

MEETING OF THE PARLIAMENT

Thursday 2 June 2005

Session 2

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CONTENTS

Thursday 2 June 2005

Debates

Col.

BUSINESS MOTION	17457
<i>Motion moved—[Ms Margaret Curran]—and agreed to.</i>	
BAIRD TRUST REORGANISATION BILL: PRELIMINARY STAGE	17458
<i>Motion moved—[Mr Andrew Arbuckle].</i>	
Mr Andrew Arbuckle (Mid Scotland and Fife) (LD).....	17458
Mr Kenny MacAskill (Lothians) (SNP).....	17462
Mr David Davidson (North East Scotland) (Con).....	17463
Scott Barrie (Dunfermline West) (Lab).....	17464
ANTISOCIAL BEHAVIOUR	17465
<i>Motion moved—[Cathy Jamieson].</i>	
<i>Amendment moved—[Mr Kenny MacAskill].</i>	
<i>Amendment moved—[Miss Annabel Goldie].</i>	
The Minister for Justice (Cathy Jamieson).....	17465
Mr Kenny MacAskill (Lothians) (SNP).....	17469
Miss Annabel Goldie (West of Scotland) (Con).....	17472
Mike Pringle (Edinburgh South) (LD).....	17475
Richard Baker (North East Scotland) (Lab).....	17477
Mr Stewart Maxwell (West of Scotland) (SNP).....	17479
Margaret Jamieson (Kilmarnock and Loudoun) (Lab).....	17481
Bill Aitken (Glasgow) (Con).....	17484
Patrick Harvie (Glasgow) (Green).....	17486
Bill Butler (Glasgow Anniesland) (Lab).....	17488
Colin Fox (Lothians) (SSP).....	17490
Mr Bruce McFee (West of Scotland) (SNP).....	17493
Karen Whitefield (Airdrie and Shotts) (Lab).....	17495
John Swinburne (Central Scotland) (SSCUP).....	17497
Paul Martin (Glasgow Springburn) (Lab).....	17498
Donald Gorrie (Central Scotland) (LD).....	17500
Margaret Mitchell (Central Scotland) (Con).....	17501
Stewart Stevenson (Banff and Buchan) (SNP).....	17503
The Deputy Minister for Justice (Hugh Henry).....	17505
QUESTION TIME	17509
FIRST MINISTER'S QUESTION TIME	17517
POINT OF ORDER	17529
QUESTION TIME	17530
PRESIDING OFFICER'S RULING	17547
PROTECTION OF CHILDREN AND PREVENTION OF SEXUAL OFFENCES (SCOTLAND) BILL: STAGE 3	17548
PROTECTION OF CHILDREN AND PREVENTION OF SEXUAL OFFENCES (SCOTLAND) BILL	17600
<i>Motion moved—[Cathy Jamieson].</i>	
The Minister for Justice (Cathy Jamieson).....	17600
Stewart Stevenson (Banff and Buchan) (SNP).....	17601
Margaret Mitchell (Central Scotland) (Con).....	17603
Mike Pringle (Edinburgh South) (LD).....	17604
Patrick Harvie (Glasgow) (Green).....	17606
Pauline McNeill (Glasgow Kelvin) (Lab).....	17607
Mr Bruce McFee (West of Scotland) (SNP).....	17608
The Deputy Minister for Justice (Hugh Henry).....	17609
PARLIAMENTARY BUREAU MOTION	17611
<i>Motion moved—[Ms Margaret Curran].</i>	
DECISION TIME	17612
SCOTTISH PARLIAMENT (POWERS)	17619
<i>Motion debated—[John Swinburne].</i>	
John Swinburne (Central Scotland) (SSCUP).....	17619

Christine Grahame (South of Scotland) (SNP).....	17621
Mr Brian Monteith (Mid Scotland and Fife) (Con).....	17623
Donald Gorrie (Central Scotland) (LD)	17624
Brian Adam (Aberdeen North) (SNP)	17625
Margo MacDonald (Lothians) (Ind).....	17626
Mark Ballard (Lothians) (Green)	17627
Jim Mather (Highlands and Islands) (SNP)	17629
Dr Jean Turner (Strathkelvin and Bearsden) (Ind)	17630
The Deputy Minister for Finance and Public Service Reform (Tavish Scott)	17632

Oral Answers

Col.

