons why we might amend the boundaries of the cod protection zone is to take into account the fact that fishermen such as the ones to which Ted Brocklebank referred can catch haddock more easily in other areas and could, of course, apply for haddock permits to fish in those areas. As the member knows, part of what we are doing is about redirecting the effort of our fishermen away from areas where cod will be taken as a bycatch, whether by nephrops fishermen or white-fish fishermen. That effort redirection regime was vital to securing the increased haddock quota to which I referred. Without that redirection of effort, there would be no decoupling and the North sea would have been closed.

The Presiding Officer (Mr George Reid): Because of the way in which questions run, I call Ted Brocklebank again to ask question 3.

Broadcasting (Content and Regulation)

3. Mr Ted Brocklebank (Mid Scotland and Fife) (Con): To ask the Scottish Executive what discussions have taken place between it and the Office of Communications regarding broadcasting content and regulation under the new communications regime. (S2O-1426)

The Minister for Tourism, Culture and Sport (Mr Frank McAveety): Ofcom has initiated a series of discussions and consultation meetings, which have included discussions with Scottish Executive officials. Ofcom has been made aware of the issues relating to broadcasting in Scotland and wishes to establish a good, practical working relationship with the Scottish Parliament and the Scottish Executive within the bounds of the constitutional settlement.

Mr Brocklebank: Does the minister believe that the Parliament should have a clear view on the content of television and radio programmes that are broadcast in Scotland, particularly in relation to regionality and originality? Is the Executive happy that Scottish Television and Grampian Television could be taken over by an international media conglomerate with its own agenda on increasing audience share and the kind of programming required to do so? Does the minister share my view that, despite the fact that broadcasting is a reserved matter, it is of the utmost importance that the Parliament gets into a dialogue with the new Scottish office of Ofcom, which is to be based in Glasgow, to make its views crystal clear on the importance of broadcasters maintaining quality, plurality, diversity and regionality in relation to Scottish broadcasting, no matter who their ultimate owners happen to be?

Mr McAveety: I thought that that was a broadcast to the nation, but I thank Ted Brocklebank for it. I assure him that, when I meet the chief executive of Ofcom shortly, along with political representatives from the United Kingdom Parliament, including Anne McGuire, many of the issues that he raised in his lengthy and detailed but important question will be reflected on.

Rail Capacity

4. Iain Smith (North East Fife) (LD): To ask the Scottish Executive how it will contribute to addressing projected shortages in rail capacity between Scotland and London by 2015. (S2O-1398)

The Minister for Transport (Nicol Stephen): The Scottish Executive is always prepared to engage with the Strategic Rail Authority, Network Rail and the Department for Transport to contribute to improvements to the rail network between Scotland and other parts of the United Kingdom.

Iain Smith: I am sure that the minister is aware of the Commission for Integrated Transport's February report that predicted that the inter-rail capacity between London, Birmingham, Manchester and Scotland will be full by 2015. Does he agree that that will have a considerable impact on the Scottish economy in terms of the fares for passengers and freight? Does he also agree that rail speeds approaching those in Europe and Japan, which would cut journey times between Scotland and London to around three hours, would have a major impact in reducing air traffic between Scotland and London? In that context, will he have discussions with the UK Government on the possibility of advancing high-speed rail links between Scotland and London?

Nicol Stephen: I will discuss that matter with Alistair Darling when I next meet him. I can see considerable benefits for Scotland if a high-speed rail link were developed. Clearly, however, that is a long-term project, as the delivery of such a line would involve the investment of tens of billions of pounds. In the meantime, my priority is to deliver the package of rail projects that the Scottish Executive is committed to. Over the next 10 years or so, we will continue to contribute significant amounts of money to new rail projects.

The projections on which the Commission for Integrated Transport has based its analysis relate to an expansion of the rail network with more passengers than ever before wanting to make use of the rail services between Scotland and London. It is vital that, in order to achieve that goal, we continue to improve and upgrade the quality of the service over the next 10 to 15 years.

Brian Adam (Aberdeen North) (SNP): What impact would capacity constraints on the east coast main line have on the modest financial requirement for the upgrade that is required between Aberdeen and Edinburgh to allow full freight facilities to be used on that part of the line?

Nicol Stephen: That question falls into the category of issues that are currently being considered and are part of the Scottish Executive's priorities for the next few years. I am confident that we can find a solution to the problem that presents itself. The funding partners for the project have yet to be agreed but, because of its scale, the project can achieve a great deal for a few million pounds of investment. I am determined to ensure that funding partners are found in the coming months. It might take a little longer to get to the construction phase, of course, but confirming the project and the funding and giving confidence to people in the north-east that we can move ahead are vital.

Maureen Macmillan (Highlands and Islands) (Lab): How will the constraints that have been mentioned affect the sleeper services between London and Scotland, particularly the service to Fort William? Is the minister aware of that service's ticketing problems and, if so, has he spoken to ScotRail about them?

Nicol Stephen: I am concerned that, too often, politicians wake up in the morning and hear the reports on "Good Morning Scotland" that the sleeper service is once more an hour or two late. That quality of service is simply not good enough if we want to expand the number of passengers making use of the sleeper. I am committed to retaining the sleeper service and to finding ways of improving its quality. Obviously, those efforts include work on the ticketing problems and the integrated ticketing that can be made available for services into the Highlands.

Transport Planning (Edinburgh)

5. Mike Pringle (Edinburgh South) (LD): To ask the Scottish Executive what support it is giving to the City of Edinburgh Council to co-ordinate future transport planning with neighbouring local authorities. (S2O-1407)

The Minister for Transport (Nicol Stephen): The Scottish Executive supports all Scotland's regional transport co-operatives to plan and co-ordinate transport issues better between neighbouring authorities. Along with nine other local authorities, the City of Edinburgh Council is a member of the south-east Scotland transport partnership. At the SESTRAN conference at the end of last year, I announced the investment of £4.5 million to enable local authorities jointly to fund activities in a co-ordinated way in the SESTRAN area.

Mike Pringle: Given that the recently announced proposal for a park-and-ride site at Straiton had to go to the Scottish Executive on appeal before it was approved, will the minister confirm that future proposals for park-and-ride sites that are vital to relieving traffic congestion in south Edinburgh will be dealt with speedily? Will he encourage neighbouring authorities to work with Edinburgh in relieving traffic congestion, which would help all commuters from Lothian, the Borders and Fife?

Nicol Stephen: It is fair to say that problems such as those that Mike Pringle has identified have been part of the reason for developing proposals for stronger regional transport partnerships. We hope to produce a white paper in

the next few weeks that will set out our proposals in more detail.

In and around Edinburgh, there are ambitious plans for park-and-ride developments at Newcraighall, Ferry Toll, Straiton, Todhills and Hermiston. However, they have not been progressing as quickly as I would like. We need to ensure that the considerable resources that the Scottish Executive has committed to those projects are spent on them as soon as possible so that those facilities are available for the travelling public.

Small Units Initiative

6. John Farquhar Munro (Ross, Skye and Inverness West) (LD): To ask the Scottish Executive what progress is being made under the small units initiative in identifying units within the Executive that are suitable for relocation from Edinburgh to rural Scotland. (S2O-1402)

The Deputy Minister for Finance and Public Services (Tavish Scott): In March 2003, the Executive identified approximately 80 posts for relocation from Edinburgh to rural Scotland under the small units initiative. Since then, progress has been made in identifying locations for those posts.

John Farquhar Munro: I am sure that the minister would agree that the small units review offers two benefits—the economic benefit to the area that is gaining the jobs and better government. For example, would it not be better if the Parliament's Gaelic service was based in an area that contains many Gaelic speakers? To that end, I request that the minister considers moving that unit to Skye, which will soon be readily accessible across a toll-free bridge.

Tavish Scott: Presiding Officer, the Parliament's Gaelic service might be a matter for you, rather than for me, but I am sure that you heard Mr Farquhar Munro's comments on the subject.

I agree with the member's initial point about the benefits that the small units initiative can bring to rural, island and peripheral areas of Scotland and their local economies. Three, four or five jobs in such localities can make a significant difference.

Jim Mather (Highlands and Islands) (SNP): What steps is the Executive taking to update relocation strategies, such as the small units initiative, by increasing the targets for the number of relocated jobs in the light of the enabling new technologies and the experience that points to increased levels of staff retention in rural areas?

Tavish Scott: Mr Mather will know that the Scottish Executive has recently announced further work on refining and proceeding with the relocation policy. The Finance Committee on which the member serves is also conducting an inquiry, so there is a considerable focus on this area of policy. The enabling technology that the member mentioned is one of the central and considerable benefits that can be brought to bear, as it can assist in the process of the relocations that we want to happen.

George Lyon (Argyll and Bute) (LD): The minister will be aware of the bid for the crofter housing grants administration unit to be relocated to Tiree, which is one of the most fragile island environments on the west coast of Scotland. Given that the grant scheme applies only to the Highlands and Islands, surely it makes sense to locate the unit in the area. Will the minister assure me that he understands how important the decision is to the island community of Tiree? Will he guarantee that a final decision will be taken as quickly as possible? I would prefer it if he did not reply by saying, "Shortly".

Tavish Scott: We will take the decision as quickly as we can, consistent with good decision making. I am sure that my colleague Allan Wilson will have considered carefully Mr Lyon's points about Tiree.

Airdrie to Bathgate Rail Link

7. Karen Whitefield (Airdrie and Shotts) (Lab): To ask the Scottish Executive what progress is being made on the reopening of the Airdrie to Bathgate rail link. (S2O-1384)

The Minister for Transport (Nicol Stephen): The first stages of public consultation have now started and an engineering feasibility study will be completed this month. The project steering group will then consider the next stages of the design and consultation work that is needed to keep the project on track for completion in 2008.

Karen Whitefield: Does the minister agree that the reopening of the Airdrie to Bathgate railway line must benefit the communities of Plains and Caldercruix in my constituency and those of Armadale and Blackridge in the constituency of my colleague Mary Mulligan? Does he agree that that necessitates the construction of new railway stations in those villages to ensure that local residents will have full access to this additional public transport route?

Nicol Stephen: Yes. Karen Whitefield has raised concerns about the breadth of the public consultation exercise that is under way and about the location of some of its public meetings. As the Scottish Executive is likely to be a significant funder of the Airdrie to Bathgate line, I assure her that I will use all my efforts to encourage further public consultation meetings. We have only just started the consultation process, which is likely to take place over 12 to 18 months, but the sooner

that we can hold meetings in Caldercruix, Plains and the other towns that she identified, the better. It is important that we get the support of all local residents and communities for this important new rail line, which we all want to see delivered.

The Presiding Officer: Bristow Muldoon's question will be on the Bathgate to Airdrie rail link.

Bristow Muldoon (Livingston) (Lab): I am encouraged by the minister's commitment to try to achieve the timetable to reopen the line for 2008. Given that the Bathgate to Airdrie rail link was identified as the most significant public transport project in the central Scotland corridor study, does he recognise that the link is essential to the Executive's aim of reducing congestion across the central belt? With that in mind, will he give a firm commitment that he will try to ensure that, unlike the Highland sleepers, the Bathgate to Airdrie trains will arrive ahead of timetable?

Nicol Stephen: I am happy to give a commitment that I will do everything in my power to achieve that. In the context of the central Scotland corridor study, it is important that we ensure that we invest in the major public transport projects and try, if at all possible, to deliver them quicker than is currently timetabled.

It is easy to invest in established road improvement schemes because we have a department that is geared up to doing that and has been doing that for a number of years. However, many of our public transport schemes are of a type that we have not seen for a long time. For example, as I mentioned at last week's question time, we have just started work on the Larkhall to Milngavie line, which is the first branch line to be reopened for 25 years. Many of the skills that are required to deliver such projects are no longer easily available in Scotland. Part of the challenge both for politicians and for the engineers and operational people in the rail industry will be to ensure that, as a team, we can deliver these projects on time and on budget.

Mr Kenny MacAskill (Lothians) (SNP): The minister will be aware that the specification to the consultants from Babtie Group Ltd is based on a state-of-the-art scheme that includes full electrification. Although that is laudable, such a specification is likely to make the scheme substantially more expensive than it would be if it were of a more basic and utilitarian nature. Will he ensure that the decision on the scheme is based not simply on the costings of the state-of-the-art scheme but on alternative costings for a more utilitarian scheme, which might in fact be more deliverable?

Nicol Stephen: I welcome Kenny MacAskill's call for frugality—the first time that he has called for that in the Parliament. When Kenny MacAskill encourages me to take a more utilitarian and less expensive approach, I am delighted to take him up on the offer. However, we want high-quality rail projects with, if possible, higher speeds and better times. If we are to succeed in getting people to transfer out of their cars and on to the rail network, we need to be as ambitious as we can be for public transport in Scotland.

Teacher Numbers

8. Fiona Hyslop (Lothians) (SNP): To ask the Scottish Executive what implications the rate of retirement of teachers will have for its ability to ensure that there are sufficient teacher numbers to meet its targets. (S2O-1399)

The Minister for Education and Young People (Peter Peacock): Teacher age profiles are taken into account in calculating the estimated numbers of teachers required to meet our targets.

Fiona Hyslop: The minister will be aware that, for some time now, the SNP has highlighted the need to double or even triple the number of new recruits into teacher training colleges. Bearing in mind the facts that there was an 11 per cent increase last year in the number of teachers retiring, that that trend is likely to continue, and that we will need 1,500 teachers on average each year just to replace those who are retiring, what measures will the minister take to try to bring more people into the teaching profession?

Peter Peacock: As the Parliament is aware, we have an historic commitment to increase teacher numbers to 53,000 overall. That is a significant challenge, but the Executive is rising to it. We have detailed ways of calculating the number of teachers we will require that take account of the current number of teachers and their age profile, how many teachers we expect to recruit from outside Scotland, how many we expect to leave the profession and how many we expect to join the profession. That is all factored together and then we make progress on that basis. We recently notified the Scottish Higher Education Funding Council of the number of teachers that we will require in future to meet our targets, and we are increasing the supply of teacher training places by 400 so that we can meet our target for primary 1 by 2007. The other figures—for secondary 1 and secondary 2 maths and English—have recently been put into the public domain and we are confident that we will meet those targets.

Robert Brown (Glasgow) (LD): Does the minister agree that, as well as the total number of teachers, the balance between different specialities within the teaching profession is important? Following the debate in Parliament last night on science, does he agree that it is important to ensure that among the opportunities offered by maintaining the number of teachers despite the

falling school roll is the opportunity to increase the number of science teachers and other specialist teachers to meet the Executive's objectives?

Peter Peacock: As I indicated, we have detailed ways of looking at teacher supply. We look at shortages that are emerging in the teaching profession and make that information part of the instructions that we give to SHEFC about the supply of teachers that we require. We are constantly reviewing the system as a whole, looking for science teachers, physical education teachers, music teachers or whatever other specialist teachers are required, to ensure that our schools have the type of teachers that we require to meet our curriculum demands.

