

MEETING OF THE PARLIAMENT

Thursday 28 April 2005

Session 2

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Scottish Parliament

Thursday 28 April 2005

[THE PRESIDING OFFICER *opened the meeting at 09:15*]

Smoking, Health and Social Care (Scotland) Bill: Stage 1

The Presiding Officer (Mr George Reid): Good morning. The first item of business is a debate on motion S2M-2667, in the name of Andy Kerr, that the general principles of the Smoking, Health and Social Care (Scotland) Bill be agreed to.

09:15

The Minister for Health and Community Care (Mr Andy Kerr): Lives have been destroyed, families have been devastated and careers have been shattered—those are the tragic consequences of illness and disease caused by tobacco smoke. In response to its consultation on a prohibition on smoking, the Scottish Executive received letters from many, many people whose lives have been blighted by the consequences of exposure to second-hand tobacco smoke. They include wives whose non-smoking husbands have died of lung cancer, asthmatics who cannot socialise in pubs and mothers who are concerned for their sons who work in bars. Those are examples of just some of the real-life stories that people have to tell about the devastating effect that tobacco smoke can have on people's lives.

Each year environmental tobacco smoke in Scotland is associated with the deaths of more than 800 people who have never smoked. That is why we must take this historic, bold and right step to improve the health of the people of Scotland. The Executive and I are proud that we in Scotland are leading the rest of the United Kingdom in the smoking debate, which is a tribute to devolution.

I thank the Health Committee for its careful and considered conclusions in its stage 1 report and I am pleased to note that it is broadly supportive of the measures that we propose. I thank the many witnesses who provided evidence to the Health Committee and I thank the Finance Committee and Subordinate Legislation Committee for their considerations.

The bill has three main purposes. The first is to introduce a prohibition on smoking in certain enclosed public spaces. The second is to continue the modernisation of the national health service, including removing charges for eye and dental checks; improving the provision of dental and pharmaceutical care; improving NHS disciplinary

processes; and allowing the NHS to participate in joint ventures for the delivery of facilities and services. Thirdly, the bill seeks to make social care provisions in relation to the Regulation of Care (Scotland) Act 2001. Clearly, this is a health bill and it is within the competence of the Parliament.

I turn to the specifics of the smoking provisions. Smoking kills and debilitates and is a major factor in health inequalities. On average, smokers can expect to live 16 years less than non-smokers, and 35 people a day die before their time because of smoking-related illnesses—a 35-a-day habit that we have to kick. There is also overwhelming evidence of harm associated with exposure to environmental tobacco smoke. That evidence is clear and irrefutable.

Elaine Smith (Coatbridge and Chryston) (Lab): As someone who has recently, finally, stopped smoking, I wish that I had never started.

Members: Well done.

Elaine Smith: Thank you. Is there any evidence that a smoking ban will help to prevent young people from starting to smoke, which is crucial?

Mr Kerr: There is strong evidence of that worldwide and in the work that we are doing in the Executive. We seek through the bill to denormalise smoking—to make it abnormal and unacceptable. I believe strongly that the bill will send that message.

Mr Brian Monteith (Mid Scotland and Fife) (Con): The minister talked about smokers. Does he differentiate between cigarette smokers and those who choose to smoke pipes or cigars, given that 90 per cent of those who smoke cigars and 80 per cent of those who smoke pipes do not inhale, but practically 100 per cent of those who smoke cigarettes do?

Mr Kerr: I do not make a distinction, because we are talking about the protection of public health—the health of everyone in Scotland, including the 70 per cent of people who do not smoke. I am yet again disappointed by the Conservatives' response to the bill.

Stewart Stevenson (Banff and Buchan) (SNP): Will the minister join me in welcoming the coverage of all tobacco that is smoked? Will he highlight the oral health problems, such as cancers, that are associated with both pipes and cigars and the crucial role that dentists play in detecting them?

Mr Kerr: We are seeking to address those matters in the strategy that Rhona Brankin announced recently in relation to oral health checks, particularly for the over-60s. The points that the member makes are accepted, understood and uncontested by most people, with the exception of the Conservatives. I hope that the

Conservatives take the opportunity in this debate to comment on the fact that their spokesperson, Mrs Milne, said that environmental tobacco smoke is "unpleasant". It is not unpleasant; it is a killer. We know that and we will act accordingly to ensure that the bill goes through.

Mrs Nanette Milne (North East Scotland) (Con): Will the minister give way?

Mr Kerr: I will give way in a minute. I need to make progress.

As Professor Sir Richard Doll has observed, an hour a day in a room with a smoker is nearly 100 times more likely to cause lung cancer in a non-smoker than are 20 years spent in a building containing asbestos.

As Minister for Health and Community Care I have a duty to act now to protect and improve radically the health of the people of Scotland. Banning smoking in public places sends out the clearest possible signal that we are determined to do just that. There are three good reasons why the creation of smoke-free places is good for health. First, it will make it easier for smokers to give up, because they are less likely to be tempted to light up if they do not see other people smoking, especially in pubs and restaurants where the association between drinking and smoking is so strong. Secondly, it will save the lives of people who are exposed to second-hand smoke. Thirdly, and most important of all, it will reduce the acceptability of smoking—it will denormalise smoking in our society and discourage young people from starting to smoke.

As I have said, smoke-free environments will encourage more people to quit. However, giving up smoking is hard and not everyone can do it on their own—I respect my colleague Elaine Smith for managing to do so. That is why the Executive is committed to supporting and enhancing smoking-cessation services and to bringing them into the community. We will deliver those services in communities, in places where people live and work, making it easier for them to take the first step towards quitting and increasing their chances of success. In the next few years, our funding for smoking-cessation services will increase significantly from £3 million per annum in 2004-05 to £11 million per annum by 2007-08. Those services are being enhanced and rolled out across the country as I speak. The important thing is that provision is being made to help more people in more places—both smokers and non-smokers—to live healthier, longer lives. That is why creating smoke-free environments is one of the most important things that we can do to improve Scotland's health.

Mr Stewart Maxwell (West of Scotland) (SNP): The minister is aware of my unswerving support

for the banning of smoking in public places, but is he also aware of my concern about the definition of smoking in section 4(1) of the bill? For the benefit of those who will have to enforce the measure, can the minister tell from where he is sitting which of the two cigarettes that I am holding it will be legal to smoke and which it will be illegal to smoke after the ban comes into effect?

Mr Kerr: First, I place on record again an acknowledgement of the work that Mr Maxwell has done in relation to the bill and our efforts to create a smoke-free Scotland. As we progress with the bill I am more than happy to discuss the issue of how herbal cigarettes are defined and what effect that will have on the overall competence of the bill. I cannot identify from here which cigarette is herbal and which is tobacco based. I understand and appreciate the point that Mr Maxwell is making, which is why I will seek to ensure that we deal with it as the bill develops. I am happy to sit down with him to work through the issue with our lawyers and advisers—I look forward to doing so.

In response to Stewart Maxwell's point, that is why we want the ban to be as comprehensive as it can be, to ensure that it is not just a legal measure but is easy to introduce and enforce. The smoking provisions are pro-clean air and pro-choice. The measures are inclusive—70 per cent of Scots do not smoke. There is currently no choice for non-smokers who have to socialise and work in smoke-filled rooms. Some of the asthmatics to whom I spoke recently told me that they are forced to avoid pubs. We have therefore proposed a comprehensive ban that is clear and simple to understand and enforce, and I am content that the provisions are consistent with the European convention on human rights. Therefore, there will be only limited exemptions on humanitarian grounds in the regulations. As exemptions will be dealt with in the regulations, those will not be finalised until the current public consultation is complete.

In the meantime, we are working hard with the business community to minimise the impact of the proposed ban and maximise the opportunities that the bill presents. To that end, I have established a smoke-free areas implementation group, which includes hospitality sector and public sector representation. That group, which I chair, will consider the key issues around the smoking measures. We are looking at the best ways to publicise the ban and advise businesses on the steps that they need to take; we are considering requirements for the training of enforcement officers; and we are seeking to exploit opportunities to market Scotland abroad and change its image to that of a healthy country. We are also considering how we can help businesses to exploit the opportunities that the ban on smoking in public places presents.

For the ban to be successful we must consider enforcement, and the Executive will work closely with the Convention of Scottish Local Authorities and local authorities to develop guidance that will ensure a consistent approach throughout Scotland. We recognise the importance of enforcement, and the Executive will provide additional funding to local authorities for that duty.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): As a non-smoker, I have sympathy with many of the aspirations behind the bill. Nevertheless, the fact of the matter is that smoking per se is not illegal. I understand that there are clubs and other places where people who enjoy smoking come together socially to smoke. Why should those people be denied the right to do what is their choice simply because the Executive has decided that it wants clubs to be included in the bill?

Mr Kerr: The bill rests on the Executive's aim of improving public health. The public health of those in a private club, a social club, a pub and a workplace is equally important and valid for me, as the Minister for Health and Community Care, to consider. The point of the bill is the protection of public health and the denormalisation of smoking, and it is my view that Ted Brocklebank's view of the matter is erroneous.

There is good evidence that the measures in the bill will have real-life effects on the public and their families. The success of the bans in Ireland and New York demonstrates that smoking bans work, and compliance rates are high—93 per cent in the Irish hospitality sector and 97 per cent in New York.

Mr Monteith: The minister talks about the success of the ban in New York. Why, then, will he not consider some of the exemptions that are allowed in New York, such as cigar bars?

Mr Kerr: I refer the member to my previous answer. I am pleased, however, that he has brought up the subject of the ban in New York. Back in 2002, few people were more fiercely opposed to the ban than the outspoken James McBratney, the president of the Staten Island Restaurant and Tavern Association. He accused Mayor Bloomberg of being a billionaire dictator and a prohibitionist who would undo small businesses such as his bar and restaurant. However, in early February, Mr McBratney said sheepishly:

"I have to admit, I've seen no falloff in business in either establishment."

He went on to describe what he once considered unimaginable—the fact that customers seem to like the ban. I suggest that the Conservatives, who are making spurious arguments, should reflect on

that point, see the future and join in our efforts to improve Scotland's public health.

In Ireland, sales of tobacco have dropped by 15 per cent and an estimated 7,000 smokers have quit since the ban was introduced. In New York, two years after the ban was introduced, employment in the hospitality industry had increased by 5.7 per cent, the number of openings was up and the number of liquor licenses had also increased. Therefore, as the Executive's financial impact studies show, we expect a nil or positive economic impact in Scotland, although the proposed ban is, primarily, a health measure. Our focus is on providing healthy choices, promoting a clean air environment and protecting everyone from tobacco smoke. We believe that everyone has the right to breathe clean air.

The bill also contains a range of other important health and social care measures. We will lead the way in the United Kingdom by removing existing statutory charges for eye and dental checks. That will bring significant benefits in the early detection of eye and oral disease—to which I referred earlier—and will secure an important role for community pharmacists. Patient protection will be strengthened through the extension of the range of primary care health professionals that is covered by the national health service disciplinary system and the extension of the disqualification criteria in relation to professional conduct.

Mr John Swinney (North Tayside) (SNP): Will the minister give way?

The Presiding Officer: The minister is getting tight for time.

Mr Kerr: I am sorry. Perhaps Mr Swinney can address the matter later, in his speech.

On the other aspects of the bill, I am sure that the Executive will reflect on the report of the Health Committee, especially in relation to adults with incapacity and other such matters that it raises. I note the concerns regarding patient care and health care facilities, in response to which the bill will give Scottish ministers the power to enable health boards to enter into joint ventures that will ensure the renewal of our infrastructure at a local level for local health care. Other such matters are addressed elsewhere in the bill.

The bill will bring direct, measurable improvements to the health of the people of Scotland and provides an opportunity for Scotland to lead the way in the UK. I am delighted that so many MSPs from different political perspectives have united around the bill, which is the most important piece of public health legislation in a generation. Let us embrace this opportunity together. I hope that the Conservatives can, at last, recognise the benefits of the bill so that we can speak with the voice of the whole Parliament

to ensure that we improve Scotland's public health.

I move,

That the Parliament agrees to the general principles of the Smoking, Health and Social Care (Scotland) Bill.

09:31

Carolyn Leckie (Central Scotland) (SSP): I congratulate the Health Committee, the clerks and everyone in the Parliament who has worked hard on this extensive bill and produced excellent reports. There is potential for cross-party support—except from the Tories, but I will come back to them—for a progressive, pro-health agenda, in particular on the headline intention of the bill. I do not need researchers' statistics to persuade me that second-hand smoke has a detrimental effect on health; I have only to see the immediate impact that smoke has on my daughter, who suffers from asthma, when she walks into a smoky room. I am persuaded by the health arguments of the bill, although I have some reservations. I will not dwell on those today but, as the bill progresses, I might come back to them. I am glad that the Executive is prepared to implement a policy that will, I hope, improve Scotland's health; however, I would be more impressed if that policy was presented in tandem with health policies that were even more proactive, such as the provision of free school meals.

It is unfortunate that I am unable to concentrate on the positive aspects of the bill today. The debate has been dominated by the proposed smoking ban—probably predictably and rightly—and I note that the minister spent only one minute of his speech in talking about the section of the bill that makes reference to joint ventures and LIFT—local improvement finance trust—schemes. However, contained in the bill is a section that, if not removed, is so fundamental that the Scottish Socialist Party—and perhaps others whose policies are pro-public finance—will end up having to oppose the bill. That is why I hope that all parties—although perhaps not the Tories, who I imagine think that that is the only good section of the bill—will support our amendment to take out the section of the bill that relates to joint ventures.

It is important to differentiate between what the Executive, civil servants and public bodies say about the policy intentions around LIFT schemes, intellectual property and so on, and what the bill allows. In answer to my written question on the subject, Andy Kerr stated:

"There is no policy intention for joint venture companies established to provide clinical services."—[*Official Report, Written Answers*, 21 March 2005; S2W-15136.]

Nevertheless, the bill facilitates that. It is obvious from the evidence that was given to the Health

Committee that there is no support for the claimed benefits of LIFT schemes. The Executive and the bodies that are expected to implement the bill have been, at best, vague about how LIFT schemes would be implemented and what the impact would be on service provision, accountability, staffing levels and the terms and conditions of any future staff. The Executive has not ruled out staff transfer, and the Scottish Trades Union Congress/Executive staff protocol exists only as long as the Executive enforces it. The SSP believes that that is not enough protection for workers.

There are already more health centres in joint premises in Scotland than there are in England, and there is much greater potential in Scotland than in England for adverse outcomes for staff. None of the witnesses who were in favour of LIFT schemes was able to give us details of their impact on public services, but it is safe to assume that the high costs of private finance initiatives, in financial and clinical terms, will be replicated in LIFT schemes.

The returns for the private sector, which is 60 per cent dominant in the schemes, are at least double what they would be under public procurement. As we have seen with PFI, the public purse, services, patients, clients and staff pay handsomely for the private sector's bumper returns. I recommend that members read in detail the evidence presented by Dave Watson of Unison, of which I am a member, and contrast its erudition, precision and confidence with the woolly, vague, ill-informed and sometimes pathetic case submitted by the advocates of LIFT schemes.

Mr Kerr: Will the member accept on record the fact that 50 per cent of general practitioner premises are privately owned and that capital support in the public sector, particularly in health, has increased radically over the past few years? All we seek to do with these proposals is to provide another option. However, it must be the best-value option, and that will clearly form part of the assessment of such projects. We want to attract additional investment at a local level in order to proceed with good examples of partnership working such as the Dalmellington area centre, Strathbrock partnership centre and Leith community treatment centre. The measures will allow more of that activity to happen.

Carolyn Leckie: That case has indeed been made for PFI; however, it has been blown out of the water by Allyson Pollock and others. I do not need to repeat their points again this morning.

The proceedings of the so-called joint conference that was sponsored by E C Harris and 75 per cent dominated by the private sector were summarised and submitted as evidence to the

Health Committee. One could almost see the slaver's lips jumping off the page. I will give the chamber an example of how ill-informed that conference was. It was asserted that there was less deprivation in Scotland than in England—and Scotland, by the way, was thought to hold more exciting opportunities for the private sector as far as LIFT schemes were concerned. Those are the kind of people from whom the Executive prefers to take advice.

One crucial matter is critical mass. The participants in the E C Harris conference certainly identified that as a vital issue for them. The banks like to finance big deals, which means that health boards' capital spending priorities become determined not by clinical priorities or health needs but by the demands of the banks. They determine the conditions of the finance and therefore dictate the size of projects.

It is clear from the evidence—and from the Executive itself—that there is no detail on these proposals and no rush to flush it out.

Stewart Stevenson: Will the member give way?

Carolyn Leckie: I am sorry—I am in my last minute.

As a result, it is not necessary to tie up this highly controversial measure in a generally positive piece of legislation. Although the measure is worthy of public debate on its own, it has not been able to attract that because of the high-profile nature of the smoking ban.

The Tories could, and should, be isolated today. I ask the Parliament to support my amendment to ensure that at stage 1 of the bill its passage can have cross-party support—with the exclusion of the Tories.

I move amendment S2M-2667.1, to insert at end:

"but, in doing so, believes that the Scottish Executive's pursuit of further privatisation in the form of joint ventures in section 31 of the Bill compromises the general benefits to health from the Bill and potentially undermines cross-party support for the passage of the Bill."

09:38

Shona Robison (Dundee East) (SNP): I welcome this stage 1 debate. I thank all those who gave evidence to the committee; I also thank the clerks for all their hard work in helping us with what has been at times a rather difficult bill.

The bill is perhaps a lesson in why bills with miscellaneous provisions are generally not a good idea and should, if possible, be avoided. The bill is dominated by the proposals to ban smoking in enclosed public spaces; however, it also contains very important provisions that relate to the

regulation of the workforce, the introduction of free eye and dental checks, compensation payments to hepatitis C sufferers and the introduction of new powers to allow the formation of joint ventures for the provision of facilities or services in the NHS in Scotland. The minister did not have an awful lot of time to address all those issues in his speech. Similarly, the Health Committee found effective scrutiny of the bill's component parts to be an extremely difficult challenge, although I must say that it made a valiant effort to do so.

I want to start with the part of the bill that focuses on smoking. It was fortunate that the committee had heard a great deal of relevant evidence during our consideration of Stewart Maxwell's Prohibition of Smoking in Regulated Areas (Scotland) Bill, because otherwise we would have been faced with a very tight timescale in which to take that evidence.

The committee took evidence from both sides of the argument and went to Ireland to see how its ban was working out. Throughout this debate, claims and counterclaims have been made about, for example, the dangers of passive smoking and the impact of a smoking ban on health and on the economy. For me, the question is very simple: on the balance of probabilities, will this measure improve public health? Having listened to all the evidence and having seen for myself the impact of a ban in Ireland, I feel that it will.

Phil Gallie (South of Scotland) (Con): I am well aware that the Health Committee has recently expressed concerns about obesity. Has the member seen any research that links cessation of smoking with weight gain? If so, does that offer an added health risk?

Shona Robison: To be perfectly honest, that is a silly analogy. The member and his colleagues must assess whether, on the balance of probabilities, the measure will improve public health. I have to say that, at the start of the process, I had to be converted to support the measure. However, if we really listen to the evidence, we can conclude only that the measure will improve public health.

Mr Monteith: Will the member give way?

Shona Robison: I will give way in a moment.

One important aspect of the measure is the denormalisation of smoking. So many children in so many communities see smoking as a normal activity, because people all around them do it. If we denormalise such activity, particularly in enclosed public spaces, we will give the next generation a fighting chance of not taking up smoking at the levels that we have seen in the past. That can be only a good thing, and I hope that Brian Monteith will at least acknowledge that.

Mr Monteith: The member said that we can draw only one conclusion from the evidence. If so, will she explain to me how it is possible for a minister from the Labour Party in the Scottish Parliament to conclude that there should be a total ban on smoking in public places, while a Labour minister at Westminster can conclude from the same evidence that only a partial ban is required in a different part of the UK?

Shona Robison: Could it be that John Reid is wrong? I will be very interested to see the absolute mess that the Westminster Government gets itself into when it tries to implement a partial ban and to decide, for example, whether a premises that serves microwaved food should be included in a smoking ban. It will be a dog's breakfast. The courts will be full of rulings to determine matters one way or the other. Because that approach will be such a nightmare, I was persuaded that an all-out ban was the way forward. I think that John Reid's assessment is simply wrong.

However, we need to consider a number of important issues. For example, people have argued that smoking will be displaced into people's homes. I do not agree that that will happen—indeed, the evidence from Ireland does not support such an assertion—but I think that the situation should be monitored effectively. In addition, because the number of people who want to give up smoking will increase as a result of the legislation, smoking cessation opportunities must be available when and where those people want them.

We must also think about enforcement. I listened to the minister's comments about the concerns that must be addressed, but the matter is crucial. After all, the ban's success in Ireland was in no small measure due to the way in which it was enforced. Enforcement was handled in a non-confrontational manner after the event. For example, if an instance of smoking in a public house was reported, that was dealt with later rather than at the time, so there was no upfront confrontation between enforcement officers and members of the public. We must avoid such situations. The Health Committee was concerned about the fact that it appears that individual local authorities will be able to determine local enforcement strategies. The minister and the Health Department must give clear guidance on what is expected in that regard.

Another ace card that the Irish have had is the Office of Tobacco Control, which was the driving force behind the package of measures that the Irish Government introduced. I believe that we need an equivalent body in Scotland to oversee the proposed changes. I look forward to hearing what the Deputy Minister for Health and Community Care has to say on that.

I realise that time is pressing, so I turn quickly to the other elements of the bill. Free eye and dental checks are welcome and have long been supported by members of the Scottish National Party. However, the committee received strong evidence—especially from the British Dental Association—that the workforce would struggle to deliver free dental checks. The minister has been questioned about that in other debates. We must acknowledge the BDA's concerns that there will not be sufficient numbers of staff to deliver the free checks.

I want to highlight the Finance Committee's strong concerns about the bill's process. It said:

"the Committee is deeply concerned that it is being asked to scrutinise the financial implications of a Bill where the staffing and service implications which crucially determine the cost do not appear to have costed in a manner that gives the Committee confidence in the figures."

We are talking about a classic case of putting the cart before the horse. When we considered the bill, we had not seen the minister's action plan or a statement of his intentions. That is not a good way in which to proceed with legislation or financial memorandums. The Finance Committee expressed very strong views on that.

I will deal quickly with hepatitis C payments.

The Presiding Officer: Briefly, please.

Shona Robison: I have a number of concerns, of which the minister will be aware. I would like him to reconsider the exclusion from the compensation scheme of those sufferers who died before 29 August 2003. The committee has expressed sympathy with the view that that matter should be re-examined and I hope that Andy Kerr will do that. I also ask that the issue of residence be looked at. If someone was affected by hepatitis C as a result of receiving contaminated blood or blood products through the national health service, it should not matter where they live now; if that is how they became infected, they should get the compensation payments as of right.

I am being asked to wind up, so I will just make a brief comment on joint ventures. I am pleased that Helen Eadie welcomes the public investment trust model, on which we will seek to lodge an amendment at stage 2.

Although I have expressed reservations in certain areas, I support the bill's general principles and look forward to the amendment process at stage 2.

09:48

Mrs Nanette Milne (North East Scotland) (Con): The Smoking, Health and Social Care (Scotland) Bill is complex and diverse. The fact that it contains highly varied subject matter has

made it quite difficult to deal with. As Shona Robison said, had the Health Committee not decided to use the evidence that it took on the Prohibition of Smoking in Regulated Areas (Scotland) Bill—which was introduced by Stewart Maxwell—in examining the Executive's bill, it would have been even more difficult for us to be ready for today's stage 1 debate.

It is clear that the Executive wants to rush through its smoking policy and I am not sure that that is wise, especially if one stops to consider how short the lead-in time to implementation will have been in comparison with the lead-in time to the introduction of the Irish legislation. In Ireland, years were spent preparing and educating the public so that they were ready for an all-out ban on smoking in enclosed public places by the time that the legislation was enacted. I do not think that the public in Scotland have reached that stage yet.

The Conservative group is generally content in principle with the proposals in parts 3, 4 and 5 of the bill, which deal with pharmaceutical care services, discipline and miscellaneous matters such as joint ventures and amendments to the Regulation of Care (Scotland) Act 2001. We agree with the recommendations of the Health Committee's report on those matters.

We have no serious difficulties with part 2, in so far as it deals with general dental services in sections 11 to 14 and with practitioner lists in sections 15 to 17, although we do not think that the Executive's recent announcements on its proposed changes to the dental service in Scotland will solve the crisis in NHS dentistry. We do not support sections 9 and 10 in part 2, which relate to free dental checks and eye examinations, nor do we agree with part 1, which deals with the prohibition of smoking in enclosed public places. Therefore, we are unable to support the general principles of what is a complex bill and we will be opposing the motion.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): So far, the Conservatives have given us spurious reasons for not supporting the bill, such as those to do with pipe and cigar smoking and obesity. My father died of lung cancer and I think that the sooner the bill is in place, the sooner we will save lives. I ask the member to please give us some firm reasons for not supporting the bill.

Mrs Milne: As someone who has worked in a thoracic unit, I am well aware of the risks of smoking. There is a difference between smoking and occasional exposure to environmental tobacco smoke, on which the research is inconclusive. There is research to support both sides of the argument; the debate is still open.

Mr Stone: We are talking about human lives.

Mrs Milne: I am aware of that.

We feel that the proposal for free dental and eye checks for all by 2007 would not be the best use of scarce resources. The most vulnerable people are already eligible for free checks; the difficulty lies in persuading them to attend for those checks and, in the case of dental checks, their being able to find a dentist to carry them out. Every effort must be made to ensure that those people access the services that are already freely available to them.

As we heard in last week's debate on dentistry, there are not enough dentists in the NHS to carry out the checks. Once the checks have been done, who will carry out the treatment, given that there is such a lack of NHS dentists? I agree with the concern that Eleanor Scott voiced during last week's debate, which is that it is unethical to diagnose a patient and then not treat them.

Dr Sylvia Jackson (Stirling) (Lab): Will the member give way?

Mrs Milne: Not at the moment.

We support the committee's recommendation on the introduction of a comprehensive dental and sight-screening programme for children at the start of their primary and secondary school education.

With regard to the proposed ban on smoking in enclosed public places, let the Parliament be in no doubt that the Conservative group wants people to have the choice of a smoke-free atmosphere in enclosed public places, such as restaurants, pubs and public transport. Great strides forward have been made in recent years without legislation. Buses, trains, aircraft and public buildings, as well as many workplaces and restaurants, are now smoke free and the licensed trade, too, is coming on board. J D Wetherspoon has led the way by introducing a smoking ban in most of its pubs.

Increasingly, choice is developing for non-smokers and those smokers who prefer smoke-free atmospheres indoors. As public demand increases, there will be more and more smoke-free premises. The licensed trade is keen to co-operate and it has indicated its willingness to make concessions and to alter premises. We want to work with the industry to enhance choice for non-smokers.

Dr Jackson: In light of what the member has told us, how does she respond to the British Medical Association? The BMA briefing says:

"The BMA fully supports the principles outlined in the Bill which seeks to provide comprehensive legislation to create smoke-free enclosed public places".

The Presiding Officer: Mrs Milne, you have three minutes left.

Mrs Milne: I have had a discussion with the BMA and it knows my position on that.

As a lifelong non-smoker and someone who accepts that the mass of her profession is in favour of the Executive's proposals, I have thought long and hard about them in the past few months, but I remain unconvinced that legislation is the right way forward—especially at this point in time, when the licensed trade is eager to become involved in improving the atmosphere for its customers and its workforce. I fear that the bill will result in displacement of smoking to the home and an increase in home consumption of alcohol, which is itself a public health problem.

Mr Maxwell: Will the member give way?

Mrs Milne: I am taking no more interventions.

I feel for smokers—especially women smokers—who will be forced outside into inferior facilities, when their habit is legitimate. Several women whom I met in Ireland forcefully made the point that, since the ban had come in, they felt that were being treated like second-class citizens and they were unhappy about that. I am concerned for pensioners, particularly in small villages, who will miss the conviviality of a pint and a cigarette at their local in the company of their pals.

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): Smoking kills people.

Mrs Milne: Mike Rumbles's constituency contains small villages where there is no choice of licensed premises. I worry for the future of establishments that are unable to provide outdoor facilities for their customers. There was not a level playing field in Ireland—that was obvious.

I am forced to the conclusion that choice is better than coercion. The increasing willingness of publicans to respond to the wishes of their customers will soon result in greatly increased choice for non-smokers, while leaving some choice for those who continue to smoke. People must take responsibility for their own health and lifestyles. I have little doubt that business will respond accordingly.

My colleagues and I feel that there is an undoubted public health case for encouraging people to stop smoking and deterring them from starting in the first case. We support the Executive's plans for a sustained and vigorous campaign against the taking-up of smoking and we would give practical help, support and encouragement to those who wish to kick the habit. Believe it or not, like the Executive, we too have the ultimate goal of achieving a smoke-free environment for everyone.

09:56

Mike Rumbles (West Aberdeenshire and Kincardine) (LD): The Liberal Democrats believe that the bill will dramatically improve the health of

the nation. I will first focus on the measures to introduce free eye and dental checks for all, which were a central part of the Liberal Democrats' election manifesto in 2003. Those free checks for all underpin our commitment to health promotion and early intervention. On the proposal for free eye checks, it is remarkable that, as the committee report points out,

"All those who gave oral evidence to the committee, namely, Optometry Scotland, the Scottish Consumer Council, Fife Local Health Council and the health boards (Glasgow and Highland) and all those submitting written evidence were in favour of the proposal."

There was a similar unity of view on the free dental checks—all those giving oral evidence to the committee were in favour of the proposal. Every member of the Health Committee, with one exception, believes that, if fully implemented, those measures have the potential to improve standards of oral health and reduce the number of long-term sight problems in Scotland.

I say "with one exception", because it was clear that the one Conservative member of the committee would oppose the measures come what may. It is interesting that, even when there is unanimity among those giving evidence to the committee, the Conservatives cannot bring themselves to listen to that evidence and draw the correct conclusions from it.

Mrs Milne: Will the member take an intervention?

Mike Rumbles: Not yet.

The dogmatic approach taken by the Conservative party to the measures in the bill is flagged throughout the report and does not go with the spirit of the committee system. Surely the Conservatives could have asked for evidence from witnesses who were opposed to the measures. Why did they not ask for such witnesses to come forward? Was it that they simply could not find anyone willing to come to the committee to support their views?

The major issue in the bill is the proposal to prohibit smoking in wholly enclosed public places. In June 2004, the Liberal Democrats became the first major party in Scotland to adopt that proposal as party policy. I am pleased that the Health Committee accepts that

"evidence exists of adverse health effects from passive smoking".

The committee's report states:

"The majority of members, therefore, support the proposal contained in this part of the bill, believing that it will help save lives."

The report refers to the "majority of members" because, once again, the one Conservative member of the committee refused to accept that

passive smoking kills. That is typical of the Conservative party's approach to almost all the measures in the bill that are aimed at improving the health of Scots across the nation.

Mr Monteith: Can the member cite any medical evidence received by the committee that suggests that passive smoking kills?

Mike Rumbles: I will come to that shortly. When members of the Health Committee visited Ireland to see how similar measures were being implemented there, we consistently heard the view expressed that it was important that every political party behaved responsibly by backing the health measures.

There is no dispute about the fact that passive smoking kills. In Scotland, only the Conservative party steadfastly refuses to accept the medical evidence. The attitude of the Conservative party on the issue is nothing less than neanderthal and nothing less than a scandal. The Conservative party seeks to undermine the medical evidence that passive smoking kills. It sides with the tobacco manufacturers rather than with patients and it sides with FOREST—the Freedom Organisation for the Right to Enjoy Smoking Tobacco—rather than with the World Health Organisation. Shame on the Conservative party.

Brian Adam (Aberdeen North) (SNP): Does the member agree that the arguments advanced by the Tobacco Manufacturers Association and, indeed, by the Conservative party echo those that the industry advanced when it did not accept that smoking kills? It is the same argument, recycled.

Mike Rumbles: I could not agree more. That is why it is absolutely shameful for the Conservative party to take the attitude that it has taken.

As for the medical evidence, Professor David Hole estimates that there are between 850 and 950 deaths from passive smoking every year among lifelong non-smokers in Scotland. His recent report states:

"Passive smoking represents the greatest risk to public health when compared to other forms of 'involuntary' environmental exposure."

It is because of the attitude of the Conservative party in challenging the medical evidence on passive smoking that so much time has to be devoted to the issue. In other countries, such as Ireland, where there is a responsible Opposition, no such debate is needed. All the time and effort can be focused on making sure that people are aware of the dangers of passive smoking and on getting behind the measures to tackle the problem.

In Ireland, the people are behind the measures that the Irish Government is taking. Tobacco sales have fallen by some 17 per cent, as we were informed by Ireland's deputy health minister.

Fewer people are smoking in Ireland—estimates suggest that as few as 25 per cent of the adult population are still engaged in smoking. The measures are working. The Irish public are benefiting from them and all the national political parties back them. Is it too late to ask the Conservative party to embrace the medical evidence that passive smoking kills and then to join everyone else in tackling the problem? If we are serious as a nation about tackling passive smoking, we cannot take half-measures, as they will not solve the problem.

The Scottish Licensed Trade Association argues that economics should outweigh health; it argues that we should have a partial ban. The Tobacco Manufacturers Association argues that proper ventilation of premises is the answer. Of course, neither of those approaches is acceptable for those who want to see an end to the situation in which some people cause the deaths of others through passive smoking. As the committee stated,

"ventilation would not provide an adequate alternative, because it does not remove carcinogens."

In other words, people might feel better, but they would still take in carcinogens. The same argument applies to so-called smoke-free areas.

Mrs Milne: Will the member take an intervention?

Mike Rumbles: I have already taken interventions from the Conservatives.

Unfortunately, we do not have time adequately to examine many of the issues that the bill raises—that is one of the problems with this type of bill. I had hoped to refer to enforcement. One issue that the committee flagged up was the hepatitis C cut-off date, to which Shona Robison referred. I hope that the minister will look again at that matter.

In conclusion, we believe that the bill contains measures that will dramatically change Scotland for the better. We will tackle the problem of passive smoking and, by doing so, we will save lives. With free eye and dental checks, we will make a difference to the nation's health through a comprehensive health promotion and preventive medicine initiative. Taken together, the measures should see us progress to a better Scotland in the 21st century. I urge everyone to give the bill their full support.

10:04

Janis Hughes (Glasgow Rutherglen) (Lab): I echo my colleagues on the Health Committee in thanking the clerks for their efforts to date in regard to the bill. The bill has not been the easiest that we have ever dealt with and I am sure that a

great deal of work is ahead of us at stage 2. The support of the clerks and others will be crucial in ensuring effective scrutiny of such a diverse bill.

As a member of the Labour Party and of the Health Committee, I am delighted to support the bill, which has the potential to become one of the most important pieces of legislation that the Parliament will ever pass. However, as we have heard from other members, it is not perfect yet. In its stage 1 report, the committee expressed concerns that the bill is too diverse, as Shona Robison and Mike Rumbles said. The committee believes that the Executive should try to avoid that approach in future. My speech will focus on three of the bill's provisions: the prohibition of smoking in public places, which is the headline grabber; optometry services; and the authorisation of medical treatment.