SCOTTISH EXECUTIVE	17509
GENERAL QUESTIONS	17509
A75 (Improvements)	17513
Blood Screening	17510
Clydesdale Bank (Closures)	17510
Health Records (Gypsy Travellers)	17509
Health Services.....	17514
Rail Services (Fife)	17515
Waste Water Services	17512
FIRST MINISTER'S QUESTION TIME	17517
Cabinet (Meetings)	17519
Developing Nations (Assistance).....	17525
European Union (United Kingdom Presidency).....	17527
Identity Cards.....	17526
Prime Minister (Meetings).....	17517
Secretary of State for Scotland (Meetings)	17524
SCOTTISH EXECUTIVE	17530
EDUCATION AND YOUNG PEOPLE, TOURISM, CULTURE AND SPORT	17530
Coastal Paths	17536
Education (Parental Involvement)	17533
European Union Education Ministers (Meetings)	17531
Health (Sport)	17537
Leisure Facilities.....	17535
Sportscotland (Funding Distribution)	17537
Youth Festivals	17530
FINANCE AND PUBLIC SERVICES AND COMMUNITIES	17538
Contaminated Land (Safeguards)	17542
Credit Unions	17543
Efficiency in Government.....	17545
Prime Minister's Delivery Unit.....	17541
Public-private Partnerships (Green Space).....	17538
Public Services (Efficiency)	17540
Retail Developments (Planning)	17540
Social Housing (Modernisation).....	17544

Scottish Parliament

Thursday 2 June 2005

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

Business Motion

The Deputy Presiding Officer (Murray Tosh): Good morning. The first item of business is consideration of business motion S2M-2901, in the name of Margaret Curran, on behalf of the Parliamentary Bureau, setting out a timetable for stage 3 consideration of the Protection of Children and Prevention of Sexual Offences (Scotland) Bill. I invite any member who wishes to speak on this motion to press their request-to-speak button now.

Motion moved,

That the Parliament agrees that, during Stage 3 of the Protection of Children and Prevention of Sexual Offences (Scotland) Bill, debate on groups of amendments shall, subject to Rule 9.8.4A, be brought to a conclusion by the time limits indicated (each time limit being calculated from when the Stage begins and excluding any periods when other business is under consideration or when the meeting of the Parliament is suspended or otherwise not in progress):

Group 1 – 25 mins

Groups 2 to 4 – 50 mins

Groups 5 to 8 – 1 hour 15 mins

Groups 9 to 11 – 1 hour 55 mins.—[Ms Margaret Curran.]

The Deputy Presiding Officer: Mr MacAskill, do you wish to speak?

Mr Kenny MacAskill (Lothians) (SNP): I am sorry. No, I do not wish to speak on this motion.

The Deputy Presiding Officer: It is always better to be clear about these things.

Motion agreed to.

Baird Trust Reorganisation Bill: Preliminary Stage

The Deputy Presiding Officer (Murray Tosh): The next item of business is a debate on motion S2M-2876, in the name of Andrew Arbuckle, on behalf of the Baird Trust Reorganisation Bill Committee, that the Parliament agrees to the general principles of the Baird Trust Reorganisation Bill and that the bill should proceed as a private bill.

Members who wish to speak might consider pressing their request-to-speak buttons.

09:16

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): I came into the Scottish Parliament in January of this year and other members will know better than I that this is the seventh private bill that the Parliament has considered. The bill was introduced on 27 October 2004 by its promoter—the trustees of the Baird Trust. Despite my late arrival on the scene, I present this preliminary stage report to Parliament today. I do so as convener of the Baird Trust Reorganisation Bill Committee, on behalf of the members of that committee.

Private bills are introduced by a promoter, who can be an individual, a company or a group of people who wish to obtain powers or benefits in excess of the general law. Private bills are not introduced by a member of the Scottish Parliament, as bills normally are; therefore, a private bill cannot have a member in charge.