Gershon Review

9. Mr Keith Raffan (Mid Scotland and Fife) (LD): To ask the Scottish Executive what implications Sir Peter Gershon's Government efficiency review will have for the delivery of public services in Scotland. (S2O-1390)

The Minister for Finance and Public Services (Mr Andy Kerr): The Scottish Executive is committed to value for money and customer-focused public services. In continuing to develop our approach, we will give due cognisance to the Gershon review of UK Government departments.

Mr Raffan: I hope that the UK Government has shared a copy of Sir Peter's interim report with the minister and that he has had sight of that. Can the minister assure us that the Executive will give serious consideration to the proposed reforms, not least in relation to procurement and the streamlining of regulation, which could save up to between £10 billion and £15 billion nationwide? That money is badly needed in the current spending review and could be redeployed in front-line services, not least education and health.

Mr Kerr: If I may be so bold, I can let Mr Raffan know that the Gershon review may learn from the Scottish Executive in relation to its funding and support for projects such as e-procurement. To cite a good example, it is projected that the Highland Council will save £3 million by its inclusion in our e-procurement system. All across the public services here in Scotland, we are working in partnership to ensure that we get value for money for our services. Every public pound wasted is a public pound lost in terms of opportunity to deliver much better public services.

Primary School Closures (Midlothian)

10. Lord James Douglas-Hamilton (Lothians) (Con): To ask the Scottish Executive how it will respond to the representations of parents at Temple and Borthwick primary schools in Midlothian, currently facing possible closure. (S2O-1432)

The Minister for Education and Young People (Peter Peacock): The proposals are Midlothian Council's and it is for the council to consult on them and to have regard to the representations made to it before reaching a decision.

Lord James Douglas-Hamilton: Is the minister aware of what Ross Finnie said to the Rural Affairs Committee on 20 June 2000? Mr Finnie said:

"The only school closures that are automatically examined by ministers are closures of rural schools … The whole reason why rural schools are treated differently is the recognition of the importance that a rural school has, not just in its educational provision but in its place in the community."—[*Official Report*, *Rural Affairs Committee*, 20 June 2000; c 1037.]

Is the minister aware that Midlothian Council proposes to close five schools in rural areas? Will he say whether he agrees with Mr Finnie's principled stand against the mass closure of rural schools?

Peter Peacock: Lord James Douglas-Hamilton makes one interpretation of what Ross Finnie said, but the Executive is committed to ensuring that we have an adequate network of schools across Scotland. It is a statutory duty of a local authority to ensure that it provides adequate and efficient education in its area, but school closure proposals are essentially local matters and it is far better for them to be determined locally. Democratically elected local politicians are accountable for their actions. They have to take account of the very local circumstances in their areas, and it would be wrong for us to second-guess those proposals from the centre.

On the point about what matters are referred to ministers, a proposed rural primary school closure would be referred to ministers only if the school was 5 miles away from the school that it was proposed that the pupils should move to. For a secondary school, a proposal would be referred if the school was 10 miles away. There is also an 80 per cent occupancy level threshold at which ministers may be asked to examine specific proposals. It is not clear to me at the moment whether any of the schools in Midlothian would be referred to ministers, because they may not meet any of those criteria.

Rhona Brankin (Midlothian) (Lab): Can the minister assure me that the Education (Publication and Consultation Etc) (Scotland) Regulations 1981 require local authorities adequately to carry out consultation of parents and school boards and that local authorities have to take account of any representations made within the statutory consultation period?

Peter Peacock: Yes. The regulations make it clear that there is a statutory duty on local authorities to consult school boards, parents and the community. Local authorities must take those representations into account before they come to a decision. I stress again that these are local matters, but it is clear that we expect local authorities to consult. The statute requires that and we expect local authorities to have regard to the consultation before they arrive at their judgments.

Children's Panels (Recruitment)

11. Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): To ask the Scottish Executive what steps it is taking to encourage people to apply to become members of children's panels. (S2O-1397)

The Deputy Minister for Education and Young People (Euan Robson): Local authorities are responsible for recruitment, while the Scottish Executive funds and manages the national campaign that supports and supplements local activities.

Jeremy Purvis: Does the minister agree that one of the benefits of the children's panel system is the diversity of panel members? Will he ensure that there is no limit for panel members and that, as part of the national promotion, the Executive encourages those in their 20s to seek membership of children's panels and endeavours to ensure that there are no limits on those aged over 60 applying for membership of panels?

Euan Robson: I agree with the member's general point. The current lower age limit is 18 and the upper age limit is currently 60 for a new appointment and 65 for retirement. However, the matter will be examined in the forthcoming review of the system and comments on the issue will be welcome. We must also bear in mind the European employment directive that addresses upper age limits. The review will have to bear the directive in mind in producing an outcome. There is a significant difference in that the employment directive covers those in paid employment, while panel members are volunteers. Nevertheless, due regard will have to be paid to that piece of European legislation.

Miss Annabel Goldie (West of Scotland) (Con): Would the minister be concerned to learn, as I did recently, that some panel members feel that they lack stature in the eyes of the agencies with which they have to interface? If that is the case, it seems regrettable. How would the minister propose to address that issue, which is a vital consideration when we are seeking to recruit people to increase our panel membership?

Euan Robson: I am aware of that view, which I believe is a minority view. The recent recruitment campaign was able to find more than 600 new members of children's panels, which shows that there is continuing interest in becoming a panel member. The hearings review will cover that issue. We welcome comments from serving members, past members and those who have an interest in the future health of the system.

Scott Barrie (Dunfermline West) (Lab): The minister will be aware of the members' business debate that we had in October on children's panel membership. Does he agree that one of the biggest inhibitors to people becoming panel members and the most common reason given by panel members who give up is the difficulty that those in paid employment have in getting time off work? Will he ensure that all employers, in both the public and the private sectors, are encouraged to see the benefits of having employees who are involved in this valuable public service and that no panel member is prevented from carrying out their important duties by being denied adequate time off work?

Euan Robson: I agree with those important points. The Scottish Executive has addressed the issue with employers and it will continue to do so. It is important that employers understand the importance of releasing their employees for children's panel work, which is vital for society. It is also important for employers to understand that there are benefits for them in that their employees will have broader experience and greater understanding of the world outside their employment and will bring to their employment skills and experience that they would not otherwise have.

The Presiding Officer: Question 12 is withdrawn.

Erskine Bridge (Tolls)

13. Trish Godman (West Renfrewshire) (Lab): To ask the Scottish Executive whether there are any plans to allow for the suspension of tolls on the Erskine bridge during the period when the Clyde tunnel is under repair. (S2O-1394)

The Minister for Transport (Nicol Stephen): There are no current plans to suspend tolls on the Erskine bridge.

Trish Godman: I thank the minister, but his answer was less than helpful. I remind him that, from day one of the Parliament, Des McNulty and I have been asking for the tolls to be lifted. Other members, including Jackie Baillie, have done the same. What has the ministers' response been? There will be no lifting of the tolls despite the fact that the bridge has paid for itself. There will be no financial support for Glasgow City Council when it has to upgrade the Clyde tunnel. When does the minister expect to receive the report of the group

that is reviewing tolls on bridges all over Scotland? An answer of, "Some time soon," will not be acceptable.

Nicol Stephen: I hope to receive the report quicker than that—it will be later this year. I realise the importance of the wider review to all the toll bridges in Scotland. We will make early progress on the review and that is a clear commitment from the partnership agreement.

With regard to the points that Trish Godman raises, the works that are being carried out are related to new safety regulations and to the fire that took place in the Mont Blanc tunnel.

It is important that the work goes ahead as soon as possible. It will start on 19 April, last approximately 57 weeks and end in mid-May 2005. At no stage will the tunnel be shut completely and all the works will be carried out overnight from 7 pm until 6 am. During that night-time period, a contraflow system will be in operation in the other section of the tunnel. The work will not affect daytime traffic.

Tolls on the Erskine bridge have been suspended on previous occasions. There were three such occasions, but that was when the Kingston bridge was closed fully for periods of greater than 24 hours. That is the justification for the current position. If there were to be any change to that position, powers would require to be taken through some temporary suspension of tolls order. We have no such order in place at present.

Des McNulty (Clydebank and Milngavie) (Lab): The minister has said repeatedly that dealing with congestion is at the top of his agenda of priorities. Does he understand the frustration that people in the west of Scotland feel, given that the Kingston bridge and the Clyde tunnel are the major congestion pinch points with which we have to deal? Removing the tolls from the Erskine bridge would present a third option to people who have to cross the river. In the context of an almost 60 per cent increase in investment in transport since 1999, it makes absolute sense to stop penalising the people in the west of Glasgow and West Dunbartonshire by continuing to impose those tolls when we could improve economic infrastructure, reduce congestion and deal with what is seen as a great annoyance at a stroke.

Nicol Stephen: I accept fully the importance of the matter and the fact that it is of regional significance. That is why we are setting up the Scottish transport agency and why we intend to give greater powers and statutory strength to regional transport partnerships so that we are better able to tackle major public transport, roads and bridges issues of regional or strategic significance in Scotland. We will produce a white paper on that subject soon. We are progressing with the tolls review. We are doing a lot of work to address the problems that members have raised today. I give them a final commitment that we will make progress on those problems in the coming months.

Women in Business

14. Irene Oldfather (Cunninghame South) (Lab): To ask the Scottish Executive what action it is taking to encourage women into business. (S2O-1421)

The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Mr Jim Wallace): Responsibility for directly assisting women into business falls to Scottish Enterprise and Highlands and Islands Enterprise. Through the enterprise networks, there is a range of support services to encourage more women to consider the option of running their own business. Co-ordination of that support is now undertaken through a national unit for women's enterprise. The unit is currently carrying out a detailed strategic review of support measures.

Irene Oldfather: Will the minister join me in welcoming the launch this week of the European Commission's action plan on entrepreneurship, which cites as one of its key priorities the promotion of women entrepreneurs? Will he also give an assurance that he will work with the enterprise networks to ensure that Scottish women have the appropriate information to enable them to benefit from and participate in that important initiative?

Mr Wallace: I certainly welcome the entrepreneurship action plan, which has recently been published. Indeed the Executive provided direct input into the original green paper.

It is also fair to say that we are already adopting a number of innovative approaches in the entrepreneurship field, including "Determined to Succeed: A review of enterprise in education" and assisting women into business. We are already doing much of what the Commission is proposing and the national unit for women's enterprise, to which I referred, is considering the development and market testing of new support mechanisms. We can therefore give a considerably greater impetus to trying to attract women into the world of enterprise to set up their own businesses.

Points of Order

15:10

Johann Lamont (Glasgow Pollok) (Lab): On a point of order, Presiding Officer. Is the Presiding Officer aware of reports in the press today that refer to the Communities Committee's stage 1 report on the Antisocial Behaviour etc (Scotland) Bill, which will be published tomorrow? The press reports grossly misrepresent the committee's very constructive deliberations. Will the Presiding Officer investigate this clear breach of the Parliament's standing orders, which I believe represents a crude attempt to pre-empt the report, to divert attention from its findings and to shape the context in which it will be considered? Will the Presiding Officer consider referring this serious matter to the Standards Committee?

The Presiding Officer (Mr George Reid): As members know, I totally deplore all leaks of that type. Of course, the matter is primarily one for the convener of the Communities Committee. The matter can be referred to the Standards Committee—indeed, if you want to raise the matter directly with the convener of the Standards Committee, you may do so.

Stewart Stevenson (Banff and Buchan) (SNP): On a point of order, Presiding Officer. I gave you notice of this point of order. Next week the Parliament moves to a new form of question time, which will be in three sections. According to the business bulletin, 39 questions have been selected, rather than the 30 that are normally selected. However, there is some disappointment that, although there will be 39 questions, only 31 members will ask them. Indeed, next week will be the Dennis Canavan show, as he has been lucky enough to have a question selected in each of the three sections.

Dennis Canavan (Falkirk West) (Ind) *rose—*

Stewart Stevenson: It is all right, Dennis—very good luck to you; they are good questions.

On inquiry to the chamber desk, I found that we are applying the same computer system and selection algorithm that we used previously for the 30 questions, so the system is being applied fairly and equitably. However, we might have to look again at its operation to ensure that the number of people who have the opportunity to ask a question is nearer 39, which is the number of questions that are selected. In the intervening period, will the Presiding Officer be able to consider the basis for the selection of questions?

The Presiding Officer: Of course, unlike you, I do not have the advantage of being a trained mathematician, but it is certainly true that rules 13.6.7 and 13.6.7A of the standing orders require questions to be selected on a random basis. I will look into the matter, but I suggest that perhaps we give the system a little time to bed down in practice.

Des McNulty (Clydebank and Milngavie) (Lab): Further to that point of order, as part of your investigation, will you find out whether the Conservatives and the Scottish National Party actually lodged many questions? They seem to be substantially under-represented.

The Presiding Officer: That is a fair point and I urge business managers to consider it.

If the points of order are finished, I will allow a slight pause while a few members leave the chamber.

Vulnerable Witnesses (Scotland) Bill

Resumed debate.

The Deputy Presiding Officer (Murray Tosh): We continue with the debate on motion S2M-699, in the name of Cathy Jamieson, that the Vulnerable Witnesses (Scotland) Bill be passed.

Jackie Baillie's speech was cut short before midday, so we will begin by allowing her to complete her speech or to make any further comments that she wishes to make.

15:15

Jackie Baillie: It is not often that I am invited to speak at length on any subject, especially by you, Presiding Officer. In fact, I completed my comments before First Minister's question time, albeit in a rushed fashion. I am happy to echo those comments now, and to thank the ministers for the Vulnerable Witnesses (Scotland) Bill. It will make a significant contribution to modernising the justice system in Scotland. That is all that I require to say.

The Deputy Presiding Officer: I have no notice of any other members who wish to speak, other than those who are designated as closing speakers, so I call Margaret Smith to close for the Liberal Democrats.

15:16

Margaret Smith (Edinburgh West) (LD): Liberal Democrats welcome the Vulnerable Witnesses (Scotland) Bill and we also welcome the support that the bill has received across the Parliament. It is important to set the bill in the context of some other developments. The victims and witnesses unit within the Scottish Executive Justice Department has been one of the most important developments. The Executive's wider work on support for victims and witnesses includes commitments on the expansion of victim support and court support schemes and commitments on improving information for victims on the progress of cases, including release dates of offenders, which is important. The victims and witnesses unit will play a big part in that wider support strategy.

Will the Vulnerable Witnesses (Scotland) Bill do what we want it to do? It will be successful only if it is part of a wider package that involves the victims and witnesses unit and some of the changes that will be introduced through the Criminal Procedure (Amendment) (Scotland) Bill. That bill will attack one of the major problems—the number of adjournments that victims and witnesses have to go through.

Jackie Baillie, Nicola Sturgeon and Maureen Macmillan spoke about the horror of the system. Members should imagine being an 11 or 12-year-old who has been the victim of sexual abuse, who then has to wait for 14 to 18 months, involving several adjournments, before they can get their day in court, in an adversarial court system. At the end of all that, we know that the conviction rate is low. I ask any parents in the chamber to consider whether they would suggest to their 11 or 12-year-old child that they should go through the justice system as is currently exists. If we are completely honest, our answer would probably be no. We now have an agenda that will help those children and their parents, and will help the justice system to tackle some of the problems of delay and of the adversarial system. I hope that we can bring about an improvement in the conviction rate for these horrendous crimes.