None of us is comforted to be reminded that Scotland continues to be the sick man of Europe, but we must stop saying that and start taking action. When the committee first took evidence on a smoking ban in the context of Stewart Maxwell's member's bill, I had an open mind on the matter and was yet to be convinced that initiating such a move would bring real long-term health benefits to the people of Scotland. However, as our committee analysed the Prohibition of Smoking in Regulated Areas (Scotland) Bill and the Smoking, Health and Social Care (Scotland) Bill and as we considered the evidence, which we have heard much about this morning, from other places—most notably Ireland and New York, where the compliance rates, as the minister said, remain high—I have become ever more certain that a total ban will have a positive impact on the nation's health.

We all know the statistics, which we have heard much about this morning, and we all know the scale of the problem. In my mind, there is absolutely no doubt that the introduction of a ban on smoking in enclosed public spaces will protect the 70 per cent of non-smoking Scots from the harmful effects of environmental tobacco smoke. As other members have said, a ban will also encourage smokers to give up smoking. That is borne out by the experiences elsewhere, including in Ireland, where tobacco sales are down significantly since the introduction of the ban.

Marilyn Livingstone (Kirkcaldy) (Lab): Despite Nanette Milne's claim about the ban's impact on women in Ireland, does the member agree that the increased numbers of young women who smoke represent the real impact on women? Does she agree that the task ahead of us is to bring about a sea change to try to stop young women smoking, given the impact that smoking has on their health and on that of their families both now and in later life?

Janis Hughes: I totally agree that the high and increasing rates of smoking among young women are a cause for concern and an issue that needs to be addressed. The one issue on which I agree with Nanette Milne is that we need to ensure that the bill will not simply ban smoking in public places, but ensure that people—and, in particular, young people—do not take up smoking in the first place. I know that the Executive has agreed to move forward in that regard.

Any debate that is inspired by the bill must inform people of the real and serious dangers to human health that are associated with passive smoking. In the parliamentary debate that followed the First Minister's statement in November, I highlighted concerns over the implications for children if parents were to choose to smoke in the home instead. Bearing in mind the similar concerns—no specific evidence was available—that were raised with us in the Republic of Ireland, the committee has recommended that the issue be monitored following the ban's implementation.

I support what Shona Robison said about the Office of Tobacco Control. In Ireland, our committee saw at first hand how that body plays a vital role in co-ordinating inspections in co-operation with environmental health departments. It was also proactive in delivering a communications strategy.

The bill will introduce significantly more than just a smoking ban, as it will also introduce many important benefits and offer us an opportunity to redefine how we deliver certain services. In particular, I welcome the bill's provisions on optometry services and I strongly support the introduction of a comprehensive sight-screening programme at the start of primary and secondary school education so that problems can be identified and treated at an early age. I speak from personal experience, as one whose mother thought that my complaints of short-sightedness in primary school were made only because I was after a pair of attractive glasses. However, I was diagnosed as being extremely short-sighted when I was screened in secondary 1 and have worn glasses or contact lenses ever since. I benefited from that screening, so I think that it is important that we screen children at an early age so that they can avoid some of the problems that can affect them in later life.

Optometry Scotland proposes that primary access to eye care should be moved away from general practice and ophthalmology clinics into community optometry practices. The organisation argues that such a move would not only allow hospital clinics more time and resources to deal with more complicated conditions, but offer patients quicker diagnosis of problems. Many optometrists feel that they could contribute more in

a community setting than they contribute at the moment. The bill will allow us the opportunity to redefine how we deliver those services.

On incapacity certification, I share the committee's concerns about the bill's amendments to the Adults with Incapacity (Scotland) Act 2000. I fully support the Executive's desire to extend the range of health professionals who can issue an incapacity certificate, but I am more dubious about the proposal to extend the duration of such certificates to three years. Although the professional bodies from which we took evidence supported such an extension, a number of patient representatives expressed their reservations. We need to consider the issue carefully, but I support the committee's view that we should not change the current legislation on the duration of certificates.

I believe that the bill will have a significant and long-lasting effect on the lives of the people of Scotland. The Scottish Executive has taken the lead in the fight against ill health and it deserves to be commended for its bravery. I am delighted to support the bill and I urge members to follow suit.

10:10

Stewart Stevenson (Banff and Buchan) (SNP): It has been said that life provides five kinds of people: those who make things happen; those who watch things happen; those who wonder what happened; those who did not know that anything happened; and those to whom things happened. As with so many subjects, we in the Parliament need to be those who make things happen for the benefit of those to whom things happened. Nowhere is that more true than in the case of the primary issue with which the bill deals. I come to today's debate as an unashamed extremist. Bertrand Russell said that only extremists create change; those who sit in the middle and agree with the herd create no change. That is why I have no tolerance for those who wish to maintain the status quo.

Let me deal with just a few of the claims that are made by the smoking lobby in one form or another. Nanette Milne claimed that the industry is keen to co-operate, but I need only refer her to the TMA's evidence to the Health Committee on the Prohibition of Smoking in Regulated Areas (Scotland) Bill. The submission states:

"The TMA does not believe it to be appropriate or legitimate"

to

"raise awareness of the dangers of passive smoking and smoking; assist in changing the attitude of the public towards smoking, and encourage smokers who want to quit smoking and help ex-smokers from relapsing."

I refer members to page 65 of the committee's stage 1 report on that bill.

Philip Morris International created the slogan:

"Today's teenager is tomorrow's potential regular customer".

We can see where that company is coming from. However, in 1999, it commissioned the Arthur D Little consultancy to study the economic impact of smoking deaths in the Czech Republic. The resulting report proudly informed the Czech Government that each smoking death provided an annual public benefit of \$1,277, which would amount to \$147 million each year.

How did such homicides—that is the only appropriate word—make their social contribution? Using what Arthur D Little described as

"the results of the exercise of our best professional judgement"—

that is, the judgment of the hangman—the report identified that deaths from smoking produced savings on health care expenses, housing for the elderly, social security and pensions. Even more surprising, the report's findings on the effect of smoking on employment were that

"replacing those who die early ... leads to savings in social benefits paid to the unemployed and in the costs of re-training".

Perhaps we should hand medals—posthumous medals, of course—to those selfless souls who smoke themselves to death for society's benefit. Would their families value such a medal more than the presence of the loved one who was killed by these evil peddlers of death? After all, those who make such a sacrifice are hardly volunteers for the task, when they are simply the collateral damage that is inflicted on friends in the cause of smoking company profits.

As James VI wrote in 1604—this debate ain't new—the point is that "habitus, alteram naturam". That is, habit changes nature. Four hundred years ago, James VI identified the pernicious effects of nicotine addiction, but we are fortunate to have other views that are of more social value, such as those that are expressed in the recent NHS document. The document suggests that, in 30 years' time, the smoking ban will save 406 lives a year. I believe that to be a fairly modest estimate, but I am reminded of Napoleon's demand for poplar trees along Europe's military routes to provide shade for his soldiers from the sun as they marched to war. His generals said, "But, Napoleon, it will take 30 years before the trees are high enough to deliver a benefit." He said, "Then there's no time to waste." So it is in this case. We must plan for financial impacts, positive or negative, but what must drive us is releasing our people and their families, friends and colleagues from the scourge of the addiction inflicted by the

ringmasters of evil in the employ of the tobacco industry.

The NHS report identifies possible negative impacts on the viability of smaller bars. I recently visited a bar in Burghead and had some of the issues put to me forcefully. I have a few thoughts for the secondary legislation that will follow the bill, because we must protect the small village pub, which plays an important role in local societies. First, we must hold the line on exemptions—there must be none—because that would create unfair competition. However, I might have one exemption to propose later. Secondly, we must seek proactive assistance for such enterprises before implementation, to allow them to broaden their appeal, develop new markets and directly support their customers in their efforts to reduce or eliminate their dependency on tobacco. Finally, I make the entirely personal suggestion that we should consider whether transitional business rates relief could be given for a couple of years, so that bars that can demonstrate a link between reduced trading and the smoking ban can have limited compensation.

James VI said:

"Tobacco ... hath a certaine venemous facultie ... which makes it have an Antipathie against nature".

That is true.

I close with my one suggested exemption. I believe that we should consider exempting Tory social clubs from the provisions of the bill. That would make a decisive contribution to eliminating the scourge of Tories from Scotland and Scottish society, although perhaps we should protect even the Tories from themselves.

10:17

Irene Oldfather (Cunninghame South) (Lab): I did not think that I would be able to agree so whole-heartedly with Stewart Stevenson, but we may have found an area of consensus on his final suggestion for an exemption.

Today's debate represents a milestone in the short history of our Parliament. Since 1999, we have passed 83 pieces of legislation, many directly improving the lives of ordinary people, on free personal care, the abolition of tuition fees and a raft of other measures. However, none has impacted on saving lives in the way that the Smoking, Health and Social Care (Scotland) Bill will do. To my mind, it is the most important piece of legislation to impact on the health of our people in a generation.

Other members will speak about the wider provisions of the bill, but I hope that members will understand my desire, as convener of the cross-party group on tobacco control, to speak to the

principles in part 1. In doing so, I want to reflect on what I believe has been a sea change in attitudes in Scotland over the six years that the Parliament has been in place.

In the early years of the Health and Community Care Committee, of which I was a member, a poll was taken of committee members' attitudes to a smoking ban. The fact that a number of us, including Hugh Henry and me, supported a full ban on smoking in public places made the evening news. Indeed, I have to say that I was not a popular person in the Market Bar in Kilwinning that weekend—sometimes we have to stand up for what we believe in. Attitudes have definitely changed in the past six years, and I hope that the work of the cross-party group, set up in 1999, has contributed to raising awareness of the debate on passive smoking and to changing those attitudes.

I acknowledge the work of individual back benchers, such as Stewart Maxwell and Hugh Henry—before he reached the dizzy heights of ministerial office—and of organisations such as the British Medical Association, Action on Smoking and Health and the trade union movement, who have assisted us in reaching the dynamic point that we have reached today. I have no doubt that, without the commitment of the Scottish Executive, the Minister for Health and Community Care and the First Minister, we would not have such a comprehensive piece of legislation. I hope that in the coming months we will maintain that position and that we do not dilute the bill under the pressure that will inevitably come upon us all.

There is a moral imperative to act. We know that smoking kills 19,300 Scots every year and that one death in five in Scotland is smoking related. We know that smoking is responsible for 33,500 hospital admissions every year. Second-hand smoke is a class A carcinogen, and that costs the NHS in Scotland an estimated £200 million every year.

Those figures represent the financial costs, but there are also human costs. No one who attended the reception at Edinburgh Castle last night could fail to be moved by the stories of how smoking had robbed loved ones of time with their relatives. They would know that this is the right thing to do. Anyone who has watched someone die of lung cancer, as I have, will know that this is the right thing to do. Anyone who has lost a mum or a dad, or a gran or a grandpa, through smoking-related illness will know that this is the right thing to do. That is why we must stand firm in the weeks and months ahead and why we must not water down the bill. I am pleased that we have the degree of cross-party support that we have for the measures.

I would like to mention a few things that I want to draw to the Executive's attention. I call them the

three Es: exemptions, enforcement and enclosed areas. I hope that I have time to deal with them all; I shall certainly do my best.

Starting with exemptions, I welcome the approach that the minister has taken in stating to the Health Committee and to the Parliament that the overall principle of the bill is to move towards smoke-free environments with minimum exemptions. The approach to exemptions so far has been humanitarian—with the exception, perhaps, of Stewart Stevenson's final suggestion. I understand that if people live in a residential home, that is their home, and that residents should be able to smoke in their own room if they want to do so. The same is true of hospices and psychiatric units. However, I am concerned that there should be clearly defined and limited smoking areas in such premises, in the best interests of other patients, staff and visitors. I know that the Executive is keen to work with the Scottish Commission for the Regulation of Care to ensure that all care homes are clear that their duty of care is to vulnerable, elderly people who would be at risk.

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

Irene Oldfather: I will not be able to cover all the issues that I wanted to cover, but I would like to say a quick word about day centres. I am aware that the Health Committee's stage 1 report highlights concern about the omission of day centres from the list of exemptions. Although I appreciate that view, I remain unconvinced that day centres should be exempt from the ban. Although day centres provide a vital service, they do not qualify as places of residence. People use them on a day-to-day basis in a similar manner to attending school, college or work, and I do not think that there are sufficient grounds to grant a residency exemption. I would be particularly concerned about the precedent that that could set for other areas. I am not persuaded of that argument.

My time is running out and I do not have time to address enforcement and enclosure, but I shall write to the minister about those issues on behalf of the cross-party group.

Today we begin a journey to change the lives of young Scots. They are the generation that wholeheartedly supports the change. I have not visited one school in my area where one person has said that it is not a change that they want. We must not let them down. I urge members of all parties to support the principles of the bill.

10:24

Eleanor Scott (Highlands and Islands) (Green): The various proposals in the bill are

generally ones that my party and I support. I agree with other members that it is an awfully motley collection of disparate bits of legislation, and I echo the remarks of other members and of the Health Committee that those matters would have been better dealt with separately. I strongly endorse the committee's comments on that point. Smoking is clearly the most important and innovative issue addressed in the bill and will naturally take precedence in the debate, but the other issues merit a bit more time than we have been able to give them because they have all been lumped together.

The prohibition of smoking in enclosed public spaces is something that is easily supportable, and my party has supported it from the beginning. I will talk about some of the arguments that have been used against it. One is the idea that people will smoke more at home. As has been said in previous debates, the evidence is against that. The experience of a workplace ban on smoking in Australia is that it resulted in people smoking less at home because of the greater awareness that the campaign had raised.

The process of denormalisation that the minister spoke about will be set in motion by a ban. People will smoke less in front of people—a societal change is happening anyway and the ban will ensure that it continues. I support the majority of the committee on that point.

Many of the alternatives that have been proposed for the protection of non-smokers in public places would, in my view and in the view of others, be ineffective. We have had extensive lobbying from the licensed trade. I take Stewart Stevenson's point about having to protect the small village pub, but three quarters of the residents of the small village—the three quarters who do not smoke—might be more inclined to go to the pub if they knew that it was a smoke-free environment. There might be a slight, temporary dip in licensed trade, but afterwards we could expect an increase, a healthy licensed trade and a much healthier environment.

In a previous debate, I mentioned my brief visit to Ireland and the sheer pleasure of being in a pub that was full of music, full of people and full of good humour and great conversation, but not full of smoke. The smokers occasionally went outside, but they smoked a lot less.

Mr Stone: As Eleanor Scott knows, I have visited Ireland quite frequently. Would she not agree that when smoke is taken out of the environment in which one is eating and drinking—I sound as if I am a heavy drinker; I am not—one tastes the beer, tastes the whisky and enjoys the food more? That is a marketable benefit.

Eleanor Scott: I agree. The pubs are cleaner and there is a much more pleasant environment. As I said, as three quarters of people do not smoke, many people will find going out to be a much more pleasurable experience.

I take Nanette Milne's point that there is a fairly short lead-in to the ban compared with that in some countries that have introduced similar bans. There is a definite need for a pre-ban publicity campaign. However, there is a lot of awareness and many people are talking about the issue. I share with members a conversation that I had with my son, who is an allegedly non-smoking student, who proposed to share a flat with some of his friends, some of whom I knew were smokers. I jarred with him a little bit about that in relation to passive smoking in the home. He said, "Well mum, they will stop anyway when the ban comes in." There is a general expectation among young people who go out a lot that the ban will be introduced and that they will modify their behaviour accordingly. That shows that the denormalisation that the minister spoke about is already starting to happen.

I agree with the committee that some enforcement issues need to be addressed. I also note the committee's comments on the crucial role and effectiveness of the Office of Tobacco Control in Ireland and the fact that we do not have an equivalent. Perhaps we do not need one, but the matter should be considered as the bill goes through Parliament. We should also consider the level of fines for breaches of the legislation.

I will move on to the proposals for free oral examinations and dental checks and eye examinations and sight tests. We have already debated extensively the dental side. As Nanette Milne mentioned, my views are on record. I have concerns about the ethics of doing examinations that may reveal a need for treatment if that treatment cannot then be provided. However, I support that part of the bill—I see that point not as a reason not to carry out the checks but as a reason to treat the dental staffing issue with great urgency. I know that the matter is being examined. The committee mentioned capacity issues, which are real.

I will put on my former school doctor's hat and talk about the committee's strong recommendation that comprehensive dental and sight screening should be done at the start of primary and secondary school. I agree with that, but in the case of sight screening I make a plea for it to take place earlier. When we screen vision or screen for eye pathology in young children, we are not necessarily looking only for their need for glasses to be able to see the blackboard or for the kind of eye conditions that occur in older people. We are looking for the condition of amblyopia, where there

is a permanently poor-sighted eye. That can result from a squint, when the image of one eye is suppressed because otherwise the child would see double, or when the two eyes are very unequal in terms of long-sightedness or short-sightedness, so again the image is suppressed.

The condition can be treated—we probably all know of children in our families who have had to have patching on an eye to treat the problem, for example—but that must be done at an early stage. There is a window of opportunity, which decreases. By the time screening takes place, a primary 1 child might be coming up to their sixth birthday, which is getting a bit late. I make a plea for screening to be done earlier. I also ask for the staffing implications of carrying out screening at that stage to be considered, in particular the possible need for more orthoptists, because they will pick up children who cannot be tested effectively in the community or who will need follow-up treatment.

I have a lot of sympathy for Carolyn Leckie's amendment. I share some of her concerns about the impact of joint ventures and LFTs, in particular about their use in future in ways that were perhaps not intended. I intend to support the amendment in Carolyn Leckie's name and also the bill.

10:30

Mr Brian Monteith (Mid Scotland and Fife) (Con): It is a pity that there is not more time for the debate. Given that the bill is so broad, a great deal of issues and details need to be explored. Matters such as the provision of free eye tests and free dental checks are worthy of debate in themselves. I would have preferred an all-day debate; if the bill is the landmark that it is regularly claimed to be, that would have been fitting.

I make two simple observations on eye tests and dental checks. First, some opticians are already prepared to offer free eye tests—I pulled out an advert from Yellow Pages this morning that shows that Dollond & Aitchison offer free eye tests, as other opticians have done before them and continue to do. That means that taxpayers' money will be poured down the drain, or poured into the bank accounts of the opticians, many of which—as I am sure Carolyn Leckie will be aware—are rather big businesses.

Secondly, why should I, on £52,000 a year, be given a free eye test by the taxpayer when before the bill I was content to pay for it?

Dr Jackson: Will the member give way?

Mr Monteith: No, I am making a point. I will see if I have time for interventions later.

Why, when to attract my custom opticians offer me all sorts of attractive deals—two for the price of

one, free sunglasses and free eye tests—and I am willing to pay more than £400 for a pair of spectacles, should the taxpayer pay someone such as me £20 to have an eye test?

Mike Rumbles: The answer is simple. The free eye test will lift public health throughout Scotland. Can Brian Monteith answer the point that I made to him directly earlier on? Is anybody against—

Mr Monteith: I will come to that point. It is clear that if one goes round opticians and dentists and says, “We will pay for some of your services directly instead of you having to ask the customer to pay,” it is a no-brainer. They will not submit evidence and say, “Of course not”; they will take the taxpayers’ money. Mike Rumbles must think that they are mugs if he thinks that they would do anything else.

I will move on to the stigmatisation of cigarette smokers—I say that because that is what the ban on smoking in enclosed public places is about. The minister talked of denormalisation, but I prefer to call it stigmatisation. It is about trying to ensure that because it is more difficult to smoke, people begin to give up. Behind the proposal is an issue that has not been addressed, which I touched on in an earlier intervention. How is it possible for two different ministers to reach two different conclusions about what action to take when provided with the same evidence about the dangers—I say “the dangers”—of environmental tobacco smoke? One minister, at Westminster, believes that the evidence is inconclusive and that a partial ban is required, and another minister, in Edinburgh, believes that the evidence is conclusive and that a total ban is required. The evidence is the same—and, by the way, it is not medical evidence; it is statistical evidence and it is disputed.

The total ban is not about protecting people; it is about stigmatising cigarette smokers, making it harder to smoke and bullying them into giving up. If the advocates of a total ban could get away with it, they would introduce a ban on the sale of tobacco. The minister talked of prohibition. In the America of the 1920s, there was prohibition and they had speakeasies. In the Scotland of the noughties, we will have the prohibition of cigarette smoking and we will have smokeasies.

Scottish people are generally law-abiding and I expect them, generally, to observe the ban. However, I also expect that, in some instances, people will be turned into criminals because they choose to smoke in enclosed spaces. For that reason, it is important that amendments will be made to the bill to broaden the exemptions. It is important that private clubs should be able—as has been suggested in England—to choose to allow smoking.

Stewart Stevenson: We could exempt Tory clubs.

Mr Monteith: I say to Mr Stevenson that, were there to be an exemption for Conservative and Unionist Party clubs, they would become particularly popular. I have no doubt that, if offered the opportunity, Mr Stevenson would not vote for that.

There could be other exemptions for cigar shops, cigar bars and premises with a high standard of ventilation. As in Japan and Italy, where they have smoking legislation, such exemptions could make a difference.

We must act to protect public health; I do not advocate doing nothing and I do not support the status quo. However, we should reject coercion and we should be conscious of civil liberties. This bill marks out Scotland as an intolerant and less free society. For that reason, I cannot support it in principle.

10:36

Mr Duncan McNeil (Greenock and Inverclyde (Lab): The Smoking, Health and Social Care (Scotland) Bill will bring direct improvements to the health of people in Scotland. I am part of the majority on the Health Committee which believes that the bill will have a positive impact and will help to save lives.

Members who sit on subject committees might agree that some evidence-taking sessions are less than illuminating, consisting largely of people whom we would expect to be giving evidence giving the evidence that we would expect them to give. The Health Committee’s stage 1 evidence on this bill—on part 1 at least—was a prime example. In one corner, we had the fundamentalists; in the other, the libertarians. Round after round, they traded statistics and counter-statistics and bashed each other with studies and counter-studies. In the end, they boxed themselves to a standstill.

Did anything emerge from that? It is pretty clear, and accepted by all, that active smoking kills. We knew that already. Passive smoking can kill—especially when people are exposed to high levels of second-hand smoke. As the minister pointed out, people who live with smokers are at a greater risk of smoking-related disease. However, that is not the same as saying that environmental tobacco smoke in public places is, on its own, going to kill people. It would be interesting to see the results of a study that focused purely on people who were exposed to tobacco smoke only, for example, in a pub on a Friday night. We did not see such a study.

We heard a lot about the Irish experience. Some elements in the chamber are desperate for us to

copy Ireland at every turn. I sometimes think that, to have an influence in Scottish politics, a person would have to be elected to the Dáil. However, in this case, we could learn from the Irish approach. As the committee heard, the Irish did not turn down the choice versus health cul-de-sac. They bypassed the argument between the right to smoke and the right to clean air. That is an argument in which we have become bogged down, turning the debate into one between smokers and anti-smokers.

Instead, the Irish concentrated on the working conditions of employees in the hospitality industry. By doing so, they united smokers and non-smokers in support of the ban. We all know that employees do not have the choice that customers have over whether to enter particular premises. Employees also spend far longer in such environments or atmospheres than their customers do; sometimes employees will spend long periods in those atmospheres seven days a week.

I have campaigned across the whole range of industries for the right of workers to have a safe working environment. If the health of workers in the hospitality industry is damaged by working in a smoky environment, I cannot stand here and argue that they should be denied the same protection that is afforded to every other worker.

However—I borrow an argument from the Green party when it talks about genetically modified crops—just because we can do something does not automatically mean that we should do it. We must ensure that smokers do not feel stigmatised by this process. We cannot just impose our will from on high; we need to win smokers round to our arguments and we need to take them with us. If we are to tackle the large number of active smokers, we need to offer them the opportunity to become part of the debate. As others have said, we cannot marginalise them.

We cannot sweep the problems of addiction under the carpet. We all know that most smokers would like to stop. All smokers wish that they had not started and I think that they would back moves to help them to stop. They would also want to prevent their children and grandchildren from starting in the first place, and to protect them from being harmed by smoke at their workplace.

We are serious about tackling the damage that is done by tobacco and I think that smokers will join us in welcoming new legislation. Smokers and non-smokers will also support us in using the powers that we already have. What about illegal sales of tobacco to children? We know that it happens—from ice-cream vans to corner shops. Smokers and non-smokers disapprove of that, so let us have some action.

Should we allow anyone—including parents and teachers—to stand smoking in school premises or adjacent to them as they wait to pick up children? We can see that happening as we go by our nurseries and schools. We have powers and we should use them. Smokers and non-smokers would agree that it is wrong to set that bad example.

We need to reduce the harm that tobacco does in our communities—particularly in communities such as my own, where smoking is clearly killing people who are too young to die. The need to reduce harm is not up for discussion. In new legislation, we must not worry about the comfort or the agendas of unelected lobbyists, however well-meaning they might be. Instead, we must pursue the principle of reducing smoking and the damage that it does in our communities.

10:42

Mr Stewart Maxwell (West of Scotland) (SNP):

What a long way we have come since June 2003, when I first proposed a ban. At that time, I was ridiculed by members in this chamber and, unfortunately, by members of the illustrious press corps. However, less than two years later, we have almost unanimous support for such a ban. I am glad that we have reached this point so soon. This is a great day for Scotland, as we take the first tangible step towards a smoke-free future and towards protecting the health not only of the current generation but of future generations.

I express my gratitude to all the people and organisations outside the chamber who have fought for smoke-free laws for a long time. I also express my gratitude to the Health Committee for its work not only on this bill, but on my bill.

However, I disagree fundamentally with the committee's comments in paragraph 38 of its report. As Irene Oldfather suggested, the idea that day care centres should be exempted from the ban makes no sense whatsoever. At the committee, the Minister for Health and Community Care argued correctly that allowing the exemption would lead to complex problems. It would also be a slippery slope. If day care centres are exempted on the ground that some people may spend some time during the day there, the way will be clear for all sorts of other places to be exempted on the same ground. A day care centre is not a temporary home; it cannot reasonably be argued that it is.

Turning to the debate over what has been called the level-playing-field approach and to the debate over enforcement, I believe that the two are inextricably bound together. Throughout the debates, one of the big arguments in favour of a complete ban has been that it would create a level

playing field. The committee took much evidence on that point and the Executive has used the level-playing-field argument to support its bill. The committee makes it clear that it agrees with that line of argument and it states expressly that any partial ban would not be as effective as a full ban. I agree with that absolutely. We need a comprehensive, clear and—most important of all—easily enforceable ban in order to protect people from the dangers of second-hand smoke.

Unfortunately, the Executive's bill does not achieve a level playing field because it contains a loophole that will allow smoking to continue in enclosed public places. Everyone is well aware of my unswerving support for a ban on smoking in enclosed public places. The minister is aware of my concerns on the definition that is contained in section 4(1); I wrote to him to point out the problem as I see it on the matter. The minister is also aware of my intention to lodge an amendment at stage 2 to close the loophole.

The bill, as it is drafted, fails to ban all smoking in enclosed public places. Although the bill bans the smoking of tobacco cigarettes, it continues to allow the smoking of non-tobacco cigarettes. The definition in my bill was not limited to the smoking of tobacco but covered all smoking. I urge the Executive to support the amendment that I will lodge at stage 2.

I intervened on the minister to ask him whether he could tell me which of the two cigarettes that I held up for his inspection was covered by the bill and which was exempt. He could not give me an answer. I will hold them up again for members' inspection. It is clear to see that they look identical; it is impossible to tell which one will be exempt. If the minister could not differentiate between them—certainly, I cannot—how will enforcement officers, the police and other licence holders be able to tell the difference?

The point is important because, as the bill stands, the ban will not be as easily enforceable as it could be. The cigarette that I am holding up is a herbal cigarette—it contains a plant other than tobacco. A herbal cigarette produces tar and carbon monoxide just like a tobacco cigarette, yet it will remain perfectly legal to smoke this cigarette in an enclosed public place after the ban has been introduced.

The smoke from herbal cigarettes will affect non-smokers, particularly those with asthma and other chest problems or breathing difficulties, in exactly the same way that tobacco smoke does. The lack of voluminous research on non-tobacco cigarettes is sometimes used as an argument that those cigarettes may be less dangerous to health than tobacco cigarettes are. The argument is flawed, however. Given that herbal cigarettes contain similar and sometimes higher levels of tar and

carbon monoxide than tobacco cigarettes do, we can easily deduce that herbal cigarettes are at least as dangerous as tobacco cigarettes are and perhaps even more so.

The Lancet published a study into the effects of smoking non-tobacco cigarettes, in which it said:

"Our data showed that smoking these vegetable-based cigarettes led to a similar degree of exposure to carbon monoxide as smoking tobacco cigarettes, and may exceed the latter. Thus this product is a potential hazard to health."

Others agree. The British Lung Foundation stated:

"A lot of people try herbal cigarettes because they think that since they don't contain nicotine they are safer. Nicotine is addictive, but it's the other stuff that gives you lung cancer and emphysema."

Mr Monteith: The Federation of Scottish Theatres has raised its members' concerns about the use of cigarettes on theatre stages. It has been suggested that the alternative would be to use herbal cigarettes. If the bill contains no exemption for the use of tobacco on stage, does the member concede that it should contain an exemption for the use of herbal cigarettes on stage?

Mr Maxwell: No; I do not accept that proposal. I am sure that another technical way can be found of producing smoke from a small tube without the person who is at work on the stage having to inhale tar, nicotine or any other hazardous substance.

Because of the evidence about the dangers of herbal cigarettes, the Federal Trade Commission in the United States of America has ensured that companies display the following warning prominently on their products:

"Herbal cigarettes are dangerous to your health. They produce tar and carbon monoxide."

In Ireland, the council of the Pharmaceutical Society of Ireland stated:

"in light of recent information on the serious health risk posed by herbal cigarettes, it is no longer ethical for herbal cigarettes to be sold from Irish pharmacies".

The secretary of the society said:

"herbal cigarettes ... pose just as serious a health risk as tobacco products".

If our real intention is to create smoke-free enclosed public places and workplaces, we must change the definition of smoking in the bill. If we want to win the health war against smoking, we must pass legislation to ban all smoking in enclosed public places and not introduce a partial ban on some smoking products.

The biggest health gain that we can achieve with the bill is to denormalise smoking in Scotland, and we can achieve that only by amending the bill so that it covers all smoking. That is the only way of

ensuring that there is no possibility that anyone can try to get round the provisions of the bill.

Banning smoking in enclosed public places will be a major step forward for public health and all members should support it. However, excluding some smoking products, even though they produce tar and carbon monoxide and have been shown to damage health, will mean that we go only 90 per cent of the way. Let us go 100 per cent of the way: let us ban all smoking in all enclosed public places.

10:49

Kate Maclean (Dundee West) (Lab): I apologise to the chamber for being late this morning; unfortunately, I was held up in traffic. I apologise to the minister for missing the first part of his speech. I will scrutinise the *Official Report* to ensure that I have not missed anything.

The issue of smoking has been well covered this morning. Apart from a brief response to a point that Irene Oldfather and Stewart Maxwell made, I will concentrate on a different part of the bill. I agree with Shona Robison and the other members who said that the provisions of the bill are too wide. It was difficult for the Health Committee to scrutinise the bill fully; in fact, if the committee had not taken evidence on a ban on smoking in its scrutiny of Stewart Maxwell's bill, it would have been impossible for us to produce a stage 1 report in the time that was available to us.

I fully support a ban on smoking in enclosed public places and, like other members, I support as few exemptions as possible. In paragraph 38 of its report, the committee recommended that adult day care centres be treated differently, and I want to explain the reason for that recommendation. If the Executive is to grant exemptions on humanitarian grounds, adult day care centres should be included in that category of premises. I am not saying that that should be the case for every centre in which adults spend the day, but some adult day care centres are, in effect, people's home for the day. If carers are on respite care or away for therapeutical reasons, the person in question has no choice of where they go for the day as they cannot choose to go somewhere else. It is important that members are aware that the Health Committee had that specific group of adults in mind when it made the recommendation in paragraph 38. The Executive's policy of exemptions on humanitarian grounds should cover such day care centres, or consideration should at least be given to that recommendation.

Mr Maxwell: Surely the comments that the member has just made undermine her argument. She spoke about a small number of people in a given set of circumstances, yet that situation will

cause real problems in the attempt to achieve a level playing field. The committee agreed that the bill needs to be obviously and easily enforceable, but the member argues that there should be exemptions in some places, at certain times and for certain people. Surely that proposal is too complicated and would be difficult to enforce.

Kate Maclean: There are problems when we look at the issue on humanitarian grounds. I was not suggesting that we do not look at things for humanitarian reasons, but that, if we do so, we will get no black-and-white solutions and there will be grey areas in between. Perhaps the issue should be monitored after the bill has been enacted. If we look at things for humanitarian reasons, it is not always easy to decide what to do. I understand why people are confused on the issue. That said, the Health Committee made that recommendation and I support it.

In relation to oral health assessments and eye examinations, I will focus on paragraphs 89, 90 and 91, which address uptake of services. In paragraph 89, the committee recommended follow-up work, including advertising, to encourage uptake. We also made reference to the nature of the new eye examination and oral health assessments. We want to ensure that they will provide positive health benefits. The committee heard evidence about the huge difference between an eye test and a proper eye examination. The point is crucial and I look forward to the minister clarifying it. I look for him to do so not today, but after the consultation that must take place with the professional bodies on the subject.

In paragraph 90, we refer to vulnerable groups, which is an issue that I feel strongly about. Some groups are difficult to assess and others can be far more time consuming. I am thinking of adults with learning disabilities or people with Alzheimer's disease. It is important that time and funding are given so that those people can get the full benefit of an eye test and oral health examination—they should benefit from them in the same way that everybody else will.

We should encourage uptake from people in more disadvantaged areas; historically, they do not take up any type of screening even although they have always had it for nothing. That point was demonstrated in some of the figures on oral health in more disadvantaged areas that were quoted in last week's dental debate.

I feel particularly strongly about the introduction of a comprehensive dental and sight-screening programme for children. I am pleased that the committee included that subject in the report and that it made a strong recommendation on it. Although I will concentrate on sight screening, the argument applies equally to dental checks.

The cross-party group on visual impairment, which I chair, and the Royal National Institute of the Blind Scotland have campaigned for several years on sight screening for pupils when they enter primary and secondary school. The bill is a convenient vehicle with which to introduce that measure. One in five children has significant undetected sight impairment, in spite of the fact that they are entitled to free sight tests, spectacles and eye care if they need them. I strongly support the recommendation, and look forward to hearing the minister's comments. The minister did not refer to the recommendation in his opening speech, but being an eternal optimist I assume that that is because he intends to lodge amendments at stage 2 to address the committee's recommendation. I am sure that if he does not do that, somebody else will.

I look forward to scrutinising the bill further at stage 2. I fully support the principles of the bill.

10:55

Donald Gorrie (Central Scotland) (LD): I have two preliminary points. First, I agree with those who oppose bills in which a lot of things are put together. Bills should not be like a plate of hors d'œuvres. I hope that ministers will take account of the fact that it is much better to have a single bill on a single issue. Secondly, I regret that Stewart Stevenson mentioned James VI, as I had intended to do so. James VI is an underrated gentleman, who not only opposed smoking but tried to limit the growth of London; those are two very good ideas.

I will talk mainly about smoking, because I have studied the issue and have strong views on it. I welcome the dental and eye checks and various other parts of the bill.