I will take a few minutes to outline the process of the consideration of this bill to date and the procedure that we will follow if the Parliament agrees to the general principles today. Following the introduction of a private bill, any person who feels that their interests would be adversely affected by the bill can object to it. They have 60 days to do so and that 60-day period is known as the objection period. The objection period for the Baird Trust Reorganisation Bill ran from 27 October 2004 to 7 January 2005. No objections were received. The bill is non-contentious.

The Baird Trust Reorganisation Bill Committee was established in March. It consists of five members, none of whom has any connection with the promoter of the bill. Before I turn to the detail of the preliminary stage report, I would like to record my thanks to the committee. The procedures were new not only to me, but to the other committee members. I thank them for their work and assistance to date. I also thank the clerks for their assistance in guiding us through the process—and possibly turning us into private bill anoraks.

The preliminary stage of the bill began when the committee was established in March. The committee's role at preliminary stage is to report to the Parliament on two issues: first, the general principles of the bill; and secondly, whether the bill should proceed as a private bill. The committee may also give a preliminary view on objections. However, as I say, we had no objections to consider.

The committee took evidence on the general principles of the bill on 3 May and I would like to thank those who came to the meeting to give evidence. We published our preliminary stage report last Tuesday; today's debate provides the Parliament with an opportunity to consider its recommendations.

If the Parliament agrees to the general principles of the bill today, we hope that the bill will move directly to its final stage. Normally at this point, a private bill would move to the consideration stage, which, I believe, is similar to stage 2 of a public bill. At consideration stage, the committee can hear further evidence from the promoter and consider any amendments to the bill. However, as no objections have been received and no member of the committee wishes to lodge an amendment, the committee recommends that the Parliamentary Bureau consider suspending the relevant standing orders in order to omit the consideration stage for this bill.

The final stage of a private bill is broadly similar to stage 3 of a public bill. It takes place at a meeting of the Parliament and begins with consideration of any amendments to the bill. This is followed by a debate on whether to pass the bill.

As members will no doubt be aware, the private bill process has recently attracted some criticism, particularly in relation to how the process is used for large works bills, such as the Edinburgh Tram (Line 1) Bill, the Edinburgh Tram (Line 2) Bill and the Waverley Railway (Scotland) Bill, which are currently going through Parliament. Colleagues on the Procedures Committee recently held an inquiry into the process and have made a number of recommendations for handling future applications for private legislation. The committee concluded that both longer-term overhaul and shorter-term improvements were required. The proposed changes would go a long way towards simplifying the private bills process for all parties. That is especially important when we consider that the Parliament expects at least three major works bills to be introduced this year.

However, my committee would like to put it on record that we feel that the private bills process has worked well for the Baird Trust Reorganisation Bill. In our opinion, the process is appropriate for small non-works bills that are largely non-contentious and straightforward—bills such as the

Baird Trust Reorganisation Bill. The process has been used to good effect before—I am told that it was used for the National Galleries of Scotland Bill, which was passed by the Parliament in 2003. Like the Baird Trust Reorganisation Bill, that bill did not authorise the construction of large transport infrastructure.

I turn now to the detail of the Baird Trust Reorganisation Bill. The bill is concise and does exactly what it says on the tin. I will give members a little background information on the Baird Trust and on why the bill was needed. The original Baird Trust was set up by James Baird by deed of trust in 1873 to assist the Church of Scotland in furthering its work in Scotland. The trust was formally incorporated as the Baird Trust by an act of Parliament in 1939 and its constitution was amended by subsequent acts of Parliament in 1957 and 1971. Currently, the only way of amending the constitution of the trust is to promote an act of the Scottish Parliament. I will come to the reason for that in a moment.

The trustees of the Baird Trust felt that the objectives of the trust required to be updated to widen the scope of the charity's work and to update the administrative arrangements so that they befit a modern trust. Various alternative legal structures were considered by the trustees. In the end, they felt that the most appropriate and cost-effective method was to change the trust into a charitable company limited by guarantee. Such a structure is the norm for modern charities. Having such a structure would remove the need for, and the associated expense of, promoting further private bills whenever changes to the trust's constitution were needed.

The bill is small and focused. It transfers the property, rights, interests and liabilities of the Baird Trust to those of a charitable company limited by guarantee. In doing so, the bill also updates the objectives and scope of the trust's work. Incidentally, the Baird Trust currently has assets of £7.2 million. In 2004, it spent, distributed or donated some £265,000.