There is a lot to be welcomed in the bill. Some important work will be done by the court system. Work will also be done on early recognition of problems by the police and other sectors. There is a definite need for proper training in a number of sectors. However, the bill will provide better protection for children and vulnerable witnesses. It will help the justice system because it will help witnesses to give the best possible evidence.

I want to make a couple of points about amendments that we heard debated earlier. First, I welcome the fact that the minister and the deputy minister, having looked at pilot schemes elsewhere, have not ruled out the idea of having intermediaries. We will have to continue to monitor the legislation and to ask ourselves how we can keep on improving it.

Secondly, I welcome the fact that the Executive accepted Mike Pringle's amendment 47. Evidence that is to be taken by a commissioner will not be taken in the presence of the accused unless in exceptional circumstances, which improves the bill. Indeed, I acknowledge the fact that the Executive took on board several amendments at stage 2 and today at stage 3 that improve the bill.

I want to ensure that we monitor how the bill works in practice. That said, I think that it strikes the right balance between the rights of vulnerable witnesses and the accused's right to a fair trial. I hope that the Executive will take the whole strategy forward.

The Liberal Democrats support the bill. We believe that it will bring greater humanity to what is often a gruelling experience for witnesses and victims.

15:21

Bill Aitken (Glasgow) (Con): The debate has been consensual and useful; many valuable

contributions have been made. As Annabel Goldie said, I suspect that the bill will pass unanimously. Indeed, it would be quite proper for it to do so.

For most of us, the idea of appearing in court as a witness is a nuisance. We see it as an inconvenience—as something that causes disruption to our everyday lives. However, for the vulnerable members of our society, the matter is much more serious. The Conservatives support any action that can be taken to improve the situation.

In its evidence to the Justice 2 Committee, the Faculty of Advocates stated that what is suggested in the bill is largely carried out already. Although there is some merit in that, not everything is being done. The bill introduces valuable measures to address a number of areas, which we applaud.

We must consider the situations that affect the vulnerable. I am talking not only about the traumatic effect on their lives but about the fact that, in many instances, justice is not done. The minister was correct to reject some of the amendments that members lodged. That said, I accept fully that some of them, including those lodged by Patrick Harvie, were lodged in a constructive manner and had a degree of merit to them.

In the bill, a balance must be sought between the rights of the victim—and also, in this case, the witness—and the need to ensure that the accused person gets a fair trial. If the Executive had gone down the route that Patrick Harvie suggested in his amendment 34 on the use of an intermediary, I am a little bit concerned that the rights of the individual to a fair trial might have been prejudiced.

I recollect a trial in Glasgow district court, in which a middle-aged man was charged with a nasty assault on a young boy. The complainer came into court and gave a lurid tale of how he was punched and kicked repeatedly and had his head stamped on while he was on the ground. The second witness, who was also a young boy, spoke to a completely different assault, and the third witness, again a young boy, corroborated totally the complainer's evidence in every detail. However, when the third witness was subjected to cross-examination, he became quite indignant and said, "Well, hold on. You have to appreciate that I did not actually see it." He said that Jimmy, who was the complainer, had told him what had happened.

The youngster was not trying to mislead the court deliberately, but he was giving hearsay evidence. I am not satisfied that we would have got to the truth of the matter if an intermediary had been used. Indeed, the accused might well have been convicted on what was, as I said, a fairly serious charge. I am not satisfied that the introduction of intermediaries would benefit the judicial process.

I congratulate the Minister for Justice on having introduced the bill. However, lest she rests on her ministerial laurels, let me suggest that there are many other things that she could do. If she is to ease the situation of real people in real situations—as she so eloquently stated—she will have to consider the pressures that are put on witnesses in other directions.

Intimidation is a real issue both in courts and on the streets. I suggest firmly to the minister that the main way in which intimidation can be reduced is by accelerating the judicial process. The existing situation of intimidation will most certainly not be eased when the victim, witness and complainer—one person, under three headings—lives cheek by jowl with the person who assaulted them, sometimes for many months before the case comes up. I also suggest that the task of victims and witnesses is not made any easier when time and again the person who allegedly assaulted them is released on bail and commits further offences while on bail.

Finally, I suggest that the language that the minister evinces when she talks about her remit generally, which seems to be devoted exclusively to trying to keep people out of prison, is not likely to strike a sympathetic chord with victims of crime and witnesses, who are the real people in real situations who walk in the real streets of Scotland.

The minister is entitled to the Parliament's congratulations on the bill, but her job is not even half done; she has much more to do. Thus far, certainly under the other headings that I have mentioned, she has failed to convince me and, I suggest, is manifestly failing to convince any impartial onlooker. Until other measures are introduced, the bill, while welcome, is not likely to be very effective.

15:26

Nicola Sturgeon: Even by my standards, Bill Aitken's speech was an extremely uncharitable one at the end of what has been a consensual debate. Bill Aitken would be wise to reflect on the fact that many of the offenders who commit offences daily on our streets have already been in prison, often not once or twice, but three, four or five times. To me, that shows that a prison sentence is not always the most effective way in which to deal with certain categories of offenders, precisely because it does not help victims of crime.

Bill Aitken: Does Ms Sturgeon agree that prison sentences are not likely to be particularly effective

when the minister has staunchly resisted any efforts on our part to review the system of remission, under which the vast majority of offenders are released from jail when they have spent only 50 per cent of their sentence time in custody?

Nicola Sturgeon: I would rather see an effective penal system in which people are sent to prison when they deserve to go there and when public safety and punishment demand a prison sentence, and in which many other offenders are dealt with outside prison. I want that, not because it is a soft option, but because it is a more effective option. If a penal system is to be in the interests of victims of crime, it should not simply be tough; it should be effective. It is worth reflecting that the Tory Government failed on both counts.

Cathy Jamieson: We have launched a consultation exercise on reducing reoffending that will run for the next 90 days, 12 weeks or three months—however Bill Aitken wants to calculate it, it may well seem like a sentence to him—that will give people the correct opportunity to feed in their comments. However, that should not detract from the valuable work that is being done through the bill, which Nicola Sturgeon has recognised.

Nicola Sturgeon: I turn from Bill Aitken to the minister. I welcome the consultation, but I pause to reflect on the fact that it is a touch strange for the minister to say that she wants to expand the range of alternatives to custody, while her activities—or, more precisely, those of her deputy in the past few weeks—have withdrawn funding from an alternative to custody that has been proven to be effective.

I am sure that it will delight members to hear that I have little to add to the comprehensive comments about the bill that I made at the start of the debate. Bill Aitken rightly said that the debate has been consensual, although he went on to shatter the consensus. The reason why the debate has been consensual is that the bill will be a good piece of legislation that has been a long time coming. The bill is one of the many reminders that the Scottish Parliament is worth having and does good work that benefits people throughout Scotland.

The bill should not be seen in isolation, but as part of a legislative package and as part of a bigger package. I repeat my earlier comments that we must ensure that the culture change continues apace and that sufficient resources are provided to allow changes to be implemented in practice.

The bill will make a difference. I will not repeat the concerns around the edges that the ministers know I have. I conclude by welcoming the passage of the Vulnerable Witnesses (Scotland) Bill.

15:30

The Deputy Minister for Justice (Hugh Henry): At the end of a good and constructive process of trying to improve the system of justice for witnesses and victims of crime, it is somewhat unfortunate that Bill Aitken could not resist the usual cheap Conservative party jibes. It is almost as if that party's members have received instructions from elsewhere to include certain phrases in every debate, regardless of its subject matter.

Bill Aitken suggested that Cathy Jamieson spoke exclusively about keeping people out of prison, but I can only conclude that he was half listening. While she spoke at great length about alternatives to custody and keeping those for whom prison is inappropriate out of prison, she has also said on many occasions that those who deserve imprisonment—those who commit serious crimes—should receive serious and lengthy prison sentences. It is fair to consider that Cathy Jamieson has been asking for a balanced approach.

The bill is part of a justice revolution that the Parliament is undertaking, which addresses issues such as the reform of the High Court, the summary justice system and alternatives to custody. As a number of members said, for the first time in many years, serious consideration is being given to those who have been overlooked by the judicial system. Stewart Stevenson said this morning that witnesses and victims are often forgotten by the system and that is true. As Bill Aitken said in his contribution, victims and witnesses often feel the pressures of intimidation in court and before they enter court. It is unfortunate that they also often feel intimidated after the court case has concluded.

We want to accelerate the judicial process and we have made some other proposals to that end. We want to examine issues such as bail, and we await with interest the discussion that we will have on that issue in the coming months. The bill offers us a collective opportunity—which, I am delighted to say, parties across the Parliament have taken—to do something for those at the sharp end of the justice system, who are often forgotten. As Margaret Smith said, the bill enables us to show greater humanity in our judicial process.

Mike Pringle said earlier that the experience of witnesses in the judicial system has not been good. As Nicola Sturgeon said this morning, we now have the opportunity to enable evidence to be given in a less stressful manner. It is right to say, as she did, that the bill serves the best interests of justice by enabling the best evidence to be given and heard.

A number of members said this morning that they are concerned to ensure that what we are presenting is part of other changes that might not necessarily be included in the bill. Jackie Baillie and Maureen Macmillan said that we should ensure that something is on the record about guidance and other things that are being done by the Executive and the Crown Office. It is right that such pressure should be put on us. Karen Whitefield was right to speak about some of the work that will be done by the victims and witnesses unit.

If we are serious about this bill making a difference, we should ensure that the finances are in place and that the necessary commitment exists on the part of the Lord Advocate, the Crown Office and others, as Annabel Goldie and others said. We should not only produce strategies, but ensure that we deliver on the strategies that we produce.

We want to deliver on the recommendations of the Lord Advocate's report on support for child witnesses and we want to see proper implementation of victim statement and victim notification systems. We want a full and effective witness service to be delivered and we want to see more effective victim support for people who turn up in court. We are right to consider the piloting of the vulnerable witnesses service and some of the other measures that have been introduced.

Essentially, the bill has enabled us to create a partnership in the Parliament, to work together to serve the best interests of people who have often been badly served by the judicial system. We are also working in partnership with a range of organisations that have tried to make a difference for victims and witnesses for many years and which have done a remarkable and effective job. We have enabled them to influence our parliamentary process and to influence legislation. Although I recognise that some of the changes have not gone as far as Jackie Baillie, Patrick Harvie and other members would have liked, we can demonstrate to organisations that we have listened and delivered. We will continue to review, to monitor and to reflect.

I argue that this is a good day for the Scottish Parliament; a good day for those whom we represent; a good day for victims and witnesses; and a good day for a judicial system that has long been in need of a shake-up and overhaul. I hope that we see the bill as part of a process that has much further to go.

Companies (Audit, Investigations and Community Enterprise) Bill

The Deputy Presiding Officer (Murray Tosh): The next item of business is consideration of motion S2M-973, in the name of Margaret Curran, on the Companies (Audit, Investigations and Community Enterprise) Bill, which is UK legislation.

15:37

The Deputy Minister for Communities (Mrs Mary Mulligan): I am happy to move the motion and I will pick up on any points that arise from members' comments.

I move,

That the Parliament agrees to the principle that, in the contexts of provisions in the Companies (Audit, Investigations and Community Enterprise) Bill enabling charities to convert to become community interest companies, conversion should be regulated and agrees that the provisions in the Bill that relate to the power to regulate such conversion should be considered by the UK Parliament.

15:38

Tricia Marwick (Mid Scotland and Fife) (SNP): It is fair to say that when the Deputy Minister for Communities was at the Communities Committee last week, both she and the committee members grappled with the present and future implications of this Sewel motion and its impact on our charities bill, which we have yet to see. The motion suggests that the Office of the Scottish Charity Regulator should approve Scottish charities as community interest companies, but the minister struggled to come up with a single example of a Scottish charity that would apply to become a community interest company.

The process has been unnecessarily complicated by the fact that there is still no Scottish charities bill before the Parliament. I invite the minister to give at least an indication in her summing up of when we might expect a bill to be introduced. At the Communities Committee, I raised several concerns, including the fact that there is no Scottish appeal process in the UK legislation, and I was not satisfied with the minister's response. I invite the minister to make her position clear when she sums up. My colleague Campbell Martin raised his concern that Scottish charities that are presently accepted as charities could, if the Scottish Parliament changes the definition of charity, be stripped of that recognition, and that CICs are the fallback position.

I am concerned that, in accepting the principle of community interest companies, in effect we limit

the Parliament's deliberations on public interest benefit before we even get to the stage of considering our own charities bill. An Executive official told the committee:

"The DTI recently published a set of regulations for the bill, which set out proposals for the community interest test. The idea is that the CIC would benefit a narrower range of people than we would expect a charity to benefit. It will be proposed that the test for a charity will be that it will have a wide public benefit, whereas the CIC … test could be … more restricted … perhaps it could relate to a community hall in a village, for example".—[*Official Report, Communities Committee*, 25 February 2004; c 655.]

In other words, we are being asked, in advance of our Scottish charities bill, to agree the scope of what a public benefit test might be when we eventually discuss it. The suggestion that the public benefit test for charities in the Scottish legislation will involve a wider geographic area than that of a village concerns me. We will not support such a provision when it is introduced.

Social enterprises or other companies can opt to become community interest companies under UK legislation. That matter is reserved to the Department of Trade and Industry under the bill. The acceptance or otherwise of the Sewel motion will not affect those companies' ability to choose that option. However, the motion puts the cart before the horse.

I share other MSPs' view that it is extremely unlikely that Scottish charities will seek approval to become community interest companies. If the Sewel motion is accepted, it might pre-empt discussions that are needed on the public benefit test that this Parliament should consider as part of the charities bill. If the Executive has made up its mind to have a limited public benefit test and if the Parliament cannot change that view when the time comes for us to consider our own charities bill, we need to preserve the option in the UK legislation, for those charities in Scotland that could find themselves stripped of charity status, to allow them to become CICs.

The Scottish Parliament is not permitted to give powers to the Office of the Scottish Charity Regulator under the companies legislation. Regrettably, that matter is reserved to the UK Government. However, the SNP has no wish for any current Scottish charity to be disadvantaged, so we will not oppose the Sewel motion.

15:41

Patrick Harvie (Glasgow) (Green): I hope that members recognise the constructive contribution that I have tried to make to the use of the Sewel convention. The motion that we are discussing represents a highly appropriate and interesting application of the convention. If we agree to it, we will consent not to the exercise at Westminster of what are, strictly speaking, devolved powers, but to the exercise of a reserved power in a way that affects the Office of the Scottish Charity Regulator, which regulates a devolved matter. As a result, the Sewel motion is a sign of a much healthier relationship between two Parliaments that are, for the time being, tied to each other.

The only question is about the operation and purpose of the measure, which allows charities and companies to convert to CICs. After the Communities Committee discussion last week, which the Deputy Minister for Communities attended, I am none the wiser about why any Scottish charity would want to convert. Like Tricia Marwick, I am not sure whether the minister is any the wiser either about why any charity would want to convert and to lose the benefits of charitable status.