A bill that bans anything causes us, as liberals, concern and we have to think carefully about it. Liberals are not people who wander round the world seeking to ban everything. However, it is obvious that there are occasions on which it must be accepted that a ban is the right thing. The proposed ban is acceptable for two reasons. First, we have to balance one person's right to breathe clean air with somebody else's right to smoke. Those two separate freedoms are in conflict. The issue is not just the deaths, which are important, but the unpleasantness. I have a colleague in another field who is asthmatic, and she cannot go into any pub in Edinburgh. It was a great pleasure to go into a pub in New York last year and breathe clean air. Officials in New York are happy with the success of their ban. The issue of two rival freedoms is important.

Stewart Stevenson: Having quoted James VI at Donald Gorrie, I wonder whether I might also quote Molière:

"The greater the obstacle, the more glory in overcoming it."

In relation to smoking, the obstacle is clearly great. Does not Donald Gorrie accept that, in this context, the rights of non-smokers and the support that we should give to smokers to cease overwhelm any countervailing requirement?

Donald Gorrie: Yes. In the end, as I was going to say, we come down on the side of the non-smokers. There are various red herrings. There is the question of partial bans and voluntary systems, but they do not work. Smoke does not recognise partial bans; it goes everywhere. Neither do partial bans or voluntary systems deal with people's working conditions, which are important.

The second reason for the ban being acceptable is that sometimes severe legislation is necessary to improve public health. The greatest steps to improve public health in Scotland were taken by the Victorian public health pioneers who insisted that there be decent drainage systems. I am sure that there was great opposition from the Conservatives of those days saying, "We have the right to put up houses with no drainage, and you can have water and sewerage systems that join up together."

Severe action has to be taken to deal with public health issues. I try to represent citizens in Central Scotland, many parts of which have a really bad health record as a result of smoking, cancer, asthma and other problems. We must pay attention to that. There is the question of balancing freedoms, but it is important that we do something strong to improve public health.

I do not conceal the fact that the objective should be to reduce smoking overall. We want to persuade people not to smoke. Some of the evidence to support a ban in public places comes from other countries, where bans have helped to reduce smoking overall. People take up smoking because of peer pressure—at 12 or 14, they do what is cool and they smoke. We must create the idea in people's minds that it is not cool to smoke.

I am not keen on the word "denormalise", but I am keen on the idea. Propaganda has a bad name, because of Joseph Goebbels and spin doctors, but propaganda in a good cause is a good thing. Religions use propaganda, and on the whole it is helpful. We need to have strong public education. I do not know whether we need an Office of Tobacco Control like the Irish have, or some other system, but we need to have a strong public education programme, which will lead to support for the bill. The bill will do a huge amount of good for Scotland and I am happy to support it.

11:01

Dr Sylvia Jackson (Stirling) (Lab): It gives me great pleasure to speak in this important stage 1 debate. I am not a member of the Health Committee, but the Subordinate Legislation Committee, of which I am convener, has examined the delegated powers provisions of the bill. Almost 30 such powers were examined, and after correspondence with the Executive only one issue remains, to which I now refer.

The bill seeks to create offences of smoking or permitting smoking in no-smoking premises. What constitutes "no-smoking premises" is left entirely to regulations that will be made under sections 4(2) and 4(7). The Subordinate Legislation Committee recognised the need for the definition of "no-smoking premises" and exemptions to be contained in regulations rather than be on the face of the bill, in order to provide the necessary flexibility. The committee also acknowledged the high level of consultation that was undertaken on the first draft regulations that are proposed to be made under the bill. However, the committee was concerned that there should be sufficient consultation on future regulations that seek to amend provisions. The committee was keen that consultation on future substantive regulations should be as wide as that which was conducted on the first regulations.

As the minister knows, the committee has written to him suggesting enhancing the power at section 34(4), so that while the Executive will be required to consult such persons as it considers appropriate before laying a draft of an instrument, it will also be required to circulate the draft instrument. The committee accepts the potential problem with developing procedures that will be applied in every circumstance, even with minor technical changes, and therefore suggests amending the bill to require that draft instruments be circulated only when substantive changes are proposed.

Behind specific issues in the bill lies the general issue of ensuring that there is adequate consultation on sensitive and important matters when new instruments are being introduced. The Minister for Parliamentary Business knows about that and other issues that are being considered as part of the Subordinate Legislation Committee's on-going review of the regulatory framework. We welcome her readiness to have on-going dialogue on the issues.

I will share with members representations that have been made to me on the bill. One community council stated:

"We all support the idea of a ban, mainly because of the health risks associated with active and passive smoking. Several of us stated that we would be more likely to use the local pub if it were smoke-free".

Another community council stated:

"it was unanimously agreed that something has to be done to discourage smoking—especially in young people."

Section 10 deals with eye tests. I have been approached by Optometry Scotland, which asks that the general ophthalmic services sight test and the eye examination be defined. It also asks that the two be inextricably linked, fully resourced and introduced together. The minister is aware of the good work that is being done in the Glasgow integrated eye care scheme and I am sure that he would be willing to consider how such schemes could be extended.

As Irene Oldfather said, we must thank the many people—such as Stewart Maxwell and those in various associations—who have been involved with the bill and in earlier work.

I return to what the Conservatives do not want to hear—the points that BMA Scotland makes on the smoking ban:

"The BMA fully supports the principles outlined in the Bill which seeks to provide comprehensive legislation to create smoke-free enclosed public places.

Smoke-free enclosed public places would save hundreds of lives each year and reduce the impact of chronic disease on individuals and the health service. Recent research published in the BMJ reports that passive smoke kills 30 people a day in the UK."

We must support the bill to improve public health in Scotland.

11:06

Carolyn Leckie: I start with the bill's provisions on smoking. Nanette Milne suggested that publicans were moving voluntarily, but I make the point to her—unfortunately, she is not in the chamber—that publicans are responding only under the pressure of the political debate. If it were not for that debate and pressure, publicans would not respond with voluntary bans.

The tobacco lobby has been ably represented by the Tories—

Stewart Stevenson: Surely not.

Carolyn Leckie: Perhaps the lobby has not been ably represented and the Tories could have done a better job.

The tobacco lobby, which disputes the health effects of passive smoking, lied and deceived people about the effects of smoking for decades. The Tories take their cue from the people in that lobby, who are culpable for the deaths of thousands who were hooked on tobacco when the tobacco companies, which knew fine well the harm that they were causing, issued propaganda claiming that smoking had health benefits.

That is why e-mails to me from the tobacco lobby go straight into the junk folder, which is where they belong. Obviously, in the case of the Tories, such e-mails go straight into the members' speeches. I have heard Tories argue that to have smoking and voluntary no-smoking pubs side by side is an alternative to a ban—Phil Gallie and I were on opposing sides in a debate on the matter at the University of Strathclyde, and he made that suggestion—which demonstrates zero concern on the Tories' part for the workers in such establishments. When Phil Gallie was challenged on that point, he offered the justification that pub workers have the freedom to choose to work in smoke-free pubs. Unfortunately, workers rarely have any choice about where they work or the jobs that they do. Moreover, history shows that workers will invariably compromise health in favour of income and that employers will do the same in favour of profit.

Like other members, I am concerned that the bill's broad-ranging nature has reduced the opportunities for full and proper public and parliamentary scrutiny and debate. I hope that the burying in the bill of other controversial measures was not an intentional ploy to reduce public involvement, but I am a suspicious person and think that that might have been the case. The fact that it is impossible for members to cover all the parts of the bill in their speeches demonstrates that there is a problem.

Brian Monteith asked why he should get a free eye test. I presume that he pays taxes—perhaps we should check that—and that that is how he will pay for his eye test but, as far as I am concerned, he does not pay enough tax. He should not worry, however, because if the Scottish Socialist Party ever gets its way, he will pay more taxes and we will help him to avoid having a guilty conscience.

Mr Monteith: Carolyn Leckie has still not answered my point: if I am prepared to pay £20 for my eye test every six months, why should the taxpayer pay for it instead of me?

Carolyn Leckie: Brian Monteith is a taxpayer and can pay for his eye test through his taxes. What is more, he will pay more than poorer people and lower-waged people, which is how it should be in the great socialist paradise.

In response to Andy Kerr's comments, I say that public borrowing is much greater value for money for the simple reason that it is cheaper. PFI and LIFT are the only additional money because the Executive ideologically restricts the ability of health boards and other public bodies to take the public procurement route. As Dave Watson of Unison said:

"The only guarantee in PFI is that the bankers always get their money."—[*Official Report, Health Committee*, Tuesday 8 March 2005; c 1752.]

I would have expected Janis Hughes, as a sister Unison member, to deal with section 31 in her speech—especially as Dave Watson has acted as her election agent in the past—but, unfortunately, she did not.

The greatest danger of section 31 is that business interests will outweigh public need. The section will replicate the detrimental effects of PFI on public services that we have seen in many documented examples, such as the Skye bridge, the Edinburgh royal infirmary and innumerable schools projects.

Elaine Smith: Will Carolyn Leckie give way?

Carolyn Leckie: I am sorry, but I am in my last minute.

The Scottish Trades Union Congress has raised serious questions about the potential for conflicts of interest in the running of LIFT schemes. There are already examples of that in England, where the fiduciary duty that all directors have to shareholders can mean that decisions on the leasing of premises are made on the basis of the rent that the prospective tenants are willing to pay rather than as a response to clinical need and as part of planning the service that the community needs to be delivered from those premises.

LIFT will distort clinical priorities, and I encourage the Executive to remove section 31. I appreciate Eleanor Scott's support for our amendment and regret that, so far, no other member has addressed it. It is a reasonable amendment and, as I have heard no arguments against it, I presume that it will attract support from other parties.

11:12

Robert Brown (Glasgow) (LD): I am delighted to close the debate for the Liberal Democrats and to speak on the bill's provisions, including the central ban on smoking in enclosed public places, which is probably the most important public health measure in a generation.

It is also important to highlight the implementation of the key Liberal Democrat commitment to free eye and dental checks—I will deal with Brian Monteith's point on that. The main reasons for the provision are health promotion reasons: to increase take-up of such checks and to ensure that no one is financially debarred from taking them up.

I will deal primarily with the debate on the smoking ban. It has been an unbalanced debate because of the Conservatives' bizarre and extreme commitment to the line that they have taken on the matter. We should be talking about ways in which we can make the smoking ban effective and we should be considering the other

measures in the bill, but we have not been able to do that because of the way the debate has been dominated by the need to answer Conservative criticisms.

I will not rehearse the medical arguments; although the tobacco industry can twist and duck all it likes, it is clear that smoking kills. Smoking is the biggest contributor to premature death in Scotland through coronary heart disease and lung cancer. In answer to Nanette Milne's attempt to bring a feminist aspect into the Tories' argument, I point out that a recent report from NHS Scotland indicates that more than 75 per cent of deaths that are related to environmental tobacco smoke are among women. She should take that fact into account before she finalises her views on the matter.

Smoking is closely associated with shorter lifespans and greater illness in deprived areas, where addiction is greater. Tobacco is heavily addictive—possibly more addictive than heroin—and extraordinarily difficult to kick. My mind is clear that the time for half-hearted, halfway-house measures has long since passed. Incidentally, if I had to choose between taking advice from the BMA, the various medical unions, the NHS, Macmillan Cancer Relief and all other medical interests on one hand or Brian Monteith on the other, my mind is clear about which advice I would take.

I will deal with the social effects of a ban on smoking in enclosed public places and workplaces. I have no sympathy with the tobacco industry or its funded mouthpiece, FOREST, which have distorted scientific investigation of the issue for far too many years. It is clear that the effect of a ban would be to cut tobacco consumption substantially, which is why they are against it and I am for it. Surveys throughout the world indicate that a workplace ban is likely to reduce the number of smokers by something like 4 per cent, and to reduce total tobacco consumption by something like 29 per cent per employee. Similar effects could be predicted from a ban in enclosed public places.

Many of the people who will be saved from addiction will be young people, such as students, who smoke socially or to appear cool. I particularly dislike the idea that 17, 18 or 19-year-olds who are smoking in pubs are exercising a free and mature choice, fully aware of the risks that they face: they are not. They believe that they will live for ever and are seduced by the culture that the tobacco industry has done much to foster.

On the other hand, I have quite a lot of sympathy for publicans who worry about their livelihoods, but I think that they are wrong. The reduction in bar sales in Ireland following the ban there is often cited, but although the reduction that

was reported by the Central Statistics Office in Ireland was 2.6 per cent, there had been a long-term decline in bar sales, which had gone down by 7.1 per cent in the year before the ban was introduced.

Brian Adam: Does the member agree that, as well as the introduction of the smoking ban in Ireland, there was a significant change in the licensing laws with regard to children being allowed in bars, and that that curfew is believed by many people to have contributed to the decline in bar sales?

Robert Brown: That is correct.

A similar picture emerges from consideration of the number of businesses in the sector that went bust. After the ban, the number was slightly smaller than it had been before the ban. The recent study that was commissioned by NHS Scotland and to which I referred earlier suggests, if anything, that the effects of the ban will probably be economically neutral for the hospitality industry. The impartial observer would be entitled to conclude that, although the position might vary between different establishments, a tobacco ban is highly unlikely to damage pubs and restaurants across the board. Indeed, there is every reason to think that it might attract back some of the 70 per cent of people who are non-smokers and who have in the past been put off going to smoky bars. That sounds like a much more solid customer base on which to build for the future.

There is an interesting point to be made about public support. We have heard various statistics—of course, the figures depend to some extent on how the questions are asked—but, according to the Scottish Executive's survey, 56 per cent of people support the ban. The foreign experience is that support for a smoking ban rises substantially after it is introduced. In Ireland, support went from 59 per cent to 93 per cent after the ban came in. That links to the 97 per cent compliance with the new laws that is reported in Ireland. It is perfectly natural that those two elements are connected.

I have a huge amount of sympathy for smokers. Tobacco is terribly addictive and we must do everything possible to support people who want to quit. Of course, people have the general right to smoke in their homes and gardens, in the street, in the park and elsewhere. However, as Donald Gorrie rightly said, the right to smoke must cede to people's greater right to a smoke-free atmosphere in their workplace or in places of public entertainment.

Since the beginning of the Scottish Parliament, Liberal Democrats have pressed the cause of health promotion. The consultation is in the partnership agreement because of our contribution, and we were the first political party to

back the ban. However, support for the ban goes right across the board and a series of contributions have been made by all sorts of people. The issue has developed a head of steam of its own, fuelled by public opinion, the New York and Irish experiences and particularly by Scotland's appalling health record. It is an idea whose time has come. Let us strike a blow for freedom to breathe clean air and—to ensure that we provide our young people with a future that is free of addiction—let us ensure that the bill passes stage 1.

11:18

Mary Scanlon (Highlands and Islands) (Con):

It was interesting to hear the Minister for Health and Community Care welcome the bill and speak of the degree of urgency that he attaches to the legislation. I have to say that, when Kenny Gibson and Nicola Sturgeon introduced bills on the subject during the first session of Parliament, those bills were not welcomed and there was no rush to legislate.

I was also surprised that the Minister for Health and Community Care allocated only two minutes of his speech to measures in the bill other than those that relate to smoking. I hope that, throughout the next stages of the bill, a bit more time will be allocated to those important measures.

Mr Kerr: I accept fully Mary Scanlon's point. However, in the interests of the debate, I took a number of interventions during my speech. Indeed, I accepted every intervention that was made.

Mary Scanlon: Fair dos. We will see how the minister performs at later dates.

I would like to pay tribute to Duncan McNeil, who made an excellent and balanced speech.

Members who are not on the committee that has dealt with a bill are always at a disadvantage in stage 1 debates, because committee members have heard all the relevant evidence. However, I read the Health Committee's stage 1 report on the bill and I would hardly say that it is a ringing endorsement of the bill, or that it expresses much confidence about the success of the measures that are proposed. For example, the committee states that free oral health assessments and eye examinations have the potential to improve standards "if properly implemented". On dental services, the committee states that the policy could work

"if properly funded and implemented".

On pharmaceutical care services, the committee again states that the measures could ensure a wider range of services "if properly implemented". That is hardly a ring of confidence.

It is interesting that the voices on the Conservative benches are speaking in support of the late Donald Dewar who, when he was in Westminster, worked with the industry and responded to consumer and health needs by introducing the voluntary code for better signage, better ventilation, smoke-free areas and other measures that provide choice for consumers.

We want to work with the licensed trade sector to enhance choice for smokers and to provide practical help, support and encouragement to people who want to stop smoking, with the ultimate goal being—as Dr Nanette Milne said—of achieving a smoke-free environment for everyone. I welcome the measures and the increased resources to assist people to stop about which the minister spoke.

Sylvia Jackson constantly talks about the BMA. If she looked back to the BMA's stance on—

Helen Eadie (Dunfermline East) (Lab): Does Mary Scanlon accept that when the licensed trade sector was given the opportunity to operate voluntarily as she described, there were major problems? Although targets were met, the number of people who participated in the voluntary scheme was so small that it was not worth while, which is why legislation was needed.

Mary Scanlon: From memory, I can tell Helen Eadie that something like £132 million was spent in one year on ventilation alone. I do not accept the view that the licensed trade was not co-operative. According to a poll in January this year, 75 per cent of Scots believe that smokers have the right to smoke in public, provided that they do not inconvenience non-smokers.

I regularly visit Donegal, as does Jamie Stone, and I can say that the licensed trade industry has been affected by the smoking ban. Many publicans have tried to increase food sales, but many others have at the back of the pub built the equivalent of bus shelters, which have three walls and one side open to the area and which serve as the smoking areas. The ban is hardly stopping smoking in Ireland.

At the heart of the bill is the effect of smoking on the health of smokers and the effect of passive smoking on the health of non-smokers.

Mike Rumbles: Will the member take an intervention?

Mary Scanlon: Certainly not from Mike Rumbles—no way on earth would I take an intervention from him. We have heard enough of his—oh, there are no words for what we heard from him today.

There are many measures, short of the draconian ban on smoking in public places, that can help people to stop smoking. If the aim is to

stop people smoking, surely it is better to try tested methods that are known to bring success rather than to risk making more people smoke in their homes, where young children are present.

Tricia Marwick (Mid Scotland and Fife) (SNP): Will the member give way?

Mary Scanlon: I am sorry, I have only one minute left and I have quite a lot of ground to cover.

I think that we dealt last week with dental checks. However, given that £7.7 million is being allocated for free dental checks and that the minimum cost for a dental check, at least in the Highlands, is £25, that means that only 308,000 people could get a dental check.

We constantly forget about chiropody and podiatry. Recently, the father of a 12-year-old footballer came to me and said, "If he is to keep playing football, my son needs an orthotic fitment costing more than £200. I can pay for that, but many others can't." If the Executive is going to be generous in relation to eye and dental care, it should re-examine the needs of podiatry and chiropody, because much has to be done in that regard.

I would like to have said more about the disciplinary provisions in the bill. It is surely an error that no reference is made in the relevant section to the General Medical Council. General practitioners raised concerns during the passage of the Adults with Incapacity (Scotland) Bill but were ignored. I am glad that the situation is being rectified in this bill.

11:24

Brian Adam (Aberdeen North) (SNP): Today is a great day. We are about to pass one of the most far-reaching measures that we could ever pass to improve public health in Scotland, and it is a great privilege to be associated with it. I give credit to the many people who have brought us to this point, particularly people outside Parliament who have campaigned long and hard for the measure, but also members in the current and previous sessions of Parliament. I acknowledge the efforts that were made by my colleague Kenny Gibson—who is no longer in Parliament—in introducing his bill. I also acknowledge the efforts of Stewart Maxwell, who introduced a bill on smoking in the current session, and Nicola Sturgeon, who introduced a bill on tobacco advertising controls.

It is not just SNP members who have done work on the matter; Irene Oldfather is convener of the cross-party group on tobacco control. She was preceded by myself and Kenny Gibson. The cross-party group, which even includes Conservatives, has striven to improve the situation. I also pay

tribute to the previous Deputy Minister for Health and Community Care, Tom McCabe, for the sterling work that he did in bringing us to this point. Mr McCabe conducted the Executive's consultation exercise superbly; the measure of that is that people participated in it. As convener of the Standards Committee, I was perhaps a little disappointed that we received only a few more than 30 responses to our consultation, just over 20 of which were from members of the public. In contrast, 54,000 responses were received on the smoking ban. It is a measure of the success of Parliament and its procedures that we have engaged with the public on the matter, and it is clear that we are delivering what the public wants.

It is right for us to debate the matter. I am pleased that the Conservatives are contributing to the debate, although I do not agree with the position that they take. I found the point that was made by Phil Gallie rather odd—I hope that the Tories do not advocate increased tobacco use for weight control. I am sure that that is not the case, but that was, nevertheless, the implication of what Phil Gallie said.

Mr Monteith: Will the member take an intervention?

Brian Adam: If the member will let me develop the point, I will let him in after that.

It is not surprising that the Tories look to market forces to deliver the change, but they slavishly follow the line of industry interests rather than that of the health service.

Mr Monteith: The member is sailing close to the wind with the idea that Phil Gallie, who is not here to defend himself, suggested that tobacco use should be increased to fight obesity. His point was that there could be unintended consequences that would not be popular in respect of public health. I would have thought that Brian Adam would support that view.

Brian Adam: We should always be aware of unintended consequences, but the unintended consequence of the market-led approach is that nothing happens. The voluntary code to which Mary Scanlon referred—which was introduced, I believe, in 1998—was not working. That is why we have got to this point: the voluntary approach did not work. The industry did not deliver, and ventilation did not deliver; there is clear evidence to suggest that the key carcinogens are not removed by ventilation.

At the risk of being accused of misquoting Mr Monteith, just as I was accused of misinterpreting what Phil Gallie said, I understand that Mr Monteith concedes that environmental tobacco smoke is dangerous. He does not suggest—I have not heard any of the Conservatives suggest it—that it is not dangerous. We should to take action

against it. That is why we should go ahead with the ban, which is the principal measure in the bill. The softly-softly-catchy-monkey approach, which suggests that we should move at the pace at which the industry wants to move, will not deliver. Market forces do not deliver on everything and they will certainly not deliver on smoking. Public action is required for public health protection, which is why I support the bill.

Elaine Smith: On the slightly different issue of public services, I have concerns about joint ventures, as does the Health Committee. What is Brian Adam's opinion on the amendment in the name of Carolyn Leckie? Does he think that it is rather sweeping, in that it says that

"section 31 of the Bill compromises the general benefits to health from the Bill"?

I have not heard much about the amendment this morning.

Brian Adam: There is merit in considering closely the point that is made by the mover of the amendment. It raises an important issue and I suspect that we may have some sympathy with it, but I hope that we will not be distracted by it on what is a significant day for public health.

The Deputy Presiding Officer (Murray Tosh): One minute.

Brian Adam: As well as the mortality effects of environmental tobacco smoke, we should consider its morbidity effects. It damages people's health: people do not die immediately as a consequence of inhaling someone else's smoke, but environmental tobacco smoke creeps up on people gradually. It has an impact on their hearts and lungs and they might end up with lung cancer or coronary heart disease. It is a significant additional risk factor in both those diseases. It has an impact on people's health over a long period of time and it also has unpleasant side effects, such as the smell. That, in itself, would be enough to encourage us to deal with it, but it also has effects on morbidity and mortality.

We need to be careful about how we enforce the ban. The best enforcement will be by the public themselves, through general acceptance and by persuasion. Duncan McNeil argued along those lines and that is the view of the Health Committee.

The Deputy Presiding Officer: You must close now.

Brian Adam: I noticed that members of the Health Committee nodded their heads in response to earlier comments on that point. I am—

The Deputy Presiding Officer: You must close now.

Brian Adam: I am just about to do so.

The Deputy Presiding Officer: No—now.

Brian Adam: I am delighted to support the bill today.

The Deputy Presiding Officer: I now call the minister. You have a very strict 10 minutes.

11:32

The Deputy Minister for Health and Community Care (Rhona Brankin): I echo what other members have said: this is an historic day for our Parliament. I, too, pay tribute to all the people who have worked so hard to bring the bill about. I notice that Tom McCabe is with us; I pay tribute to the work that he has done.

The Smoking, Health and Social Care (Scotland) Bill will deliver some of the most important public health measures for a generation. The introduction of free eye and dental examinations will bring significant benefits in the early detection of eye and oral disease and will support further development of ophthalmic and dental services. The role of community pharmacists will be secured and extended to ensure that they play a significant role in delivery of primary health care. The NHS disciplinary system will be strengthened to ensure that protection of patients remains paramount. The bill makes provision to capture in legislation a scheme for ex gratia payments to certain persons who contracted hepatitis C as a result of NHS treatment.

For the first time, Scottish ministers will have the power to enable health boards to enter into joint ventures. That will allow health boards greater choice in how they deliver health care facilities and services to the people of Scotland, by allowing them to take a strategic approach to provision of health care facilities in the community.

Carolyn Leckie: Will the member take an intervention?

Rhona Brankin: I will address later in my speech some of the points that Ms Leckie made.

The bill will also provide an opportunity to tap into Scottish scientific and technical genius by making the most of intellectual property for the benefit of NHS Scotland.

I turn to the provisions on smoking. The bill is not about banning tobacco; it is about protecting people's health. There is overwhelming evidence that demonstrates the harm that environmental tobacco smoke does to people and their families. Smoking is also a major factor in health inequalities. We need to act now and must not shy away from making unpopular decisions so that we can deliver health improvements for Scotland, which is why the key measure of the bill is the prohibition of smoking in certain enclosed places.

The bill aims to improve the health of the nation and to increase the choice that is available to the vast majority of the people of Scotland, who do not smoke. It aims to offer freedom to enjoy the pleasures of life, whether going out for a drink or a meal, pursuing a pastime or simply shopping in a smoke-free atmosphere. In short, the bill offers a healthier way of living, in which smoking is not the norm and young people know that they do not have to follow the bad habits of past generations or suffer the appalling consequences.

I will respond to some of the points that members made. I say to Carolyn Leckie that involving the private sector is nothing new. Some 50 per cent of general practitioner premises are already privately owned. The Scottish Trades Union Congress protocol with Scottish ministers and the guidance on it clearly indicate that the protocol applies to all public-private partnerships. Public-private joint ventures are a form of PPP, so the protocol would apply in such cases.

Carolyn Leckie: Will the minister give way?

Rhona Brankin: No, thank you. I want to address many points and I have already referred to what Carolyn Leckie said.

Several members mentioned the Office of Tobacco Control in Ireland. It is important that enforcement be carried out as effectively as possible and we are developing an effective network throughout Scotland to ensure effective implementation. However, our minds are not closed on the matter.

Delivery of free dental checks for all will be challenging, but we are convinced that the measures in the dental action plan will help us to meet that challenge. Indeed, the extended oral health assessment that is being discussed as part of the modernising dentistry process is not a specific deliverable of the bill. The extended eye examination is also subject to discussions as part of the ophthalmic services review—again, such examinations are not a specific deliverable of the bill.

On screening of schoolchildren, we already have provision for dental inspection and education for all school pupils. The inspection programme targets primary 1 and primary 7 children and the huge investment in children's oral health that we recently announced will immeasurably strengthen provision on the ground.

On eye screening for children, the "Health For All Children: Guidance on Implementation in Scotland" draft consultation, which was issued to all health boards earlier this month, states:

"All children should be screened by an orthoptist in their pre-school year, between the ages of four and five years"

and adds that

"The evidence for screening in secondary school remains inconclusive."

However, it is made clear that any child who undergoes assessment for educational underachievement or other school problems should have a visual test. We will continue to consider that issue before stage 2.

Ministers have great sympathy for the relatives and dependants of people who died before the eligibility date of the hepatitis C scheme, but we must consider the effects of financial outlay on the scheme on our ability to provide treatment for other patients. For that reason, the scheme focuses on people who are currently suffering. We are considering with other United Kingdom Administrations the issue of overseas residence and may lodge an amendment in the light of those discussions.

At the moment, we are not minded to exempt day care centres and I note what has been said about the bill's being potentially opened up. We believe that people who spend time in day care centres who do not smoke also deserve to be protected.

Stewart Maxwell talked about the definition of smoking. Our minds are still open about the definition and we will continue the dialogue before stage 2. Sylvia Jackson talked about the Subordinate Legislation Committee. I confirm that ministers received a letter from that committee yesterday and that we are considering it.

I would like to quote comments by schoolchildren to the Health Committee about the effects of smoking. One said:

"people should not have to breathe in other people's smoke when they go into a pub or restaurant."

Another said:

"It has been proved that Scotland has one of the worst rates of coronary heart disease, which can be caused by smoking."—[*Official Report, Health Committee*, 15 June 2004; c 1014.]

Another child said:

"It is not fair that we are getting cancers and diseases because other people have chosen to smoke!"

and another said that

"the future is pretty bleak unless we do something right now."

Finally, one child said:

"For Scotland's sake let's stop people smoking in regulated areas."

This will be the most important legislation on public health for a generation. Members have an opportunity to endorse principles that will bring benefits for generations of Scots to come. We must seize this opportunity for the sake of future generations—for the sake of the young

schoolchildren who wrote to the Health Committee and those who have talked to the First Minister about their health and that of their future families. The opportunity is too important to miss for the future health of the people of Scotland. I urge members to support the motion and to reject Carolyn Leckie's amendment.

Mr Maxwell: On a point of order, Presiding Officer. Will you investigate a situation that has occurred in respect of the public galleries? Last night at a reception with the First Minister, a number of organisations and individuals who were interested in the debate on the Smoking, Health and Social Care (Scotland) Bill approached me and said that they had tried to get tickets for it, but had been told that the galleries would be full and that no tickets were available. However, the galleries have been virtually empty this morning. Will you investigate that matter?

The Presiding Officer (Mr George Reid): I will do so and I will write to you.

Question Time

SCOTTISH EXECUTIVE

General Questions

11:40

New Deal (Fife)

1. Christine May (Central Fife) (Lab): To ask the Scottish Executive how the new deal is helping young people in Fife into secure employment. (S2O-6523)

The Deputy Minister for Enterprise and Lifelong Learning (Allan Wilson): Employment policy is reserved to the United Kingdom Government, which takes the lead on funding and delivery of the new deal. The new deal for young people is delivered by Jobcentre Plus and provides training, education, work experience and job-search support to help long-term unemployed young people to move into sustained employment. Since the new deal for young people began, 5,190 young people in Fife have gone into jobs and 78 per cent of those job outcomes were sustained.

Christine May: The minister may be aware of figures that were released yesterday showing that the financial services sector has grown by 6.4 per cent. Many clients who have been recipients of new deal support in my constituency have found jobs in the financial services sector. Will he outline what he fears would result from any diminution of the new deal or from its being stopped?

Allan Wilson: Indeed. Youth unemployment is down 79 per cent since January 1997 and down 57 per cent since January 1999. Such reductions are due in no small part to the impact of the new deal. The member refers to the financial services sector, which we debated only yesterday. Like other sectors, that sector makes an important contribution to the growth of the economy, which of course provides the job opportunities that have been taken up by those young people.

Murdo Fraser (Mid Scotland and Fife) (Con): Given that the Government's figures show that barely a third of people who go into the new deal programme find jobs that last more than 13 weeks, is it not time to stop the appalling waste of money and use it to reduce taxation on our overburdened businesses? Of course, that is not only the Conservatives' policy but the policy of the Liberal Democrat Minister for Enterprise and Lifelong Learning.

Allan Wilson: Doing so would consign those young people to the dole. Young people were familiar with being consigned to the dole during

the Tory years and I suspect that the people of Scotland and the United Kingdom do not wish to return to that. Therefore, I do not see any prospect of a Tory Government being in a position to scrap the new deal.

Unemployment (East Lothian)

2. Mr John Home Robertson (East Lothian) (Lab): To ask the Scottish Executive what action is being taken to reduce unemployment in East Lothian. (S2O-6514)

The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Mr Jim Wallace): Scottish Enterprise is charged with pursuing the strategic priorities for economic development that are contained in the Executive's "A Smart, Successful Scotland" enterprise strategy. Those priorities include improving productivity and competitiveness to enhance the long-term growth rate of the Scottish economy—including in East Lothian—to generate greater prosperity and employment and to reduce economic inactivity.

Mr Home Robertson: Does the minister acknowledge that the record low unemployment rate of 2.3 per cent debunks Mr Michael Howard's assertion that the minimum wage would cost jobs? I remind the minister that more than 3,000 of my constituents were out of work when Mr Howard was last in the Cabinet back in the 1990s. On what Murdo Fraser said, is it too much to ask a Liberal Democrat to acknowledge that Gordon Brown's new deal has been a spectacular success that will help to get even more people back into work in East Lothian and elsewhere?

Mr Wallace: I am only too pleased to confirm the figures and the picture that John Home Robertson has given about low levels of unemployment in East Lothian. East Lothian has a claimant unemployment rate of 2 per cent, which is significantly down from when Mr Howard was last in the Cabinet, as John Home Robertson said. Scotland's employment rate of 75 per cent is higher than that in any other part of the United Kingdom and higher than that in any other European Union country other than Denmark. East Lothian's employment rate is even better, at 79 per cent. I am always prepared to give credit where it is due, not least to the Chancellor of the Exchequer, Gordon Brown. Much of his economic success has been underpinned by the operational independence of the Bank of England, a policy on which I campaigned during the 1997 election, and I am sure that Mr Home Robertson, in the same spirit, will give us credit for that.

Supporting People Charges

3. Mrs Nanette Milne (North East Scotland) (Con): To ask the Scottish Executive what

discussions it has had with local authorities regarding sheltered housing tenants' concerns about the financial burden of supporting people charges. (S2O-6492)

The Deputy Minister for Communities (Johann Lamont): We are aware of concerns about the supporting people programme charges, but it is for councils to determine charges in line with the Convention of Scottish Local Authorities guidance. COSLA is consulting local authorities on revised guidance and we are in discussion with COSLA about that.

Mrs Milne: I thank the minister for her answer on an issue that is causing concern among pensioners in Scotland. I ask her to respond to the concerns of one of my constituents, Mr Henderson, who is a pensioner from Oldmeldrum in Aberdeenshire and who, with his wife, faces an additional £62 per month charge under the supporting people programme on top of his rent, council tax and warden charges. He is now so concerned about the additional burden that he is planning to move out of sheltered housing.

Johann Lamont: In any particular case, it is always helpful if the constituent writes to me with the details so that I can give the member a full and accurate response and so that I can make sure that the individual's particular circumstances can be covered.

There should not be extra charges without the agreement of the person involved. The extra charges should relate only to inflation or to changes in services. We are closely monitoring the situation, along with COSLA. We should not forget the huge budget of the supporting people programme. An investment of £1.2 billion over three years is a significant level of funding to support some of the most vulnerable people in our communities.

Stewart Stevenson (Banff and Buchan) (SNP): I am rather surprised to hear the minister suggest that the charges are voluntary. I have written to the minister and her predecessor on six occasions in response to an approach from a constituent. How can she explain the fact that people in Aberdeenshire have a different regime from that in Aberdeen, which is different again from that in Dundee? How do we tell people that we are denying them services because we are introducing a charge? That is simply not acceptable.

Johann Lamont: The member misunderstands. There is a change in the way in which charges are made for the payment of rent to the landlord and for the provision of services. It is an important point because, for example, it allows voluntary sector providers to tender for work. The member knows as well as I do that the quality of the work that is done by voluntary organisations that have

expertise in dealing with vulnerable groups is crucial, and we want to harness that. It is also important to understand our commitment to local decision making. We expect there to be differences in different parts of the country, given the different local authorities' priorities. We are also committed to harmonising the policy throughout Scotland and we will be considering it closely along with COSLA.