The main changes that are introduced by the bill will widen the membership and powers of investment of the trust. They will allow trust funds to be used to support churches outwith the Church of Scotland and churches outside Scotland. That is an innovative move.

In order properly to scrutinise the general principles of the bill, the committee invited representatives of the promoter and David Campbell, who is a reporter to the inner house of the Court of Session on the reorganisation of public trusts, to give evidence. At our meeting at the start of last month, some interesting issues were raised by those who gave evidence. I would like to take a little time to discuss those issues in more detail.

In his evidence, David Campbell confirmed that, in his opinion, the proposed new legal structure was entirely in keeping with modern charity administration. That is an important point when we bear in mind the current changes in charity law.

If passed, the bill would have the effect of widening the membership and scope of the trust, to enable it to support the work of churches outwith the Church of Scotland and, indeed, churches outside Scotland itself. As they said in "Father Ted", that would be an ecumenical matter.

On a more serious note, the committee views the changes to be brought in by the bill as positive. We note in particular that no objections were raised during the consultation and objection periods.

Also of note are the proposed changes to the long-established Baird lecture; the changes may illustrate why the promoter feels that the bill is necessary. The Baird lecture was established from the beginning of the trust. However, the promoter feels that the conditions imposed on the lecture—who can deliver it, how often it should take place, the method of delivery and the content—are now far too restrictive. They do not take account of modern-day technology such as the internet or even television and video communication. That is one of the areas that the memorandum and articles of association for the proposed new trust addresses. In effect, the lecture will be replaced by a new Baird presentation, the arrangements for which will be much more wide ranging.

The committee is satisfied that the bill will have the effect of increasing public scrutiny of the trust, which is in keeping with the aim of modernisation. That is because, as well as being scrutinised by the Inland Revenue and the Office of the Scottish Charity Regulator, the reorganised trust's annual accounts will need to be lodged with Companies House, which will also have to be informed of changes to the trustees or secretary. Those records are open to the public.

The bill's promoter suggests that the trust's investment powers are somewhat restricted by the Trustee Investment Act 1961. The arrangements for the reorganised trust will widen those powers to give the trustees greater discretion on the range of investments that they can make. Members will be aware that the Charities and Trustee Investment (Scotland) Bill is progressing through Parliament. During its evidence, the promoter explained that it had examined whether that bill could have any impact on the Baird Trust Reorganisation Bill and decided that it could not.

The committee is satisfied that the bill's general principles are sound and that the accompanying documents satisfy the technical criteria that are set down in standing orders and allow for proper

scrutiny of the bill. If the Parliament is minded to agree to the bill's general principles today, we hope that the bill will move to final stage consideration at a future meeting of the Parliament. On behalf of the committee, I ask the Parliament to agree to the general principles of the bill.

I move,

That the Parliament agrees to the general principles of the Baird Trust Reorganisation Bill and that the Bill should proceed as a Private Bill.

09:27

Mr Kenny MacAskill (Lothians) (SNP): I am grateful for the Presiding Officer's indulgence of my earlier technical error. On that note, it is appropriate that I should thank the clerks, the committee's convener and the other members of the committee for dealing with the technical aspects of the bill, which, to some extent—along with technology—remain beyond me.

It is appropriate for us to support fully the bill's purpose. We operate in a magnificent Parliament that deals with a variety of tasks; the Parliament is charged with tackling a multitude of issues for the people of Scotland. Yesterday, grand affairs of state were mentioned in the First Minister's report on his trip to Malawi. Later this morning, there will be a debate on dealing with antisocial behaviour—that debate is vital to life in Scotland. This afternoon, we will consider the Protection of Children and Prevention of Sexual Offences (Scotland) Bill, which is crucial legislation. It is clear that the Baird Trust Reorganisation Bill does not fall within the ambit of any of those matters. However, we are the Parliament for the people of Scotland and the committee decided that there was no avenue for making the required changes to the Baird Trust other than through a private bill.

The convener was correct to point out that the Baird Trust was legislated for back in the last century. As the inheritors of Westminster's powers, our only way forward is to tackle the issue through a bill. We should do so not begrudgingly, but in a manner that takes on board what is necessary. The bill does not deal with grand affairs of state, but it is important for the Baird Trust, its members and the many people who benefit from it. Consideration of the bill will take up 30 minutes of our day, which is not a great deal. Members who have served on the committee have been required to attend two meetings. We should just accept that.