The Minister for Communities (Ms Margaret Curran): Did the member listen?

Patrick Harvie: I did.

I need reassurance that charities will not be pressured and will not feel that they have no alternative but to convert.

The other reassurance that I need before I can support the Sewel motion is that CICs will be a genuinely positive development that is in keeping with the position of the social economy as one of the Executive's priorities. CICs should not be merely an opportunity for private profit-making businesses to hive off existing philanthropic operations—many of which are driven more by their public relations value than by a sense of responsibility—and by so doing receive a benefit or advantage at public expense.

Stewart Stevenson (Banff and Buchan) (SNP): Does the member share my concerns that CICs can be registered under sections 43 and 53 of the Companies Act 1985, which differentiates public limited CICs from other CICs, and that the existence of a facility for having public limited CICs is suspicious, as it provides businesses with a way of making part of their operation charitable?

Patrick Harvie: I am certainly concerned about anything that offers private companies that exist for profit the opportunity to hive off part of their operation and give it something that people perceive as akin to charitable status. We discussed that after the Communities Committee meeting last week.

I understand that the two reassurances that I have requested lie right on the line between devolved and reserved issues and that ministers may not feel able to comment, but if they can give those reassurances, I will happily support the Sewel motion. Otherwise, I am minded to abstain.

15:44

Murdo Fraser (Mid Scotland and Fife) (Con): Of necessity, this will be a rather brief contribution. I declare an interest as a former company lawyer. Company law is largely reserved to Westminster. I pressed my request-to-speak button on the assumption that the SNP members would oppose the Sewel motion, and I intended to take issue with them on that. Tricia Marwick has rather shot my fox, if she will pardon the expression, in the debate.

As other members have said, the only provisions of the bill that are relevant to Scotland are those that would create the new community interest companies. There is a possibility that charities in Scotland may want to convert to CICs. My Conservative colleagues at Westminster have broadly welcomed the idea of community interest companies, but we have expressed the wish to scrutinise the proposals to ensure that adequate care is given to delivering benefits to the voluntary sector, which all of us want. The provisions dealing with CICs are a small part of the bill. We have reserved judgment on the costs involved and some of the additional burdens that may be placed on business if the bill is agreed to. It is vital that the changes strike a balance and fine tune a system of strong controls, rather than overburdening business with yet more unnecessary regulation. We will test the proposals to ensure that they genuinely increase the confidence and trust of companies.

The bill deals largely with matters that are reserved to Westminster, as is the case for company law generally. We are happy to support the Sewel motion today.

15:46

Mrs Mulligan: I hope that we are setting a precedent in ensuring that Sewel motions are debated in a consensual way.

Tricia Marwick asked whether I had examples of organisations that would want to become CICs. I am aware that when I attended last week's meeting of the Communities Committee I did not have any such examples. Strictly speaking, the bodies to which I will refer are not examples of the sort that the member seeks, but they have shown an interest in becoming CICs. I cannot guarantee that they will pursue the matter once CICs are established. They include a community transport business; a not-for-profit clothing design and manufacture business that uses its surpluses to aid projects in developing countries; an association to promote the improvement of a local area in partnership with the local authority; a small voluntary organisation that is considering ways of changing its constitution to make it more accountable to the local community; a charity that encourages people to use their entrepreneurial skills to set up out-of-school clubs in their communities; a charity trading arm; and a non-charitable registered social landlord. Those bodies have shown an interest in becoming CICs, but we are not absolutely certain that they will pursue that option.

Stewart Stevenson: I understand why the bodies to which the minister has referred might wish to gain the benefit of limited liability. Why would they not choose the simple route, under section 53 of the Companies Act 1985, of becoming a private company and remaining a charity, as the Isle of Gigha Trust, which was responsible for a community buyout, did? A CIC is not a charity, but merely a company. Why would bodies see becoming a CIC as the way forward, rather than becoming a company while remaining a charity?

Mrs Mulligan: The only response that I can give is that the intention in establishing CICs is to create a brand and to give recognition and assurance that a body is operating in the public interest. Organisations may see that as giving a boost to their public profile. However, as I said at the committee meeting, it will be for individual organisations to say which route suits their purpose and is most effective in delivering the aims that they set themselves. At this stage, I cannot say whether they will pursue the option of becoming a CIC or take the route that the member suggests.

I return to the other issues that Tricia Marwick raised. We hope to consult on charities legislation later this year, probably towards the end of the spring and the beginning of the summer. Answers to most of the other questions that the member asked will be sought in that consultation. I appreciate that the timing of the bill is not ideal, given that we hope to conduct a consultation in the near future. However, if Tricia Marwick examines the issues that the Sewel motion sets out to address, she will see that it does not prejudice any of the discussions that we will have about charities legislation.

Patrick Harvie asked whether charities would be forced or coerced into becoming CICs. I reassure him that that is not the intention. Only charities themselves will be able to decide whether they wish to cease being charities and become CICs. Nobody else will interfere with that decision.

Patrick Harvie: As various members have mentioned, the definition of a charity may change. The two tests are worded differently. Will the minister give a more explicit reassurance that charities will not find themselves having the charity rug pulled away from under them, with only the option of CIC status remaining?

Mrs Mulligan: The definition of a charity will be down to this Parliament. It is not for me to prejudge that definition, therefore I cannot give a more definitive answer to that question, other than to say that it is not the intention to force charities to become CICs. The decision on whether to become CICs will be solely theirs.

On Stewart Stevenson's point, the CIC regulator will be responsible for ensuring that any CICs meet the public benefit test. That will determine the kinds of companies that proceed.

The Sewel motion is required to allow the UK Parliament to include in its bill a provision to allow for a power relating to a reserved issue—that is, the power to authorise an organisation to cease being a charity and to become a CIC—to be given to a devolved body, that is, OSCR. As Patrick Harvie pointed out, that means that rather than taking decisions away from Scotland, the motion will give a devolved body the right to make decisions regarding Scottish bodies. I therefore ask members to support the motion.

Points of Order

15:52

Frances Curran (West of Scotland) (SSP): On a point of order, Presiding Officer. I ask you to reconsider your decision not to allow a motion without notice to debate a motion at short notice. The decision is wrong. The Parliament has the time. The motion at short notice is procedurally competent.

The reason that was given for not debating the motion at short notice was that we have not given the Parliament enough notice. The issue is urgent. Today at lunch time, the BBC announced at 12.24 that two hunger strikers had collapsed and are days from death. Before the Parliament next meets, those two men—in fact, the three men who are on hunger strike—could be dead. I do not know under which circumstances we could have given more notice. The Presiding Officer should accept that the issue is urgent.

Ministers could intervene in the situation, so the issue is relevant. We should at least debate whether ministers can do that to prevent a terrible tragedy from taking place. The issue is more important than the procedural niceties of the Parliament. It is a case of human suffering, and the situation is dire and urgent. I urge the Presiding Officer to reconsider his decision.

The Deputy Presiding Officer (Murray Tosh): I am not aware of a decision having been given on the matter, but, for the guidance of members, this is the decision. Under rule 8.2.6, the Presiding Officer's agreement is required to allow Parliament to consider whether to take a motion without notice. In exercising that discretion, I must balance the desirability of having such a debate—on a motion without notice—and the difficulties that would be involved in Parliament being required to debate an issue and vote on it at very short notice indeed.

In the current circumstances, I am not persuaded that the balance is in favour of allowing the motion to proceed, therefore I exercise my discretion by declining the invitation to ask Parliament to accept such a motion.

Carolyn Leckie (Central Scotland) (SSP): On a different point of order, Presiding Officer. The decision that is at the discretion of the Presiding Officer should more properly be made by the Parliament. I have had notice that decision time is likely to be brought forward to 4.30 pm.

The urgency of the situation means that the debate requires to be held today. The Parliament should at least have the opportunity to vote on the motion without notice on whether to debate the

motion at short notice. It will reflect badly on the office of the Presiding Officer if he does not allow the Parliament to take a view on whether the issue can be debated. Next week might be too late. I ask the Presiding Officer to reflect on his decision, take time, agree to meet me, report back to Parliament later and not make final the decision that he has just made.

The Deputy Presiding Officer: I am bound to say that it is unusual for members to criticise a decision by the Presiding Officer—I realise that the member did not go quite that far.

In giving the ruling that I have just given, I was guided by the recognition that we have before us a debate on a motion on which we have not yet proceeded. The question whether decision time might be taken early is, at this stage, hypothetical. In giving members notice that decision time might be taken early, someone was kindly paying them the courtesy of warning them that the timing might be advanced. We are only some 14 minutes ahead of the clock at this stage, and I would have thought it unlikely that decision time would be as early as 4.30 pm, although it might well be. When I ask members to press their request-to-speak buttons shortly, I will get a better impression of the position. As things stand, I have before me a debate on a motion, which I propose to take now.

Civil Contingencies Bill

The Deputy Presiding Officer (Murray Tosh): Motion S2M-974, in the name of Cathy Jamieson, is on the Civil Contingencies Bill, which is, again, United Kingdom legislation. I invite members who wish to speak in the debate to press their request-to-speak buttons now.

15:56

The Deputy Minister for Justice (Hugh Henry): Members will be aware that last week the Justice 1 Committee considered a memorandum on the Sewel motion on the Civil Contingencies Bill, which is on preparing for and dealing with emergencies. The bill's purpose is to provide a single framework for civil protection throughout the United Kingdom that will be able to meet the challenges of the 21st century. The bill is not to address specifically any terrorist threat, but deals with planning for any disruptive event that might go beyond organisations' day-to-day ability to cope.

The bill has two distinct parts. Part 1 will place broad duties on organisations that are involved in responding to emergencies. Category 1 responders are the key emergency response organisations, for example, the police and local authorities. Category 2 responders are organisations that support an emergency response, such as utilities companies. Their duties will be to assess the risk of emergencies occurring, to plan for such emergencies, to promote business continuity advice and to co-operate and share information on preparing plans. Emergency planning is devolved to Scottish ministers; part 1 of the bill will therefore require Parliament's consent.

At last week's meeting of the Justice 1 Committee, I set out the reasons why we believe the measures in the UK bill should be welcomed and implemented in Scotland. We need to ensure that there are consistent standards of civil protection throughout Scotland and the rest of the United Kingdom. We need to have clear responsibilities for front-line responders and we need to modernise the legislative tools that are available to Government to deal with the most serious emergencies.

Part 2 of the bill will update the powers that central Government has for dealing with the most severe emergencies. It will allow the UK Government to declare an emergency, including on regional emergencies, and to make emergency regulations to deal with the prevailing circumstances. Scottish ministers will be able to request that a state of emergency be declared in Scotland and regulations might confer on Scottish

ministers powers to assist them in co-ordinating the response to an emergency in Scotland.

We have considered the results of extensive consultation and concluded that there was widespread support among the emergency planning community for a common framework for civil protection throughout the United Kingdom. Many of the threats that we face are no respecters of national boundaries. We believe, therefore, that it is important for Scotland that we are assured about the standard of civil protection arrangements in other parts of the United Kingdom and vice versa.

However, the Justice 1 Committee asked me three questions about matters on which it felt it had insufficient reassurance and information. The first was on monitoring and how we will ensure that responders adhere to the requirements of the bill. For the first time, the bill will allow regulations to ensure that a uniform set of standards will be maintained throughout the emergency planning community. Arrangements for standards and audits have not been finalised, but they will be considered among other regulations under the bill—there might be elements of monitoring by existing inspectorates or by self-audit, and there might be a role for Audit Scotland.

I was asked whether the bill would be funding neutral and gave the assurance that it would be; it remains our contention that that will be the case. Many of the requirements in the bill are measures that emergency responders already perform and for which they receive funding through grant-aided expenditure.

We will consult on draft regulations that will underpin the bill and we will explore with respondents the impact of any regulations before implementation of the bill. I made a commitment to the committee that any new functions that require funding will be financed by the Scottish Executive.

Members of the committee asked why there was—as they thought—no reference to the Scottish Executive in the bill. I gave an explanation of that at the time, but can further clarify the matter today. Clause 21(2)(l) talks about

"protecting or restoring activities of Her Majesty's Government"

and clause 21(2)(m) talks about

"protecting or restoring activities of Parliament, of the Scottish Parliament, of the Northern Ireland Assembly or of the National Assembly for Wales".

The committee asked why the Scottish Executive was not specifically referred to at that point. However, clause 21(2)(n) talks about

"protecting or restoring the performance of public functions"

and paragraph (d) in clause 30(1) of the bill provides a definition of "public functions", saying that it means

"functions of the Scottish Ministers".

Scottish ministers are, therefore, specifically included as part of the public functions. We believe that, as well as Parliament being protected, the functions of ministers in the Scottish Executive will also be protected. I hope that, with that further reassurance, Parliament can agree to the motion.

I move,

That the Parliament agrees the principle of a single statutory framework for civil protection across the UK, as set out in the Civil Contingencies Bill, and agrees that the relevant provisions in the Bill should be considered by the UK Parliament.

16:02

Nicola Sturgeon (Glasgow) (SNP): The provisions of the Civil Contingencies Bill are important in that they seek to increase national resilience to, and preparedness for, emergencies that could of course include threats that are posed by international terrorism. For that reason, on this occasion the Scottish National Party will not oppose the Sewel motion, although I will speak later about my growing concerns about the over-use of Sewel motions by the Scottish Executive.

First, however, I will deal with some of the points of detail that the minister referred to. As he said, the Justice 1 Committee, which is to be commended for producing a report in the short time that was available to it, has raised three questions of substance. I will deal first with the last one that the minister mentioned.

The Justice 1 Committee asked why, although the bill provides for a minister to make emergency regulations for protection or restoration of activities of the UK Government, the UK Parliament, the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales, there was no specific reference to the Scottish Executive. I have heard the minister's explanation and I agree that it seems that there is a mechanism in the bill that will allow Scottish ministers to be included in that process. However, I state simply that that appears to be quite a laboured way of covering the activities of the Scottish Executive and that it would be simpler to have the Scottish Executive listed alongside Her Majesty's Government as being one of the organisations whose activities could be restored or protected by regulations. It may be that the legal effect will be no different—I would have to study the situation to come to a conclusion—but it seems that the bill would have been tidier and easier to follow if the Scottish Executive were

covered in the paragraph that covers the UK Government.

Other points are worth noting in passing. Although certain organisations will be required to compile emergency planning protocols, there are no clear provisions about whose responsibility it will be to monitor that and to check that it is happening. Again, I heard the minister's explanation but I think that it is slightly unfortunate that we have been asked to agree to a Sewel motion before we know what those monitoring arrangements will be. It is important that Parliament should have an opportunity to consider the detail of that when it becomes available

The third point is about resources, on which we have a classic case of the minister saying one thing and the committee saying another. I put on record—as the minister has done—merely that the Justice 1 Committee was not satisfied with the statement that the bill will be resource neutral. That must be kept under review.