Attacks on Firefighters (Tayside)

4. Kate Maclean (Dundee West) (Lab): To ask the Scottish Executive what new action it will take in light of the increase in violent attacks on firefighters in Tayside in the last six months. (S2O-6520)

The Minister for Justice (Cathy Jamieson): Assaults on firefighters and other emergency workers are completely unacceptable. We have taken action through the Emergency Workers (Scotland) Act 2005 and the Fire (Scotland) Act 2005 to increase the penalties for people who are convicted of such assaults. We will continue to work closely with the fire and rescue service and other agencies to ensure that fire crews are given as much protection as possible.

Kate Maclean: Is the minister aware that there have been six attacks on firefighters in Dundee in the past six months? That compares with the one or two attacks in the same period in the previous year. Is she aware that there is under-reporting of attacks on firefighters and that what could be regarded as relatively minor attacks go unreported? Has the Scottish Executive given any thought to a national strategy to deal with the issue?

Cathy Jamieson: I am aware that the Fire Brigades Union has suggested that it would like a national strategy to deal with the issue. We have to take a co-ordinated approach across the public sector to try to ensure that we get protection for workers.

I would be concerned if there was under-reporting and I encourage people to report such incidents. In Scotland in 2003-04, 222 physical attacks on fire service personnel were reported, along with 166 instances of verbal or other abuse and interference with equipment. In Tayside, there were six reported incidents involving firefighters in the year to the end of March 2005, compared with 16 in the previous year. Of the six incidents, three involved physical attacks on staff, two involved verbal abuse and the other one was an unconfirmed report of a missile being thrown at a fire crew. That is unacceptable. A secondee from the Scottish Trades Union Congress has been working with the Executive on implementing our initiatives aimed at preventing violence against any worker who is involved in the public sector.

Shona Robison (Dundee East) (SNP): Is the minister aware of the concerns that the FBU raised about the impact on the safety of firefighters and the public if the number of fire control rooms is reduced, including in Tayside? Can she confirm whether that decision has already been made, given that the Executive included the reduction in its savings that were published on 31 March? If so, would that be a breach of parliamentary trust, given that we were assured that the decision would come back to the Parliament?

Cathy Jamieson: The member will have heard my deputy, Hugh Henry, say on a number of occasions that further information was required following the initial consultation on fire control rooms. That work was done. Ministers are considering it and no final decision has been taken. It will be made known to Parliament in the correct way in due course.

Bill Aitken (Glasgow) (Con): Does the minister agree that, in light of the Parliament's unanimous condemnation of the behaviour in question, the appropriate way of prosecuting all cases of it would be on indictment? Will she discuss that with her colleague the Lord Advocate?

Cathy Jamieson: The member will want to know that the Lord Advocate has reissued his guidelines to try to ensure that people are aware of the seriousness with which such incidents are viewed. It is not for me to decide whether it would be appropriate for them all to be dealt with on indictment. There might be some instances where that would not be appropriate. However, I assure the chamber that the Executive takes any assault very seriously. Assaults on public sector workers such as emergency crews going about their business are completely unacceptable and must end.

Strategic Rail Development Plan

5. Rob Gibson (Highlands and Islands) (SNP): To ask the Scottish Executive whether it has a national strategic rail development plan for Scotland over and above the local initiatives in the partnership agreement. (S2O-6498)

The Minister for Transport (Nicol Stephen): Scottish ministers will develop a rail strategy for Scotland, as part of a national transport strategy, during the coming year.

Rob Gibson: As strategic cross-Scotland rail lines such as Perth to Inverness, Inverness to Thurso and Wick, and Aberdeen to Inverness can shrink distance poverty, does the minister agree with me and the Amicus union branch in Thurso that the time has come for a full and proper investigation into the benefits that the far north line brings to the Highlands and Orkney? What investment is required to provide the north with a

modern rail service that meets the aspirations of travellers and the Scottish Executive?

Nicol Stephen: As part of the development of the national rail strategy, we have, with the Strategic Rail Authority, commissioned a Scottish rail planning assessment. Ove Arup & Partners Scotland Ltd has been appointed as consultant for that work. It is considering future demand for the network and where the problems and further opportunities are that go beyond our current ambitious proposals for development of the network. I urge any MSP who has thoughts, ideas or proposals about this to contact me. That applies to the far north line and to rail improvements in all parts of Scotland. I will ensure that all proposals are fed into the development of the national strategy.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): In light of the 2005 Scottish National Party manifesto proposals for a £5 billion bullet train and the lack of any commitment in the 2003 SNP manifesto for the Borders rail project, will the minister assure me that he will not follow any local or national rail plans of the SNP as the Executive develops its strategy?

Nicol Stephen: It is important that those MSPs who are making proposals for the national strategy should feel confident that the proposals are supported by their party as well as being likely to get the Executive's support. It is important that we focus our future investment on the right proposals. I am sure that it will be for us all to ensure that when the 2007 election comes around we all put forward properly costed, affordable and deliverable policies—the sort of policies that the Executive partnership is currently putting forward with improvements such as the Airdrie to Bathgate line, the Stirling-Alloa-Kincardine line, the Larkhall to Milngavie line and the Borders rail link.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): One of the frustrations for communities such as Blackford, where people desperately want a rail station to be reopened, concerns not only the lack of funding that is available for such reopenings, because of the Executive's road building programme, but the lack of clarity about what future demands on local rail routes from long-distance rail routes might be. When will we have a clear picture of the balance that needs to be struck between long-distance and short-distance rail services and of where station reopenings fit into that?

Nicol Stephen: I have explained that we are developing a national rail strategy for the first time. That work is on-going. We are considering new proposals and are looking to develop the rail network. One would think that the current situation for rail was static or that we were slipping backwards, but the reverse is the case; we are

now investing more in public transport than ever before. We are increasing the level of funding so that 70 per cent of our expenditure will be on public transport and the balance will go on our roads. That is a big boost for public transport. I will not repeat all the public transport projects and all the rail projects in which we are investing, but they are significant and run into hundreds of millions of pounds of investment. These are exciting times for the rail industry in Scotland and we are attracting new rail staff to work for the new national transport agency on those exciting rail developments. We will ensure that we have the widest possible consultation about future developments. The Executive is committed to providing better rail services in Scotland, which is one reason why we saw an increase in rail passenger numbers of 11 per cent over the past 12 months.

Europe Day

6. Irene Oldfather (Cunninghame South) (Lab): To ask the Scottish Executive what action it is taking to promote participation in Europe day. (S2O-6534)

The Minister for Finance and Public Service Reform (Mr Tom McCabe): Europe day is the day when we celebrate the unity of the peoples of the European Union and we have been doing so since 1985. The Scottish Executive, together with the Scottish Parliament, the European Commission and members of the European Parliament in Scotland, will host a reception in the Parliament on the evening of 9 May to mark Europe day as part of further promotion of the benefits of the European Union.

Irene Oldfather: Does the minister agree that the vision that Robert Schuman had of a peaceful and prosperous Europe is more relevant today than ever and will the minister join me in congratulating local authorities throughout Scotland, including North Ayrshire Council, on the work that they do not just on Europe day but throughout the year to encourage educational exchanges that enable young people throughout Scotland to experience directly the benefits of being part of the new Europe?

Mr McCabe: I am more than happy to endorse those sentiments and the sentiments contained in the motion that the member lodged recently.

Richard Lochhead (North East Scotland) (SNP): What steps is the Executive taking to ensure that Scotland and the Parliament can participate in Europe, and not just Europe day? As the minister will be aware, the Government failed on most of its objectives in negotiating the European constitution. What new steps are going to be taken to ensure that the people of Scotland and the Parliament can directly influence decisions

that are made in Europe that affect our everyday lives?

Mr McCabe: One of the things that we will not be doing is encouraging people to vote against the new constitution. We will do the same as we have always done and promote the benefits of the European Union, such as the peace, prosperity and employment and social changes that it has brought. We will continue to do that today and every day in the future.

Phil Gallie (South of Scotland) (Con): Does the minister agree that an excellent way of promoting Europe day would be to remove the uncertainties surrounding the EU? On that basis, will he press for an early referendum? In the wish for European solidarity, will he join me in hoping for sound judgment from the French people at the end of next month?

Mr McCabe: An excellent way of promoting the benefits of the European Union would be for Mr Gallie to drop his ideological blinkers and acknowledge the benefits that it has brought the people of Scotland for many years.

The Presiding Officer: Before we come to First Minister's questions, members will wish to welcome in this G8 year officials of the Red Cross societies of Europe and their United Nations representative, Encho Gospodinov. [*Applause.*]

First Minister's Question Time

12:00

Cabinet (Meetings)

1. Nicola Sturgeon (Glasgow) (SNP): To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-1597)

The First Minister (Mr Jack McConnell): The Cabinet will meet briefly next Wednesday and discuss issues of importance.

Nicola Sturgeon: On 20 March 2003, the First Minister praised the United Kingdom Government for being the first Government "in living memory" to

"put the possibility of going to war to a vote in the House of Commons".—[*Official Report*, 20 March 2003; c 19800.]

Does the First Minister agree that MPs should have been made aware of the grave doubts that we now know the Attorney General had about the legality of the war in Iraq before they were asked to vote to send our servicemen and servicewomen to war?

The Presiding Officer (Mr George Reid): I make it clear at this point that the First Minister is responsible for what he says in Parliament and in the country, but not for what others say elsewhere.

Pauline McNeill (Glasgow Kelvin) (Lab): On a point of order, Presiding Officer. If you allow this question to be debated at First Minister's question time, I insist that you allow the same latitude to back benchers.

The Presiding Officer: I made it clear that the First Minister is responsible for what he says in the chamber and for what he says in the country. He is not responsible for advice given by the Attorney General to Government at UK level. The question is, therefore, to Mr McConnell.

The First Minister: I am not responsible for that advice, but I am happy to refer to the fact that that advice was published this morning. Ms Sturgeon will see from what was published that what she claims is, in fact, wrong. I said at that time—and I absolutely adhere to that position today—that it was right and proper for this British Government to be the first ever to put a decision to go to war to a vote in Parliament and to secure the support of the British Parliament for that decision. I have absolutely no doubt that that was a tough decision for the Prime Minister to take and that that difficult decision was not made lightly. I also have absolutely no doubt that members of Parliament from all parties, when they voted on that decision in the House of Commons, voted having given it

due consideration. Ultimately, I believe that they made the right decision.

Nicola Sturgeon: I make it clear that my line of questioning is entirely based on comments made by the First Minister in this chamber. This is a question of whether the UK Parliament, the Scottish Parliament and the public were given the facts about the reasons for, and the legality of, the war in Iraq.

On 13 March 2003, the First Minister left us in no doubt that he thought that United Nations resolution 1441 provided, if necessary, a legal basis for war. He said that there was

“no doubt that it was a serious and final declaration.”—
[*Official Report*, 13 March 2003; c 19435.]

Before he made that unequivocal statement to the Parliament and to the Scottish people, had the First Minister seen or asked to see any legal advice from the Attorney General to back it up?

The First Minister: No, of course I had not, but I absolutely stand by that judgment. I quote for Ms Sturgeon what the Attorney General himself said last night, without even the additional information that we have this morning. The Attorney General said last night that what the document published yesterday does,

“as in any legal advice, is to go through the complicated arguments”

that led to his view. Far from showing that he

“reached the conclusion that to go to war would be unlawful,”

it shows how he

“took account of all the arguments”

before reaching any conclusions. That is exactly what any Government expects from its law officers. If Ms Sturgeon is claiming that the Government went to war on the basis of an untruth, or something that was hidden from the public, she is calling the Attorney General, not the Prime Minister, a liar. If she is calling the Attorney General a liar, that is a very serious accusation indeed to make of a law officer.

Nicola Sturgeon: I was asking the First Minister about the legal basis for the comments that he made in this chamber on 13 March 2003. I asked him that question for a reason. We now know that the only legal advice that the Attorney General had issued at that time was issued on 7 March. On 7 March—just six days before the First Minister said that there was no doubt about resolution 1441—the Attorney General said that

“the language of resolution 1441 leaves the position unclear”.

In other words, there was very real doubt. Does the First Minister not feel angry that he was not

made aware of what, at that time, was the Attorney General's only legal advice and, as a result, was put in the position—albeit inadvertently—of misleading this Parliament?

George Lyon (Argyll and Bute) (LD): On a point of order, Presiding Officer.

The Presiding Officer: This is getting skewed for reasons that we all understand. I will take Mr Lyon's point of order.

George Lyon: As the First Minister is responsible for the Executive's policy, how can he comment on events and issues that were decided at the Houses of Parliament in Westminster? Ms Sturgeon is straying far from the subject of what the First Minister said in this Parliament. Presiding Officer, it is time that you took action and ruled this out of order.

The Presiding Officer: As I have made clear before, the First Minister is responsible for what he says in Parliament and in the country. He is not responsible for advice that is given to the United Kingdom Government. I leave it to the First Minister to reply or not, at which point I might be moved to move on.

Carolyn Leckie (Central Scotland) (SSP): On a point of order, Presiding Officer. I think that we should have some consistency here, because it appears that your authority is being challenged. I have been chucked out for less. [*Interruption.*] I will repeat that, because members were laughing. I have been chucked out for less. What about George Lyon?

The Presiding Officer: Before we move on, I ask the First Minister whether he has anything to add.

The First Minister: It is clear to everyone that Ms Sturgeon would rather debate matters from another place than debate the responsibilities that we have in this Parliament. It is critical that we ensure that the Parliament debates critical issues such as growing the Scottish economy, improving our health and education services and tackling crime.

However, I am also very happy to answer for what I say in this Parliament and elsewhere. I am clear that my opinion, which I genuinely held at the time, is one that I stand by today. I have known Iraqi civilians for more than 25 years and know that today they are freer, live in a more democratic society, are happier to return home and are pleased with the action that the British Government took. I stand with them now, just as I did then.

Prime Minister (Meetings)

2. David McLetchie (Edinburgh Pentlands) (Con): To ask the First Minister when he will next

meet the Prime Minister and what issues will be discussed between them. (S2F-1598)

The First Minister (Mr Jack McConnell): I look forward to meeting the Prime Minister of the United Kingdom after next Thursday's election, and will decide what I discuss with him when that meeting is arranged.

David McLetchie: I am sure that Mr Howard will be delighted to see the First Minister in the interests of co-operation with the UK's devolved legislatures and Executives.

However, on a matter for which the First Minister is undoubtedly responsible, will he tell us why, after eight years during which waiting lists and times in our national health service in Scotland have risen, hospital-acquired infections have multiplied and doctors have complained about being forced to work with outdated equipment, it takes a general election campaign to prompt the Minister for Health and Community Care to start talking about reforming our NHS by setting a national price list for operations and procedures?

The First Minister: Never have so many untruths been spoken in one question from one member of the Parliament. It is simply not true that waiting times have gone up. As Mr McLetchie knows, when his party was in government, the target for waiting times in the NHS was 18 months. Not only has that target come down to 18 weeks, but Scotland is increasingly ahead of the UK on in-patient waiting times, with people who used to wait more than nine or 12 months now waiting six months.

Not only do we have a stabilising and, I hope, given all the Minister for Health and Community Care's actions, falling level of MRSA in our hospitals, but we can at least measure these matters. The Conservatives did not properly measure out-patient waiting times or even the level of hospital-acquired infections. Mr McLetchie's claim that the health service in Scotland was in a better condition than it is now is simply untrue. He knows that, and he cannot create a smokescreen by claiming that the Minister for Health and Community Care said something this week for the first time. In fact, the minister talked about a national price list in this chamber back in December. It was as clear as a bell. If Mr McLetchie reads the *Official Report*, he will see for himself that that is the case.

David McLetchie: The First Minister knows well that the statistics that we have been quoting in the Parliament for weeks were collected and put on record by ISD Scotland in 1997, just as they are in 2005. In that time, the median wait for an out-patient appointment in Scotland has gone up from 34 days to 56 days, which is an increase of more

than three weeks. That is on the record and it is indisputable.

Let us not pretend that this week's comments by the Minister for Health and Community Care are anything other than a humiliating climbdown, which was no doubt brought about by the criticisms that the Prime Minister made. Let us consider the substance rather than the timing of the proposals, because that is the real issue. Mr Kerr said that a national tariff had been proposed as a means of comparing the cost of operations in different NHS hospitals and in the independent sector. That is what he said. If, as a result of that comparison, it turns out that patients in Scotland can be treated more quickly and for less in the independent sector, will the NHS under the First Minister's stewardship pay for that treatment or will that be vetoed by his Liberal Democrat allies in the Scottish Executive?

The First Minister: We have made it perfectly clear that we already use the independent sector when it is appropriate to do so and that we will make greater use of it in the months and years to come. I know that in Dundee, Grampian, Glasgow and other parts of the country the Scottish National Party is opposed to such contracts and would rather that people waited longer, but the reality is that we already use the independent sector and that we will make more use of it in the months and years to come. The Minister for Health and Community Care made that clear in December; indeed, his predecessor had already made it clear some time before then.

The difference between that position, which is about ensuring that patients in Scotland are treated according to the principles of the national health service, and the position that Mr McLetchie is trying to hide from voters in Scotland during the current election campaign, is that he would take that money out of the NHS and use it to ensure that only those patients who could afford to pay for their operations—not those patients who most need operations, who have waited longest, who are in most pain or who, in the clinical judgment of the medical profession, need operations most quickly—would be subsidised to do so. The existence of that fundamental divide is precisely why I will not be meeting Mr Howard as Prime Minister after 5 May. The reason for that fundamental divide between the Executive and Mr McLetchie's party is that his party is interested only in subsidising those who can already afford to pay, whereas we will use health service resources according to health service principles to make a difference to those people who most need operations. We will use both the health service and the independent sector to do that.

David McLetchie: There is a fundamental lack of logic in the First Minister's answers. Why is it all

right for the health service to use taxpayers' money to pay 100 per cent of the cost of an operation that is provided by the independent sector, but not all right for the health service to pay 50 per cent of that cost and to keep the other 50 per cent to treat patients who are still on the Executive's lengthy NHS waiting lists?

The First Minister: Precisely because of the point that I have just made. I know that it is quite hard for a Tory to understand those basic principles because the Conservatives opposed the creation of the NHS. I can tell Mr McLetchie that the people of Scotland expect decisions in their NHS to be made on the basis of clinical need, the urgency of the case, the level of pain that a patient is in and their medical condition as assessed by medical professionals rather than on the basis of the size of their wallet, how much they are paid or how much they could contribute to their treatment. That is a fundamental divide.

We stand for a health service to which access is free at the point of need and determined on the basis of need; Mr McLetchie stands for one in which people can jump the queue because the state will subsidise them if they can already pay for their treatment. He is wrong.

Secretary of State for Scotland (Meetings)

3. Robin Harper (Lothians) (Green): To ask the First Minister when he will next meet the Secretary of State for Scotland and what issues he intends to discuss. (S2F-1614)

The First Minister (Mr Jack McConnell): Mr Harper will not be surprised to learn that I am in fairly regular contact with the Secretary of State for Scotland at the moment and that I expect to see him again over the next few days.

Robin Harper: Last week, the report of Clive Fairweather and Charles Pelling on the Airborne Initiative (Scotland) was published. It identified Airborne as a success, in that it drew international interest and was the only strategy of its kind that helped high-tariff offenders not to reoffend. The evidence shows clearly that support for the Airborne Initiative should have continued. Does the First Minister agree that the decision to close Airborne was, at worst, a caving-in to nimbyism and misinformation and, at best, precipitate and unwise?

The First Minister: No, I do not. Large parts of that report show just how little success the Airborne Initiative achieved. Scotland has the opportunity not only to deal with more of its young offenders, but to deal with them much more effectively and to ensure that fewer of those young people who were involved in persistent and dangerous offending, reoffend.

The decisions that we took then were right. Those decisions will lead to an improvement in tackling both offending and reoffending.

Robin Harper: From 2000 onwards, the Airborne Initiative beat prison and probation. On every count, Airborne did better, including with regard to reconviction rates after release. In the last year of Airborne's operation, all of the changes recommended by two social work inspections that wanted to see Airborne succeed were instituted.

Despite repeated invitations to visit and see the improvements, the Minister for Justice and the Deputy Minister for Justice refused to see Airborne for themselves. Does the First Minister agree that this failure was at best an example of poor ministerial practice and at worst an example of a cavalier dereliction of ministerial duty that this chamber has a right to know will never happen again?

The First Minister: I am surprised at the way in which Robin Harper raises these issues. His claims are outrageous and untrue. I will ask the Minister for Justice to write to him in some detail to refute the outrageous allegations that he has made about the work of the Minister for Justice and the Deputy Minister for Justice.

I reiterate that the Airborne Initiative needed to be replaced. It is being replaced by programmes that will treat more young offenders more appropriately and effectively, as part of the system. It will also build upon those elements of the Airborne Initiative that are worth retaining. Although we learn from the good parts, at the same time, we recognise when systems are not working and we replace them with systems that are more effective for more people in the longer term.

Economy (Access to Broadband)

4. Karen Gillon (Clydesdale) (Lab): To ask the First Minister how improved access to broadband will help the Scottish economy. (S2F-1607)

The First Minister (Mr Jack McConnell): Broadband offers the prospect of lower costs and higher sales for Scottish businesses through improved access to markets. It also offers reduced prices for consumers and more opportunities for people to develop their skills. Every community in Scotland will have access to broadband services by the end of the year, and I am very pleased that we are delivering on that commitment.

Karen Gillon: I welcome the additional investment that was announced this week. The First Minister will be aware that in constituencies such as mine, access to broadband can enable the development of local businesses in more remote communities. What steps have been taken

by the Executive to harness that potential? What advice and guidance is being given to Scottish Enterprise Lanarkshire to ensure that it harnesses such potential in the Clydesdale constituency?

The First Minister: Considerable guidance is being made available. I will ensure that Karen Gillon is sent copies of all relevant material.

Throughout the time in office of this Executive, businesses the length and breadth of Scotland have not only been encouraged to take up broadband services but to make maximum use of them. It is important that a country such as Scotland, on the north-west periphery of Europe, has such electronic connections. We have worked hard to ensure that access is available in both urban and rural Scotland. We are ahead of the rest of United Kingdom on that and we should be very pleased when we see Scottish businesses benefiting as a result.

Brian Adam (Aberdeen North) (SNP): Does the First Minister recognise that many potential users of broadband are still being denied access for technical reasons, such as distance from the exchange or lack of fibre optic cabling? What support will he offer to those in that position, such as my constituents in Kingswells, to plug gaps in provision?

The First Minister: We will have full provision in place by the end of the year. The Deputy First Minister announced on Monday the contract that will ensure that those final elements are delivered. I will be happy to ensure that he informs Mr Adam what will be available for his constituents.

Capital Equipment (NHS Greater Glasgow)

5. Mr Brian Monteith (Mid Scotland and Fife) (Con): To ask the First Minister whether the Scottish Executive has had any meetings with NHS Greater Glasgow to discuss the provision of capital equipment. (S2F-1604)

The First Minister (Mr Jack McConnell): Officials meet on a regular basis with NHS Greater Glasgow to discuss operational and financial matters.

Mr Monteith: After two years' delay, the Minister for Health and Community Care has finally intervened to ensure that the Western infirmary's aging scanner is replaced within three months. However, the Western's problem is not an isolated example. The correspondence that ministers received—of which I have a copy—refers to another out-of-date scanner at Gartnavel general hospital, but no action has yet been taken to replace that piece of equipment. Will the First Minister announce today that Gartnavel's 15-year-old scanner will be replaced at the same time as the one in the Western?

The First Minister: First, it is inconsistent of Mr Monteith to demand—as both he and his leader have done regularly in the chamber—that ministers take a more hands-off approach and intervene less on behalf of the people of Scotland in the running of the health service if he also wants to suggest, as he seems to do in his question, that it would be right if ministers intervened more.

It is absolutely right and proper that ministers do not make decisions on individual pieces of capital equipment in the local health service. Local health boards and their committees, which are advised by the medical profession, should make such decisions on the basis of local needs. In the case to which the member refers, we know that Greater Glasgow NHS Board decided that the scanner in Stobhill should be replaced first. I am not in a position to question that decision. If that was the local health board's assessment, those who use Stobhill hospital will be pleased with that. Although those who use the Western infirmary might have been disappointed with the decision, they will be pleased to know that the Western's new scanner will be in place within the next few months. In fact, both scanners were ordered at the same time so that the Western's scanner would be available at the start of the current financial year so that it could then be put in place.

The reality is that the improved provision of cancer and other scanning equipment is one reason why the rate of cancer deaths in Scotland has reduced since 1997. Partly because of that investment, we have been able to make that difference. I think that cancer patients across Scotland would take Mr Monteith's protests as being a little more genuine if today he backed the bill to ban smoking in public places, put his days as a lobbyist for the tobacco industry behind him and supported the health of the people of Scotland.

Pauline McNeill (Glasgow Kelvin) (Lab): As the First Minister will be aware, in February of this year I wrote to the Minister for Health and Community Care to express legitimate concern that, although the replacement of a magnetic resonance imaging scanner and the provision of additional X-ray capacity at the Western had been agreed in principle, no funding had yet been identified. Therefore, I welcome what the First Minister has said today. However, does he agree that the Conservatives did little to modernise imaging equipment when they were in Government? Does he agree that the Conservatives' timing in raising the issue—*[Interruption.]*

The Presiding Officer: Order.

Pauline McNeill: Does he agree that the Conservatives have raised the issue at this time in a vain attempt to persuade the public in the

general election that the Conservatives can be trusted with the national health service? Does he agree that the public will not trust the Conservatives with the NHS?

The First Minister: Clearly, I agree with Pauline McNeill that the Conservatives have made a politically inspired attempt to undermine the health service.

Both to cancer patients and their families and to those who are concerned either about cancers of which they are currently aware or cancers that they worry might affect their families in future, I stress that we are determined that, step by step, we will ensure that Scotland offers the best facilities, equipment, staff, waiting times and services for those who are affected by cancer. We are determined to do that not just inside the national health service but also by supporting the voluntary sector, such as the Maggie's Centres. Across the length and breadth of Scotland, people are concerned about cancer in their family and among their friends and relatives. We want to reduce those worries by ensuring that services are improved and that we continue the progress that we have made in reducing cancer deaths in Scotland.

Wind Farms

6. Richard Lochhead (North East Scotland) (SNP): Now that the lights have come back on, we can turn our attention to energy.

To ask the First Minister what steps have been taken to provide guidance to local authorities on suitable locations for wind farm developments. (S2F-1602)

The First Minister (Mr Jack McConnell): Guidance on identifying sites is provided in "National Planning Policy Guideline 6: Renewable Energy Developments".

Richard Lochhead: Can the First Minister confirm that new guidelines will be issued to local authorities to ensure that wind farm developments are sited at appropriate locations? Will he give a commitment that new guidance will be issued in the coming months, and not in a matter of years, given the huge concern that is being expressed by communities and developers the length and breadth of Scotland? Will he also explain how he intends to achieve his target of getting 40 per cent of electricity from renewable sources by 2020? Is he simply going to rely on onshore wind farms? What is he doing to promote other renewable sources?

The First Minister: We are pursuing a number of different sources to ensure that we meet that renewables target. We are proud of having set that target, but we are also determined to meet it. We will do that not only by investment and by having

the right guidelines in place, but by consistency. We know that, in this area perhaps more than in any other, we have seen ridiculous inconsistency from Mr Lochhead and others. On the one hand, they say that they support renewable energy—Mr Lochhead himself talks about trying to ensure that Aberdeen is Europe's energy capital—but they oppose wind farms and create a scare about wind farm developments, both onshore and offshore. If we are to deliver renewable energy in Scotland and if Scotland is to be ahead of the game in the industry rather than behind it, we must be consistent and ensure that, where those guidelines are met, we support the developments and ensure that local people are not wound up to oppose them for the sake of support for the SNP or anything else.

Murdo Fraser (Mid Scotland and Fife) (Con): The First Minister should be aware that there is widespread concern among rural communities in Perthshire, and right across Scotland, about the fact that they are being swamped by large-scale wind farm applications coming in hand over fist. Is it not time that the Scottish Executive introduced national strategic guidance on locating wind farms and, in the meantime, brought in a national moratorium on wind farm applications that face substantial local opposition, as the only way to protect those communities?

The First Minister: We all know that the Tories would like us to return to the days when our industries were behind those of the rest of the world and we were falling behind because we were not investing in or ensuring that we capitalised on Scotland's potential and assets. We know that Scotland has not only the capacity and skills to generate renewable energy, but the fantastic natural resources that allow us to do so. We must ensure that Scotland is ahead of other countries—ahead of the game and not behind it. We intend to do that, but we also intend to do it using properly formulated national policies that ensure that fair and consistent decisions about wind farm development are made across Scotland. Those guidelines are in place. They are, of course, reviewed when they need to be, but they should be applied by local authorities, and MSPs and local authorities should not pass the buck to the Executive when difficult decisions are to be made. Difficult decisions need to be made. We should make them, back them up and ensure that Scotland leads the world in that industry.

Maureen Macmillan (Highlands and Islands) (Lab): Does the First Minister agree that the development of renewables gives huge opportunities for engineering jobs in the north of Scotland, particularly in the Moray firth area, whether in wind power, wave power or tidal power?

The First Minister: We have potential opportunities not just in the generation of electricity from natural resources—which is a good thing for Scotland, particularly now that we can export electricity to England and beyond as part of a proper, fair UK energy network—but also in construction and manufacturing. There are skills in Scotland, particularly in the north of Scotland as a result of the oil and gas industry, and we want to ensure that those skills are used. That is why we are in discussion with Highlands and Islands Enterprise and others to ensure that more such work is done for the Highlands and the north of Scotland.

Nora Radcliffe (Gordon) (LD): Will the First Minister join me in commending Aberdeenshire Council for developing supplementary planning guidance on the use of wind energy in Aberdeenshire? The council also plans to introduce supplementary planning guidance on biomass and small-scale energy generation. Does he agree that we need to promote the maximum possible use of all forms of renewable energy if we are to make any impact on slowing down or reversing climate change? Does he also agree that the Scottish Executive could support local authorities by encouraging Scottish ministers to determine those applications for which they are responsible as expeditiously as possible?

The First Minister: I absolutely agree with Nora Radcliffe's final point about the need for the expeditious determination of those applications for which we are responsible. Action is being taken to reduce the delays that have been experienced by many of those who make those applications. We want to ensure that further progress is made.

I have not seen the documents that have been produced by Aberdeenshire Council, but in principle I certainly agree that that kind of local approach would be very welcome and I hope that other councils can follow suit.

12:30

Meeting suspended until 14:15.

14:15

On resuming—

Question Time

SCOTTISH EXECUTIVE

Environment and Rural Development

Special Protection Areas

1. Mike Watson (Glasgow Cathcart) (Lab): To ask the Scottish Executive what plans it has to extend the network of special protection areas. (S2O-6537)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): I have confirmed in recent weeks two new sites and the extension of one existing site for capercaillie. On 7 March, I announced 11 proposed further additions to Scotland's network of special protection areas, including seven new sites, three boundary extensions and the addition of a qualifying species at an existing site. Further work is being done on possible new or extended sites for the golden eagle and certain species of seabird.

Mike Watson: I welcome the extensions that the minister has announced. Does he agree that the special protection areas throughout Scotland do not just protect wildlife but safeguard Scotland's natural heritage in its widest sense? Will he undertake to discuss with the Minister for Tourism, Culture and Sport the opportunities that special protection areas offer for the development of eco-tourism as a means of attracting greater numbers of visitors to this country?

Lewis Macdonald: I am happy to confirm that the work that we do in providing protection for species and habitats has wider benefits for biodiversity in general, as well as for those specific species and habitats. I am happy also to confirm that we will continue to work with colleagues throughout the Executive in promoting the biodiversity benefits, the economic benefits and the tourist numbers that those species and habitats can attract.

Mountainous Area Status

2. Maureen Macmillan (Highlands and Islands) (Lab): To ask the Scottish Executive what progress is being made in achieving mountainous area status for the most disadvantaged and peripheral areas. (S2O-6521)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): We are continuing discussions on future arrangements for less favoured area support from 2007 with the stakeholder working group, which includes

representatives of crofters and farmers and Highlands and Islands Enterprise. Further work on mountainous area status and related issues will be taken forward following the latest meeting of the group earlier this week.

Maureen Macmillan: Is the deputy minister aware that the crofting community feels that achieving mountainous area status—the top-priority category in the LFA classification—would enhance the case for increased support for peripheral areas in the Highlands and Islands? Is he aware that the crofting community feels that its difficulties have not been taken fully into account in the present LFA scheme? There is concern that, without top-category status, crofting will be unable to face down the challenges of common agricultural policy reform and climate change. The crofting community hopes that the Executive will do everything possible to support it in that regard.

Lewis Macdonald: The views of bodies such as the Scottish Crofting Foundation on mountainous area status are known to us and have been fed into the discussions of the stakeholder working group. We are keen to identify the most effective way to ensure that LFA support under the new regime is developed in a way that delivers particular support to the most fragile areas. Mountainous area status is one option for doing that; there may be others that reflect, for example, the land capability classifications of agricultural land. We would not want to go for an option that excluded fragile areas that happen not to be mountainous, but we recognise that many of the most fragile areas are in upland parts of the country. We will continue to explore the issue. Following the recent meeting that I mentioned, we have undertaken to do further work on all those options, including mountainous area status.

Mr John Swinney (North Tayside) (SNP): The minister mentioned in his earlier answer that one of the components in the debate about mountainous area status is the potential changes to the LFA regime. Will he provide Parliament with an update on the discussions in the European Union on reform of the LFA regime and tell us when he expects to have any announcements to make on the implications for those who currently benefit from LFA support?

Lewis Macdonald: The negotiations on the rural development regulation and the less favoured area scheme continue. In the first instance, agreement is required on the rural development regulation framework within which the LFA scheme will be developed. One of our priorities is to maintain LFA status for most of the Scottish land area that currently enjoys it. As soon as we can report to Parliament, we will do so.

Horse Strategy

3. Miss Annabel Goldie (West of Scotland) (Con): To ask the Scottish Executive what the current position is with regard to a horse strategy for Scotland. (S2O-6499)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): Executive officials meet the Scottish Equestrian Association regularly and I am confident that those meetings will assist the SEA if it chooses to take the lead in developing a strategic approach.

Miss Goldie: I accept that what is happening supports the industry, which makes a significant contribution to Scotland's economy. South of the border, a draft strategy for the equine industry is being consulted on. Given where that industry might be in 10 years' time, is the danger that the equine industry south of the border may be able to make more coherent and steady progress than the industry in Scotland? Is the minister apprehensive about that? Could more be done to provide leadership in Scotland?

Lewis Macdonald: I am not apprehensive about that. Our general view is that, because circumstances in Scotland are different from those in England and Wales, the equine sector's requirements to make progress are different.

It is important for the equine sector to be able to access all the interested sections of the Executive, whether that means my department's animal welfare section, the Enterprise, Transport and Lifelong Learning Department or the sports division of the Education Department. The Executive covers several interests. Officials from all the relevant sections participate in the meetings that I described and ministers maintain a dialogue among themselves about the issues.

I am not concerned that direction has been lost. However, if the Scottish Equestrian Association believed that it should do more, from within the sector, to develop a strategic approach, we would offer it our co-operation and advice.

Stewart Stevenson (Banff and Buchan) (SNP): I will ask about equine welfare. Does the minister recall various parliamentary answers about the Weeds Act 1959 that I have received in recent months? Since 1995, only four notices have been served about ragwort, which is a pernicious weed that has disastrous effects on horses. Only 70 man days were committed to enforcing the 1959 act. Will he do more to protect horses from irresponsible landowners who allow the spread of ragwort on their land?