As the committee's convener said, it is clear that there is no opposition to the proposed changes, which are perfectly sensible—even if we do not know in what position they will put the Baird Trust or what they will allow it to do. I happened to see

"Newsnight" last night, on which there was a debate involving a Liberal Democrat MP and a Labour MSP and minister. It may be that the Baird Trust will wish to deal with matters furth of Scotland. The Lib Dem MP—with whom I have to say I disagreed—suggested that the links between Scotland and Malawi were not especially strong. If he studied the history of the Church of the Scotland and of the Reformed Presbyterian Church in Malawi, he would realise that there were significant links between those bodies. We might not like to crow too much about some of those links—such as the attendance of Dr Hastings Banda at university and divinity college here—but the links between the church in Scotland and the church in Malawi are important. If the reorganisation of the Baird Trust provides an opportunity to expand the links between Scotland and Malawi, it is important.

The reason why the Parliament is dealing with the trust's reorganisation is that no other body in Scotland is capable of doing so. We are Scotland's legislature. The issue requires legislation; we cannot pass it on to a charity commissioner or regulator, the churches or the local authorities. The buck stops with us—that is why it has been appropriate and correct for us to go about our task under the guidance of the convener and the clerking team.

It is clear that we can deal with the trust's reorganisation through an accelerated procedure. The Procedures Committee is reviewing how private bills are dealt with by the Parliament. Every now and again, we will have to deal with historical anachronisms. Although that adds to our work, we should accept that it is part of the responsibility that goes with being elected to the office of member of the Scottish Parliament. The proposed change is limited and we have satisfied ourselves that it will not cause any problems, but will allow the Baird Trust to do more effectively what James Baird originally charged it with doing. I commend the motion to the Parliament.

09:31

Mr David Davidson (North East Scotland) (Con): I apologise for being two minutes late for the debate. Notwithstanding what was said during yesterday's transport debate, the delay was caused by a public transport problem.

The Scottish Conservatives most certainly support the modernisation of a trust that does important work. Quite simply, the bill seeks to make three major changes. First, the scope of the trust's work will be extended from supporting the Church of Scotland to supporting any church. Secondly, the current restriction whereby trustees must be members of the Church of Scotland will be lifted. Thirdly, the restriction that only trustees

can be members of the trust will be lifted, which will open up tremendously the opportunities that are afforded to the trust.

I was concerned to note that market comparisons show that, to date, the rate of return on investments that the trust has achieved has not been great. As the convener of the Baird Trust Reorganisation Bill Committee stated, by allowing greater discretion to be exercised on investments, the trust will be brought into the modern age.

I and other members of the committee believe that the proposed changes are compatible with those that are contained in the Charities and Trustee Investment (Scotland) Bill. We should allow the trust to reform. In its new form, it will be able to achieve its objectives in a clearer and more focused manner. In a much more complicated financial world, it will have far more flexibility to do its job.

09:32

Scott Barrie (Dunfermline West) (Lab): I will not take up too much more of the Parliament's time because I am conscious that the next debate is important.

As we have heard, the Baird Trust Reorganisation Bill is technical, short and focused. However, that does not make it any less important. Indeed, the Baird Trust has assets of more than £7 million—a not inconsiderable sum. I reiterate the committee's recommendations to Parliament. The bill provides for the necessary reorganisation of the trust. It seeks to simplify the trust's structure and to improve and broaden the trust's ability to support churches and church activities. It provides for an administrative structure that is more suitable for a modern charity, aids public scrutiny of the trust and widens the trust's membership. It will comply with the Charities and Trustee Investment (Scotland) Bill that is going through Parliament, which will receive stage 3 consideration next week, and will remove the need for future private bills to address the trust's needs. That is important. As we have heard, the trust was set up by an act of Parliament and has been modified by acts of Parliament on two subsequent occasions. If we progress with the reorganisation as the committee suggests, there will no longer be a need to return to Parliament to address the trust's needs. That is as it should be.