In closing, I raise again the question of whether the Sewel procedure is the most appropriate way in which to deal with the devolved aspects of the bill. Part 1 of the bill deals with emergency planning, which is a devolved matter. The bill deals with complex issues and much of it is enabling, so the detail will come later in the form of regulations. Again, we are being asked to agree to a Sewel motion when we do not have access to, or knowledge of, much of the detail.

Alasdair Morgan (South of Scotland) (SNP): Will the member explain something to me? She obviously knows much more about the subject than I do. One of the reasons that the minister gave for the legislation is, I think, the spurious one that commonality is needed in emergency planning across the United Kingdom. As I understand it, the regulations for England and Wales will be made by ministers of the Crown and the regulations for Scotland will be made by Scottish ministers. Where is the commonality?

Nicola Sturgeon: I am always grateful to my colleague when he raises such points of detail. That is a fair point in respect of part 1 of the bill, which deals with emergency planning, which is devolved, so the regulations for Scotland will be made by Scottish Executive ministers and the regulations for England and Wales will be made by the Government in London. There is therefore clear scope and potential for different approaches. That raises a question about the necessity for the Sewel motion.

The position might be different with part 2 of the bill, which deals with emergency powers, which are a reserved matter. However, that takes me back to my earlier point: the regulations will be made by the Government south of the border after we have agreed to the Sewel motion, so we will have no further powers of scrutiny. Alasdair Morgan raised a valid question about those points.

I was about to end on the general theme by echoing a concern of the Justice 1 Committee. It is fair to say that the Justice 1 Committee has expressed this concern and I ask the Scottish Executive to reflect on it. In its report, the committee said:

> "As with previous Sewel motions, the Committee is concerned at the limited time available to consider the Bill and its implications for Scotland".

Whatever arguments the Scottish Executive makes in favour of Sewel motions, it remains the case that when we allow Westminster to legislate on devolved matters, our opportunity for scrutiny is constrained and is not as full as it would be if the Scottish Parliament were to deal with the legislation. Although that might be justified on some occasions, the Executive is going too far with its use of Sewel motions and I ask it to reflect on the concerns that have been voiced by the Justice 1 Committee.

16:06

Phil Gallie (South of Scotland) (Con): It would appear that today is a day for consensus, and those are not the kind of debates that I usually enjoy participating in. I welcome Nicola Sturgeon's words, particularly when she said that on this important bill—I believe that it is an important bill—the SNP will not oppose the Sewel motion.

Current emergency legislation is based principally on legislation that was passed in 1920 and, just after the war, in 1946, I think. The time is right to re-examine that legislation and see how we can modernise it. In the years that have passed since that legislation was enacted, the changes in society have been immense: we think of changes in information technology, telecommunications, infrastructure development, equipment design, engineering achievements and the improved equipment that is used by, and is available to, our emergency services. All those provide a good base from which to consider the civil contingencies that are available in emergency situations. The immense changes that have taken place in travel patterns might also give us another raft of problems.

The trigger for the bill may have been the horrendous events of 11 September 2001, but the bill does much more than simply address those issues. I recognise that that might be controversial. As the all-party committee that examined the bill said, the bill contains some potentially dangerous flaws. Examination of the bill and of the debates at Westminster show that the Government's current intentions may well fall foul

of the European convention on human rights. However, I have no doubt that the issue will have been considered carefully by the Executive and by the Government south of the border. I feel sure that any such difficulties that might arise will be ironed out before Westminster MPs make their decision on the bill.

I am obliged to say that, on this occasion, I am quite happy to put my faith in Westminster MPs. Despite the fact that there is among them an insufficient number of Tories to guarantee a sane outcome, we will nevertheless put our trust in them.

It is right that we will have legislation that applies to UK borders rather than just to our local borders. Along with the Justice 1 Committee, I recognise that—as the minister said when he spoke about part 1—additional levels of responsibility could well be passed down beyond the Scottish Executive to others, which will be mainly local authorities and utilities companies.

Margo MacDonald (Lothians) (Ind): I am intrigued as to why Mr Gallie believes that we should devolve the matter to Westminster and let it take the decision on our behalf because that seems to be a tidier arrangement. Does he agree that the same argument could be made for investing power in European institutions so that, for example, we could all have commonality in our approach to terrorism?

Phil Gallie: I am sure that our Westminster colleagues and others are already debating issues in Europe on which commonality can be arrived at. However, the bill will amend existing UK laws that it is intended should be changed. I am satisfied that issues that are suitable for the consideration of our Westminster colleagues are not necessarily suitable for the participation of a wider European audience, especially given differences in culture and in other aspects of our everyday living.

Let me return to the important issues that are contained in the bill. To some extent, the minister has addressed my fears—which were shared by my colleague Margaret Mitchell, who raised the issues in the committee—that any arrangements whereby additional burdens would be placed on other authorities and organisations should be properly funded. The minister suggested that the funding arrangements will be dealt with fairly and properly when the time comes. However, I suggest that it may be worth our while to return to some of the details of the bill once it has been passed at Westminster so that we can debate how those arrangements would be applied north of the border.

I acknowledge that part 2 of the bill deals with reserved matters, but pretty extensive powers could be passed down to Scottish Executive ministers. Those include powers for the seizure of public buildings and property, for taking control of public services, for setting up special courts, for enforcing evacuations and for banning public gatherings. Such grave responsibilities could be passed to Scottish Executive ministers. However, I recognise that the bill also envisages some level of agreement from Scottish ministers, whose acceptance should be requested in such circumstances. I would like to hear the minister's thoughts on those issues. Perhaps that could be done later, once the bill has been passed at Westminster.

As far as the debate on Sewel motions goes, I recognise that there are concerns about the number of Sewel motions that come before Parliament. However, I believe that in this case there is another message, if we look back at the pre-devolution situation. It was thought that Scottish business was not always fully covered at Westminster, but to my mind the number of Sewel motions that come before us demonstrates adequately that Scottish business was considered regularly at Westminster and, indeed, that it was considered in a way that involved our 72 members of Parliament having great responsibilities heaped upon their shoulders in looking after Scottish business.

16:15

Margaret Smith (Edinburgh West) (LD): We are obviously in a new world and face real threats of global terrorism, so it is absolutely right that the Government is considering strengthening the mechanisms that are in place to protect our citizens from a range of incidents and emergencies. Some of the existing mechanisms, as we have heard, have been in place since legislation was passed in 1920. There is general consensus that without improved co-ordination and communication between agencies the UK will not be able to respond effectively to the types of emergencies that we might face. Contingency plans now need to be more flexible and responsive, and the responsibilities that are involved need greater clarity.

I welcome the fact that, given the gravity of the subject matter, the SNP does not intend to oppose the Sewel motion, although I have a certain amount of sympathy for its continued opposition to Sewel motions in general. On this occasion, however, I believe—like the SNP—that the content and seriousness of the motion means that UK co-ordination is needed and that that is the better approach. We note that a protocol will be drawn up on how the UK and Scottish ministers will plan for and operate in emergency circumstances, and particularly on the form that consultation of Scottish ministers will take. It may well be that

Alasdair Morgan's question about commonality of approach may be answered with a little more clarity when we have seen that protocol. It is unfortunate that, because of time limits, we have not got that protocol in front of us when considering the Sewel motion.

Powers will remain with Scottish ministers through part 1 of the bill. Emergency planning is a devolved matter and the bill sets out new duties for organisations that are engaged in civil protection and provides a certain amount of clarification on relationships between key local responders. It will place statutory duties on organisations to plan for emergencies, to co-operate in developing plans and to share information. In responding to the Executive's consultation, many organisations stated that the present system, although they thought that it was quite robust, needed to be changed. They favoured a less permissive system, so that people know exactly what they must do in terms of risk assessment, audit, threat containment, control, funding, equipment and training.

Some concerns were expressed at the Justice 1 Committee and one of the most interesting that was raised by the SNP was about the fact that, although one of the things that would have to be done in an emergency would be to ensure that we could recover the key services of Government—including the Government itself—the Scottish Executive is not named, which I thought was quite a nice touch. The performance of public functions that Hugh Henry mentioned is a rather laboured way to go about ensuring that the Scottish Executive would be restored following an emergency; that is something that the Executive could take from this debate.

Part 2 of the bill deals with emergency powers, which are obviously a necessary evil. Emergency legislation should be invoked only in the most exceptional of circumstances. Some of my Westminster colleagues have expressed concerns that the bill relies on good faith that Government will not abuse the considerable powers in part 2. Generally speaking, however, we feel that the range of potential threats to the population and the need to protect human life mean that the bill is absolutely necessary.

Margo MacDonald: I had no intention of taking part in this debate, but it occurs to me that we should not see ourselves either as the United Kingdom, or even as Scotland, but as part of the British isles, if we are thinking strategically about the defence of these islands, whether against terrorist attack or natural phenomena. Was any consideration given in the committee to any protocol that might be required with the Government of the Republic of Ireland?

Margaret Smith: If my memory serves me correctly, there was no consideration of that issue. We had a very short time in which to consider the bill. It is exactly those kinds of issues that crop up when we have more time to consider the matter, but that issue was not discussed at committee.

One of the issues that we have not talked about as much as we might have is the need to ensure that the public are given as much information as possible when we deal with incidents and emergencies. We have, in recent years, seen that on issues to do with to the water supply; information sometimes has not got to people, or the wrong information has got out. We must improve on that.

There was some dismay at the Justice 1 Committee when the minister said that the measures would be cost neutral. We felt that the responders would audit what they were doing, examine their equipment and consider their state of readiness and that there is bound to be a knock-on impact on key budgets, for example in local government and the national health service. I welcome the minister's commitment that any new functions that are identified will be fully financed, but that is one of the matters over which there is still a question mark.

The other issue is obviously who will monitor the extent of preparedness. I hear what the minister says about a uniform set of standards and about the fact that a range of people may monitor the uniform set of standards. However, that does not take us any further forward. Unfortunately, we are having to agree to the Sewel motion today without there being total clarity about who will monitor what is going on in what is a very important area.

16:21

Pauline McNeill (Glasgow Kelvin) (Lab): It is interesting to note that different pieces of legislation mean different things to different people. Phil Gallie talked about forced evacuation and the banning of public gatherings. I must say that those matters had not occurred to me in the context of the bill.

It is a forward-thinking bill, in the sense that we must think about things that we do not want to think about—for example, what will happen in the event of disaster and the need for emergency planning. It is sensible that we are now thinking about a statutory framework for emergency planning and that we are considering the terrorist threat that may bring our civilisation to a standstill.

Margo MacDonald asked whether the Justice 1 Committee had considered the issue of co-operation with other countries. There is no reason, having established a statutory framework in the UK, why we cannot alter that in the future if we

think that there is a case for discussing emergency planning across European boundaries and so on.

Mr Stewart Maxwell (West of Scotland) (SNP): If Pauline McNeill believes, as she has just said, that there can be cross-border co-operation between nation states, surely that means that there could easily be cross-border co-operation between Scotland and the rest of the UK. Therefore, a separate Scottish bill would be entirely appropriate and would work well because normal protocols would be in place, so it is not necessary to have a Sewel motion on the issue.

Pauline McNeill: Mr Maxwell has taken advantage of the point that I was responding to; I was pointing out that Margo MacDonald is perfectly correct. If Mr Maxwell wants to address the issue of whether we should this afternoon be addressing a Sewel motion, which I understand the SNP will support, that is perfectly legitimate. However, there seems to be immense value in ensuring that organisations throughout the UK have a single framework in which they plan and prepare for emergencies. That is why the Justice 1 Committee supported that approach.

The Justice 1 Committee had concerns about the timescale for considering such important legislation; we thought that it was important to say that we need more time to scrutinise such an important bill.

I am pleased that the minister has provided some clarity on the points that the committee raised in its report. The question of who monitors the organisations that will draw up plans is crucial, because we do not want to find further down the line that the organisations that should have put together plans have not done so. I am pleased that consideration is being given to the question of who does the audit to ensure that plans are in place.

I hope that the Executive will at least keep an open mind on the question of whether the bill is cost neutral as the legislative framework develops. We perhaps cannot always predict what costs might arise.

My third point is about the committee's concern that, in the event of an emergency, it would not necessarily be a priority to restore the Scottish Executive. I am pleased to hear that that is provided for. There might be situations in which the Parliament might not be able to meet, so it is more important that we have a Scottish Executive that is able to fulfil the functions of Parliament.

I am satisfied that it is correct in the circumstances to agree that the UK legislation should be dealt with through the Sewel motion and I am happy to support it. However, it is fair to say that we should develop better ways of ensuring scrutiny. We are tied to the busy Westminster timetable and our busy timetable here, so it is not always possible to deal with matters when we wish to. It is important that we are thinking ahead to emergency planning.

Phil Gallie: Pauline McNeill's point about timetables is valid. However, the opportunity has existed for some time in conversations between our Deputy Minister for Justice and his Paisley buddie, Douglas Alexander, who is the architect of the bill, to look at the details. When such contacts take place in the future, it might be possible to respond to Pauline McNeill's comment if the deputy minister brings back such issues to committee at an earlier stage.

Pauline McNeill: It must be recognised that, prior to the current parliamentary session, committees had no opportunity to scrutinise Sewel motions, so there has been an important development. I am trying to think a bit deeper about how much more scrutiny we could have. There is nothing wrong with doing that.

The Civil Contingencies Bill is forward-thinking legislation and I will support the Sewel motion.

16:27

Mark Ballard (Lothians) (Green): The Parliament has been given a brief opportunity today to discuss the Civil Contingencies Bill and I welcome the chance to contribute to the debate. However, I cannot support the Sewel motion in this case. It is important that the emergency powers are discussed fully by the Scottish Parliament because of their significance and wide-ranging nature.

The Justice 1 Committee—echoed by Pauline McNeill in today's debate—said in its report on the bill that it is

"concerned at the limited time available to consider the Bill and its implications for Scotland".

I share those concerns. The motion transfers our devolved powers for emergency planning to the UK Parliament. That should not be taken lightly. We have to see this Sewel motion in the context of the wider bill that is passing through the UK Parliament. Liberty describes the bill as

"the most powerful piece of peace-time legislation ever proposed in the UK. It seeks to grant the Government unprecedented powers to make emergency regulations which are unavailable under existing laws."

The powers that are being discussed are significant.

We are discussing part 1 of the bill, which repeals the Civil Defence Act 1948 and changes the notion of civil defence to the wider idea of civil contingencies. The repeal introduces the concept of emergencies. In clause 1 of the bill, the meaning of emergency is defined in a wide-ranging fashion. It says:

"There must be an event or situation threatening serious damage to human welfare, the environment or the security of the UK."

The event itself need not be serious and the decision on whether the definition of "emergency" has been satisfied is in effect made by a Scottish minister. As any damage needs only to be threatened, that might be a highly subjective decision. Parliamentary scrutiny is required for enactment, but that is not likely to occur for several days after a potential emergency power has been granted and the regulations might already have had considerable impact. We have to recognise the wide scope of the new powers that we are discussing in the limited time that we have available.