Lewis Macdonald: I expect that if the equine sector felt that further action was needed on that issue, the matter would arise in the meetings that I

have described. Should it arise in that forum, we would respond to any request.

Domestic Waste Recycling

4. Bristow Muldoon (Livingston) (Lab): To ask the Scottish Executive what the impact has been of initiatives to encourage greater recycling of domestic waste. (S2O-6531)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): Local authority returns prepared by the Scottish Environment Protection Agency show a recycling and composting rate of 7.97 per cent in 2002-03, rising to 12.1 per cent in 2003-04 and to 16.6 per cent from April to December 2004.

Bristow Muldoon: Is the minister aware of the success in West Lothian of the three-bin kerbside recycling scheme, which was introduced in March 2000? That resulted in 18 per cent of domestic waste being recycled or composted in 2004-05. West Lothian Council is confident that it will meet the interim target of 25 per cent by 2006.

The only issue on which I ask the minister to back the council relates to its concern, which it has raised with me, that its ambitious plans to make further progress on waste recycling are being held up because the Lothian and Borders waste management project has not progressed as quickly as wished. Will he put the Environment and Rural Affairs Department's weight behind encouraging the councils involved in the partnership to make swifter progress?

Lewis Macdonald: We are keen to encourage swift progress around the country. We are conscious of the achievements of West Lothian and the positive projections to which Bristow Muldoon referred, which show West Lothian not only reaching but probably exceeding the targets that have been set for 2006. That is very welcome. We encourage all the authorities in Lothian and the Borders to work together to expedite the delivery of their plans as early as possible.

Demolition Activity

5. Fiona Hyslop (Lothians) (SNP): To ask the Scottish Executive what plans it has to review legislation on the environmental impact of, and environmental safety in relation to, demolition activity. (S2O-6539)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): Under the provisions of the Environmental Protection Act 1990 and other legislation, local authorities and the Scottish Environment Protection Agency have powers to tackle environmental problems resulting from demolition activity. The legislation is not currently under review.

Fiona Hyslop: I am disappointed by the minister's response. Perhaps he will review his decision in light of the demolition activity at Motherwell Bridge Ltd in my constituency, where asbestos was involved. The agencies to which he referred refused to take responsibility for that activity. The Health and Safety Executive takes responsibility for workers during demolition, SEPA takes responsibility for removal of waste after demolition and local authorities pass on responsibility to the private contractor involved. Will he review his decision, because serious public health and environmental impacts can result from demolition activity, especially when asbestos is involved, as in the case that I have highlighted?

Lewis Macdonald: As Fiona Hyslop says, the HSE, as well as local authorities and SEPA, has a role to play. We expect all the agencies with responsibilities not only to fulfil their remit but to ensure that the work that they do is joined up and that there is no gap in statutory provision. The case that the member highlights does not incline me towards a different view of the legislation, but I am happy to check the current state of play. I know that there have been discussions between SEPA and the local authority concerned and I am happy to ensure that those continue.

Developers (Environmental Damage)

6. Cathie Craigie (Cumbernauld and Kilsyth) (Lab): To ask the Scottish Executive what action it will take to ensure that environmental damage caused by developers does not adversely affect communities. (S2O-6508)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): Where planning control or an environmental consent has been breached, planning authorities and regulatory bodies such as the Scottish Environment Protection Agency have the powers to deal with consequent environmental damage. Those powers are kept under review.

Cathie Craigie: I am sure that the minister will agree that the current regulations have varying degrees of success in ensuring that communities are protected. I could highlight a number of sites in Cumbernauld and Kilsyth where developers have begun work but failed to complete it within a satisfactory timescale, adversely affecting the communities that live around the site. I know that planning matters fall within the remit of the minister's colleague, the Minister for Communities, but will he assure me that they will work together on the forthcoming planning bill to ensure that communities such as those in Cumbernauld and Kilsyth are protected from irresponsible developers?

Lewis Macdonald: I have no doubt that the review of planning will consider issues of

enforcement, as well as many of the other issues that have been aired in the chamber in the recent past. The Environment and Rural Affairs Department is happy, as always, to engage in discussion with colleagues on those matters.

Powers are available to local authorities to intervene when a developer has failed to maintain land properly in circumstances such as those that Cathie Craigie describes—in other words, when a developer has acquired a site but has not developed it. There is a requirement on the developer to maintain that land properly. If they fail to provide proper maintenance and the condition of the land adversely affects the amenity of the neighbourhood, the local authority has the power to serve a notice requiring the developer to take action. There is already provision for that, but the planning consultation process that is under way will yield other enforcement options.

Phil Gallie (South of Scotland) (Con): Is the minister confident that land that was formerly used for industrial development and which is currently being reclaimed in regeneration programmes through the burial of sewage sludge is not endangering the wider environment, especially watercourses?

Lewis Macdonald: Specific requirements govern the spreading of sewage sludge on land, to ensure that there is no adverse environmental impact. The Scottish Environment Protection Agency has powers to act if it thinks that the spreading of sewage sludge is compromising good environmental conditions, and the agency recently used those powers. However, it is important to recognise that the spreading of sewage sludge on land, if it is done safely and properly, offers a far better means of disposal than does land filling and is therefore encouraged, as long as the necessary environmental conditions are met.

The Deputy Presiding Officer (Murray Tosh): Question 7 has been withdrawn.

Subsidies (Information)

8. Dennis Canavan (Falkirk West) (Ind): To ask the Scottish Executive what measures it is taking to publish more information about the amount of subsidies that farmers receive. (S2O-6485)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): The Executive publishes an annual report on the administration of the common agricultural policy in Scotland, which includes statistics on payments of subsidy. Ross Finnie announced in January that we will publish details of recipients and subsidies under the new single farm payment scheme, which became operational on 1 January, and the new rural development regulation schemes, such

as the land management contract menu scheme, which came into operation this month.

Dennis Canavan: Will the minister comment on recent reports that disclosure of information about payments from the common agricultural policy to individual farms in Scotland is very limited, on the spurious grounds of data protection and European legislation? How can only limited information be disclosed, if there is full disclosure of information south of the border? Is the Scottish Executive operating a freedom of information system that is inferior to the system in England?

Lewis Macdonald: We are certainly not operating a system that is inferior to the one in England. However, we are operating a system that is different from the one in England. The Freedom of Information (Scotland) Act 2002 applies in Scotland as, of course, does Scots law. In the situation that the member identifies, as with every other case, we take legal advice on how the law applies. For example, the cases of individual farmers or crofters who are sole traders are subject to the provisions of the Data Protection Act 1998, which protects information that relates to individuals. The basis on which subsidies were provided in the past under the CAP included the protection afforded by confidentiality. However, our intention is that under the regime that replaces the CAP, individuals' names and subsidies will be made public.

Loch Lomond and the Trossachs National Park (Byelaws)

9. Jackie Baillie (Dumbarton) (Lab): To ask the Scottish Executive when, in this calendar year, it expects to consider revised byelaws for Loch Lomond and the Trossachs national park. (S2O-6503)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): The Loch Lomond and the Trossachs National Park Authority is currently engaged in an extensive consultation on proposals for new byelaws for Loch Lomond. I expect the authority to submit draft byelaws to ministers in December. If the draft byelaws are approved, revised byelaws will be introduced early next year.

Jackie Baillie: The minister is aware of my concerns about the use of jet-skis on Loch Lomond, particularly in the light of the decision of the Lake District National Park Authority to ban jet-skis from Lake Windermere. Given that a decision will not be taken until the end of the year, what assistance will the Scottish Executive provide for interim enforcement measures?

Lewis Macdonald: We have already made it clear to the park authority that we will assist it in bringing forward byelaws as rapidly as it can do

within the rules that govern the process. Clearly, a proper process of consultation must be followed, which is why the timetable that I described was set. However, as Jackie Baillie said, there is an issue to do with interim provision, in relation to which we have had fruitful discussions with the park authority. I expect those discussions to continue.

Dr Sylvia Jackson (Stirling) (Lab): Further to Jackie Baillie's question, I welcome the minister's comments on the continuing discussions with the park authority about the possibility of introducing interim measures. Could one such measure be a pilot in which separate zones for different leisure or sports activities are identified on Loch Lomond, so that all users of the loch can be treated with equal respect?

Lewis Macdonald: The measures that the park authority decides to take are a matter for the authority. We provided additional resources to allow the authority to increase ranger presence on the loch during the summer. That will allow the authority to enforce the existing byelaws, which limit speed and promote responsible behaviour on the loch. We will discuss with the park authority any other proposals that it brings forward in relation to how it is managing within the terms of existing byelaws. The priority is to bring forward the new byelaws as quickly as possible, which is why we have provided additional resources for that process.

Flood Prevention

10. Mark Ballard (Lothians) (Green): To ask the Scottish Executive how it plans to improve flood prevention measures and whether any such measures will inform revision of the relevant planning guidelines. (S2O-6543)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): We are continually looking at ways to improve flood prevention measures, and all planning guidelines are reviewed as required. We have no plans for an early review of Scottish planning policy 7, on planning and flooding, which was published last year following extensive stakeholder involvement and wider consultation.

Mark Ballard: The minister will be aware that Scottish planning policy 7 requires that the storage capacity of functional flood plains should be safeguarded. He will also be aware of the devastating floods that hit Edinburgh in 2002, when the Water of Leith overtopped its banks. Will he confirm that he will resist any attempt by the Scottish Rugby Union to convert the flood plains at Murrayfield into development land by inappropriately positioning flood walls as part of the measures that are being taken to safeguard Edinburgh from further flood damage?

Lewis Macdonald: Mark Ballard will be aware that a process must be followed in making and announcing decisions on specific projects. I was delighted earlier this year to open a new flood prevention scheme in Edinburgh. I look forward to seeing the full range of evidence to allow me to make a decision on the Water of Leith scheme, as it is one that has taken some time to get to its current stage. However, our overwhelming commitment in this process is to design flood prevention schemes that have the desired impact—namely, that they reduce the risk of flooding. A balance must be struck in all of that, but it is one that we will strike in the usual way, taking into account all relevant considerations.

Health and Community Care

Scottish Statistics

1. Mr Stewart Maxwell (West of Scotland) (SNP): To ask the Scottish Executive whether, now that it has published separate Scottish data for some of the indicators on the World Health Organisation's European health for all database, it will submit a separate return for Scotland to the database to enable Scottish statistics on health to be compared on a like-for-like basis with those of other European countries; and the reasons for its position on this matter. (S2O-6487)

The Minister for Health and Community Care (Mr Andy Kerr): I need a towel wrapped round my head in a darkened room after that question, but that is another matter.

The Scottish Executive considers that comparisons with health information for other countries is a vital part of understanding the health issues facing Scotland. It uses the WHO databases, along with other sources, for a range of analysis to inform relevant policy and decision making. Having invested in the new analysis for Scotland, the Executive is committed to ensuring that the maximum value and benefit can be derived from all possible international uses and comparisons. As a result, the Executive is discussing whether Scotland could be separately identified in the WHO's health for all database.

Mr Maxwell: I thank the minister for that charming answer.

Given that the published figures are now in the public domain but only 306 of the indicators have so far been published, is it the minister's intention to publish the rest of the indicators, up to the total number of 517? Why do we not have a direct input into the WHO's European database, which gives a like-for-like comparison? The question is particularly pertinent given that the figures that he has published show that the death rate for trachea, bronchus and lung cancer among

Scottish women is almost 50 per cent higher than the rate in the rest of the United Kingdom, and that the standardised death rate for cirrhosis of the liver in Scotland is 116 per cent higher than the rate in the rest of the UK. Is it not vital for the Parliament to have that direct comparison, not just with the rest of the UK but with the rest of Europe? We could also use that database for internal comparisons between the different regions of Scotland, using the software that is available.

Mr Kerr: Care must be taken when comparing Scottish health information with results derived from other sources, such as the WHO. Different classifications, definitions and methodologies mean that results must be interpreted very carefully.

The Scottish National Party, as it always does, looks to the figures that show that Scottish health is at its worst. I could quote other figures, such as those on life expectancy of males and females born today or infant deaths per 1,000 of live births, which show strong improvements. The database gives us mixed information, which the Executive is well aware of in the context of its strategy on coronary heart disease, stroke and cancer and the priorities that it has set in regard to the hungry for success programme, the physical activity task force in our schools and the attempt to improve health and well-being in Scotland. It is very unfair, but typical of the SNP, to talk Scotland down and pick the negative statistics.

The substantive part of the question—*[Interruption.]* Well, the member chose to use the statistical database to talk down Scotland, so I wanted to use the opportunity to talk up Scotland's health and create some confidence in our Scottish health service. If SNP members had listened to the Royal College of Nursing conference this week, they would know that the RCN asked politicians to speak about the positive aspects of health as well as those that cause them concern—the SNP singularly fails to do that in its questions.

The member asked why we had managed to provide only 306 of the 599 WHO health indicators. Providing those indicators is a considerable effort and a lot of work that has significant resource implications for the information and statistics division and which delays other ISD activity on its work programme. Therefore, we need to balance the pressures in Scotland around the well-recorded improvements that we want to make in the ISD and in the information that it provides to the Executive and the wider public. We must manage our resources effectively to ensure that we deliver that wider programme of work while celebrating the fact that we now have 306 of those indicators in our database. I suggest that good progress has been made and that we try to

understand the resource implications for the ISD and its wider work programme.

Community Hospitals

2. Christine Grahame (South of Scotland) (SNP): To ask the Scottish Executive when it will publish the replies it received to its questionnaire on the current and future role of community hospitals. (S2O-6500)

The Deputy Minister for Health and Community Care (Rhona Brankin): The Executive is not able to publish the individual replies to its questionnaire on the current and future role of community hospitals, as they were provided in confidence. We will, however, publish a summary of the responses in May 2005.

Christine Grahame: As a result of the Freedom of Information (Scotland) Act 2002, I have the response from Borders NHS Board in my hand. One of the interesting points that it makes about cottage community hospitals is that they provide an

"intimate environment ... well suited to providing Palliative and Respite Care for some patient groups."

It then makes a telling point that

"there are no hospices in the Border area."

Given that the Borders currently has the highest number of elderly people in Scotland and that that will increase by 30 per cent over the next few years, does the minister agree that cottage hospitals such as those at Jedburgh and Coldstream, which provide respite and palliative care in an area with no hospices, should remain open to fulfil that important role for the elderly frail in the area?

Rhona Brankin: The Executive recognises that it is important to develop the role of community hospitals and we are conducting a national review, as the member alluded to, on the role of community hospitals in order to develop a strategy for sustaining small, rural and community hospitals. A discussion paper on the future of community hospitals will be circulated for consultation during the summer of 2005 and a final strategy will be available by April 2006.

A major programme of investment, change and modernisation in community health facilities amounting to more than £13 million will be undertaken in the Borders by the end of April 2006. There will be a phased programme of health centre improvements, such as redevelopment in Newcastleton and Stow and the work that is under way at Kelso health centre. Work is also due to commence in 2005 on the redevelopment of Galashiels health centre. Community hospitals in the Borders have also seen major redevelopment and upgrading. Duns, Hay Lodge at Peebles and

Kelso community hospitals have been the subject of major modernisation programmes for frail and elderly patients. Such patients are now admitted to and cared for in modern, en-suite facilities that are designed to respect their right to privacy and dignity in old age. I assume that Christine Grahame welcomes that modernisation and improvement.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): I recently visited the palliative care department at Borders general hospital, where I met the consultant Jim Rodgers and his dedicated staff. In light of that visit, although I welcome the investment in my constituency, does the minister recognise that one of the crucial elements of community hospitals and the delivery of palliative care to elderly people in the Borders is the link with Scottish Borders Council social work services and the voluntary sector? Will she affirm that community hospitals and local health provision, as well as the wide range of other services provided through local authorities and other agencies, make a real difference to elderly people?

Rhona Brankin: Absolutely. Hospitals do not work in isolation; they need to work in partnership with local authority social services teams. Mr Purvis will be aware that an action team has been set up as part of the national framework exercise to consider specifically rural access to health services. We look forward with interest to the team's report.

Sexual Health

3. Patrick Harvie (Glasgow) (Green): To ask the Scottish Executive what progress has been made towards implementing its strategy and action plan for improving sexual health. (S2O-6545)

The Minister for Health and Community Care (Mr Andy Kerr): I fully appreciate the expectations of members and of key stakeholders following publication of the strategy. Of course, full implementation cannot occur overnight. However, two key workshops have been held. The first, for clinicians and board executive directors, was held on 16 February, to consider the clinical services implications of the strategy. The second workshop, on 24 March, was for key stakeholders who commission services, to help them to consider how best to implement the strategy. Following on from those workshops, we have now received all board clinical sexual health plans. We are considering them in the context of disbursing funds from the additional £5 million per annum over the next three years for implementing the strategy. The national sexual health advisory committee will have a crucial role in monitoring progress and supporting implementation of the

strategy. Letters seeking nominations to the committee were issued earlier this week.

Patrick Harvie: I thank the minister both for his answer and for his efforts in keeping the cross-party group on sexual health informed of developments. It has been three months since he made a commitment to the Parliament to seek time for a full debate on the sexual health strategy. Has the time now come to hold that debate, given that decisions are now being made and the direction of the strategy's implementation is being determined? I would not have wanted a debate immediately; as we agreed at the time, we needed time to digest the material. However, will he now make a clear commitment that Parliament will have a debate on these important issues at least before the summer recess?

Mr Kerr: Presiding Officer, I am not sure of the rules about making a clear commitment. I have absolutely no problem with bringing to the forefront in the chamber the issues that affect us in Scotland with regard to sexual health and our sexual health strategy. I am happy to raise the matter with the relevant parties, starting with my colleague Margaret Curran, because, like Patrick Harvie, I believe that we should discuss the strategy in the chamber. Things are moving on—indeed, significant things have happened over the past few months—so I would be happy to debate the matter in due course.

Phil Gallie (South of Scotland) (Con): Is it the case that the incidence of under-age pregnancy has increased in Scotland in recent times, as has the spread of sexual disease among young people? Does that perhaps suggest that the new enlightened policy on sexual health education, for young people in particular, is going in the wrong direction?

Mr Kerr: No, I do not think that it suggests that. We cannot single out aspects of our sexual health strategy—or, indeed, the position of society as a whole—without factoring in issues of equality, deprivation, education, community well-being and confidence. All those things contribute to our sexual well-being and sexual health, so I do not make the assumption that Phil Gallie makes about the work that we are doing. Whatever he may say, I think that he should take time to visit some of the much-valued services in our community and to speak to the professionals involved in delivering those services, as I, Rhona Brankin and others have done.

We have to speak to young people and communicate with them, their parents or guardians and members of their wider family to ensure that we can give them access to high-quality information. We must ensure that young people delay sexual activity until they are ready, but that, once they are ready and are embarking on having

sex, they do so safely. That is the right strategy—it is a balanced strategy, in which abstinence has a place and a role. I know that our approach upsets some people, but we must ensure that the services that we provide offer the appropriate support to young people who are ready for sexual activity.

This is a difficult area in which to work, but the people to whom I have spoken deal with the matter professionally—they involve young people's families and talk about the wider social issues. We support the valuable service that I believe those professionals offer. That is what phase 2 of the healthy respect project is about. As we see in our communities these days, professionals are working with young people, sometimes in difficult circumstances. They are doing so professionally, trying to ensure that the wider family is involved and speaking to young people in language that they understand.

We are trying to ensure that we can tackle the issues that Phil Gallie raised in relation to sexually transmitted infections and teenage pregnancies. I strongly believe that the sexual health strategy and the further support that we are putting into it will have a positive impact on the figures.

National Health Demonstration Projects

4. Susan Deacon (Edinburgh East and Musselburgh) (Lab): To ask the Scottish Executive how the work of the four national health demonstration projects is being developed to inform practice across Scotland. (S2O-6509)

The Deputy Minister for Health and Community Care (Rhona Brankin): Phase 2 of three demonstration projects—have a heart Paisley, healthy respect and starting well—has been launched, together with evaluation reports and learning materials from phase 1. Three national learning networks, based at NHS Health Scotland, are leading in the key role of sharing learning and informing national practice throughout Scotland. The fourth demonstration project—the cancer challenge—became Scotland's contribution to the United Kingdom colorectal cancer screening pilot. It is being continued while plans for national roll-out are developed as part of the bowel cancer framework, which was launched in April 2004.

Susan Deacon: I welcome the progress that has been made, but does the minister agree that valuable lessons on how infant and maternal health can be improved can be learned from the starting well project? In particular, will she join me in recognising the contribution that multidisciplinary teams have made to the project, which involves health visitors, lay health support workers and many others, including community nursery nurses? Will she assure me that, in the

on-going debate about future health service provision, she will work to ensure that appropriate attention and investment are given to the vital work that goes on in people's homes and in people's communities and that the debate does not focus only on hospitals and other bricks-and-mortar issues?

Rhona Brankin: Absolutely. One of the key lessons in phase 1 of starting well was the need for inter-agency work. The importance of the phase 2 development is that it will focus on the needs of the most vulnerable children—aged zero to five—and their families throughout Glasgow. The work will be done through a multidisciplinary and multi-agency team, which will include social work, health and education. Through referral from generic services, starting well will pilot common assessment processes among groups of professionals and multi-agency partners. The work will be developed through the "Health for All Children" guidance, the fourth edition of which has now been launched.

I agree with Susan Deacon about the importance of parenting. We now understand the vital importance of the early years in any child's life. I also agree with her that, as part of our health improvement strategy and our work to tackle health inequalities, we need to tackle some of the inequalities that we see among parents and families throughout Scotland.

NHS 24

5. Mr John Swinney (North Tayside) (SNP): To ask the Scottish Executive what its position is on the current performance of NHS 24. (S2O-6489)

The Minister for Health and Community Care (Mr Andy Kerr): The Health Department continues to receive weekly reports on performance from NHS 24 and tracks significant trends closely. We recognise that more needs to be done to ensure that NHS 24 improves the services that it provides to the public. A major programme of work is under way within NHS 24, in partnership with local NHS boards, to bring about those service improvements. The internal programme of work is running in parallel with the independent review, which was announced in February. The review team has been asked to provide an interim report by the end of May and a final report—with recommended actions for NHS 24, NHS boards and the Health Department—by the end of September.

Mr Swinney: I welcome the minister's comments, in particular his recognition that all is not well with NHS 24—the acknowledgment that there are difficulties is a starting point from which we can work to improve the service for the safety and health of our constituents. In the light of the

concerns that general practitioners now regularly express in the media about the quality of advice that is given to patients who phone NHS 24 and of the volume of constituency cases that come to me on the subject, will the minister assure the Parliament that he will look carefully at the feedback from the review groups and make early recommendations on how the performance of NHS 24 can be improved for the safety of all our constituents?

Mr Kerr: Absolutely. I share some of John Swinney's concerns—he has written to me on a number of occasions about the performance of NHS 24. However, NHS 24 is a large service that deals with a multitude of calls. On many occasions, the calls go perfectly well. In response to some of the more negative press articles, I point out that I have received many letters of support from the public about their personal experiences of using NHS 24. I have also visited NHS 24 and seen some of the work done by the excellent front-line staff, who deal with a million calls per annum.

However, when things go wrong, they go badly wrong. A reassurance that I can offer is that we can follow the service all the way through from the initial call. That allows us to find out exactly what happened to that individual caller. I advise all members to ensure that they are aware of the service that is provided. Those with complaints should contact NHS 24 directly and find out about the whole call experience.

I share John Swinney's concerns and am aware that such concerns are being expressed. However, it is ironic that—following the expansion of NHS 24 as a result of GPs saying that they would no longer provide an out-of-hours service—some GPs are now heavily critical of the service.

The service is evolving. It can and will improve. I acknowledge the concerns, which is why we are having a review. A work stream within the review team will also take account of some of the rural issues that John Swinney has raised. I look forward to the interim report and to the subsequent September report, which I hope will give us a good steer towards improving confidence in the service.

Janis Hughes (Glasgow Rutherglen) (Lab): I thank the minister for his continuing commitment to reviewing NHS 24. The organisation has had problems in the recruitment and retention of staff. Will he work with NHS 24 to consider more imaginative ways of recruiting staff, such as secondments from other parts of the NHS?

Mr Kerr: NHS 24 offers flexible employment opportunities; it offers nurses and others a different way of working in the health service. Staff to whom I have spoken—both on formal visits and informally—want to balance eye-to-eye engagement with patients in hospitals or other

care environments with engagement through the telephone-based system. Both systems are equally valid.

I agree with Janis Hughes that we must be more creative. We must also be more supportive of staff, because they work under considerable pressure. We must provide proper training and give people proper skills. We must value the staff. I am sure that, through such measures, we will be able to recruit and retain more staff.

NHS 24 is an essential part of modern health care. People outside Scotland look at it with some envy, but we need to be sure that we can deliver the service more effectively. I share Janis Hughes's concerns; we must be more creative.

The Deputy Presiding Officer: We have to go now to—

Linda Fabiani (Central Scotland) (SNP): On a point of order, Presiding Officer. I will check the timings in the *Official Report* tomorrow, but it seems to me that ministers have taken an inordinately long time to answer questions. As a result, only five health questions have been asked. I ask the Presiding Officers to look into that and to come back at some future time to tell the chamber what length of answers is acceptable.

The Deputy Presiding Officer: If members check the *Official Report*, they will find that we covered nine environment questions in 21 minutes and five health questions in 21 minutes. Members will also see that the health questions were significantly longer than other questions.

Stewart Stevenson (Banff and Buchan) (SNP): Not all of them.

The Deputy Presiding Officer: No, not all of them, but the health questions were generally longer. The answers were also longer. The consequence, of course, is that we got through fewer questions. I do not have any power to direct either the questioners, so long as they are asking pertinent questions, or the ministers, so long as they are giving answers. For ministers, it is a matter of judgment whether they require to give detailed information in answer to specific questions, or whether they wish to answer more questions.

Criminal Justice Services

The Deputy Presiding Officer (Murray Tosh):

The next item of business is a debate on motion S2M-2736, in the name of Cathy Jamieson, on supporting safer, stronger communities and the reform of Scotland's criminal justice services.

I think that Cathy Jamieson is just about ready.

14:58

The Minister for Justice (Cathy Jamieson):

Thank you, Presiding Officer—I was just making sure that the Minister for Health and Community Care had taken all his worldly goods with him. I am pleased to be able to begin the debate.

Scotland's people and Scotland's communities have the right to live safely, secure in their homes and neighbourhoods and free from the fear of violence. Safer communities supported by a fair and effective criminal justice system—that is not just an aspiration, it is a clear objective and it is why we have embarked on the most radical reform of criminal justice in a generation.

Our reforms are about getting to grips with offending and reoffending, about making our courts more effective and more efficient and about tackling the continuing threat from drugs, whether the threat is from the addict who turns to crime to feed a habit, from the dealers on street corners or from the organised gangs at home and abroad. The reforms are also about the way in which we deal with sex offenders, of whom there are a small number, but who, rightly, are of huge public concern. Our reforms and investment have delivered nearly 1,000 more police officers since 2001. All our reforms are about helping ordinary, hard-working people to stand up to antisocial behaviour and the booze-and-blade culture that is corrupting decent communities throughout the country.

Nowhere is the need for further reform and the need to act felt more acutely than in relation to how we deal with violent crime, particularly knife crime. Knife crime is an ugly and vicious scar on our society. Sadly, it reflects an enduring, widespread and deep-rooted culture of violence in our country. That culture is not acceptable and we have to do more to challenge and change it. We need serious debate and discussion about why Scotland has such an ugly, dark side, why violence, abuse and alcohol are linked in such a damaging cocktail, why violence continues to be linked to sectarianism and why too many women and children continue to live in fear of violence in their homes.

I welcome today's debate. I hope that it will give us the opportunity to consider the wide-ranging

reforms that are transforming criminal justice in Scotland and to examine the actions that the Executive is taking to tackle knife crime, so that we can make Scotland a better, safer place.

Six out of 10 offenders will be reconvicted within two years of leaving the prison gates. We have all heard the figures and we all know that they are unacceptable. That is why reducing reoffending must be at the forefront of our reformed criminal justice services.

The provisions of the Management of Offenders etc (Scotland) Bill strengthen the relationship between criminal justice social work and the Scottish Prison Service. The bill will introduce new partnerships that will ensure more effective management of individual offenders, greater local and national scrutiny of the agencies involved, a new national advisory body that will bring together the key players at national level and a new governance structure for the Scottish Prison Service, under which ministers will take back responsibility for the decisions that are most likely to have an impact on communities.

This is not change for change's sake, but change that will reduce the likelihood and risk of reoffending and reduce the dangers that sex offenders pose. As I said, although sex offenders constitute a relatively small group, the danger that they present and the concern to which they give rise are real and substantial. Victims and communities know that only too well. That is why tougher measures will be put in place. We have tightened the legislation on sex offending and introduced more robust procedures to ensure that the judiciary have better information when sentencing sex offenders. We are strengthening the law that protects children from predatory sex offenders, particularly those who seek to use the internet. Moreover, we have set up the Risk Management Authority.

Stewart Stevenson (Banff and Buchan) (SNP): I welcome the Executive's proposal to bring an end to the automatic release of all sex offenders. However, will that measure apply to all sex offenders—in other words, to anyone who has an index entry, even if it is not a main index entry?

Cathy Jamieson: Clearly, the focus in the first instance is on those people who have been convicted of a sexual offence. I was about to move on to address that issue more fully.

We can always look harder at the issues and do more to protect innocent citizens. That is why, first, I asked Professor George Irving to investigate the operation of Scotland's sex offender registration scheme. Clearly, that point is relevant to the issue that Stewart Stevenson raised. Professor Irving hopes to submit his report and recommendations to me this summer. I will study them with great

care. Secondly, I asked the Sentencing Commission to report to me by June this year on how best to take forward our commitment to ending the unconditional automatic early release for all prisoners who are convicted of sexual offences. The Executive has such matters very much on our mind at the moment. Thirdly, we asked every police force, every local authority and the Scottish Prison Service to review the plans that are in place for each and every medium-to-high-risk sex offender. Those bodies have been asked to report to me after the summer on the audits that they have undertaken.

Just as we are taking steps to get to grips with how we manage sentenced offenders, we are pushing forward with further reforms to make our courts more effective. The new arrangements in the High Court are now in place and beginning to work. Last month, we published our proposals for radical reform of the summary justice system, which is where the majority of less serious cases are heard. Although those offences are classed as less serious, they are the kind of cases that are most likely to affect local people in our communities.

Summary justice reform is at the heart of a better criminal justice system, in which justice is delivered fairly and speedily, the sentence fits the offence, the rights of the victim are given full and proper regard, restoration and repair of the harm that is done to communities become an everyday part of how we do business and reducing reoffending is a common goal. That is all about focusing on smarter, sharper options, so that offenders make amends for their actions and communities see that justice is being done.

Where legislation is needed, we will introduce it, but we are not just waiting to pass legislation. We have already introduced specialist, problem-solving courts, such as youth courts, drugs courts and, most recently, a domestic violence court. Drug treatment and testing orders, which are the mainstay of the drugs courts, are proving to be effective in working with high-tariff offenders with substantial drug misuse problems.

We face the more fundamental challenge of ensuring that our sentencing framework is transparent, effective and consistent. Sentencing is rightly and properly an issue for the courts, but it is a matter of public safety, public concern and public confidence that the right decisions are taken on bail and remand, early release from custody and overall consistency of sentencing. That is why the Sentencing Commission has been tasked to carry out a root-and-branch review of those matters.

Miss Annabel Goldie (West of Scotland) (Con): I am comforted to hear that the minister has confidence in drug treatment and testing

orders. Does she accept that, if we introduce those orders at district court level, we will effectively provide early intervention and prevent a lot of criminals from going on to the sheriff court to face higher-tariff charges?

Cathy Jamieson: As I outlined, we are examining the whole summary justice system, so I will not make a commitment at this time. However, we believe that early intervention is important. That is why one of the proposals in the proposed police bill relates to mandatory testing for a drug link to crime, so that we can get people into treatment before we get to the stage of sending them to court.

Another issue that I am sure will be of interest to Annabel Goldie and other members relates to bail and remand. We need to take tough action to address the problem of too many people offending while they are on bail. When people offend on bail, not only does that have consequences for victims, but it has a corrosive effect on public confidence in the justice system. That is why we are giving the courts the option to manage the accused more tightly when bail is granted. The pilot programme to make tagging available for offenders who have been permitted bail is not an alternative to remand for those who should be in custody; it is a tougher condition of bail.

The action that we are taking will deliver results and make our communities safer and stronger. We have increased the number of police officers—there are record numbers of police officers in Scotland. We have strengthened the Scottish Drug Enforcement Agency. We have better crime clear-up rates, there has been more disruption of drug-trafficking rings and we have implemented our antisocial behaviour legislation. All those measures have been put in place and they are all beginning to bite.

Stewart Stevenson rose—

Cathy Jamieson: I am sorry, but I have to move on.

Local agencies are determined to make a stand against the mindless, abusive and disruptive behaviour that undermines the fabric of too many of our communities. They are beginning to use closure orders, antisocial behaviour orders, noise nuisance powers, fixed-penalty notices and powers of dispersal. With the use of such measures, the lives of real people in real communities are improving when, in some instances, those people had lost hope of ever getting a peaceful night's sleep, something that most of us take for granted.

On the streets of hard-pressed communities throughout Scotland are 550 community wardens. I was interested to hear that in Peterhead and Fraserburgh, for example, the wardens helped to

reduce reported incidents of vandalism and youth disorder by 50 per cent over a six-month period in 2004.

On proceeds of crime and drug dealers, we have made tremendous efforts to assist communities in standing up to antisocial behaviour, not just by those who are involved in the drugs scene, but by the dealers who are peddling illegal drugs. The drug dealers don't care campaign, on which we are working with Crimestoppers, has been particularly successful. There have been 3,500 actionable calls, which is an increase of 400 per cent since the campaign began. There have also been nearly 1,000 replies to direct mail, 116 arrests and 292 charges. The impact of that operation will last long after the first phase of the campaign ends. We have also introduced additional funding to tackle treatment and rehabilitation.

The debate gives us the opportunity to put on record our support for the communities that want to stand up to antisocial behaviour and are fighting back against the drug dealers, but we still have a long-standing problem with knife crime. Around half of all murders involve knives, as do many other serious assaults. In too many of our communities, young people, and young men in particular, carry knives routinely.

We have already announced a five-point plan to tackle knife crime. I will not rehearse all the points in it today, but we will shortly consult on proposals for licensing the sale of non-domestic knives and banning the sale of swords, which have caused the most problems. I am aware that many members have been invited to visit the violence reduction unit in Strathclyde—I know that some members have already visited it and I encourage others to take up the offer.

I hope that, this afternoon, we will be able to have a constructive debate, get underneath some of the problems in Scotland, examine more closely the reasons why we have those problems and begin to consider solutions for the future.

I move,

That the Parliament believes that building safer, stronger communities is vital for Scotland's well-being and future success; supports the reform package set out in the Criminal Justice Plan to promote the swifter delivery of sentences that are effective in reducing reoffending and supporting rehabilitation; recognises that violence, particularly knife crime, damages the daily life of already disadvantaged communities, and believes that co-ordinated action to tackle violence and knife crime must be stepped up in communities across Scotland.