The committee's members have scrutinised the promoter's proposals and are satisfied that the promoter is acting in good faith and that the new trust will be administered and regulated in a way that is appropriate for a modern charity. I hope that later this afternoon Parliament will concur with the committee's recommendations.

Antisocial Behaviour

The Deputy Presiding Officer (Murray Tosh):

The next item of business is a debate on motion S2M-2893, in the name of Cathy Jamieson, on antisocial behaviour.

09:35

The Minister for Justice (Cathy Jamieson):

We know that people want to live in communities where the threat of crime and disorder does not hang like a pall over their homes. People want to live in communities where they do not have to put up with mindless and thuggish behaviour. I am talking about the kind of behaviour that makes elderly people frightened to leave their homes and children afraid to play outside—the kind of antisocial behaviour that saps people's confidence, undermines their hope for a better future and, of course, undermines respect.

We had to persuade many professional, political and, indeed, some media people that antisocial behaviour was and is a real problem in Scotland. What we did not have to do was persuade the hard-pressed communities that live with it every day. Despite the early opposition and concerns of some, we knew that we had to deliver for those communities.

Today, I want to report on how we are delivering and to say something about what more we need to do. Before I do that, I think that it is worth putting this work into the context of the wider reforms that we are undertaking. We are making our courts more effective, accessible and responsive to communities; tackling the problems of reoffending; putting more police than ever before into our police forces and on to our streets; introducing programmes to tackle the scourge of drugs—programmes such as the drug dealers don't care campaign; tackling the culture of violence; addressing knife crime; and taking steps to deal with the stain of sectarianism. All that work will help to make daily life safer for Scotland's people and to tackle antisocial behaviour.

I will give one example of how those various strands fit together. Drugs and antisocial behaviour often go hand in hand; the premises that are used for drug dealing frequently become the focus of antisocial behaviour. People are often too frightened to complain, but the drug dealers don't care campaign showed that, with the right sort of approach, we can help those communities to take a stand against the drug dealers.

The closure orders that are provided under the Antisocial Behaviour etc (Scotland) Act 2004 can be used to give immediate relief to those near the premises, allowing the police time to deal with the criminal activity. That provision links to our

proposals for reinvesting the proceeds of crime back into the communities that are hardest hit by the effects of drugs and antisocial behaviour. In that way, we are giving something tangible back to those communities. The same approach of tackling the problem from all angles characterises the reforms that we are undertaking.

I want to say a few words about how we are tackling antisocial behaviour and about our progress so far. Ministers have seen at first hand how the measures in the act are being used and the difference that they are making to our communities. People who have suffered years of noise nuisance can now—and perhaps for the first time—sleep peacefully.

Miss Annabel Goldie (West of Scotland) (Con): Will the minister give way?

Cathy Jamieson: I would like to finish the point.

That may not mean much to politicians and professionals in the leafy suburbs, but it means a lot to people who have faced years—and I mean years—of that kind of behaviour on their doorsteps. I am interested in the comments of real people. One resident in Montrose said about a closure order:

"It has been a living hell for all the rest of us. It will be bliss for the first time in months to have some peace and quiet".

Miss Goldie: In commenting on the progress of the act, is the minister disappointed at the apparent lack of interest in issuing antisocial behaviour orders and the apparent inertia in using the much-vaunted dispersal powers?

Cathy Jamieson: I will move on to address those points.

Since October 2004, four closure orders have been granted to police forces in Fife, Lothian and Borders and Tayside. Sheriffs in the Scottish Borders, Falkirk, West Lothian and Aberdeenshire have, between them, granted 10 ASBOs on conviction. In addition, the dispersal powers have been used in the Grampian police area. Fife constabulary has used the powers of the act to seize vehicles that were being used in an antisocial manner and have issued 34 warning notices. Since April, police in Tayside, who are piloting the use of fixed-penalty notices for more routine types of antisocial behaviour, have issued more than 400 notices.