Part 2 deals with emergency powers, which are a reserved matter. I very much share the concern of, for example, the Liberal Democrats at Westminster, whose official spokesperson described part 2 as "scary". Members are not considering that part of the bill today. However, in relation to the reserved matters that will be discussed at Westminster, I note that in order for UK ministers to confer functions through emergency regulations on Scotland, they must consult Scottish ministers. I trust that, should those emergency powers be invoked, Scottish ministers will think long and hard before they allow the proposed measures to go ahead. Let us not forget that, as Phil Gallie said, those measures include the confiscation or destruction of property, the forced movement to or from a place, the prohibition of travel and the prohibition of peaceful protest.

There might be advantages to legislating for a single framework for civil protection, but I have not been convinced that that is the case. Emergency powers are an important part of the powers of local authorities, the police force, the fire brigade and so on. The issues are important, but we must not deal with them at the expense of civil rights. It would be a travesty if, in relation to emergency powers, we were to give away without proper scrutiny the important defences and laws that the Parliament works to uphold.

George W Bush was able to rush through his Patriot Act in America virtually without debate, although the act had wide implications for civil and human rights. We must not follow that example. We have the opportunity to say no to the rushing through of potentially serious limitations on Scottish civil rights. I urge members to reject the Sewel motion and to take the time that is needed to debate fully such an important issue. There should be no knee-jerk, over-hasty reactions; we need a full discussion of the wide-ranging and important powers that have been proposed.

16:32

Frances Curran (West of Scotland) (SSP): The powers that the bill confers would allow cities to be sealed off, travel bans to be introduced, all phones to be cut off, websites to be shut down, demonstrations to be banned and news media to be subject to censorship. We begin to wonder whether the Home Office has watched too many episodes of "24".

Really serious powers have been proposed. If it is the case that both the Home Office at Westminster and the Scottish Executive can envisage a situation in Britain or Scotland in which such powers would be necessary, that is the major factor in the debate. This Parliament should be party to that political discussion, which should take place with full scrutiny in Westminster. We need to scrutinise such serious powers, which are much more akin to those of a dictatorship than to those of a democracy. If we are to vote on powers that could transform the situation in an emergency, we need to scrutinise those powers carefully, whether they are given to the Government in Westminster or in Scotland.

However, today we have less than an hour to discuss the handing over of scrutiny of the aspects of the bill for which this Parliament should be responsible to Westminster with a nod. To be honest, I am really taken aback that the discussion in the Parliament has been so perfunctory, when I consider what the bill contains. Even if it is competent for this Parliament to discuss only the areas in which powers would be devolved, we should take the opportunity to do so fully and to widen the debate past the Parliament, to the forefront of democratic procedures. We will oppose the motion and I urge the Executive to reconsider it.

My final point is that everything is in context. I would like to be able to discuss some of the powers in the bill in committee and in the Parliament as the bill passes through its stages. In particular, I would like to discuss the powers that

"provide for or enable the requisition or confiscation of property (with or without compensation)"

and the powers to take financial institutions into public control. If the Scottish Socialist Party were putting those proposals forward to the Government, the whole Parliament would be up in arms and calling us loonies and mad; yet the Executive is about to put the proposals through without any proper discussion or scrutiny. The Executive is about to hand decisions on such powers to the Westminster Government. I urge the Executive to think again and to scrutinise the measures in the bill.

The Deputy Presiding Officer: We now move to wind-up speeches. I call Margaret Smith.

16:35

Margaret Smith: I have said everything that I want to say so I waive my right to speak.

The Deputy Presiding Officer: I now call Phil Gallie. [*Interruption.*]

16:35

Phil Gallie: Thank you, Presiding Officer—you caught me out, but you got through eventually. I will be very brief, which will please members.

Some valid points have been made on all sides. The serious nature of part 2 has been underlined by both the Greens and the Scottish Socialist Party. In my original remarks, I suggested that ministers—after the bill has gone through Westminster, has become an act, and is on the point of being implemented—should bring the issues back to this Parliament so that we can discuss them in greater detail. In the interim, I am more than happy for the United Kingdom Parliament to look after the United Kingdom issues, including Scottish issues, in this bill.

16:37

Mr Stewart Maxwell (West of Scotland) (SNP): I was going to start by saying, "Another day, another Sewel motion." However, I would have been wrong, because it is another day, another two Sewel motions. For a "rarely used procedure", we seem to be using it rather a lot.

This bill has, in effect, two main parts. Part 1 deals with emergency planning and civil contingencies. As members know, emergency planning is a devolved matter. Part 2 deals with emergency powers, which are reserved. That is fair enough. However, there is no reason why the Executive should not have introduced a bill to deal with the devolved emergency planning areas. The Executive could and should have done that; I do not understand why it has not done so. The areas that part 1 covers are very much within the Scottish Government's remit.

The minister came to the Justice 1 Committee and, to be frank, failed to explain why the Executive should not introduce such a bill. As a number of people have said, cross-border co-operation in a UK context is absolutely acceptable and normal, and can be easily accommodated through protocols and other measures. I do not understand, therefore, why it is unacceptable, and not possible, to have cross-border co-operation and measures in this case. That makes no sense.

Alasdair Morgan made a valid point earlier, when he asked about the minister's logic. It does not make sense to say that we cannot have a difference between Scotland and the rest of the UK in these matters. As we all know, many of the provisions in the bill are dealt with through regulations. The English and Welsh regulations, and the Scottish regulations, as dealt with by the two Parliaments, may well be different. There is nothing wrong with that, but if it is okay for regulations, why is it not okay for bills?

Part 1 of the bill creates two categories of responder. Category 1 responders are organisations such as local authorities, the police, the fire authorities, the ambulance service, the health boards and the Scottish Environment Protection Agency. It is within the competence of this Parliament to deal with all those organisations. This Parliament should be dealing with these issues.

John Swinburne (Central Scotland) (SSCUP): Frankly, I am amazed at the naivety of this place. I assure members that, if there were an emergency in Scotland this afternoon, the civil authorities and the emergency services would step in. I have sat on panels discussing what would happen if a plane crashed at a football ground in Motherwell. All the discussions were on how the emergency services would deal with that. Measures are in place now. We do not have to give away any more authority to England under a Sewel motion or by any other means in order to get things moving.

Mr Maxwell: Indeed. However, the bill is about emergency planning. The event would be dealt with by the various authorities such as the police, fire services and other civil emergency authorities.

I will move on to address category 2 responders, all of whom are within Scotland: Scottish Water, the Common Services Agency of NHS Scotland and gas, electricity and telecommunications providers that operate only in Scotland. Given that all of them operate in Scotland, quite frankly it is nonsensical that we do not have a separate Scottish bill in front of us that we can debate fully at committee and in the chamber.

The minister talked about clause 21(2). I agree with the Justice 1 Committee on the point that it made about that provision Clause 21(2) sets out the scope of emergency regulations, including the protection or restoration of the activities of Her Majesty's Government, the Westminster Parliament, the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.

Although he did not do so at committee, in today's debate the minister pointed to the provision in paragraph (d) in clause 30(1) relating to the functions of Scottish ministers. As other members have pointed out, it is a strange and laboured way to say that the activities of the Scottish Executive are to be restored. If that is the straightforward restoration and protection of the Scottish Executive, why is it not provided for in

clause 21(2)(l), as is the case for Her Majesty's Government? If it is okay for Her Majesty's Government to be included in that provision, why is it not okay for the Scottish Parliament?

Margo MacDonald: I agree with everything that I have heard so far from Stewart Maxwell. Will he explain why his party is not opposing the motion?

Mr Maxwell: As we have said, we do not support the use of a Sewel motion, as it passes powers to the UK Government. At the same time, very important provisions are contained in the bill and we would like to see them enacted. If we want to see that happen, and the Executive gives us no choice in the matter, we have to accept the motion.

Patrick Harvie (Glasgow) (Green): Given the changes that Stewart Maxwell is highlighting and the similar but not identical position on the Sewel mechanism that our two parties have, does he agree that a constructive addition to the mechanism would be for MSPs, whether collectively or through the committee structure, to be able to lodge amendments to bills that are before the Westminster Parliament?

Mr Maxwell: I have no problem in agreeing with the proposal. It would be entirely reasonable for us to do that. It would be even better, however, if there were no Sewel motions in the first place. The Scottish Parliament should deal with the issues that are within its competence.

The matters that we are debating are devolved. There is no reason why we should pass them to Westminster other than the fact that the Executive is unwilling to introduce bills into the Scottish Parliament. It is unwilling to allow the Parliament to discuss devolved matters that are of major importance to the people of Scotland. What is the point in having a Scottish Parliament if the Executive continually sends matters back to the UK Government?

Alasdair Morgan: Does the member agree that it is not just that the Parliament is disfranchised, which is bad enough, but that, because the Scottish Parliament has a consultation mechanism that brings in views from the wider society in Scotland, that wider society is disfranchised? It is patently obvious that Westminster does not have such a consultation mechanism.

The Presiding Officer (Mr George Reid): Before Mr Maxwell replies, I have to say that far too many private conversations are going on in the chamber. Members are trying to listen.

Mr Maxwell: Thank you, Presiding Officer. I agree absolutely with the point that Alasdair Morgan made. [*Laughter.*] Labour members might laugh, but the Scottish Parliament was established with specific principles in mind, including the principle that the Parliament should be co-operative and should involve the community and the people of Scotland in a very different way from the way in which Westminster operates. Labour members might think that that is funny, but we think that it is important.

One point that is raised in the Justice 1 Committee's report and which I raised with the minister when he came before the committee is about the minister's claim that the bill will be resource neutral. The committee's report states:

> "The Committee was surprised by the minister's comments that the Bill is intended to be resource neutral."

I am no further forward in understanding why he believes that the bill will be resource neutral. The bill places a lot of emphasis on what responders in categories 1 and 2 should do; it also places a lot of emphasis on what organisations such as local authorities should do. Given that there is a heightened risk from various sources, it seems self-evident that the bill has been introduced because of that heightened risk and that therefore the increase in emergency planning and assessing will lead to an increase in the desire for more resources to tackle possible civil emergencies. I do not accept the minister's view that the bill is resource neutral, although I accept that the minister said that the Executive will provide any necessary resources to enact the measures.

It is right and proper that we should have legislation to take cognisance of emergency planning, but this Parliament should have dealt with the issue. Emergency planning, which is the central point of the bill, is a devolved matter. A Scottish bill would have been easier to produce and could have been debated fully in committee and in the Parliament. We could have had a bill that allowed cross-border co-operation and that allowed the Parliament to accept its responsibilities. That is an important point. The more that Sewel motions are used, the more that the Parliament loses its central function. I hope that we see an end to the use of Sewel motions as soon as possible.

The Presiding Officer: I remind members that they have a duty to show respect and courtesy to their colleagues. Far too many members are turning their backs on speakers during the debate, which I regard as discourteous and disrespectful. If necessary, I will identify individuals.

16:47

Hugh Henry: It has been a privilege to listen to the debate because those parties that espouse independence have allowed us to see something of the parallel universe that they inhabit. It has been incredible to listen to some of the comments about the proposals. In some ways, the lack of

understanding has been profoundly depressing. For example, John Swinburne talked about the powers going to England and Mark Ballard spoke about other issues. The bill involves issues that are the responsibility of the United Kingdom Government. In Scotland, we elect people to go to Westminster to represent us; they do that effectively. [*Laughter.*] SNP members may laugh about the contribution that other SNP members make at Westminster—frankly, their contribution is at times beyond a joke.

We have heard suggestions that we should be allowed to lodge amendments to legislation that is being considered at Westminster. I do not know whether the members that suggested that wish Westminster to have the opportunity to suggest amendments to legislation that this Parliament is considering.

Patrick Harvie *rose—*

Hugh Henry: It is cabaret time. Yes, Patrick.

Patrick Harvie: That was very respectful, I am sure.

Does the minister accept that my proposal to allow MSPs to propose amendments to Westminster legislation—whether collectively through a majority vote of the Parliament or through committees—would enable scrutiny and would undermine some of the arguments in principle against Sewel motions? My suggestion would provide a mechanism through which, if Sewel motions are necessary, the process could be conducted by consent.

Hugh Henry: How long have I got, Presiding Officer? It is hardly worth getting into.

We have a UK Parliament with UK responsibilities and a Scottish Parliament with Scottish responsibilities. The motion before the Parliament relates to emergency provision, which is the responsibility of the UK Parliament. There are different aspects to this matter. Mark Ballard and others have confused the power of Scottish ministers to make regulations under part 1, which relates to preparing for emergencies and is devolved, with part 2, which relates to responding to emergencies and is reserved. Without this Sewel motion, the Parliament would not have been able to discuss the latter issue, which is a UK responsibility.

Fiona Hyslop (Lothians) (SNP) *rose—*

Hugh Henry: No, I think that we have heard enough, thank you very much.

We are discussing matters that are competent for us to consider and that would be affected by the emergency planning system that is being considered by the UK Parliament. The UK Government is conferring certain powers back to Scottish ministers to allow them to respond in the event of an emergency. I would have thought that some people in the Parliament would have welcomed that.

A member queried the difference in regulations between Scotland and the rest of the UK. In fact, consultation is required between Scottish and UK ministers to ensure commonality. If we had different bills for Scotland and the rest of the country, we would not have common regulations—by definition, we would have different legislation. We are able to look at commonality of regulations purely because we are using the same legislation.

Margo MacDonald posed a quite legitimate question to SNP members when she asked why they are not opposing this motion. They are not happy about our pursuing the matter in this way, so they have decided not to vote. However, they realise that important issues need to be voted on and are quite happy for the rest of us to do so. If that is not cowardice, I do not know what it is. They might have been opposed to the bill on a matter of principle, as the Green party members are, although I disagree with them. However, SNP members should not tell us that certain aspects of the bill are so important that they should be agreed to, but that they should be agreed to by the rest of us and not by them because they do not want to dirty their hands.

Although this is an important issue and there have been one or two significant speeches, a number of speeches have trivialised the matter before us. Frankly, we can do better than that.

Presiding Officer's Ruling

16:53

The Presiding Officer (Mr George Reid): I will now deal with the extended point of order made by Margo MacDonald at the end of First Minister's question time today. I promised to get back to her as quickly as possible.

I confirm that the Executive is not responsible for the resolutions of the Parliament. Clearly, responsibility rests firmly and properly with the Parliament itself.

The question that Margo MacDonald lodged last week asked the First Minister to urge action on a matter that was outwith the Executive's general responsibility. The fact that the question related to an issue, the Iraq war, that had been debated extensively in the Parliament—indeed, the First Minister participated in those debates and took a position—does not alter what I said to Ms MacDonald in my letter of 6 February. The issue is about questions, not about answers. Under the rules, parliamentary questions must relate to matters within the general responsibility of the First Minister, the Scottish ministers and the Scottish law officers. There is no such constraint on motions and debates.

Ms MacDonald implied that rule 13.3.3 of the standing orders was a general application to what the First Minister says in debate, but that is not the case. The rule relates specifically to questions put to the Scottish Executive. If she has concerns about the accuracy of information given by ministers, that is not a matter for me but relates to the ministerial code.