15:11

Mr Kenny MacAskill (Lothians) (SNP): The Scottish National Party fully supports the motion and the minister's words. It is clear that there is a

cultural malaise in Scotland that manifests itself not only in a drink culture, but in a knife culture and a growing drug problem. That cannot simply be legislated against, but needs to be addressed by our communities and in our communities.

The SNP welcomes the debate. Crime is a continuing societal problem. It is the cause of worry as well as death, injury and upset. The debate, as with other debates at the moment, takes place against the backdrop of a general election, which gives rise to a great desire for instant solutions and one-off remedies. Our view is that we must take cognisance of the fact that no one party has the prerogative over law and order; it requires to be addressed in all communities no matter what viewpoint one takes or faith one professes.

That is not to say that action and prescription are not needed, because they clearly are. There are some easy remedies that we need to use. We need more police, a more visible police presence and more resources for the organisations that are trying to tackle crime through other means. We also need more disposal options for our judiciary and others who are involved in sentencing to use and more diversion from prosecution. However, there is no one simple solution and, to some extent, that is why we are happy to support the Executive. We have had fewer simplistic soundbites and more sensible, pragmatic plans, which we recognise as being important because, although they will not bring about an immediate change over a matter of days, they will result in a better community.

The problems are caused by a variety of factors, which is why there is no one immediate or instant solution. Individual behaviour needs to be addressed as well as social problems. Wicked and reckless actions by individuals, as well as drink, drugs and deprivation, which afflict many, affect and create the climate that fuels the problems.

We are happy to support the Executive's motion, although we have a few caveats. In particular, we recognise that resources need to follow those on whom obligations are placed. We must be wary of putting more responsibilities on local authority departments, never mind other organisations, without giving them commensurate resources. We must acknowledge that the problem will be tackled not by one super-organisation but by a variety of organisations—whether local authorities, non-governmental organisations, or Executive departments—and that, in many instances, it is best dealt with through co-operation. We must ensure that co-operation takes place and the Executive must give direction to ensure that its departments and other organisations work together, but I am glad that the Executive has

taken on board the point that one super-organisation is not the way to go.

We will not support the Tory amendment, which once again is written in jingoistic terms with an eye on the coming election.

Miss Goldie: Mr MacAskill might have noted that the amendment is verbatim a motion on which my party led a debate in December, when no election was in sight.

Mr MacAskill: The motion is an example of the sloganising that we have had from the Tories since the Parliament was formed without any sensible attempt to move forward.

There are aspects of the Tories' amendment that are sensible. Clearly, rehabilitation is part of the process that should occur when someone is in prison and we would say that, fundamentally, we do not have prisons for the purpose of rehabilitation. Prisons are for people who are dangerous to the rest of us in society or who have committed an offence of such seriousness that they require to be incarcerated in order that society may show its displeasure. They are not there to provide rehabilitation. If somebody's fundamental problem is alcohol or drugs, we require to address the basis of the problem that results in criminal action.

Gordon Jackson (Glasgow Govan) (Lab): Like me, would the member say that we should not imprison people who have defaulted on fine payments?

Mr MacAskill: It is utterly ludicrous that we have such a large number of people, particularly women in places such as Cornton Vale, who are imprisoned—and, in some cases, committing suicide—because they have defaulted on fine payments. There has to be a better way.

Similarly, if someone commits an armed robbery because they need money to fuel their drug problem, they need to go to prison because the offence is so serious that that is the treatment that it merits. If their crime is simply that they possess or are using drugs, it might be much more sensible for us to address the root cause of the criminality. That is the issue that we want to deal with.

Margaret Mitchell (Central Scotland) (Con): Will the member give way?

Mr MacAskill: I have already taken two interventions.

On automatic release, we welcomed the proposals with regard to sex offenders by the Executive and take cognisance of them. Our amendment is designed to add to, not detract from, the point that the Executive is making. We need to take responsibility in Scotland. Responsibility needs to be taken at an individual

level because, sadly, too many people are making excuses for what is purely bad behaviour. I do not want to get into the argument of whether a certain proportion of antisocial behaviour is just antisocial or is criminal behaviour; however, our communities are fed up with people making excuses for wanton and unacceptable bad behaviour. People must remember that they have responsibility for their actions and that, more important, their actions have consequences.

We have to remember that there are difficult matters that we must deal with. People have to participate in the criminal justice system because, to be quite frank, we get the police in our communities whom we deserve. If our communities, for whatever reason, do not participate in the process—whether it is by reporting crime or becoming involved in the situation—the police cannot do their job effectively and appropriately. I know that it is easy for me—a resident of the same leafy suburb in which our learned Lord Advocate resides—to say that people should participate and report crime, given that I am not getting my tyres slashed, my windows put in, my children threatened and so on, but we must say to people that they must co-operate with the police, otherwise the police cannot do their job. We must get police whom our community is prepared to work with.

I will make my last point with particular regard to the Tories. We must address the elements that are the basis of a great deal of crime. For many centuries, we based the betterment of our country on the importance of the three Rs, but if we want to resolve the problems that Scotland faces in the 21st century, we must address the three Ds: drink; drugs; and deprivation. They fuel crime and alienation and, until we tackle them, we will not solve the problems that we are talking about today.

Individuals must take responsibility for their actions and we, as a society, through our elected Government, must take responsibility for all communities and all individuals, no matter how marginalised or alienated.

I move amendment S2M-2736.2, to insert at end:

“and recognises the need for individuals to accept greater responsibility for their actions and the consequences thereof as well as their own role in criminal justice, from reporting crime to participating in jury service, and equally for the Scottish Executive to recognise its own responsibility to all communities in Scotland and address the problems of drink, drugs and deprivation that lie at the root of much desperation and crime.”

15:18

Miss Annabel Goldie (West of Scotland) (Con): I support the rubric to the motion,

"Supporting safer, stronger communities". There is not a scintilla of difference between the minister and me in relation to seeking those objectives for Scotland. Unfortunately, there is a yawning gap between what my party regards as being the fundamental components of a criminal justice system that will achieve those objectives and the strategy of the Executive. In a nutshell, the difference is about whether we should put in place simple priorities before approaching specifics or do what the Executive does and sidestep the priorities and deal only with the specifics.

Before expanding that theme further, I will deal with process. The justice plan that we are discussing was published on 6 December 2004 and I think that the minister used the adjective, "radical" in connection with it. It is indicative of the level of priority that it has been given that only now has the Scottish Executive got around to debating it. As I said earlier to Mr MacAskill, the matter was considered in the chamber in December 2004 only because my party secured a debate on it. I make no apology for repeating the arguments that we advanced then on the creation of safer, stronger communities, which are reflected in our amendment.

Cathy Jamieson: I recognise that Annabel Goldie's party initiated that debate, but does she accept that the question is not one of debating a document on a one-off occasion? The document contains a number of strands, some of which we have debated in the Parliament and elsewhere. The point of debates is to take things forward, not to return to rhetoric that has been used before.

Miss Goldie: We are not going to agree on the mechanics of the process, but if the proposal is as radical as the Executive suggests, it would have been timely for the Executive to have debated it long before now.

The reality is that the overall number of crimes and offences has increased from 907,525 in 1997 to 993,126 in 2005. Just as alarmingly, there is a huge amount of unreported crime: according to the Scottish crime survey, three out of four incidents are not reported, which confirms what my party has been maintaining. Sadly, those statistics produce a picture that reflects what many of our constituents tell us is going on in our communities. Regrettably, it is a picture with which the public are familiar and it highlights the difficulty that the Executive faces in presenting the criminal justice plan as a solution. Individual bits of it are worthy and merit support in their own right, but the plan as a whole is not coherent and lacks an underpinning strategy.

That is why my amendment offers three simple components that, once in place, could be supported by elements of the criminal justice plan. Unless those three fundamental components are

in place, the plan will have only a patchwork effect. There is no point in trying to replace roof tiles, put new rendering on the chimney and paint the windows if the structural cracks and the sinking foundations mean that the whole house is at risk. That is why my party would start to address the basic problems by dramatically increasing the police presence in our communities, with 1,500 new officers.

Mrs Mary Mulligan (Linlithgow) (Lab): When Labour came to power in 1997, there were 14,789 police officers in Scotland. Today, there are more than 16,000. It is clear to me that the Labour-led Executive is increasing police numbers. What can the Conservatives offer us, apart from a rehashed amendment?

Miss Goldie: That might be clear to the member but it is certainly not clear to the public. Those additional officers are not appearing in the communities where members of the public live. The Executive has visited many new bureaucratic obligations on our police officers, which keep them in offices and not in our communities. That is why my party is committed to providing 1,500 new officers.

Increasing police presence would make a radical difference. It has worked in New York and, much nearer to home, it has worked in Broomhouse in Edinburgh. It has worked for the residents of Reidvale Housing Association in Dennistoun in Glasgow. A report shows that the improved night-time policing in that area has reduced crime. That must be our first approach to reducing the overall incidence of crime.

Jackie Baillie (Dumbarton) (Lab): Will the member take an intervention?

Miss Goldie: No. I have been generous.

When a prison sentence is appropriate, the term that is imposed should be the term that is served. The Executive does not agree with that, but the public know what they want and what they expect. Ending automatic early release is what the law-abiding majority want. If that had been done, James Campbell would not have been at liberty to perpetuate an appalling crime. Ending automatic early release is also important if we are serious about trying to provide rehabilitation in our prisons. I do not agree with Mr MacAskill; many of the people in our prisons are serious offenders who need to be in custody for the sake of society, but they also need rehabilitation.

It is quite wrong to say that prison does not work. We know that from the experiences of Spain and Ireland, where there is a high prison population in relation to recorded crime and a low crime rate. In Scotland, we have a lower prison population in relation to recorded crime and a higher crime rate. Prison will not work if there is

automatic early release and if rehabilitation provision in prison is not sustained and effective.

I deplore the decision to stop mandatory random drug testing in our prisons. I know that the Executive is concerned about the high rate of reoffending by discharged prisoners, but if they emerge without the education and training that they need to re-enter the community, reoffending will be a risk. If a drug addictive prisoner who is still dependent on drugs re-enters the community, reoffending is an even higher risk. Unless such issues are addressed, discharged prisoners will continue to reoffend and it will be tempting for people to say—although it would be misjudged—that prison per se does not work.

I conclude by urging the Executive to prioritise the fundamentals of all criminal justice systems: improving policing levels; reducing the crime that is committed; and identifying what makes certain individuals repeat their criminal activity. That might be dealt with outside prison, but if prison is the court disposal, the Executive should prioritise ending automatic early release and create a regime in the prison that will reduce opportunities for reoffending and improve meaningful rehabilitation by steering convicted criminals away from crime.

I move amendment S2M-2736.1, to leave out from first “believes” to end and insert:

“notes the unacceptable rate of reoffending occurring in Scotland today; accepts that there is a place in our criminal justice system for a range of different sentencing options to address this problem but recognises that, when a prison sentence is the appropriate disposal, then prison is not simply a punishment but is intended to rehabilitate, deter and protect the public; believes that the way to reduce reoffending and subsequently the prison population is to reduce the overall incidence of crime in Scotland, and therefore calls on the Scottish Executive to increase the police presence in our communities to deter and detect crime and to end automatic early release from our prisons to ensure honesty in sentencing.”

15:25

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): The proposed Letwin-Monteith shadow budget—if we wish to call it that—in the election campaign points to £745 million-worth of savings, which are part of the Scottish Executive’s efficient government review. Of course, that money has been reallocated to all the Executive departments, including the Justice Department. The Conservative party claims that it would contribute the money to tax cuts and proposes cuts in the Justice Department’s budget. Its proposals to fund more police officers are an absolute fantasy.

Miss Goldie: The member is patently misrepresenting the situation, although I accept that he is doing so inadvertently. My party has

pledged that in government at Westminster it will honour the current Barnett allocation to Scotland, which will honour the current spending pledges to Scottish departments.

Jeremy Purvis: Only last week, Miss Goldie’s colleague, the Conservative party’s education spokesman, denied that the Conservatives wanted to cut £175 million from the education programme for community schools until he had a discussion with his colleague, Brian Monteith. I recommend that Miss Goldie has a similar discussion. The penny—or the millions—will then drop about the Conservatives’ cuts.

This debate and other debates on the criminal justice plan must be put in context. Our society is safe and remarkably violence free. Crime and reported crime are down—indeed, the lowest level of recorded crime in almost a quarter of a century has been reported. Last year’s police clear-up rate of 47 per cent was the highest rate since the second world war. That context is important, but there must be progress in two crucial areas, about which I will speak in my remaining time: first, our reoffending rates are still too high; and secondly, there must be earlier interventions for younger people in respect of alcohol and drug abuse.

I fully support the Management of Offenders etc (Scotland) Bill, which is one measure in the criminal justice plan. The bill could provide one of the best tools for reducing reoffending that would be available to the criminal justice and community-based services—the use of home detention curfews. The Conservative party has enjoyed writing its get-out-of-jail-free-card press releases, but the Scottish Prison Service has considered how the bill could assist in providing continuity of rehabilitation services that start in prison and which often do not continue in the community.

In the debate on women offenders, we heard about the chaotic lifestyles of short-term prisoners, and that is the reality for most prisoners. The Executive recognises the need to provide for many people for the first time in their lives not only practical education, but often drug and alcohol programmes, anger management courses and practical advice about and assistance with housing, basic financial management and employment. The link centres in our prisons are good. The centre that I recently visited in Edinburgh prison has more than 20 partner organisations that provide rehabilitation services. However, there are two problems. First, many short-term prisoners are in prison for an insufficient time for the programmes to be commenced. Secondly, if programmes are started in prison, there is no continuity in the community setting.

Bill Millar, who is the governor of Her Majesty’s Young Offenders Institution Polmont, has agreed

with me that there could at last be in home detention curfews a tool that provides in a community setting a degree of the enforcement that is currently required to bring stability and structure to individuals' unstructured lives. In a Justice 2 Committee meeting, he told me:

"I agree. There is an opportunity to use the curfew in such a way."—[*Official Report, Justice 2 Committee*, 19 April 2005; c 1544.]

I hope that the minister will consider providing further details of discussions on the conditions that could apply to home detention curfews in further parliamentary debates on the bill.

The second important issue is the main contributory factor to antisocial and criminal behaviour—alcohol and drug misuse. We cannot debate the criminal justice plan without debating the impact of alcohol abuse in Scotland, which costs Scottish society more than £1 billion every year and cost the criminal justice system an estimated £27 million in 2002-03. The Scottish crime survey shows that almost two thirds of assault victims who could tell thought that the perpetrator was under the influence of alcohol.

It is rare that MSPs and the Parliament recognise the commitment and dedication of the many people in the voluntary sector and the professions who work well beyond what is contractually required of them in the criminal justice network. Community liaison police officers and others are at the heart of youth work and the criminal justice network. Recently I met Lothian and Borders police to discuss the issue and was impressed with the approach of its safer communities department. Inspector Kenny Simpson, a highly dedicated and outstanding police officer, has recently started a new approach to tackling alcohol abuse and binge drinking among young people in the Borders. Any young person whom the police find in possession of or under the influence of alcohol is automatically referred to the Reiver project—I know that the minister is aware of that project—unless the parent or guardian refuses within seven days.

As the minister knows, I have raised concerns about the continuity of funding for such projects. We need to support that kind of home-grown initiative. We should be aware that without continuity and long-term funding for such projects, we put their success at risk.

Together with more innovative measures such as the application of home detention curfews, earlier intervention and a more effective, efficient and consistent application of the criminal justice process, we will see further improvements to those that we have already seen.

The Deputy Presiding Officer: Before we move to the open debate, I inform members that

there are a considerable number of back benchers whom I want to call, so I will keep members to a strict six minutes. When I say "One minute," I will mean one minute.

15:32

Pauline McNeill (Glasgow Kelvin) (Lab): I begin by putting on record my support for the Executive's approach to the reform of the criminal justice system. Prior to the Parliament, the subject did not receive the attention that it deserves, but I do not think that anyone can argue now that it is not a priority. Building safer communities is the central objective and Cathy Jamieson is quite right to say that the darker side of Scotland—where knife crime and other crimes of violence are prevalent—is something that we politicians must all face up to.

We are reducing crime; dealing with serious crime and the complexities of sex offenders; setting out our ideals for the protection of children; focusing the police's resources on policing; speeding up the too-slow system; changing relationships that need to be changed; restructuring the court system—the High Court, the sheriff court and the district court; reforming options for sentencing; reducing the number of women in prison by providing alternatives such as time-out centres; examining our sentencing policy; strengthening the reliability of the bail system; and providing early intervention and specialist courts such as drugs courts, youth courts and domestic courts. I do not see how the Conservatives can argue that the Executive does not have a coherent and radical criminal justice reform policy.

However, tackling the criminal justice system should not be done in isolation from the Executive's central priorities of creating alternative lives and real opportunities. We must strike a balance. We all—or most of us—agree that Scotland imprisons too many people and that there are better solutions. Gordon Jackson talked about that earlier, as did Kenny MacAskill.

Scotland is not the only country with a rising prison population; other countries are seeing similar trends and I recommend the Scottish Parliament information centre report on alternatives to custody. We must consider what other countries do.

All of us who have visited prisons know the harshness and isolation of a prison regime. It is harder to reform and rehabilitate a person in an environment that takes them away from the community. Some people will benefit from community sentences, but it is hard to identify who deserves a prison sentence and who deserves a community sentence. As we all know from listening to our constituents, a victim is a victim,

and no matter how low level a crime is, if someone's house, car or person has been violated, they want justice. As politicians, we must contend with getting justice for victims as well as providing alternatives to imprisonment.

Miss Goldie: Does the member agree that it is worrying that three out of four incidents of criminal activity are not reported? Does she accept that that reflects a huge number of victims throughout Scotland?

Pauline McNeill: From time immemorial, academics have argued over what the real statistics are. If we wanted to examine what is not being reported, we would have to go back 50 years for the statistics to be of any use to us. We are dealing with reported crime. Everyone in the debate has said that, as politicians, we must deal with people's perception of crime, but the reality is that reported crime is going down and instances of certain crimes are genuinely falling.

The line between prison and the services that we provide in the community is artificial and serves only to perpetuate reoffending rates by contributing to the cycle of persistent offending. That is why the criminal justice plan, which is a radical reform of the relationship between the prison service and criminal justice, is here not before time; I support that policy whole-heartedly.

The Executive has done the right thing by establishing the Sentencing Commission. Quite a bit of detailed work is required on sentencing, for which we need the help and support of experts. The average daily population of our remand prisons is increasing. Sheriffs are remanding and choosing not to bail many offenders. That should tell us something. The work of the commission is vital. It is hard to strike a balance between the human cost of releasing a person on bail and the human cost of detaining a person unnecessarily. We will not get a perfect system.

Annabel Goldie and other Conservative members have referred to the case of James Campbell. We would support reform of the automatic early-release policy, but if someone has served their sentence, they must be released from jail at some point, so to rely on the reform of automatic early release to solve reoffending will not work. In fact, the Executive has introduced a sentence that can deal with the likes of James Campbell: the order for lifelong restriction, based on the work of Lord MacLean and Lady Cosgrove. However, judges and courts must be prepared to use that lifelong sentence.

Other issues include the fact that sanctions in relation to bail are not always applied, that non-appearance is endemic and that the Crown may not object to bail. The area needs urgent work. I support the plan.

15:38

Mr Bruce McFee (West of Scotland) (SNP): As usual, there are many differing views in the chamber. One thing, though, is clear: the present system of prison is not working as it should do and it is not delivering for our communities. As the Minister for Justice mentioned, there is a reoffending rate of nearly 60 per cent, based on reconviction within two years of release. There is a revolving door syndrome, in which individuals spend their lives in the system, sometimes from one generation to the next. There is the inappropriate use of short sentences, especially for fine default and for women. In 2001, 38 per cent of custodies were for fine default, and the average length of sentence was 10 days. The imposition of short sentences helps to wreck the fabric of the very families and communities that the criminal justice plan seeks to support. We must begin to address seriously the problems of offenders, not just the low levels of literacy but, in particular, the addictions to drugs and alcohol. If we fail to recognise those problems and to provide treatment, we are destined to continue with the same cycle of failure.

If we consider the profile of Scotland's prisoners, we start to identify other problems. Not every poor or underprivileged person is a criminal—it would be absurd to suggest that. However, crime has a direct link to poverty. If we do not address that, we are again condemned to failure. In the US, an experiment called justice reinvestment, which invests in public safety by reallocating justice dollars to refinance education, housing, health care and jobs, has established the clear principle that if we do not want to continue filling our jails and paying big style for it, we must start to invest in the community. A direct comparison cannot be made between Scotland and the US, but that experiment is producing remarkable results in different counties in the States and is worthy of further consideration.

Just as one party does not have all the answers, neither does one country. The Justice 1 Committee report entitled "A Comparative Review of Alternatives to Custody: Lessons from Finland, Sweden and Western Australia" is interesting reading, particularly on Finland's approach of gradual change and on the dramatic reductions in Finland's jail population.

What is clear in all cases, and is cited in the Justice 1 Committee report, is the need to engage in debate not just with professionals, but with communities. Too often, policy appears to come down from on high and the rhetoric does not match the reality. As we try to make alternatives to custody more effective, it is vital that community service is not seen to be the soft option that it is sometimes portrayed as. Community service must

be shown to benefit communities, particularly those that are blighted by crime.

The most important issue in the debate is prevention. A hard core will always continue to revolve in and out of the prison door, but it is vital to reduce the number of individuals who might join that group. The shortage of some types of work—particularly manual work—leaves many younger people with time on their hands through unemployment. The American experiment showed that keeping people out of crime was less expensive than putting them in jail. Perhaps scope exists to use some of our local authorities to provide manual jobs. I well remember the move to increase mechanisation in local authorities. That may have saved local authority budgets or protected jobs in direct labour organisations in the public-private partnership era, but it also destroyed manual jobs. Perhaps a two-sided balance sheet is needed, which appreciates fully the social costs of unemployment and potential crime. Better local authority services might even be the result.

In any prevention policy, we must re-examine how to divert young people from activities that are likely to suck them into the criminal justice system. We must provide young people with an alternative focus for their energies. Too often, they are called couch potatoes when they spend a couple of nights in front of the telly or neds if they congregate on the streets. Many Executive and social inclusion initiatives are aimed at new organisations that provide diversionary activities, but the same support is not given to our older voluntary organisations, especially the uniformed organisations. As a society, we sometimes try to reinvent the wheel.

Some members will remember that I initiated a debate in the chamber a few weeks ago about the work that Renfrew and Inverclyde scout association does at a community facility called Lapwing Lodge. Members spoke in support and the Minister for Environment and Rural Development confirmed in writing that he supported the organisation's work, but not one penny was forthcoming. That is common with our older voluntary organisations. I hope that, in summing up, the Deputy Minister for Justice will give our voluntary sector encouragement that it will not continue to suffer the present funding imbalance.

15:44

Marlyn Glen (North East Scotland) (Lab): The Scottish Executive is to be congratulated on its in-depth examination of the criminal justice system and the resulting proposed reforms. No one can argue against the aim of creating a safer and more just society or of reducing reoffending. The task is on a huge scale and even more than reform of the

criminal justice system is needed to make those changes, because the pattern of offending in our society correlates closely with offenders' family histories and social backgrounds. I agree with some of the points that previous speakers have made. Deprivation and a family history of offending drastically increase a person's chances of becoming an offender.

We need to make our society more socially just for children, to shield them not just from being victims of crime but from growing into criminals. I welcome the approach of closing the opportunity gap, which aims to prevent individuals or families from falling into poverty, to provide routes out of poverty for individuals or families and to sustain individuals or families in a lifestyle free from poverty.

I have seen how difficult it can be for the young to find their way in life, and I welcome schemes that provide them with support. However, there is concern about what happens when people have committed crimes and fallen into the system. We must work to tackle our national recidivism rates. I welcome the extra investment in treatment services, because we must help to treat drug addiction, for example, and provide support to prevent people from falling into patterns of offending. We need to examine our prisons closely and to look at society in general.

I support the prison visiting committees and praise their work in providing one of the few safeguards for prisoners' civil rights while they are in prison. That is not to detract from the work that is done by inspectors of prisons or from our efforts to visit prisons and examine their regimes; I look forward to next month's debate on the effectiveness of rehabilitation in prisons. However, our visits are organised and accompanied, sometimes not just by prison officers and governors but by representatives of the Scottish Prison Service, such as the chief executive. Although we can and do gather a great deal of information, a different perspective is gained by independent prison visitors. I look forward to their position being strengthened while their role is modernised.

Recently, publicity has surrounded the report of the chief inspector of prisons on Kilmarnock prison. The media have picked up the story as being about children in adult prisons. Society should be shocked not just by where young people are locked up, but by the fact that it is considered necessary to lock them up. There is a realisation that young people offend and that the problem must be dealt with. However, there is a distinct need for us to concentrate our efforts on supporting projects that aim to change behaviour at the earliest possible age. I refer to projects such as the Barnardo's bridge project in Dundee and

Angus, one of whose slogans is

"Giving children back their future".

The project deals with young people who have been recognised as displaying inappropriate sexual behaviour, but who will be robbed of their future unless help is given to them. If we are to concentrate our thinking on young people such as those whom the bridge project helps, we must stop doling out blame and expecting that punishment alone will reduce reoffending.

What happens after prison? People—I am still concentrating mainly on young people—can lose everything after just a brief spell in prison, even for minor offences. If they have lost a tenancy and have no supportive family, everything in their house may be cleared out and thrown into a skip, including even school certificates and family photographs. That means that people come out of prison to nothing at all. How easy would any of us find it to start from scratch, probably only on benefits? If we do not spend money on supporting accommodation and job opportunities for ex-offenders, we will have to spend even more on secure accommodation and prisons. Perhaps if people were given more support and their lives were more just during their troubled childhoods, offending could be drastically reduced.

It is common for people to call for early intervention, and I welcome the minister's support for that approach in relation to addiction. Early intervention must underpin all our thinking about the justice system and other parts of government. We should not look at justice work in isolation. We need to include not just the usual parts of the system, such as criminal justice social workers and outside agencies, but social workers, youth workers and education and health workers in the drive for joint working. I welcome the attention that the Minister for Justice and the Deputy Minister for Justice are giving to the debate, but I underline the need for different ministers to work together to find and fund solutions that will halt the vicious circle of families perpetuating a culture in which offending continues through the generations.

I want to recommend some television viewing. I will not describe the programme, but I suggest that members watch "Supernanny", which is not about crime but about changing behaviour, with some spectacular results.

I will mention some of the legislative changes that are in train. We are strengthening the law to protect children from predatory sex offenders who seek to use the internet to facilitate their activities, and we are considering the Prohibition of Female Genital Mutilation (Scotland) Bill, which will protect girls from the practice of genital mutilation. I welcome the frank discussions on such issues that have taken place in the Justice 1 Committee and

the Equal Opportunities Committee. It is high time that we provided such protection for children and young people, who have often suffered in silence, and I am thankful that the Executive is facing up to and acting on those matters. As society changes and the use of modern technologies increases, our law must keep up to date with new and different ways of offending. The process is on-going and requires vigilance from the Executive. I support the criminal justice plan.

15:50

Bill Aitken (Glasgow) (Con): Marlyn Glen must forgive me, but I have some difficulty with the concept of Cathy Jamieson in the role of Supernanny.

We do not think, as Pauline McNeill suggested, that the criminal justice plan is incoherent, but we have serious doubts about its workability. We do not need a degree in applied psychology or rocket science to know that criminal behaviour is deterred by two factors: the fear of detection and the fear of punishment. I accept that it would be impossible to achieve a 100 per cent success rate in detection, although we would all like detection rates to increase. However, detection rates are not likely to increase, given the present state of the police operation in Scotland. I am sure that, as Mrs Mulligan said, the number of officers has increased, but we do not see those officers being deployed at the sharp end of disorder on the streets, deterring and solving crime and reassuring the community.

On the fear of punishment, the Executive has in effect mitigated punishments over the years, thereby providing an incentive to criminality. Conditional offers of fixed penalties—or fiscal fines—are not paid, or only the first instalment of £5 is paid on admission of guilt and the matter is never taken further. Fines are not paid: some £6.5 million in unpaid fines was outstanding at the last count and the vast majority of that sum will never be paid. The answer is self-evident: fines should be deducted at source from people's benefits or salaries. Such an approach would ensure that people received adequate punishment and would prevent people from going to jail for non-payment of fines. I do not know why the Executive is so obdurate as to refuse to accept such a commonsense solution.

Stewart Stevenson: Does Mr Aitken agree that we should consider relating fines to the ability to pay, so that we do not bear on the poor unduly and let the rich away more or less scot free?

Bill Aitken: The member and I have crossed swords on the issue before and my answer remains unchanged. In fixing a penalty, the courts have—and use—the facility to take account of the

accused's ability to pay. Courts certainly take the matter into account when a penalty is to be paid in instalments.

Community service is often not done to the 100 per cent level that we should demand when a community service sentence is imposed as a direct alternative to custody, but why are so many offenders not breached?

Offenders might eventually be sent to jail, but our appallingly dishonest sentencing policy provides for automatic early release. Believe it or not, that is not entirely the Executive's fault—when we signed up to the European convention on human rights under the terms of the Scotland Act 1998, we had to accept that prison governors are not an independent tribunal. That means that whether people behave impeccably or are proper pests while they are in prison, they receive remission of either a third or 50 per cent of their sentence. The only available sanction for misconduct in prison is to take the prisoner to court, with all the expense and hassle that that causes.

The Executive and its colleagues down south continually send out mixed messages about drugs, which are the curse of the 20th and 21st centuries. The reclassification of cannabis was a major error and is being reconsidered down south by Mr Clarke. How can the situation whereby drugs are freely available in prisons be allowed to continue?

What of the operation of the drugs courts? The jury is out on whether they will be successful. However, they would be more likely to be successful if their client base was radically changed. Those who go before the drugs courts in Glasgow are, to use unfortunate terminology, old lags with 50 or 60 convictions, who would normally have received a sentence of six months on summary conviction. Frankly, in many cases they are incorrigible. However, what happens to the street prostitute or the third-time shoplifter who is anxious to get off drugs? The facilities that are available at the drugs courts for immediate drug treatment or drug testing are not made available to lower-tariff offenders, which is ludicrous.

I agree totally with the minister's properly expressed concerns on the operation of bail. However, I am concerned that tagging might not be the solution to the problem. In many instances, murders will be committed in communities in which the deceased and the accused are well known to one another, and where their families as well as the witnesses will be in constant contact during the period before a trial. Tagging does not prevent the influencing and subornation of witnesses.

The application of warrants is a further issue. Many thousands of warrants are outstanding and will not be executed. Until such time as there is a

much sharper approach to warrants, bail and, in particular, the collecting of monetary penalties, this plan is going nowhere.

15:56

Linda Fabiani (Central Scotland) (SNP): I prepared for this debate by looking at Scotland's criminal justice plan. I was immediately struck by the introduction to the plan, which states:

"Justice is at the heart of safer, stronger communities. Our justice system underpins strong communities where the values of fairness, tolerance and respect can flourish."

Too often, we are guilty of agreeing with such statements without looking at what lies behind them. I agree that justice can be at the heart of safer communities, but what of the inclusion of the word "stronger"? What about the flourishing of fairness, tolerance and respect? I suggest that another phrase—social justice—should be included in the introduction. That is at the heart of the process, which is not purely about the criminal justice system.

Roger Houchin, a former governor of Barlinnie prison, called in January of this year for a rethink of justice policy to reduce the offences that are punishable by prison, not just to solve the prison overcrowding problem but to help break the clear link between poverty and crime. His study revealed that a quarter of all prisoners come from just 53 of Scotland's 1,200 council wards—the 53 most deprived wards. Half of those in jail come from the poorest 13 per cent of council wards. In the same month, Audit Scotland released a report showing that half of all those who are released will be back in two years, and that drug rehabilitation programmes, despite the assertions of availability, were failing to reach prisoners. Less than half of those with a problem had received treatment.

I commend a book by my colleague Kenny MacAskill, in which members can read Roger Houchin's fascinating article. One of the points that Roger Houchin makes is that part of the reason for the growth in the prison population is that it allows the rest of us to divorce ourselves from the discomfort of having to engage with what he calls our underclass society, which the preponderance of prisoners—young men aged around 23, from the most deprived backgrounds—inhabit. One in nine men from deprived areas will be in prison during their 23rd year.

There are those who deny the link between poverty and crime by pointing out that crime rates increase most quickly when affluence growth is at its greatest. However, poverty is relative and cannot be framed as absolutely as that. Poverty in a society has nothing to do with bank balances; it has everything to do with being able to provide for oneself and one's family the parts of life that allow

one to be normal in the society in which one lives, rather than being shoved aside and made to feel that one is not part of it. I certainly do not agree with the theory that all property is theft, but it is not too far wide of the mark to describe the lack of facilities for normal living as a crime against society. The question then is: who is committing that crime?

The Administrations that we have had at Westminster over the past few decades have contributed to that crime through the individualism that they have espoused—it is only the individual that matters. We start to look at poverty almost as if it is a crime and as if it is the fault of the individual that they are underprivileged—there is no such thing as society. Sadly, the present Labour Government does nothing to reintroduce the values and philosophy of collectivism.

It has become almost a crime to be poor. I think that the crime is allowing poverty to cause such divisions in society. I believe firmly that criminality cannot be addressed until deprivation is addressed, and that that can be addressed only when we are all prepared to look it square in the face and call it for what it is. That does not mean that I am an apologist for criminals—I fully accept that there are some right bad swines of all ages out there and that, in some cases, there is no alternative to incarceration. However, it is time that we thought about the principles that underlie the Kilbrandon report and used them for adult justice as well as in the children's hearings system. We should sort out the problem and not try to hide it.

Having said that, there is some good stuff on which we can build among what the Executive says on the way forward. I was interested in some of the key elements that were noted in "Supporting Safer, Stronger Communities: Scotland's Criminal Justice Plan" for success in dealing with lower-level offending. Immediacy is one of the four elements and that is crucial. Visibility and accountability in the criminal justice system as a public service are important, because people feel a bit divorced from the system. I am sure that we all get complaints from folk who do not know why charges were dropped because nobody ever came back to tell them what had happened when something with which they were involved ended up in court. That is crucial, but so is the last element, which is active community involvement through a range of roles, often as volunteers.

That brings me back directly to one of my biggest bugbears, which is the fact that volunteers contribute so much to society. Volunteers save the Government a fortune. Let us look at funding voluntary organisations to do the job that they do really well. We must core fund them and let them get on with it. Let us take the opportunity to have a

radical rethink of how we fund those volunteer agencies, nationally and at local government level.

16:03

Donald Gorrie (Central Scotland) (LD): I am happy to speak in support of the coalition motion. I recognise the excellent work that the minister and her colleagues are doing. The minister's commitment to the subject is very clear. As in any group of intelligent adults, different people have different views on certain aspects of the issues and we argue them out in a sensible fashion.

The sunshine in the chamber appears on me and disappears from me; that must be symbolic of something or other, but I am not quite sure what.

I will make three points. First, the legal fraternity does not understand how fed up the laymen get with the incredible delays in justice. Surely we must be able to do better than we do at present. It is a question of meeting to sort something out and either the issue is resolved or at least each side knows what they are doing. They then go in to bat and the matter is decided one way or the other in court. That could happen just as easily in one month as in six.

The Deputy Presiding Officer: I am sorry to interrupt you, Mr Gorrie, but will you move your microphone up a bit? We are having difficulty in hearing you.

Donald Gorrie: I apologise for my height.

So, let us speed up justice.

Secondly, there are many excellent organisations that help to deal with young people who have problems with the law. The last time that I praised an organisation, it was promptly closed down so I will not praise any individual organisation today. There are many such organisations and they have a problem, because the funding always runs out. We do not have continuous funding. Surely there must be a way in which the Executive can say, "Right, we recognise that this project is delivering the goods, and so long as it continues to deliver the goods it will get the funding." That way, people could get on with what they were doing instead of wondering what their next job would be. We must have continuous funding for organisations that help people to sort themselves out. A number of organisations besides the Airborne Initiative have shown that there is merit in a mixture of outward-boundary activity and heavy psychological warfare on the young people. Quite a number of organisations have had real success in that way; the Executive should recognise that and support residential organisations that are doing such good work.

My third and main point is that we must revolutionise our whole approach to communities.

For years, Governments of different hues have poured a lot of money into our poorer communities and achieved very little. The same communities have problems with crime, poor health and lack of educational attainment. Instead of putting in a lot of well-intentioned money and having people like me devise great schemes in which communities have to do X, Y and Z before they get the money—communities obediently do X, Y and Z, but they do not believe in it so it does not work—we should give them the money and let them do their own thing and develop their own way of doing things.

Last week, I visited on successive days the violence reduction unit in Glasgow, which is a really good organisation, and the Development Trust Association Scotland. Coming from totally different angles, those organisations had the same message—that we can help communities to do their own thing. We can encourage active enterprise in communities. There are some communities, for example, that have bought one windmill in a farm, which gives them an income that they can plough back into other community activities. There are a lot of other enterprising things that people could do. From a violence reduction point of view, we could get communities to sort themselves out better. We will not sort out communities; they can sort themselves out and change attitudes. We must get young people to accept that it is cool for their community to behave better.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I do not disagree at all with what Donald Gorrie is saying. We all know that there is always a poorer end of the community and a wealthier end of the community; often, the gap between those two parts of the community is the problem. Does Donald Gorrie agree that, if we are to make what he is suggesting work, it is important for the whole community to co-ordinate together?

Donald Gorrie: I agree. People of all ages, sexes and finances should work together. That is the point. There is a huge amount of energy in communities. In some communities, the only way in which people can demonstrate their energy is by selling other people drugs. If we open up opportunities for people to do worthwhile things, they will sort themselves out. There will be some failures and the odd chap may cheat the system, but at least we will get somewhere. One person I spoke to described how a housing estate in a city got urban aid and money for successor schemes of that sort for 20 years, but the money has now run out and the schemes have run out. For 20 years, we have been pouring money into the area and we have achieved absolutely nothing. We must change and help people to help themselves, rather than parachuting in well-intentioned schemes.

16:09

Gordon Jackson (Glasgow Govan) (Lab): One thing that can be said about the Executive is that it has been zealous on issues of crime and criminal justice—if anything, maybe even too zealous. If I have a minor criticism, it is that there may at times be a tendency to over-legislate, but that is a minor matter.

There have been many radical reforms to the criminal justice and courts system. I can hardly keep up. By and large, those reforms are valuable, but I add a tiny note of caution: crime and disorder are not solved within the justice system. We can make the system more efficient and we can make it quicker for Donald Gorrie. We can make it better value for money and we can make it more user friendly and more victim friendly. We can also do even more valuable things. For example, specialist courts such as drugs courts and domestic abuse courts are valuable. Such reform is all worth while, but it is limited. The criminal justice and courts system is important. It is part of the law and order structure, but people who work in it—judges, sheriffs, lawyers or whoever—know its limitations. Issues of criminality will not be solved in that context.

So what will help? What can we do? Let me be positive on a couple of issues before I am negative. I think that we must tackle certain types of crime firmly and I applaud the Executive's emphasis on dealing with knife crime. The suggestions that have been made are valuable. I like the idea of licensing and banning certain types of knives, although in my experience most knife crime is committed using something that has been taken out of the kitchen. In almost all the knife murders that I have come across, the knife came out of the kitchen drawer. That will always be a problem. That is why it is important that the Executive is speaking about tackling the culture of young men wanting to carry knives. I say good luck with that, because it is a very big test.

Stewart Stevenson: I am listening with great interest to someone who I know has serious understanding of the issues. Does Gordon Jackson agree that it is the mental state and social attitudes of the people who hold the knives that are a bigger problem than the weapon itself and a more difficult problem with which to deal?

Gordon Jackson: That is what I am saying. The culture needs to be tackled, but that is extremely difficult to do.

I have no difficulty with increasing the maximum penalty. I recently heard a judge make an interesting comment with which I tend to agree. He said that perhaps when someone is convicted of carrying a knife, that is the one occasion on which first offenders should be treated severely. What

often happens is that someone is treated lightly for carrying a knife and they think that it is not a big deal, so they do it again and again and on the second or third occasion someone ends up in the mortuary. A first conviction for carrying a knife is perhaps the one occasion when we need to take a firm line right away.

The other idea that I like is offender management and consideration of how we challenge offending behaviour. Again, that is not easy.

Bruce McFee said that 60 per cent of people in prison reoffend after they come out, but there is more to it than that. Almost everyone who goes into prison has offended often before they go there. Very few first offenders are in prison—I suspect that very few second or third offenders are in prison. By the time people go into prison, there is a huge culture of reoffending. It is not surprising that when they come out of prison nothing much has changed. I enjoyed Bruce McFee's speech; he raised some ideas that we want to think about.

The Executive's idea of prison and social work departments working together to challenge offending is extremely important. One criticism that I have is that there is often little sense of a joined-up approach being taken to these matters. If offending behaviour is to be challenged and reoffending reduced, we need to have a framework where all the agencies start working together better. I do not think that that has happened in the past. If a new statutory framework is required to achieve that, so be it, because it is necessary.

That is enough of the positive, so I will now be a little negative towards the amendment from my dear friends the Tories. I do not find helpful the constant emphasis on ending early release from prison. I know that the amendment calls it "automatic early release", but that is usually presented as a soundbite for the idea that, whatever the sentence is, it should be served in full. I do not buy that—the suggestion is neither helpful nor practical. No one has ever costed that policy for me or calculated how many more prison places would be needed. The current situation is that serious offenders are released before their full term, but they can be recalled to serve their full term if they put a foot out of line thereafter. That is important as it allows good management of prisons and it gives prisoners an incentive to address their reoffending behaviour, both before they apply to the Parole Board for Scotland and in order to continue to be at liberty thereafter. The soundbite policy of prisoners "serving their whole term" might sound attractive, but it is not helpful. To echo what Kenny MacAskill said, I think that the policy is more of a jingoistic approach than a real contribution to the debate.

I think that the debate is helpful and I am glad that the Executive is tackling the issues as it is doing.

16:15

Patrick Harvie (Glasgow) (Green): As in many of our debates on justice, I have a great deal of support for the Executive's intentions in reforming the criminal justice system. There is little in the motion that I can disagree with. However, time after time, we return to and acknowledge the same problems. Prison populations continue to rise and I continue to suggest that a more fundamental approach to the problem could achieve much more.

The motion asks us to support the criminal justice plan. There is indeed a lot in the plan to welcome. However, as soon as we start to scratch the surface of some of the phrases in the motion, we see problems. For example, none of us would disagree with the call for "sentences that are effective", but what does that phrase mean? Are short-term prison sentences effective? If so, in what way are they effective? Do they effectively change offenders' behaviour? Do they effectively build public confidence in the criminal justice system? Do they effectively deter people from offending? I do not think that they do. However, the opportunity exists to achieve all those things and more by fully accepting, like other countries, the roles of restorative justice, mediation and reparation. The Executive's intentions have been good, but they have been too limited.

The Deputy Minister for Justice (Hugh Henry): Patrick Harvie poses a number of questions on short-term prison sentences. I put on record yet again what we have consistently said: we do not believe that short sentences are effective. We need to consider what they achieve and we need to consider the churn of people going into prisons for short periods and not being properly prepared for coming back out. We are happy to make that point time and again. It is at the heart of much of what we are trying to do.

Patrick Harvie: And the sentences continue, and the disruption and harm to people's lives continue.

Is it effective to imprison people whose behaviour is a result of mental health problems or addictions? Of course not. Such people need treatment and support if they are going to change their behaviour. They do not belong in prison if prison remains a place of punishment.

As has been noted, the Conservative amendment in the name of Annabel Goldie contains much that is familiar. Gordon Jackson dealt very well with the issue of early release. I would add that the task of diverting people from

prison, whenever possible, is far more important than any other task. For the majority of people, prison does no good, only harm.

In debate after debate, we hear speeches from members—including Conservative members—emphasising punishment. I ask why. If we can achieve deterrence, if we can achieve rehabilitation and behavioural change, if we can achieve a sense for victims that wrongs have been put right, and if we can achieve protection for the public, and if we can achieve all those things by sending far fewer people to prison, what is the additional value that society obtains from punishment? Punishment for its own sake is barbarity.

The SNP amendment in the name of Kenny MacAskill is also worthy of support and I will be voting accordingly. However, elements of Mr MacAskill's speech were deeply disappointing. Was he really arguing that an addict who pays for their own habit deserves rehabilitation, but one who steals to pay for it does not? Was he suggesting—as he seemed to be—that we should ignore the root cause of behaviour when serious offences have been committed but should not ignore the root cause of behaviour when serious offences have not been committed? To make such suggestions is questionable on moral as well as practical grounds.

The United Nations International Covenant on Civil and Political Rights, which the United Kingdom signed in 1976, states that those citizens who are deprived of their liberty should be treated

“with humanity and with respect for the inherent dignity of the human person.”

The covenant adds that the prison system should

“comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation.”

I repeat the call for an abandonment of the notion that punishment or retribution is an effective use of prison.

Mr MacAskill: I am not sure what Mr Harvie was driving at. I can only assume that he was referring to what I said in response to the point that Mr Jackson made. If someone has a drug problem, I fully accept that that requires to be addressed. However, if someone commits a serious offence as a result of that drug problem, such as a knifing, stabbing or armed robbery, it is important that that crime be punished. Is Mr Harvie suggesting that we should ignore the actions of those people when and if they go beyond the simple problem of their addiction? If not, does he accept that the seriousness of the offences and the consequences of their actions on our society require that those crimes be addressed by punishment and imprisonment?

The Deputy Presiding Officer: You are in your last minute, Mr Harvie.

Patrick Harvie: I am saying that the one factor that will make an addict more likely to commit future crimes and so create future victims, more likely to become HIV or hepatitis C positive and less likely ever to sort out their life is being sent to prison.

In the few moments of my speech that remain, I will address an issue that is less directly relevant to the debate but which is important to the treatment of offenders. It is an issue on which some members chose to comment this week, not in the chamber but in the gutter press. Page 22 of the Executive sexual health strategy states:

“The Scottish Prison Service will make condoms and dental dams available as a health protection measure as part of the SPS's general policy of taking measures to protect and improve the health of prisoners.”

Without a shadow of a doubt, the policy is a rational and necessary measure. Frankly, I was disgusted that some members chose to indulge the more shallow and prejudiced element of the fourth estate by calling for the policy to be abandoned. They did so only one day after the Parliament spoke with a united voice about the impact of HIV in Africa.

The Deputy Presiding Officer: You must finish, Mr Harvie.

Patrick Harvie: How dare members call for the impact of HIV on the life of any Scot to be ignored? I call on the minister to confirm in closing that the Scottish Executive Justice Department will ensure that the policy is implemented.

16:21

Mrs Mary Mulligan (Linlithgow) (Lab): Before I get to the body of my speech, I welcome the minister's comments on and commitment to tackling knife crime. This morning, I attended a meeting with some children from Low Port Primary School in my constituency. One of the first questions that I was asked was, “What is the Scottish Parliament doing about knife crime?”

The issue is one about which children and young people are aware and concerned. They see their friends, or friends of friends, carrying knives and they want to avoid doing so themselves. They are also aware of the peer pressure to carry knives. It is clear from the minister's comments that the Executive intends to take the issue seriously. From the contributions that members made to the debate, I believe that the Parliament will take the issue seriously and seek to tackle it at source.

A number of members spoke about the problems of drugs in their communities. My

constituency is no different in that respect; we suffer the same criminal activity that goes alongside drug taking. However, I am pleased that many members also mentioned the misuse of alcohol. Although we have debated the issue previously in the Parliament, it is important that we recognise in this debate the implications of its misuse.

If I may, I will use an issue from my constituency as an example of the difficulties that people experience as a result of alcohol misuse. Recently, despite many objections from local people, a corner shop in my constituency was given a licence to sell alcohol. Since that time, local people have had their lives disrupted by youths hanging around. They have suffered abuse, noise, vandalism and intimidation even in just approaching the youths. I recognise that the issue is one that the Executive has taken up through its review of the licensing laws, for example. However, I also think that it is because of the number of people, agencies and pieces of legislation that are involved that my constituents have not yet received a satisfactory response to the problem. Neither planning nor licensing regulations have been effective and a report is therefore being prepared for the procurator fiscal. My constituents continue to lack confidence that anything will be done about the problem. The example illustrates how the abuse of alcohol can significantly reduce the standard of living for many people in our communities.

Although I understand the emphasis on illegal drugs, alcohol should not be ignored. I ask the Executive to continue to work with our Westminster colleagues to tackle the bootleg selling of alcohol in local communities, particularly at some markets, as it is often a front for other illegal activity. I also ask the Executive to ensure that local drug and alcohol action teams give sufficient time and resources to the alcohol part of their remit. We know that many acts of violence, including domestic violence, are perpetrated while people are under the influence of alcohol, so we have to ensure that we treat the issue more seriously.

I turn my attention to safer, stronger communities, which are central to why we want to develop the criminal justice plan. The Parliament spent much of last year discussing antisocial behaviour. I strongly believe that the Executive was right to address antisocial behaviour through legislation that responded to the many people in our communities who clearly said that action needed to be taken. However, the legislation was only part of the story. People's lives can be helped and improved through the response to that legislation.

Local authorities and the police have responded with various initiatives. In my local authority, West Lothian, the community safety partnership was established involving partners such as local authority departments, the police and the fire brigade. It quickly had an impact by establishing a neighbourhood response team. The NRT operates a 24-hour helpline, responds to daily complaints about antisocial behaviour, provides information to people on what they can expect and to whom they can complain, and operates a warden scheme.

In this area the Conservatives go astray from the real issues. Their only answer seems to be to introduce more and more police. As I said earlier, the Executive has delivered more police, but it has also embraced more innovative measures that are more appropriate to the problems. Community wardens are working well.

In summary, it is important that we acknowledge the on-going work and that we recognise that there are many aspects to the problem that do not just revolve round providing more police and locking up more people. We have to examine why people commit crimes. We have to try to prevent them from doing so and we have to ensure that those who commit crimes are tackled on them and sentenced for them but also rehabilitated and returned to our communities as responsible citizens.

The criminal justice plan must address preventing offending, detecting crime, reducing reoffending, and rehabilitating offenders. A partnership of the Parliament and others will ensure that we improve the lives of everybody within our communities.

The Deputy Presiding Officer: I regret that I can give Colin Fox only three minutes.

16:28

Colin Fox (Lothians) (SSP): As members have said, this is an important debate. There is a broad consensus on the need to deal urgently with many facets of the criminal justice system. In the three minutes that are available to me, I will focus on the depressing levels of reoffending that members and the minister have mentioned.

I was struck by the statistic in "Supporting Safer, Stronger Communities" that 80 per cent of male offenders under 21 are likely to be reconvicted after serving a sentence of six months or less. I wanted to look behind the statistic, so last month I visited Low Moss prison in Bishopbriggs. Low Moss is one of Scotland's prison factories, with a large volume of young men going through its turnstile again and again. I am sure that, like me, members who have visited it thought, "What a waste. What a catalogue of despair."

I was struck by the governor's reply when I asked him why so many young men come back to Low Moss again and again. He replied, "What did you expect? We're releasing these laddies back into Possil and Easterhouse and wherever else—back to where they came from in the first place, where there's nothing for them. They do their time and they go straight back to doing what they did that brought them here in the first place." He asked me, "Where else would they go? To work in the stock exchange in Glasgow or to study at Glasgow University?" Clearly, we need a new approach.

The minister's motion states that we want

"sentences that are effective in reducing reoffending and supporting rehabilitation".

We know what is effective and what works up to a point. The figures suggest that non-custodial sentences for low-level offending have lower reoffending rates and greater rehabilitative success. However, as Pauline McNeill and others have stated, one problem is that many community service orders are being traded up as alternatives to fine payment rather than being used as alternatives to custody, as was originally intended. Time does not allow me to elaborate on the points that were made in Professor Jacqueline Tombs's important report on the views of sentencers on that.

I am disappointed in the tone of the SNP's amendment, which seems to me to say, "Come on, pull your socks up and snap out of it." It is a moralising tone, which is unappealing to me. The amendment does not add much to the debate and the Scottish Executive's obligations seem to be an afterthought in the amendment, whereas I think that the Executive has important responsibilities towards communities.

The problem with the Tory amendment is that the measures that are proposed in it do not address the root causes of crime. I broadly support the reforms in the criminal justice plan, but we must address the roots of the problem, which cannot be solved by the Justice Department on its own.

16:31

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): In the time that is available to me, I will try to pick out the salient features of this informative debate.

The minister rightly said that we have embarked on the most radical reform of criminal justice in a generation. She also mentioned knife crime, on which Mary Mulligan and Gordon Jackson also touched. Gordon Jackson made the important point that the majority of knife crimes are committed with knives that have been taken

straight out of the kitchen drawer. That being so, we have to think carefully about how we address the issue, because we will not necessarily get rid of the crime simply by categorising knives. Indeed, an SNP member suggested that we should perhaps tackle the motive of the person who is holding the knife.

The minister also mentioned the importance of strengthening links between, for example, the Scottish Prison Service and social work departments. Gordon Jackson also drew out the importance of that.

The increase in police numbers over the past few years has been highlighted. That takes me to Annabel Goldie's speech. She made a point about the delay in the debate and announced a Conservative policy of providing 1,500 more police officers. Jeremy Purvis's question about how that would be financed is valid and I am sure that the answer will come out in the days before the general election. If Mr Michael Howard were to win the election, which is unlikely, there would be a Barnett consequential in reverse and money would be stripped out of the Scottish budget, so it is important that the electorate know which other Scottish Executive budget would be cut to pay for those extra 1,500 police officers.

Jeremy Purvis correctly pointed out that it is not all bad out in our communities at the moment. He highlighted the fact that police clear-up rates are 47 per cent, which is the highest since the second world war, and talked interestingly about the conditions that will apply to home detention curfews.

Pauline McNeill talked about the Sentencing Commission and the importance of its work. I must compliment Bruce McFee on a most interesting speech. We know that the present prison system is not working, but he probably put it more pithily than most. He mentioned a US experiment that showed that, if I quote him correctly, it is less expensive to keep people out of prison. That is an interesting philosophy and, if the Executive is not considering that, it could constructively be considered in future.

I warmly welcome and endorse Bruce McFee's statement that community service must not be regarded as a soft option. I have made that point in previous debates and am firmly of that opinion. Through community service, we can link the offender back into the community and we must get representatives of the local communities to give recognition, reward and compliment in cases in which the community service has been successful. Community service orders are all too infrequently used constructively by communities as they could be, such as for environmental improvement works.

Marlyn Glen correctly said that social justice should be directed more at the young and rightly praised the prison visiting committees' role. I repeat myself when I say that those committees should receive further recognition of their work and that they should be augmented and beefed up, perhaps by taking people from other sectors of society. That communication between offenders in prison and society outside prison can often act as a hand of friendship and reduce the rate of reoffending.

Bill Aitken took us back to the fine old issue of punishment, as did Patrick Harvie. I have to say to Patrick Harvie that, as Kenny MacAskill knows, there are some people who are so bad that they have to be punished. However ugly the thought of the word "punishment" is, there is nothing else that we can do with some people.

Patrick Harvie: Will the member give way?

Mr Stone: I will not give way, but we can talk about the issue later.

I would say to Bill Aitken that he must remember that some old lags do not mind going to prison for a third, fourth, fifth or sixth time. The fear aspect of the punishment of imprisonment is not always there.

Bill Aitken's point about automatic early release was dealt with most ably by Gordon Jackson, who drew a line under the issue. I totally support Gordon Jackson's view and I think that it is time that we stopped making cheap shots about this issue.

Bill Aitken: Perhaps due to time constraints, Mr Jackson could not get across the entirety of the situation, which is that those who are out on licence can be subject to recall, but those who are out on an unexpired sentence can be sentenced at a future court hearing and ordered to serve the rest of their sentence only on the basis of reoffending. There have been very few cases of that over the past five years.

Mr Stone: I detect in Mr Aitken's intervention a move towards Gordon Jackson's position. We must continue to have a debate around this subject but we must be honest about it.

I compliment Donald Gorrie on his unusual expression "outward boundery". I think that I know what he means. He is talking about creative engagement with the environment and the community. That is an issue that we can consider in future.

Mary Mulligan correctly highlighted the importance of alcohol. Members across the chamber mentioned it in passing, but she highlighted the problem exactly for what it is. In tandem with the drug problem, the alcohol problem is hugely important.

This has been a constructive debate. One of the great benefits of summing up a debate is that one has to listen to the whole debate. All our thoughts will have progressed during the debate.

Linda Fabiani and Colin Fox spoke with passion about the link between poverty and people being sent to prison. We must not forget that.

16:37

Margaret Mitchell (Central Scotland) (Con):

The debate has focused on proposals for promoting the swifter delivery of sentences that are effective in reducing offending and supporting rehabilitation. We all want safer and stronger communities, but there is a fundamental division of opinion about how best that objective can be achieved. The Scottish Executive believes that the proposals in the criminal justice plan will deliver. The Scottish Tories disagree, which is why our amendment advocates a more visible police presence on our streets, a range of sentencing options and an end to automatic early release. All those positive proposals can be acted on now.

Contrast that with the Scottish Executive's criminal justice plan, which is peppered with proposals for procrastination. It is a plan for inaction, with proposals to review, consider, evaluate, explore, consult and pilot. In other words, although action is required now, the Executive has delayed and dithered.

Cathy Jamieson: Does the member accept that the plan also contains proposals for legislation, some of which is going through Parliament at this point? That is action, not delay.

Margaret Mitchell: I readily acknowledge that, but I regret the fact that some of that legislation is going through Parliament—I will deal with that later.

The Executive's proposals for tackling knife crime have been mentioned by a number of members and the Executive's motion quite correctly highlights knife crime as a particular problem. In December 2004, the criminal justice plan proposals stated that the Executive would

"implement a five point plan of action to tackle the impact of knife crime across Scotland".

Excellent. However, that was December. Has the five-point plan been implemented? No. Instead, in February 2005, the proposal was included in a consultation paper, with responses to be received by 3 May. Why the delay? The answer is the Executive's endless preoccupation with and addiction to consultation.

Jeremy Purvis: Will the member give way?

Margaret Mitchell: No, I am sorry. I need to press on.

The same pattern of dither and delay can be seen in the Executive's approach to ending automatic early release. After years of castigating the Conservatives for pressing for an end to that deeply damaging policy, the Executive is finally coming round to our way of thinking. It has been a tortuous journey. In December last year, the criminal justice plan stated that the Executive would

"Consider whether there should be an end to automatic early release for all prisoners convicted of sex offences."

Jeremy Purvis: Will the member give way?

Margaret Mitchell: No. I am afraid that I have heard the member's interventions before—and his contribution today—and I realise that he will have nothing worth while to add.

Finally, earlier this month, the First Minister conceded that in some circumstances automatic early release is wrong. But did he act? No. Instead, he dithered again and delayed any policy change until the Sentencing Commission has reported. How long will it take the First Minister and the Executive to realise the benefits of ending automatic early release? To restore honesty in sentencing would send out a crucial message and deter crime, but it would also ensure that a prison sentence provided the opportunity effectively to assess what had led to the offending behaviour and to put in place a rehabilitation programme to address it. Contrary to what Gordon Jackson said, our policy incorporates a provision for up to a sixth of a sentence to be taken off for good behaviour.

Hugh Henry: Yet again, Margaret Mitchell and the other Conservatives talk about early release. Given that the Kinraid committee recommended five years as the threshold for automatic early release, can she explain why the Conservatives adopted a lower level in 1993? Given what she has said, why did they adopt any level at all?

Margaret Mitchell: I regret that the minister has wasted time making that point. As he well knows, we corrected that and the Executive changed its policy again. We have been waiting for five years for the Executive to change its mind.

I whole-heartedly agree with Gordon Jackson on the word "legislation", which appears frequently in the plan—six times in all. If the Executive is serious about reducing reoffending, it should legislate less and instead support the excellent work of the intervention projects that are run by independent and voluntary organisations. Both Donald Gorrie and Linda Fabiani made that point.

Finally, I add a word of caution on the reference to "disadvantaged communities" in the Executive's motion. The senseless and horrific knife attack on Abigail Witchalls has had a profound effect on everyone who lives in the community of Little

Bookham in Surrey—an area in which crime is virtually unknown. That appalling incident should act as a stark reminder to the SNP and others that crime knows no boundaries. A victim is a victim, regardless of whether they live in an area of deep deprivation or the leafy suburbs.

16:44

Stewart Stevenson (Banff and Buchan) (SNP): In this debate, we find much on which we are prepared to agree with the Executive, certainly on matters of policy. I suspect—because as yet I have heard nothing to the contrary—that the Executive finds much of our amendment acceptable and in line with its thinking. On that basis, I hope that it will extend its intellectual agreement to a voting agreement at 5 o'clock. However, we shall see—that is not the most important thing in the debate.

The minister opened her contribution by talking about safer communities. I am glad to say—although I have a slight suspicion about things that Patrick Harvie said—that no member has suggested that the policy should be that there should be less safe communities. Therefore, we can start with agreement about that.

The minister correctly focused on the scourge of drugs and drug addiction, which are at the heart of much of the crime that blights our communities. She referred to dealing with

"gangs at home and abroad."

I was particularly interested in her mentioning dealing with gangs abroad. Perhaps Hugh Henry—who I understand will sum up—will say at least two sentences about that matter, as I am particularly interested in it.

Many members have referred to knife crime. Like everyone else, I am deeply concerned about the effects of knife crime. However, we must focus on people who commit knife crime, rather than on the weapon itself, because once getting hold of knives has been made more difficult, much knife crime is likely to be committed by people using a knife out of the kitchen drawer, as Gordon Jackson suggested, or a knife that has been obtained by legal means. After all, strenuous efforts to improve gun control have not necessarily reduced the use of guns by criminals, who obtain guns by other means. The issue is a person's state of mind and their preparedness to commit crime.

The minister referred to reoffending, which is a subject that is fraught with difficulties. In the past five days, I have received a couple of parliamentary answers on the matter. I asked a question about reconvictions after two years and after four years—members should note that I said

“reconvictions” rather than “reoffending”, as there is a difference between the two. The most recent figures for those periods are for 1999. There is a paucity of figures, but I believe that more is being done that may help.

There is an interesting issue that we might consider. For Scotland overall, the reconviction rate within four years is 71 per cent. For crimes of indecency, the figure is 22 per cent. Superficially, that sounds like good news in relation to indecency, but it is particularly difficult to obtain convictions for a number of crimes that come under that heading, both in the first place and in the second place.

For example, another parliamentary answer suggests a conviction rate of only 6 per cent for rape and attempted rape. We must therefore look with caution at a reconviction rate of 22 per cent. If we do a bit of clever arithmetic on the rape and attempted rape conviction figure of 6 per cent, then probably the reoffending rate for people who are guilty of indecency is above that of the average overall. The conviction rates, perhaps not; but the reoffending rates I suggest are above average. The minister could usefully ensure that research is undertaken to help us all—the Executive and the Opposition—to understand better the reality of life on the streets as distinct from the statistics.

The minister graciously referred to improvements that have been made in Fraserburgh and Peterhead as a result of community wardens. However, I caution her not to be drawn into thinking that things are as simple as they have been made out to be. On 9 December 2002, I spent time in a normal policing situation—without the press—with PC Duncan McInnes on the streets of Fraserburgh. I did so at his express invitation and not at the invitation of the sergeant, the inspector, the superintendent or indeed Andrew Brown, who was the chief constable at the time. PC Duncan McInnes had fought the system to be allowed to patrol the streets of Fraserburgh for four hours a day because he believed in a police presence on the streets and his case has been made by changes that have been made there.

On 30 November 2002 I spent five hours, from 11 o'clock on a Saturday night, out with a police van, which was a revelation for someone who had a sheltered boyhood. The real problem is, of course, that community wardens are not tackling some of the problems that come up at weekends and overnight, but yes, they are worth considering and worth having.

I will not say much about sex offenders because Paul Martin's members' business debate after decision time will give us an opportunity to comment. It remains a serious issue.

I got the impression that Patrick Harvie was trying to persuade us that if someone has a drug problem that causes them to offend, they should not go to jail, however serious the offence, because they are not in control of their actions. Addicts are indeed victims of the addiction that has captured them and taken away some of their self-control. Nonetheless, addicts cease to be addicts only by taking control of their own lives again. Addicts are not people who have surrendered all control over their own actions.

Patrick Harvie: Will the member take an intervention?

The Deputy Presiding Officer: The member is in his final minute.

Stewart Stevenson: If they were unable to help themselves, the logic of Patrick Harvie's position would mean that we should lock up addicts for their own benefit until they were no longer addicts.

We welcome and support the Protection of Children and Prevention of Sexual Offences (Scotland) Bill. We welcome much of what is in the Executive's proposals and documents, but we want more effort to deliver on the promises that have been made.

16:51

The Deputy Minister for Justice (Hugh Henry): I start with an apology. To some extent, the title of the debate might have taken the attention of some members away from the substance of the motion on which Parliament should be focusing for the purposes of the debate. That is, what can we in the Government and the Parliament do to address some of the deep-rooted and systemic problems in our society, particularly violence and the use of knives?

I would be doing the issue a disservice if I tried to engage in some of the party-political knockabout into which the Conservatives want to drag us. Today's debate was initiated by the minister to provide an opportunity for us to think beyond some of the immediate issues that confront us. We know that there is a problem in this country in that there are far too many people in our jails. We recognise that, and we have accepted that something needs to be done about the revolving door system in which people go into prison, come out and go back in immediately. However, we want to encourage something more fundamental in this debate.

I hope that there is consensus that the changes that we have initiated in relation to summary justice and High Court reform will make a difference to how justice is delivered in Scotland. I hope that some of the changes that we have introduced to tackle serious and organised crime

will make a difference in our communities. I hope that what the First Minister and Cathy Jamieson have said about the use of knives will be addressed seriously by the Parliament. However, it is incumbent on us to stop and think beyond some of those immediate issues. We have to think beyond the resources and beyond outbidding each other when we talk about the number of police that will be on the streets. We have to think beyond what we say when we talk about the number of available prison places—we have to think about how we can stop such things happening in the first place. I accept that deterrence is an issue and, unlike Patrick Harvie, I believe that in such cases acts of punishment are appropriate and that people should know that their actions have consequences. However, we must stop for a moment and think, “Is there something else that we need to address?” Kenny MacAskill’s contribution was helpful in trying to set the tone for some of what followed.

There is something profoundly wrong in our society if young men, in particular, can think that it is acceptable to wander our streets carrying knives. Indeed, there must be something wrong with a society in which, unlike in many other western democracies, the link between the consumption of alcohol and the expression of violence, with or without a knife, is all too prevalent. What is it about our society and culture that causes such problems?

I hope that the Parliament can take the opportunity of this debate to start thinking about long-term as well as short-term measures. John Corrigan of Strathclyde Police showed a group of ministers a video in which a young man wanders into the centre of Glasgow and randomly knifes some innocent stranger who is simply walking along one of the city’s main streets. What causes that young man to behave as he does? What do we need to do to resolve such a situation? I agree that we need to catch such people; that we need closed-circuit television cameras; and that we need jails. However, what made that young man think that it was somehow acceptable to walk out with a knife?

I had the bizarre experience of visiting a project in Greenock and speaking to a very articulate young man who said that he carried a knife for his own protection. I do not accept that reason for a moment; however, he then went on to say that it was the police’s fault and that he would not have needed to carry a knife if there had been more police in his neighbourhood to protect him. Such logic is unacceptable, but unfortunately it is all too prevalent in many communities.

We need to get to the heart of the problem. We need to be able to deter and dissuade these young men, but we also need to change the

culture in which they operate. We need to change a culture in which men think that it is all right to get bevvied up on a Friday or Saturday night and to take it out on people in the pub or on the street or to go home and give a woman a doing. We need to change a culture in which violence is an acceptable form of expression.

As a result, I hope that this debate can be a starting point for the Parliament to take the issue seriously.

Margaret Mitchell: Will the minister give way?

Hugh Henry: No.

I hope that as a result of this debate the minister can start to engage with members across party boundaries in order to come up with another way of tackling this issue. I hope that, with this debate, she can start to engage with organisations throughout Scotland in order to raise the level of debate and identify solutions. Moreover, I hope that we can then translate that into action in the Parliament.

We have a lot to be proud of in this country. So many good things are going on and, as speakers have pointed out, Scotland is relatively safe. However, there is something profoundly wrong; as the minister pointed out in her speech, there is a dark side to our culture and psyche. We need to do more. Let this debate be the start of something that will translate into action to make our communities safer, to deter young men from carrying knives and to change the mentality of those who think that violence is acceptable. This debate can be only a first step.

Parliamentary Bureau Motion

The Presiding Officer (Mr George Reid): The next item of business is consideration of a Parliamentary Bureau motion. I ask Margaret Curran to move motion S2M-2731, on approval of a Scottish statutory instrument.

Motion moved,

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No.3) (Scotland) Order 2005 (SSI 2005/208) be approved.—[*Ms Margaret Curran.*]

16:59

Mrs Nanette Milne (North East Scotland) (Con): The Scottish Conservative party will continue to oppose such Scottish statutory instruments, because we have consistently argued that the best approach is to adopt end-product testing.

I understand that the Deputy Minister for Health and Community Care intends to hold in a fortnight's time a briefing session about shellfish monitoring. I hope that she will announce that, as a result of continued Conservative lobbying, Scottish fishermen will at last be able to operate under the same inspection code as the Irish and others do. I hope that the order is the last on amnesic shellfish poisoning that we must oppose.

17:00

The Deputy Minister for Health and Community Care (Rhona Brankin): Members are well aware that such emergency orders are required under European Community law and are put in place to protect consumers' health, because the presence of the toxins in shellfish poses a real risk to human health.

As well as serious public health considerations, we must recognise the potential for damage to the shellfish industry. A major incident of shellfish poisoning would damage hugely the Scottish industry's reputation, so I urge members to ignore the Conservatives and the Scottish National Party and to vote to protect public health by supporting the SSI.

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

Smoking, Health and Social Care (Scotland) Bill: Financial Resolution

17:01

The Presiding Officer (Mr George Reid): The next item of business is motion S2M-2284 on a financial resolution in respect of the Smoking, Health and Social Care (Scotland) Bill.

Motion moved,

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Smoking, Health and Social Care (Scotland) Bill, agrees to any expenditure or increase in expenditure of a kind referred to in Rule 9.12.3(b)(ii) or (iii) of the Parliament's Standing Orders arising in consequence of the Act.—[*Rhona Brankin.*]

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

Presiding Officer's Ruling

17:01

The Presiding Officer (Mr George Reid): I have reflected on the points of order that were raised during First Minister's questions today. Standing orders are clear. Under rule 8.17.2, points of order take precedence over the question that is under consideration. However, members will be aware that my predecessor and I have tried to protect the flow of First Minister's questions by taking—with the consent of the members concerned—any points of order that arise during those proceedings at the end.