Margo MacDonald (Lothians) (Ind): Thank you for that response, Presiding Officer. I greatly appreciate the time that has been given to this extremely important question.

There is a possible question about whether members voted to support an Executive amendment on the basis that they believed that the position that they were supporting was legal. If it is shown at a later date that the course of action did not follow either legal precedent or legal advice, we will have a moral responsibility, and probably a responsibility under the "Code of Conduct for Members of the Scottish Parliament", to correct any decisions that we took that were not based on correct, sound legal opinion.

The Presiding Officer: I took a substantial amount of time this afternoon to read and reread what you said earlier in the day in your extended point of order. I think that it would be helpful, Ms MacDonald, if you studied the considered opinion that I have given to Parliament. If you wish to revert to the matter, there is always next week.

Motion without Notice

The Presiding Officer (Mr George Reid): We are about five minutes ahead of ourselves. I am minded to accept a motion without notice to bring forward decision time.

Motion moved,

That Decision Time on 4 March 2004 be taken at 4.56 pm.—[*Patricia Ferguson*.]

16:56

Frances Curran (West of Scotland) (SSP): I oppose the motion.

The Presiding Officer: If you can do so briefly.

Frances Curran: Well, there are four minutes. Earlier today, Presiding Officer, you decided at your discretion not to put to the Parliament a motion without notice to enable us to discuss an issue at short notice. Why is a motion without notice acceptable now—when there is a little bit of time to discuss the issues—given that such a motion could not be put forward earlier? The motion that we wanted to put—

The Presiding Officer: The motion has been moved and you must speak to the specifics.

Frances Curran: Okay, then.

The Presiding Officer: And briefly.

Frances Curran: I oppose the motion because of the issues. The issues might not be relevant next week, or in a few days. The hunger strikers might die and it is important for the Parliament to—

The Presiding Officer: The only question now is that decision time should be brought forward.

Frances Curran: I oppose the motion.

The Presiding Officer: The question is, that the motion 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)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)

Davidson, Mr David (North East Scotland) (Con)
Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
Douglas-Hamilton, Lord James (Lothians) (Con)
Eadie, Helen (Dunfermline East) (Lab)
Ewing, Mrs Margaret (Moray) (SNP)
Ferguson, Patricia (Glasgow Maryhill) (Lab)
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)
Gorrie, Donald (Central Scotland) (LD)
Grahame, Christine (South of Scotland) (SNP)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Hyslop, Fiona (Lothians) (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)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Mather, Jim (Highlands and Islands) (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)
McGrigor, Mr Jamie (Highlands and Islands) (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)
Morgan, Alasdair (South of Scotland) (SNP)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Neil, Alex (Central Scotland) (SNP)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
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)
Scanlon, Mary (Highlands and Islands) (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)
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)

AGAINST

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Curran, Frances (West of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Harvie, Patrick (Glasgow) (Green)
Leckie, Carolyn (Central Scotland) (SSP)
MacDonald, Margo (Lothians) (Ind)
Martin, Campbell (West of Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)

ABSTENTIONS

Harper, Robin (Lothians) (Green)

The Presiding Officer: The result of the division is: For 93, Against 13, Abstentions 1.

Motion agreed to.

The Presiding Officer: We therefore bring decision time forward. It is 16:58, which is two minutes ahead of the time that was intended.

Decision Time

16:58

The Presiding Officer (Mr George Reid): The first question is, that motion S2M-699, in the name of Cathy Jamieson, that the Vulnerable Witnesses (Scotland) Bill be passed, be agreed to.

Motion agreed to.

That the Parliament agrees that the Vulnerable Witnesses (Scotland) Bill be passed.

The Presiding Officer: The second question is, that motion S2M-973, in the name of Margaret Curran, on the Companies (Audit, Investigations and Community Enterprise) Bill, which is UK legislation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
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)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McAveety, Mr Frank (Glasgow Shettleston) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (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)
Swinburne, John (Central Scotland) (SSCUP)
Tosh, Murray (West of Scotland) (Con)
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

Canavan, Dennis (Falkirk West) (Ind)
Grahame, Christine (South of Scotland) (SNP)
MacDonald, Margo (Lothians) (Ind)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Curran, Frances (West of Scotland) (SSP)
Ewing, Mrs Margaret (Moray) (SNP)
Fox, Colin (Lothians) (SSP)
Gibson, Rob (Highlands and Islands) (SNP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Hyslop, Fiona (Lothians) (SNP)
Ingram, Mr Adam (South of Scotland) (SNP)
Leckie, Carolyn (Central Scotland) (SSP)
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)
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)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
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 73, Against 3, Abstentions 32.

Motion agreed to.

That the Parliament agrees to the principle that, in the contexts of provisions in the Companies (Audit, Investigations and Community Enterprise) Bill enabling charities to convert to become community interest companies, conversion should be regulated and agrees that the provisions in the Bill that relate to the power to regulate such conversion should be considered by the UK Parliament.

The Presiding Officer: The third and last question is, that motion S2M-974, in the name of Cathy Jamieson, on the Civil Contingencies Bill, which is UK legislation, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
Curran, Ms Margaret (Glasgow Baillieston) (Lab)
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)
Gallie, Phil (South of Scotland) (Con)
Gillon, Karen (Clydesdale) (Lab)
Glen, Marlyn (North East Scotland) (Lab)
Godman, Trish (West Renfrewshire) (Lab)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, Mr John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Johnstone, Alex (North East Scotland) (Con)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Lyon, George (Argyll and Bute) (LD)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)
Macmillan, Maureen (Highlands and Islands) (Lab)
Martin, Paul (Glasgow Springburn) (Lab)
May, Christine (Central Fife) (Lab)
McCabe, Mr Tom (Hamilton South) (Lab)
McGrigor, Mr Jamie (Highlands and Islands) (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)
Morrison, Mr Alasdair (Western Isles) (Lab)
Muldoon, Bristow (Livingston) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)
Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
Murray, Dr Elaine (Dumfries) (Lab)
Oldfather, Irene (Cunninghame South) (Lab)
Peacock, Peter (Highlands and Islands) (Lab)
Peattie, Cathy (Falkirk East) (Lab)
Pringle, Mike (Edinburgh South) (LD)
Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
Radcliffe, Nora (Gordon) (LD)
Raffan, Mr Keith (Mid Scotland and Fife) (LD)
Robson, Euan (Roxburgh and Berwickshire) (LD)
Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
Scanlon, Mary (Highlands and Islands) (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)
Tosh, Murray (West of Scotland) (Con)
Wallace, Mr Jim (Orkney) (LD)
Whitefield, Karen (Airdrie and Shotts) (Lab)
Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Byrne, Ms Rosemary (South of Scotland) (SSP)
Canavan, Dennis (Falkirk West) (Ind)
Curran, Frances (West of Scotland) (SSP)
Fox, Colin (Lothians) (SSP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Leckie, Carolyn (Central Scotland) (SSP)
MacDonald, Margo (Lothians) (Ind)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Swinburne, John (Central Scotland) (SSCUP)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Mrs Margaret (Moray) (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)
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)
Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
Welsh, Mr Andrew (Angus) (SNP)
White, Ms Sandra (Glasgow) (SNP)

The Presiding Officer: The result of the division is: For 69, Against 14, Abstentions 23.

Motion agreed to.

That the Parliament agrees the principle of a single statutory framework for civil protection across the UK, as set out in the Civil Contingencies Bill, and agrees that the relevant provisions in the Bill should be considered by the UK Parliament.

Achievements of Deaf Pupils in Scotland

The Deputy Presiding Officer (Murray Tosh): The final item of business is a members' business debate on motion S2M-758, in the name of Cathie Craigie, on the achievements of deaf pupils in Scotland project. The debate will be concluded without any question being put.

Motion debated,

That the Parliament congratulates the Scottish Executive for funding the Achievements of Deaf Pupils in Scotland project since November 2000; is concerned to note the gap in achievements between deaf and hearing children identified in its initial findings, and considers that the Executive should continue to fund the project so that groundbreaking year-on-year evidence can be collected to enable identification of factors which can be addressed by education services for deaf pupils in Scotland.

17:01

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I thank the members who signed the motion and those who have stayed for the debate. The support of so many members shows how important the research and information that has been gathered by the achievements of deaf pupils in Scotland project team are to members and their constituents. Through their commitment to and enthusiasm about the project, Mary Brennan and her team have earned the respect of the deaf community and of all those who work in education.

The achievements of deaf pupils project has run for the past three and a half years. It was established in 2000 to collect detailed information about pupils and their achievements. The project is funded by the Scottish Executive, which is to be congratulated on its foresight in providing the initial funding and on continuing the funding. However, the decision to continue funding for only a single final year, until March 2005, is regrettable. I ask the minister to rethink the decision and I hope to give some reasons to support the continuation of funding in its present form or in an improved form.

The ADPS project is the only national long-term database that is based on annual surveys of deaf children in Europe. The only comparable database is based on the annual survey of deaf and hard of hearing children and youth that is undertaken by the Gallaudet research institute in Washington DC, which is part of a university for deaf people. For 30 years, the institute has undertaken research that has helped to shape educational provision for deaf and hard of hearing young people in the United States.

In Scotland and the rest of the United Kingdom, considerable concern has been felt for some time about the educational achievements of deaf pupils. Some evidence points to underachievement. There is no inherent reason why deaf children should not perform and achieve to the same levels as hearing children do. Of course, just as in the mainstream population, there are deaf children with physical or cognitive conditions.

The five to 14 national test results show that the number of deaf children who achieve level D in primary 7 lags well behind the number of their hearing peers. In 2001-02, 73 per cent of hearing children achieved level D in reading, but only 37 per cent of deaf children did. In the same year, 60 per cent of hearing children achieved level D in writing, whereas only 30 per cent of deaf children did. Also in that year, 69 per cent of hearing children achieved level D in mathematics, whereas only 29 per cent of deaf children did.

The statistics and the levels of underachievement among deaf children should concern every one of us. As deaf children become older, they fall further behind in literacy. That obviously has an increasingly negative effect on their access to the curriculum and their future chances in life.

From evidence that shows that the intelligence spectrum across the population of deaf children is similar to that across the population as a whole, we can conclude that the underachievement results not from the fact that the children cannot achieve but from the fact that in some way the system is failing them. For that reason, we need reliable research to explain the underachievement of deaf children—research that is trusted by the deaf community, children, parents, teachers and politicians. We need to examine the reasons for it and to plan and develop new strategies to ensure that we as policy makers do not fail deaf and hard of hearing young people but encourage and support them to have the same life chances as hearing children have and to achieve all that they can.

We know that the Scottish Executive is already committed to collecting data on Scottish pupils through the work of the Scottish exchange of educational data project—believe me, I found that easier to say than ScotXed. Its aims are comparable to those of the ADPS project, but its work is not the same and it is not collecting the same data or range of data. It is not collecting the data that are needed to identify key factors that influence the achievement of deaf pupils or the data that will allow us to monitor the effectiveness of educational provision. The low numbers of deaf children mean that wide variations in performance are likely, so patterns and trends are likely to emerge only over time. That is why we need the ADPS project to collect data over a long period.

New measures introduced by the Scottish Executive, such as newborn hearing screening,

the Education (Additional Support for Learning) (Scotland) Bill that the Parliament is considering and other policy developments are all developments in the right direction. However, those policies and their implementation will need to be monitored over time to gauge their impact. That is only one reason that the work of the ADPS project is necessary and can complement the work of ScotXed by providing highly detailed data on deaf children. We need only examine the project's findings to see how important its work has been and the support and dialogue that it has been able to develop with parents and teachers. I encourage all members to do just that. The ADPS project receives a tremendous response to its questionnaires, 99 per cent of which are returned. I have seen the questionnaires, which are not a light piece of work. As politicians, we wish that we could get the same return when we consult people.

The Scottish Executive took the lead in establishing and funding this very necessary project. The model is now being considered for use in other parts of the UK and Europe. We in Scotland must remain at the forefront of these developments. We must demonstrate our commitment to equality of access for each deaf child and must keep the expertise and trust that have been built up at the project. I urge the Scottish Executive to give continued support to the ADPS project, to work with the research team and to work to ensure that better and equal chances for deaf and hard of hearing young people become the norm.

The Deputy Presiding Officer: There will be time for speeches of four minutes.

17:08

Mrs Margaret Ewing (Moray) (SNP): I wish to be the first to congratulate Cathie Craigie on lodging this motion for debate. This is an issue that needs to be explored and the case needs to be made for continuing to fund the ADPS project. I thank her for her speech. She has obviously done a great deal of work on and research into the issue.

I am not sure that my speech will reflect the same amount of research as Cathie Craigie's. I do not claim to be an expert in this area, but I suspect that my situation is the same as that of all members who are present. The issue of deafness is brought to us in our surgeries and constituency mail. We receive complaints about lack of audiology facilities, access to consultants, educational facilities and so on. There are many groups that work closely with the deaf, in all aspects of life. I think of Hearing Dogs for Deaf People, the meetings that I have had with representatives of the deaf society in my constituency and the fact that I have placed a textphone in my local office for the use of the deaf. That facility is open to all members and we should all use it.

This is the first debate that we have had on any form of deafness since a previous members' business debate on British Sign Language, which was led by my mother-in-law. I remember that the galleries were absolutely packed and that we had signers in the gallery and on the floor of the chamber itself. It is good that the subject has been kept on the agenda, because it is not one that should be allowed to slip away.

The debate today is about children in particular. Research collation is vital in reaching future diagnosis decisions. Having been a teacher, I believe that the accumulation of data is terribly important in relation to what we are trying to achieve with young people. A family services officer of the National Deaf Children's Society said:

"I have to say it is brilliant to actually have reliable statistics now and be able to use them to help plan our society's future."

That is the significance of the ADPS project, which I hope will continue.

The project is widely respected and highly regarded throughout Europe. Indeed, I understand that the UK Government was looking at the possibility of following the example of Scotland—that is interesting, given the previous debate—by setting up a similar project south of the border. Where we are achieving in this way, we should be proud to say, "This is a good idea and we are going to develop it," rather than take away the funding.

We received comments from parents and pupils as briefing for this debate, two of which I will read out. A parent said:

"ADPS is a crucial step forward in deaf education. We need the knowledge gained from the information collated to help both parents and professionals help our children towards having more control over their chosen destiny."

An ex-pupil said:

"I have been following the project since it started in 2000 and I think that the work that the team is doing is invaluable. I know from my own experience that it is important to keep track of your achievements and be encouraged to aim high."

Aiming high is what we are supposed to be about in this Scottish Parliament—aiming high for all our citizens in Scotland. Being a smart, successful Scotland means being an inclusive society. We must ensure that people are given equality from the beginning. I say to the minister that this Parliament is giving a clear warning that we do not want the project's funding to end. I believe that it will cease in March next year, so there is a year in which to rethink and aim high.

17:13

Eleanor Scott (Highlands and Islands) (Green): I thank the Presiding Officer for calling me early—I gave notice that I will have to leave to catch a train. I am sorry about that. I look forward to reading the rest of the debate, because it is on a subject that is dear to my heart. It is one of the things that I carried with me from my previous job as what I call a community paediatrician, but which is perhaps more recognisably called a school doctor. I had a particular interest in paediatric audiology and in deaf children, and there was a unit for deaf pupils in one of the schools for which I was responsible. I am interested in the subject, and I am glad that it is being debated.

On the phone this afternoon I checked with some of my former colleagues who are teachers for the deaf, and they said that the ADPS project has been well received by the profession. Indeed, one of our senior teachers from Highland was involved in the early stages in drawing up the project, so it is relevant even to areas such as Highland that have a sparse population and particular problems in delivering services to deaf pupils.

As Cathie Craigie said, the form filling is onerous. A great big, thick wodge of paper comes in for the initial assessment, although apparently the updates are not so bad. However, staff feedback has been good and the in-service training from Moray House has been well received.

I do not want to pre-empt any data that might come out of the project, but a teacher told me that although one would instinctively think that the profoundly deaf pupils would be the ones who would achieve the least, the feedback shows that that is not always the case. Some of the severely deaf pupils—who are less deaf, in other words—have had lower levels of achievement. That might be partly to do with their receiving less support. The message must be advanced, particularly in the forthcoming review of support for learning, that support is a big issue.

Deaf pupils are labour intensive, but that labour is rewarding, so it is well worth while. There is no other way round the issue: we need signing learning support auxiliaries, which means that auxiliaries must be trained to be signers, and we need teachers of the deaf. In Highland, where there might be one pupil in a remote area—I know of two—teachers of the deaf have to travel to support staff who must be trained up to be deaf aware. There must be deaf awareness in schools at all levels, from staff to pupils. Much work is involved in providing for deaf pupils, but it is worth while.

The other point that Cathie Craigie raised that I will pick up on is the wide variation among deaf pupils. Now with my medical hat on, I point out that we are increasingly seeing young children who have deafness as part of a constellation of difficulties. Many of them are survivors of extreme prematurity, who need a multidisciplinary team. From talking to my former colleagues, I know that multidisciplinary teams in Highland meet fortnightly to discuss how they are working with pupils, which is important.

When I started my previous job in community child health in Highland 16 years ago, there was a history of deaf pupils having to leave the area for education to go on residential placements in Edinburgh and Aberdeen, and there was only a small unit attached to the primary and secondary schools in Dingwall. Increasingly, we have moved away from that, and it is now normal for pupils to stay at home throughout their school career and to be provided for locally. As I said, that means that resources must be available. We cannot have economies of scale with small numbers in a scattered population. However, the service must still be delivered, because deaf pupils merit it.

An important point to consider in relation to all special needs children is the fact that the handover to adult services is always problematic. People might have received a lot of support at school age, but when they leave school and perhaps go to college, the support is just not there anymore. Many of our kids in Highland still go off to Doncaster College or Derby College for their post-school education and training. There are local colleges, and if support were provided in them, perhaps more kids could stay at home.

I welcome the debate and the on-going monitoring of the achievements of deaf children academically and socially. I hope that there will be a commitment to carry out such monitoring long term and that it will not be carried out in an atmosphere of uncertainty, which would undermine the professionals who are so dedicated and who put so much into their work.

17:18

Lord James Douglas-Hamilton (Lothians) (Con): Cathie Craigie is to be congratulated warmly on her success in introducing this subject for debate, given that it is so important. It comes in the wake of a debate that we had some years ago on the need to have funding for more sign language teachers, on which I hope that appropriate action has been taken.

The achievements of deaf pupils in Scotland project was established in October 2000 to create a database of accurate information on deaf pupils in Scotland. Before that, statistics and information

on deaf pupils were often partial and inaccurate. Such statistics were presented to the Scottish Parliament and portrayed an unrealistic view.

ADPS in the only project of its kind in the United Kingdom and is comparable only to a project that the Gallaudet research institute in Washington DC carried out. That puts the project and Scotland very much at the forefront of deaf education globally. As Cathie Craigie has rightly said, initial findings have indicated that deaf children are underachieving, so surely it is vital for the Executive to continue the funding and to assess what needs to be done and where and why it needs to be done. There seems little point in identifying underachievement and then failing to act upon it by ceasing funding.

ADPS has worked hard to forge strong links with local authorities, professionals, parents and deaf pupils. Local authorities use the information to plan for provision and to allocate resources more effectively, so saving funds in the long term, while parents and professionals use the research to set realistic targets in a way that best helps children to achieve their full potential. The enthusiasm for and commitment of parents and professionals to the project is highlighted by the fact that a staggering 99 per cent of people who were given questionnaires returned them.

However, ADPS is not a quick-fix initiative. The needs, achievements and performance of deaf pupils will change and must be monitored over time. If important patterns and trends are to be found and statistics are to be compiled, longer-term funding from the Executive is essential. The Executive should consider the importance, impact and global standing of the achievements of ADPS. It is not only a valuable tool in the identification of groundbreaking research; it is a unique and exciting project of great importance well beyond Scotland. The results and information collated can be used not only to contribute to the Executive's policy decisions and developments but to lead the way forward and to set new examples in equality and access for all deaf children.

Cathie Craigie is most certainly right on this matter and deserves strong support in this cause. Some years ago, I learned about an elderly man who was given his hearing for the first time through cochlear implants, which completely transformed that person's life. I feel that being hard of hearing can be a substantial disadvantage to young people and we should do everything in our power to help them.

I hope that the minister will give an extremely positive response.

17:22

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I congratulate Cathie Craigie on securing the debate. I know that, along with others, she has raised deaf issues tirelessly since the establishment of the Scottish Parliament. The debate deals with a practical manifestation of how we can address the needs of deaf people in Scotland.

I have some awareness of the work of ADPS, although I would not profess to be an expert. I am happy to add my support to Cathie Craigie's motion because a great deal of the work that ADPS does chimes well with the aims and aspirations of the Scottish Parliament and complements the work that the Scottish Executive seeks to take forward. It is important that politicians continually try to turn our rhetoric into reality, and part of the rhetoric of this Parliament and the Executive since 1999 has been that we must work to give every child in Scotland the best possible start in life. We do not say "some children", we say "every child", and that includes deaf children and other children with conditions or disabilities that might otherwise limit their ability to fulfil their potential.

What is exciting about the work that ADPS has done is that it is starting to get to the bottom of why deaf children under-attain when that should not necessarily be the case. It is just beginning to explore what can be done to avoid such under-attainment in future. That is enormously exciting. We have the potential to make a difference to the lives of people in this country.

The Executive has particular reasons to want the project to continue its work. It has a good track record in taking action that will benefit deaf young people and other people who are deaf and who have hearing problems. However, it is important that we keep track of how effective such policy changes have been. In a former life, I was involved in some of the early decisions to extend cochlear implantation and to introduce hearing tests for newly born children. We need to know what impact those policy changes and investments are having over time.

ADPS is quite unusual in being a project that can feed into Government policy on a continuing basis and give feedback and evidence to inform future decisions and to tell us what has been successful in the past. Therefore, there are very good reasons why the Executive should want to continue to support and develop the project.

Finally, I get concerned about the short-term nature of much of our thinking in so many areas. Part of that is because of the world in which we live and the pressure that we are all under to come up with quick fixes. As we all know, quick fixes

rarely exist. We can make a difference and track the differences that have been made only over time. What is striking about ADPS's work is that it has put in place a longitudinal study, which—by definition—must and should be able to continue into the future to give us a clear picture of trends. It would be wasteful, if not daft, to have to reinvent such a project in future to answer the very questions that ADPS is just beginning to be able to answer.

From the knowledge that I have of the project, I think that real progress is being made. It supports and complements the aims and aspirations of the Parliament and of the Executive and can add value to policy development and its implementation now and in the future. Critically, it can make a difference to the lives of deaf young people now and in the future. The project has the confidence and the trust of parents, professionals and deaf young people. Not many projects can say that with impunity. It is important that the project is supported and encouraged into the future.

17:26

Ms Sandra White (Glasgow) (SNP): I, too, congratulate Cathie Craigie on securing the debate and on all the hard work that she has done with deaf people in the Parliament and through the cross-party group, which has done tremendous work.

I was very concerned when I learned about the loss of funding for the project. After looking at the papers, I can only concur with what every member who has spoken before me has said about the good work that is done by the project. The statistics that were quoted by Cathie Craigie are proof that the project should continue, especially because of its emphasis on information gathering and sharing. That type of information is invaluable for the future, not just for the present. The project has turned around the statistics on underachievement and has been able to take evidence from various areas and from research that has been done and put it into practice. That is what we are looking towards: putting ideas into practice for the benefit of all deaf people.

Cathie Craigie talked about the response to the questionnaires. There was a 99.4 per cent return from schools, which is fantastic—that level of response would put a Scottish election to shame. That shows that the public, the schools and the deaf community take such work very seriously. Those people are willing to take part in that type of research; we do not always get that willingness, so we should not lose it once we have it. They are very keen that the project should continue, and so are those who are in the chamber. I ask the minister to take the statistics on board.

I will tell members about a deaf person who I have known for a long time. He was, and still is, a fantastic artist, and was probably the loudest, most outgoing and sociable person in our group. When it came to saying what we wanted to do when we left school, he chose architecture. This was more than 40 years ago and many deaf people will identify with what I am about to say. He did not have the recommended qualifications to pursue that career. That was not because he was not talented, but because, at that time, not enough was done to encourage deaf people to get those qualifications. I still go out for a drink with him and, although he has had various jobs, he is not bitter; he is a very happy person. However, when I speak to him, I think what a loss he has been to our society and what a shame it is that such a talented person did not get the opportunities that hearing people got just because he was deaf. That is why it is so important to continue the ADPS project.

There are probably many who have passed through schools who, like Dennis and others—now that I have said his name, he will never forgive me—have much to give to society but cannot contribute in the way that they would like to because the help that projects of this type provide is lacking. On behalf of all the pupils who attend those schools and who desperately want to fulfil their potential, I ask the minister to continue the funding. Even if the funding were continued for just another year, we could see how things go from there. Too many people's lives are at stake. I appeal to the minister to continue the project's funding.

17:30

The Deputy Minister for Education and Young People (Euan Robson): I welcome the opportunity to respond to the debate. I had the opportunity to meet Cathie Craigie and her colleagues on the cross-party group on deafness only a few months ago, when we had a useful and wide-ranging discussion of the issues. There is no doubting the group's commitment, in particular to developing and improving educational services for hearing-impaired children. Like Susan Deacon and others, I pay tribute to the work that Cathie Craigie has done as convener of the cross-party group. She has laboured long and hard and is a considerable campaigner on deaf people's behalf.

The Executive shares the commitment of the cross-party group. Over the years, we have sought to improve provision for deaf children and young people in various ways. We share the concern of Cathie Craigie and the cross-party group that deaf children's achievement should develop and improve. That is a key issue.

Our general policies of encouraging inclusion where it is in the child's best interests, promoting

better access to schools and to the curriculum and providing more resources for staff development and training all serve to support deaf education as well as the wider provision for those with additional support needs.

As Cathie Craigie rightly said, the Education (Additional Support for Learning) (Scotland) Bill aims to modernise and strengthen the current system for supporting children's learning needs by building on and complementing developments in Scotland's educational system and by promoting the wider agenda of integrating and improving children's services.

We provide specific support for deaf education. We continue to provide substantial funding to Donaldson's College, which is perhaps the most significant specialist centre for deaf education in Scotland. We will soon consult on new regulations covering specialist qualifications for teachers who deal mainly with children who suffer from sensory impairments.

Through our innovation grants programme, which is now called the unified fund, we have supported a range of deaf education projects and organisations that promote the interests of all who are involved in the education of hearing-impaired children. For example, some members may be familiar with the CD-ROM "Stories in the Air", the production of which we funded to encourage the development of basic sign language between very young hearing-impaired children and their parents.

We provide important core funding for the Scottish sensory centre, which is a national source of advice, guidance and training for teachers and others who work with pupils with sensory impairments.

In addition, since October 2000, we have funded the achievements of deaf pupils in Scotland project, which is the subject of tonight's motion. That funding will continue for another year. It was originally intended that the funding would cease at the end of March 2004, but £85,000 was found for the year to the end of March 2005.

We began funding the ADPS project almost four years ago because we recognised the need to obtain more accurate information on the numbers of deaf pupils in Scotland and their attainments. Such information will be used to help pupils, parents and teachers to identify where improvements are required and to enable steps to be taken to improve the quality of provision. By March 2005, almost £470,000 will have been spent on the project.

When the research project began, analysis of the attainment of pupils with a hearing impairment was simply not possible. A specific research project was the only way in which such information could be obtained, and that was why the Scottish sensory centre was funded to begin the work.

Mrs Ewing: Euan Robson said that £470,000 would be the total expenditure over the four-year period. Where does that fit in as a percentage of the budget that is available to the Executive? It seems to me like a drop in the ocean among all the other moneys that are available.

Euan Robson: In a budget of some billions, it is indeed a small percentage, but clearly it is a significant sum of money, given the cost of the research project, and it has made a significant impact because we have valued the work that has been carried out.

Since the project began, the Executive has made a great deal of progress with its own statistical collections. The annual school census has changed fairly significantly, from a paper form of summary information filled in by the head teacher to an individual-level download from the school's management information system. That enables local authorities and the Executive to identify pupils with various difficulties, including hearing impairment. When that information is linked to individual data from the Scottish Qualifications Authority, attendance records, information on free school meals entitlement and so on, it will soon be possible to carry out centrally much—but, I agree, not all—of the analysis that is performed by the ADPS project.

The national collection of five-to-14 data is under review at present. However, whatever the outcome of that consultation, it will be possible for local authorities to continue to monitor the performance of the hearing impaired at any given level. It may also be possible to ensure that whatever replaces the national collection of five-to-14 data will enable the analysis of pupils with such difficulties.

We agree totally that the accumulation of data about deaf pupils is vital—that is why we put the money into the ADPS project. We are not stepping back from a commitment to the accumulation of the data. We will collect the data through the ScotXed programme and continue to monitor the achievement of deaf pupils, for the reasons that I have given. We do not want teachers to have to continue to complete large-scale questionnaires, but we feel that that will not be necessary, given the changes that have been made to our own data collection.

We recognise that the way in which data are currently collected through the electronic school census does not pick up all pupils with hearing impairments, but only those for whom it is the main difficulty in learning. However, we have started discussing changes to the census specification for 2005 in order to identify all such pupils. We will also ask the ADPS team to work with us and with local authorities to assist in the handover from the research project stage to the

central monitoring stage, to ensure that all such pupils are picked up.

In short, we want to help to manage the process of transition, and that is why I ensured that funding would continue for another year, but not after March 2005. We have been discussing today only pupils with hearing impairment. In future, as I have described, the Executive will be able to monitor all groups of disabilities, including visual impairments, motor impairments, autism and so on. That will be a great improvement from the previous need to set up specific research projects in every area.

Life has moved on from when we started in 2000. We have valued immensely the work that has been done and we remain committed to improving the performance of deaf children and to monitoring that progress closely, but we will not be able to continue the funding after March 2005.

Meeting closed at 17:39.

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