I make it clear that it impacts badly on what should be the key scrutiny point of the week if members seek to interrupt proceedings with points of order that can wait until the end of proceedings. I will therefore continue to seek members' consent to defer such points unless I am of the view that a matter needs to be disposed of as it arises.

I may pre-empt any comment by Ms Leckie by saying that I strive continually to deal with matters fairly and consistently and that I shall continue so to do.

Carolyn Leckie (Central Scotland) (SSP): On a point of order, Presiding Officer. You have acknowledged that when a member makes a point of order, business should stop for it. I agree with your citing of rule 8.17. In retrospect, do you acknowledge that the first time I was asked to leave the chamber, I merely asked to make a point of order? Just as you asked Pauline McNeill whether she would press her point, you should have asked that of me, rather than asking me to leave the chamber. Will you acknowledge that that was inconsistent?

The Presiding Officer: I never enjoy going over past history. Disrespect to Parliament is a different matter. When members give a refusal, that becomes discourtesy. On the occasion to which you refer, you displayed discourtesy in the chamber by continuing to speak, which was ruled out of order. You compounded matters by refusing to apologise.

Decision Time

17:03

The Presiding Officer (Mr George Reid): There are seven questions to be put as a result of today's business. The first question is, that amendment S2M-2667.1, in the name of Carolyn Leckie, which seeks to amend motion S2M-2667, in the name of Andy Kerr, that the Parliament agrees to the general principles of the Smoking, Health and Social Care (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Baird, Shiona (North East Scotland) (Green)
Ballance, Chris (South of Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Fox, Colin (Lothians) (SSP)
Harper, Robin (Lothians) (Green)
Harvie, Patrick (Glasgow) (Green)
Kane, Rosie (Glasgow) (SSP)
Leckie, Carolyn (Central Scotland) (SSP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)

AGAINST

Aitken, Bill (Glasgow) (Con)
Alexander, Ms Wendy (Paisley North) (Lab)
Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
Baillie, Jackie (Dumbarton) (Lab)
Baker, Richard (North East Scotland) (Lab)
Barrie, Scott (Dunfermline West) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Canavan, Dennis (Falkirk West) (Ind)
Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
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)
Goldie, Miss Annabel (West of Scotland) (Con)
Gorrie, Donald (Central Scotland) (LD)
Henry, Hugh (Paisley South) (Lab)
Home Robertson, John (East Lothian) (Lab)
Hughes, Janis (Glasgow Rutherglen) (Lab)
Jackson, Dr Sylvia (Stirling) (Lab)
Jackson, Gordon (Glasgow Govan) (Lab)
Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
Kerr, Mr Andy (East Kilbride) (Lab)
Lamont, Johann (Glasgow Pollok) (Lab)
Livingstone, Marilyn (Kirkcaldy) (Lab)
Macdonald, Lewis (Aberdeen Central) (Lab)
Macintosh, Mr Kenneth (Eastwood) (Lab)
Maclean, Kate (Dundee West) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (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)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

The Presiding Officer: The result of the division is: For 9, Against 75, Abstentions 17.

Amendment disagreed to.

The Presiding Officer: The second question is, that motion S2M-2667, in the name of Andy Kerr, that the Parliament agrees to the general principles of the Smoking, Health and Social Care (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 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)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, 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)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (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)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 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)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Jackson, Gordon (Glasgow Govan) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)

ABSTENTIONS

Fox, Colin (Lothians) (SSP)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)

The Presiding Officer: The result of the division is: For 83, Against 15, Abstentions 3.

Motion agreed to.

That the Parliament agrees to the general principles of the Smoking, Health and Social Care (Scotland) Bill.

The Presiding Officer: The third question is, that amendment S2M-2736.2, in the name of Kenny MacAskill, which seeks to amend motion S2M-2736, in the name of Cathy Jamieson, on supporting safer, stronger communities and reform of Scotland's criminal justice services, be agreed to. Are we agreed?

Members: No.

The 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)
 Ballard, Mark (Lothians) (Green)
 Canavan, Dennis (Falkirk West) (Ind)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (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)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 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)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 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)
 Fox, Colin (Lothians) (SSP)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Gorrie, Donald (Central Scotland) (LD)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, 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)
 Kane, Rosie (Glasgow) (SSP)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Mundell, David (South of Scotland) (Con)
 Oldfather, Irene (Cunninghame South) (Lab)

Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stephen, Nicol (Aberdeen South) (LD)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Tosh, Murray (West of Scotland) (Con)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 24, Against 78, Abstentions 0.

Amendment disagreed to.

The Presiding Officer: The fourth question is, that amendment S2M-2736.1, in the name of Annabel Goldie, which seeks to amend motion S2M-2736, in the name of Cathy Jamieson, on supporting safer, stronger communities and reform of Scotland's criminal justice services, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)

Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fox, Colin (Lothians) (SSP)
 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)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kane, Rosie (Glasgow) (SSP)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, 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)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahan, 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)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (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)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 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)
 Wilson, Allan (Cunninghame North) (Lab)

The Presiding Officer: The result of the division is: For 15, Against 87, Abstentions 0.

Amendment disagreed to.

The Presiding Officer: The fifth question is, that motion S2M-2736, in the name of Cathy Jamieson, on supporting safer, stronger communities and reform of Scotland's criminal justice services, be agreed to.

Motion agreed to.

That the Parliament believes that building safer, stronger communities is vital for Scotland's well-being and future success; supports the reform package set out in the Criminal Justice Plan to promote the swifter delivery of sentences that are effective in reducing reoffending and supporting rehabilitation; recognises that violence, particularly knife crime, damages the daily life of already disadvantaged communities, and believes that co-ordinated action to tackle violence and knife crime must be stepped up in communities across Scotland.

The Presiding Officer: The sixth question is, that motion S2M-2731, in the name of Margaret Curran, on approval of a Scottish statutory instrument, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

FOR

Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (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)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fox, Colin (Lothians) (SSP)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)
 McGregor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (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)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Welsh, Mr Andrew (Angus) (SNP)

The Presiding Officer: The result of the division is: For 66, Against 18, Abstentions 17.

Motion agreed to.

That the Parliament agrees that the Food Protection (Emergency Prohibitions) (Amnesic Shellfish Poisoning) (West Coast) (No 3) (Scotland) Order 2005 (SSI 2005/208) be approved.

The Presiding Officer: The seventh and final question is, that motion S2M-2284, in the name of Tom McCabe, that the financial resolution in respect of the Smoking, Health and Social Care (Scotland) Bill, be agreed to. Are we agreed?

Members: No.

The Presiding Officer: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baird, Shiona (North East Scotland) (Green)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Henry, Hugh (Paisley South) (Lab)
 Home Robertson, John (East Lothian) (Lab)
 Hughes, Janis (Glasgow Rutherglen) (Lab)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Jackson, Dr Sylvia (Stirling) (Lab)
 Jackson, Gordon (Glasgow Govan) (Lab)
 Jamieson, Cathy (Carrick, Cumnock and Doon Valley) (Lab)
 Jamieson, Margaret (Kilmarnock and Loudoun) (Lab)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, 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)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)

McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Rumbles, Mike (West Aberdeenshire and Kincardine) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (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)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 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)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Aitken, Bill (Glasgow) (Con)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fox, Colin (Lothians) (SSP)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Kane, Rosie (Glasgow) (SSP)
 Leckie, Carolyn (Central Scotland) (SSP)
 McGrigor, Mr Jamie (Highlands and Islands) (Con)
 McLetchie, David (Edinburgh Pentlands) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Mundell, David (South of Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

The Presiding Officer: The result of the division is: For 83, Against 0, Abstentions 18.

Motion agreed to.

That the Parliament, for the purposes of any Act of the Scottish Parliament resulting from the Smoking, Health and Social Care (Scotland) Bill, agrees to any expenditure or increase in expenditure of a kind referred to in Rule 9.12.3(b)(ii) or (iii) of the Parliament's Standing Orders arising in consequence of the Act.

Managing Sex Offenders

The Deputy Presiding Officer (Murray Tosh):

The final item of business today is a members' business debate on motion S2M-2573, in the name of Paul Martin, on reviewing arrangements for managing sex offenders. The debate will be concluded without any question being put.

Motion debated,

That the Parliament recognises that, following the murder of eight-year-old Mark Cummings by registered sex offender, Stuart Leggate, there is a requirement for a root-and-branch review of how registered sex offenders are monitored and managed in the community; believes that the current sentencing policy for dealing with registered child sex offenders is grossly inadequate and requires review, that it is not acceptable that registered sex offenders are able to legally act under an alias identity and that the current housing allocation policies for dealing with registered child sex offenders present a serious risk to local communities; considers that an inquiry should be held into the events leading up to the murder of Mark Cummings; believes that the Scottish Executive should, as a matter of urgency, bring forward measures that will ensure that the risk to our children posed by registered child sex offenders is radically minimised, and commends the *News of the World* for its campaign in raising the awareness of the need to introduce legislation to manage registered sex offenders more effectively.

17:12

Paul Martin (Glasgow Springburn) (Lab):

I thank members who have supported my motion and the large number of organisations and individuals outwith Parliament who support the ethos of the motion. I also pay tribute to the courage and determination of Margaret Ann Cummings, who is with us this evening. Tragically, she lost her son, Mark Cummings, who was murdered by Stuart Leggate, a registered child sex offender. I commend her patient and constructive approach to ensuring that lessons are learned from the tragic murder of her son.

I want to highlight several issues. First, I will consider how the housing allocation system deals with registered child sex offenders—I stress “registered”. There is a myth that registered sex offenders are carefully managed in the housing allocation process and that housing providers are informed of the history of such offenders. I am sorry to inform members that that is not the case. Stuart Leggate, who had served two years of a four-year sentence for sex acts against children, was able to choose to live in the Royston area of Glasgow. He was not managed through the housing allocation process and he was housed in an area that has a high population of young children, and within 100yd of a nursery and two primary schools.

When someone has been convicted of sex acts against children, they should forgo many of the life

choices that are available to law-abiding citizens, including the choice of where to reside. We need to create a rigid and efficient environment to ensure that we manage sex offenders and that they do not manage us during the process.

The minister should ensure that legislation is introduced to establish a structure that will deliver the basic requirement of managing sex offenders through the housing allocation process while dealing with sex offenders' being able to assume aliases. It is unacceptable that both Ian Huntley and Stuart Leggate assumed aliases. Parliament should investigate a possible partnership with Westminster to consider withdrawing the right to an alias.

I will refer to sentencing policy. Stuart Leggate served two years of a four-year sentence for sex acts against young children. It is unacceptable that he should be released only two years into his sentence. Many academics and world-renowned experts on the subject tell us that dealing with registered sex offenders is a difficult and complex issue—I agree with them all. Why, in that case, should we release sex offenders halfway through their sentences?

We should significantly increase the sentencing tariffs that are available to sheriffs in respect of registered child sex offenders. Moreover, a life sentence should mean life for individuals who have shown during the process that they are not capable of being treated. I ask the minister to respond to the specific question of how we can ensure that tariffs are increased.

On neighbourhood notification, much has been said about how we notify communities of the presence of child sex offenders. A lot has also been said about vigilantes. I do not represent a community of vigilantes; I represent hard-working men and women who wish to live in harmony in their communities, and who care deeply for the safety of their young children. There have been no vigilantes in Royston. Although there are examples of vigilante action, we are dealing with people who want to work constructively with the authorities to examine ways in which they can protect their children.

I have always maintained that to take this issue forward, we, as elected members, should not be so arrogant as to dismiss any opportunity that is presented to us on the ways in which we can protect children from registered child sex offenders. The Executive should at least investigate opportunities that are available to it worldwide, and it should examine international examples of cases in which information on registered sex offenders has been shared with communities. The intention would be to use the information in a controlled and responsible

environment, in which the safety of the child is paramount.

An issue also arises in respect of how we share information, not only with communities but with authorities such as housing authorities. The fact that this gift is in the possession of only the police authorities is unacceptable. We have to consider the various authorities that deal with sex offenders, sometimes indirectly, and we must ensure that relevant and accurate information is provided to them.

We hear far too much about information-sharing partnerships and the existing partnerships that are in place. We should introduce legislation to ensure that information partnerships are established to deal with how we share information on registered sex offenders.

It is important that we learn from the experience of young Mark's death. Margaret Ann Cummings has made it very clear that she does not want a blame culture to follow Mark's death, but a culture in which all of us accept with humility that we could have got it much more right than we did. Let us show humility and introduce a "Mark's law" that will ensure that everything possible is done to protect our future generations.

17:20

Mary Scanlon (Highlands and Islands) (Con): I do not normally participate in debates on justice, but I asked to speak in this debate because of a local problem in Inverness that was recently brought to my attention. I say at the outset that I do not wish to discuss any of the matters in the Management of Offenders etc (Scotland) Bill, given that the Justice 2 Committee has just started taking evidence on it.

Although the rehabilitation of sex offenders will always be sensitive, challenging and difficult, the balance must always be in favour of public safety and minimising the opportunities for reoffending.

Like Paul Martin, I urge the minister to give careful thought to giving guidance to councils, the police and the Prison Service about the physical relocation of a sex offender. I hope that housing allocation policies take into account the proximity of not only a school or nursery, as Paul Martin said, but someone who is a registered child minder.

During the Easter recess, parents in an area of Inverness kept their children indoors because of their fears about the presence in the community of a sex offender. If the Minister for Justice and the Executive do not take the necessary action, parents might resort to vigilante tactics in order to address the problem.

Angela Prosser from Inverness asked me to use her name in the debate. She has lived in the same house—her parents' house—for 27 years. When she was young, her parents allowed her to go out and play at any time of the day with no problems. She is now a registered child minder and found herself worrying about her children's safety, so she kept them inside for the full two weeks of the Easter holidays. She told me that 35 children live in close proximity to her home.

Although the Conservatives support the idea that sex offenders should serve their full term, we want to ensure that appropriate rehabilitation measures are available in prison and that regular risk assessments are carried out. The system needs to be monitored, audited and managed not only in prison but in the community, without the buck being passed between the Prison Service, the police and the social work department.

I noted from Margaret Ann Devlin's petition to the Parliament that she mentions Megan's law in America. That law is used to give house purchasers information about any known sex offenders in the area. I mentioned the law at a recent Communities Committee meeting in connection with purchasers information packs, as those would provide an opportunity to introduce such a measure. I do not have information on how successful or otherwise the scheme in America is, but it is worth examining. I note that the Minister for Justice will resist calls for people to be told if a sex offender is living in their area.

It is a matter of concern that, as stated by the head of child protection in the Association of Chief Police Officers in Scotland, the sex offenders register records only one tenth of the likely total of sex offenders. Many have committed offences prior to 1997 when the register came into force; in other cases, prosecutors failed to secure a conviction.

I was very concerned that the Social Work Inspection Agency acknowledges that the Scottish Prison Service did not provide the sex offender James Campbell with access to rehabilitation while he served his sentence. I was also concerned by the lengthy delay before he was interviewed on his arrival at prison and by the six months that it took to appoint a new prison social worker after the original one left. How often have we heard of poor communication between police, other services and social work staff? That certainly was the case with Mr Campbell's assessment. I hope that we can learn from today's debate.

17:25

Stewart Stevenson (Banff and Buchan) (SNP): I extend my thanks to Paul Martin for giving us the opportunity to debate a difficult and

important subject. I also extend my commiserations and those of my party to the Cummings family on the situation in which they find themselves, and I commend their dignity under that provocation.

We must be careful with some of the things that we think about. We must manage sex offenders such as Leggate better on their release, and Paul Martin has mentioned quite a few things that would be useful, but we must not imagine that that is enough. It is not.

If we look at conviction rates and the experience that comes from a variety of sources, we realise that we have probably convicted only one in 10 of the sex offenders who are out there. Of all crimes, it is a particularly hidden crime, so we must protect our children not just from those whom we already know to be sex offenders because they have been convicted, but from those who are yet to be revealed as sex offenders.

That means that we all have to think about how we can protect our children and educate them to recognise problems, to help their peer group and to bring the necessary information to the attention of those who can take action. I myself was aware of a sex offender when I was a wee bairn, because my father, as a general practitioner, treated a sex offender who had yet to be convicted but who he was utterly convinced was a problem. I shall name him. He was Christopher Milne, the son of A A Milne—Christopher Robin in the books. He was a patient of my father, and his upbringing and the effect of what his father had done in writing about him was said to have been one of the factors in his becoming a paedophile.

There are one or two interesting things about the Leggate case. I understand from my sources that prison staff were pretty clear that Leggate had a high risk of reoffending, but that information does not seem to have permeated down to anyone who might have taken action. I was disappointed to hear that councils and police are not getting such information. I have to say that I believe that information is actually being passed on in Aberdeenshire. That can happen, and in some parts of the country there are mechanisms for making it happen. Indeed, I am consulted, as are other elected representatives, about the matter, and I know how many sex offenders there are in the different communities. I can help the police and the council with the information that comes to my attention. I do not know the names or addresses, but I know what is going on in general terms.

There are a couple of challenging ideas that we might think about. Megan's law is all very well, but given the number of sex offenders who are out there, house surveys would always say, "There are sex offenders in the area." That is a real

difficulty. In Canada there are what appear to be successful schemes for befriending sex offenders and ensuring that they are socially related and adhered to someone in the community. I understand that the Quakers in England are running a similar trial. I do not think that that is a magic bullet by any manner of means, but I certainly think that we should consider trying what is being tried elsewhere and see whether it has any application in Scotland.

The real issue, particularly with paedophiles but perhaps less so with rapists, is with sex offenders' mental processes and their whole view of the world. Programmes in prison can help to make them aware of that problem, although they cannot change their behaviour, and can help them to detect when they are going to reoffend. They have distorted thinking and will have it all their lives. Perhaps we should release those people only when we can prove that it is actually safe to do so. Sentences for people with psychological problems and distorted thinking are perhaps not the right way of dealing with them, even though locking them up is.

17:30

Elaine Smith (Coatbridge and Chryston (Lab)): The murder of Mark Cummings shocked and horrified people throughout Scotland. I commend Paul Martin for demanding a review of the arrangements for managing sex offenders and I congratulate him on securing the debate.

Last year, in my own constituency, the horrific crime perpetrated by James Campbell—that of abducting and attempting to rape a two-year-old child—caused outrage within the local community and confirmed that the management of sex offenders is a nationwide issue that requires the urgent attention of the Scottish Executive. The community protests and demonstrations that took place in Coatbridge last summer showed the strength of feeling about the issue. Although such crimes may be rare, people are nevertheless scared about their children's safety and lack faith in a system that should safeguard their well-being. We have a duty to take action to address those concerns.

I welcome the announcement by the Minister for Justice of a national audit of sex offender cases, following the Social Work Inspection Agency's report into the incident in Coatbridge. I also recognise the commitment made by Jack McConnell last week during First Minister's questions that the Scottish Executive will move quickly to end automatic early release for sex offenders following the recommendations of the Sentencing Commission for Scotland.

Both those actions move us in the right direction, but more must be done, and it must be done urgently. Appropriate sentencing of those who commit sex offences against children is essential, because they are the perpetrators of despicable crimes and society demands that they are punished accordingly. However, punishment is only part of the equation. The reality is that the majority of child sex offenders will be released into the community again at some point in the future. It is imperative that when they are released, the necessary monitoring and support services are in place, as Paul Martin said, and that prior to their release they receive adequate treatment to address their offending.

Perhaps the most concerning finding of the SWIA's report into the James Campbell case was that that offender, who was only 17 when he committed his first serious sexual offence, was not assessed for, or given, any rehabilitation intervention when he was in prison. The fact that that disturbed young man was released back into the community without any treatment is of huge concern.

I accept that the volume of receptions in prison in this country makes the provision of rehabilitation programmes for every prisoner difficult, but in the case of high-risk sex offenders, such programmes are essential. Rehabilitation and risk assessment should form an integral part of every sex offender's sentence and the Scottish Executive must take action to implement such an approach.

As the SWIA's report states, risk assessment must be a dynamic and on-going process. In the case of James Campbell, supervising officers appeared to have a different level of supervision because the homelessness unit had closed-circuit television and a 24-hour concierge. However, the CCTV took only internal footage and the staff had no knowledge of the offender's record. That was totally inadequate monitoring of the offender's behaviour. I ask the minister what consideration has been given to introducing more comprehensive methods for monitoring high-risk sex offenders following their release. Paul Martin also raised that issue.

Another concern raised by the report relates to the housing of sex offenders. James Campbell was accommodated in a homeless unit that overlooked two primary schools. That was completely inappropriate. Mistakes were made by the various agencies involved and they have been quick to recognise that.

The SWIA's report highlighted the fact that confusion between North Lanarkshire Council's social work and housing departments about their responsibilities in relation to housing sex offenders exacerbated the situation. The report describes the relationship between the two departments as

"complex and cumbersome" and suggests that the absence of national guidance hinders agencies in trying to find their own solutions. I hope that the minister will indicate in his speech what stage the Scottish Executive has reached in developing a national strategy for Scotland on housing sex offenders and when we can expect that strategy to be put in place.

There is no doubt that the issue of managing sex offenders is extremely complex and emotive. The Scottish Executive has recognised the concerns that exist throughout Scotland and it has shown a willingness to take action. I hope that the Executive will now take on board the recommendation in the SWIA's report and will work to ensure that every possible precaution is taken in future to try to prevent crimes of the nature that we have spoken about in the debate or, at the very least, to minimise the risk of such crimes.

17:34

Patrick Harvie (Glasgow) (Green): I endorse the comments that have been made about Paul Martin, who deserves to be commended for bringing an important issue to the Parliament. We should recognise that it takes a certain amount of courage to address what he acknowledges is a highly complex, emotive and difficult subject.

In most cases of abuse, before an abuser becomes a sex offender in the eyes of the law, something difficult and traumatic has to happen: the victim has to feel able to report the abuse. The difficulty and the trauma are made all the more intense because many victims—almost certainly the large majority—have suffered the abuse at the hands of family members or friends of family members. The effective provision of comprehensive and honest sex education, designed appropriately for age and stage of development, has a dramatic and positive impact on young people's and children's feelings of confidence in reporting abuse if it happens. We have to get that education right. If we do, we will be able greatly to reduce the scale of the problem in society.

The sad truth is that there is always likely to be a certain level of sexual abuse in our society and a certain number of children who are victims. We will always have the problem of how to manage and deal with offenders. Involving communities in the management of sex offenders is a laudable goal, but we should think about the kind of involvement that we want.

One of Paul Martin's colleagues—Jane Griffiths MP—brought a debate on the issue to Westminster. She said:

"How does a community respond to the release of a sex offender into its midst? It is understandable that there will

be fear and concern for the safety of those in the community. In an extreme”—

and I welcome Paul Martin's comment that his community is not an example of an extreme—

“that can lead to what happened to Arnold Hartley, a convicted sex offender who was murdered in his home in Redcar, Cleveland, last November. Similarly, we all remember the scenes in Paulsgrove, Portsmouth. That is not the kind of community involvement in the treatment of sex offenders that I am seeking through this debate.”—
[*Official Report, House of Commons*, 7 July 2004; Vol 423, c 295WH.]

We should all acknowledge the consequences of such actions, which can lead to a greater risk of future offences.

The Deputy Minister for Justice (Hugh Henry): Communities look for protection but—I refer members to the debate that we had earlier this afternoon—communities also look for the punishment of people who commit heinous crimes, such as sex offenders and those who offend against children. In the earlier debate, Patrick Harvie suggested that he did not believe in punishment. Notwithstanding what he said about the role of the community, does he believe that people who commit sex offences against children should be punished?

Patrick Harvie: I am afraid that we do not have time to go into a long debate on the philosophy of punishment, but I am sure that we will have other opportunities. However, in the situations that we are discussing, the absolute and overriding priority must be to reduce the likelihood of future offences. As soon as a sex offender is known, that has to be our priority.

Giving people such as home buyers a head count of known offenders, as Mary Scanlon suggested, is surely dangerous. It would lead to the perception that, if no offenders are known in an area, there is no problem. Most offenders do not fit a stereotype. Most offenders are not known to the state and have not been in contact with the criminal justice system. We have to accept that.

There are more positive ways of working. Stewart Stevenson talked about Canada. There is also a pilot project in the Thames valley, where a different approach has been taken to the involvement of communities. It has been acknowledged that, to prevent reoffending after release, an offender requires not only to be held accountable, but to be given support. The initiative used volunteers from the community—people who had been carefully screened by the police and who had been well trained—to provide circles of support and accountability, as they are known.

I will quote one of the ex-offenders:

“My relapse programme, with the support from volunteers, has real meaning. I feel that I can continue with my main aim of not re-offending.”

One of the volunteers said of an offender:

“It makes me happy to feel that he, too, will be able to live a better life now. It has helped me to see that whatever awful things someone might have done, they still have a human heart beating in their chest.”

Let us think of the young people who, because of such interventions, have been spared the nightmare of becoming victims. I ask the Executive to explore such options in Scotland.

17:39

Mr Kenny MacAskill (Lothians) (SNP): I will follow the normal course of events and, like other members, congratulate Paul Martin on securing the debate. I also thank him for his thoughtful speech. However, the normal platitudes are inadequate tonight. On this occasion, we have to pay greater tribute to Paul Martin. The subject of the debate is the tragic event that befell the Cummings family. That event is not only significant in Paul Martin's constituency, but has national ramifications. Paul Martin has doggedly and tenaciously pursued the matter. Tonight's debate is simply a culmination of that work, which has resulted—albeit with the support of the Executive—in change taking place.

Members of the Scottish Parliament are often abused and derided. On this occasion, Paul Martin has done us all a favour by showing what an MSP can do by not seeking personal advancement and, indeed, by not being partisan. He has pursued the issue, effected change and publicly raised matters that are of significant concern not only to the people whom he represents, but to the Scottish nation. I put on record the fact that the normal platitudes are simply inadequate in this debate.

The Scottish National Party welcomes the recent changes that were announced by the Executive. These issues are difficult. Notwithstanding the tragedies that occur, which devastate individuals and communities, we must never lose sight of the fact that the number of people who are involved in such crimes is, thankfully, limited. The perpetrators of such crimes are dangerous people—they are not only highly manipulative, but in some instances, I am sad to say, probably incorrigible. That is why we have to look at other ways of dealing with offenders.

Paul Martin made the valid point that the people whom he represents are not vigilantes. People are entitled to know whether a sex offender is living in their area. I have agonised long and hard about whether Megan's law and other such ideas are a good or a bad thing. I remember a conversation with the professor of criminology at the University of Edinburgh, in which he reversed the question by asking, “What would you do if that happened in your area? Do you think that you have a right to

know?" The fact is that I would insist on knowing. I would be outraged if the council and the Executive knew that a sex offender was living in my area but my family had not been advised of that.

The difference in response in such situations borders on the issue of class, which is a matter into which I stray only infrequently. If such a crime were to happen in the leafy suburb where I and the Lord Advocate live, members can rest assured that we would have used the contacts and the resources at our disposal to hire the best lawyers in the city to ensure that action was taken.

In other areas, particularly Royston, people do not have those good connections—unless they have a connection to a member such as Mr Martin, who will take action on their behalf. Those people do not have the resources to go to lawyers to take steps to protect their community. It is entirely wrong to denigrate those who protest and call them vigilantes. Those people are pursuing the only course of action that is available to them. They cannot use the connections that are available to the middle class or to the more affluent members of society, in which I include the members in the chamber. I repeat that Paul Martin deserves credit for the actions that he has taken.

As I said, the issue is not only local, but national. It comes down to the representations that the social work department concerned has made to us all. I am referring to issues such as resourcing—this sort of social work care does not come cheap. The problem needs to be addressed not only in prison, but when offenders are outwith the prison environment. Although those people need significant monitoring, we cannot put a price on the lives of our children. Treatment programmes and new initiatives have to be considered. There is no simple solution.

Again, I pay tribute to Paul Martin for raising the issue and securing the debate. The SNP welcomes the steps that the Executive has announced and taken to date; the Executive can rest assured that it has our full support. As Mr Martin has correctly shown, the subject of the debate is not a partisan issue, but a matter that affects all of us in all our communities.

17:44

The Deputy Minister for Justice (Hugh Henry): Like other members, I thank Paul Martin for giving the Parliament the opportunity to consider this difficult issue. He has not just enabled the Parliament to reflect on what happened but has enabled his constituents, the Cummings family, to have a voice in the Parliament that was otherwise denied to them.

Surely nothing is more devastating than the loss of a child. Losing a child in such circumstances

makes the problem and the grief, the anger and the anguish all the more profound.

It is to the credit of the family that while of course they want answers about what happened in relation to Mark, they want to ensure that other families are protected so that they do not have to go through the trauma and grief that the Cummings family have experienced.

We all recognise that sex offenders are among the most difficult and challenging group of criminals for the justice system to deal with. They understandably instil fear in our communities. They prey on the most vulnerable. They are very skilled in avoiding detection. They are very manipulative, as we see in the way they manipulate people of various age groups. As Kenny MacAskill said, they are small in number, but create disproportionate concern. That concern is understandable: the consequences of their offending can be profound and long lasting. We know that there are victims who suffer for the rest of their lives, even if they manage to stay alive.

It is right that we are all committed to improving public protection, so that we can ensure that people live their lives in safety and without fear. There have been many improvements based on the recommendations of the Cosgrove report in 2001. We strengthened the registration requirements for sex offenders in 2003. The Criminal Justice (Scotland) Act 2003 requires improved reports for sheriffs and judges with better information on risk. The act also gives the Parole Board for Scotland the power to impose electronic tagging as a condition of release on licence. We are encouraging the board to think positively about using that safeguard.

We are rolling out a system throughout Scotland to record sexual and violent offenders properly and to keep track of them across police boundaries. I hope that that will make it easier to share intelligence. The Management of Offenders etc (Scotland) Bill seeks to establish joint arrangements between the police, local authorities and the Scottish Prison Service to assess and manage the risk posed by sex offenders, and includes the sharing of information. That will help to ensure that each organisation has a clear understanding of its role and responsibilities in relation to sex offenders.

Mary Scanlon: Can the minister guarantee that sex offenders will get access to rehabilitation programmes when they are in prison, to ensure that some help and support is given?

Hugh Henry: As Mary Scanlon has identified, there is a need to work with sex offenders in particular. We are concerned that far too many offenders of all natures do not get the proper rehabilitation and support that they need in order

to avoid reoffending when they come out. That is even more critical in relation to sex offenders. However, we want to ensure not only that what happens in prison is properly carried out, but that the proper safeguards, support and help are provided in the community.

As Paul Martin graphically illustrated, and as Elaine Smith mentioned, there have been recent cases—not necessarily that of Mark Cummings's death, where someone had completed their sentence—in which all the so-called safeguards have broken down, the agencies have not co-operated and there have been failings. The minister has asked for a report on what happened in those cases, because we need to learn the lessons.

We need to understand that assessing and managing the risk posed by these individuals is critical. That is one of the reasons why we set up the Risk Management Authority, which puts Scotland at the forefront of developments. That authority will be responsible for ensuring the effective assessment and management of risk posed by sexual and violent offenders.

Paul Martin raised the issue of some individuals' lifelong sex offending. That is one reason why we have introduced orders for lifelong restriction, which will give the High Court a way of dealing with serious violent and sexual offenders. We are working hard to establish the Risk Management Authority fully and to bring on stream the lifelong restrictions as soon as we can.

We are also seeking to restrict the activities of individuals who are suspected of being a danger to our children. We want to restrict their activities even if they have not committed an offence. The Protection of Children and Prevention of Sexual Offences (Scotland) Bill will allow chief constables to apply to the sheriff court for risk of sexual harm orders and extend the use of sexual offences prevention orders.

Mary Scanlon and Paul Martin mentioned housing. Mary Scanlon talked about a case in which an offender was allocated a house in what she described as an inappropriate area of Inverness. I do not underestimate the problem of housing a sexual offender who has completed a sentence. Even if they have been given the proper support in prison, they are still a worry to the community. I cannot comment on the specifics of the case that Mary Scanlon identified, but if she writes to me to identify the areas in Inverness in which she thinks it might be appropriate to house offenders, I will ensure that that information is passed on to the relevant agencies.

Paul Martin is right to ask about the wider issues of housing. It is true that people need stable accommodation when they come out of prison, but

the Cosgrove report warned that blanket exclusions of sex offenders in housing allocations would be unhelpful and recommended that they should normally be accommodated in mainstream housing in the local community. Guidance for social landlords on the housing of sex offenders has been in place since April 1999. It is produced by the Chartered Institute of Housing Scotland with our funding. The Cosgrove report welcomed that guidance and advocated the development of a national accommodation strategy to support the practical issues that are highlighted in the guidance. It also recommended the development of an education and training programme for housing providers and their management authorities.

We have acted on all those recommendations, but Paul Martin is right that lessons need to be learned. I assure him that the minister, Cathy Jamieson, has made it very clear to all the agencies that were involved in dealing with the tragic death of Mark Cummings that they should examine their practices and procedures to determine what improvements can be made. We have also asked Professor George Irving to review the operation of the sex offender registration scheme and we will shortly produce for local authorities a revised statutory code of guidance on homelessness. Those matters are all continuing and we need to consider them specifically.

Paul Martin raised a specific issue on change of name. There is a notification requirement in the Sexual Offences Act 2003 that provides that a sex offender must—I stress that they must—provide their name, any other names they have used and any changes to their name that have not already been notified. That provides some protections, but we will need to reflect on whether that is strong enough and whether anything else needs to be done on that issue.

Patrick Harvie mentioned circles of support. They might be worthy of consideration at some point but, to be frank, we know that there are weaknesses in the statutory system that need to be addressed first. Before we can even start to think about circles of support, we need to resolve things that in far too many cases have let people down. I want the statutory arrangements to be made robust, so we will wait and see what comes out of the pilot in England. The Home Office is evaluating the pilot and we will determine whether there are any lessons to be learned in Scotland.

I hope that we have given Paul Martin and the Cummings family some assurances.

Paul Martin: Will Hugh Henry give way?

Hugh Henry: Yes.

The Deputy Presiding Officer: You are definitely over time, minister, but I will allow one more intervention and then a quick summation.

Paul Martin: I will ask the minister about two points. First, will he make representations on the tariffs that are available to sheriffs? Secondly, will he legislate on housing allocation policy to ensure that we have in place not voluntary partnerships, but a specific framework that ensures that, when housing is allocated, information is shared between authorities, such as housing authorities?

Hugh Henry: I will certainly ensure that the comments about housing are passed to my colleagues who deal with that issue.

Paul Martin knows that we have asked the Sentencing Commission to examine the unconditional early release of sex offenders. Further, we will ask it to examine sentences generally. Work in relation to the sentences that sex offenders serve and what happens when they are released is already under way. The Minister for Justice has written to local authority chief executives, the chief executive of the Scottish Prison Service and the chief constables to ask them to review their medium and high-risk sex offenders cases in order to ensure that sex offenders in all areas have been subject to a competent and comprehensive risk assessment and that appropriate arrangements are in place.

I hope that I have given some assurances about the work that is being done. I can be in no way complacent and cannot assume that what has been done and is about to be done will be sufficient. I am sure that there is always more that can be done. However, it is incumbent on us to listen to what Paul Martin and others say on behalf of their constituents and, as Cathy Jamieson has done, to listen to the views of the families who have been directly affected. After all, we are here to represent them.

Meeting closed at 17:56.

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