It is not just the measures in the act that are having an impact, although things are beginning to come through in that respect. We are also seeing the positive results of the substantial extra funding that we have provided, which, it is worth remembering, is more than £113 million over four years. We have put 550 community wardens on to the streets of those hard-pressed communities

across Scotland. The wardens are proving very popular—they are already having a real impact. I want to repeat a comment that I have used in the chamber before, which is that, in Fraserburgh, wardens have helped to reduce incidents of youth disorder by 55 per cent and vandalism by 16 per cent over the period that they have been in operation. One resident in Fraserburgh said:

“You can actually see it’s made a difference. You don’t have so many kids running about causing trouble and there does seem to be less graffiti and vandalism”.

The dedicated antisocial behaviour teams or co-ordinators in virtually every local authority area are now beginning to deal with serious cases of antisocial behaviour; they are bringing them to court.

Stewart Stevenson (Banff and Buchan) (SNP): Will the minister take an intervention?

Cathy Jamieson: I will give way to the member whose constituency I have just mentioned.

Stewart Stevenson: The residents of Fraserburgh welcome the changes. However, does the minister accept that the big change that many businesses in the town of Fraserburgh want is increased overnight police cover? They want that cover at weekends in particular, when substantial problems remain. Wardens are not a substitute for police.

Cathy Jamieson: Indeed, and no one has ever suggested that wardens are a substitute for the police. In working alongside the police, wardens are part of the solution to the problem. Some of the measures that have been taken to tackle retail crime in particular have been welcomed by, for example, the Scottish Retail Consortium.

I want to make the important point that antisocial behaviour legislation, coupled with the extra funding that is linked to the wider justice reforms, is beginning to show that we are taking a stand and that we are making a difference to people’s lives. We have come a long way, but there is a lot more that has still to be done.

I want to mention a couple of issues that relate to points that Miss Goldie raised and on which other members will no doubt want to comment. The first is the consistent use of the Antisocial Behaviour etc (Scotland) Act 2004 across the country. I have heard some rumblings—no doubt members will have too—about agencies that are not willing under any circumstances to use some of the measures in the act. That is simply not acceptable.

Local communities have a right to know that a consistent approach to tackling antisocial behaviour is being taken across the country. I am referring to action by the local authorities, police, the children’s hearings system or the courts. We

all acknowledge that a lot of antisocial behaviour results from some very deep-seated problems that require long-term solutions. Scottish ministers are totally committed to addressing those problems. However, the problems that individuals face should not and must not prevent us from dealing with the effects of their antisocial behaviour on others. It is not acceptable to say to victims of antisocial behaviour that they have to suffer in silence until someone else’s problems have been dealt with. We have to help the perpetrators to acknowledge and change their behaviour while, at the same time, we bring relief to those who suffer from it.

I have emphasised that point because I want to send a clear message to all the agencies, at a time when they are finalising their antisocial behaviour strategies, that ruling out the use of any of the measures in the act is not acceptable. A blanket refusal by any agency in any part of Scotland not only undermines the will of the Scottish Parliament, but fails the local people whom the agency should be trying to help. That does not mean that legal measures should be used indiscriminately, however. Local antisocial behaviour strategies need to reflect the need for prevention, early intervention and rehabilitation as well as enforcement. That said, we expect legal measures to be used when appropriate, including ASBOs for under-16s, parenting orders and dispersal.

I want to knock on the head any idea or perception that ministers are interested only in the number of ASBOs, closure notices or dispersal orders obtained. Of course, we need to know how the measures are being used. Members, quite rightly, ask ministers about that all the time. Indeed, there is a legal requirement to report on the use of ASBOs and dispersal.

Executive funding from 2006 is tied to the achievement of outcomes, not the number of times the measures in the act are used. Community planning partnerships must show that they have made real, tangible and measurable improvements on the ground for the people in our local communities. An outcome agreement approach is not a blank cheque: community planning partnerships that fail to deliver real outcomes for their communities and, at the same time, fail to use the measures in the act must be held to account.

Our strategy is showing that people in Scotland can stand up to antisocial behaviour if local agencies and local people work together. I want to congratulate the agencies that are blazing the trail. Having said that, I believe that an equally determined and consistent approach needs to be taken to tackling antisocial behaviour across the country and that that approach should include

using the measures in the act when that is the appropriate thing to do. The people of Scotland have a right to expect that the good practice that we are seeing in some areas becomes the norm across Scotland. We must achieve that if we are to foster confidence in our public services and regenerate the respect that we all want in our society.

I move,

That the Parliament believes that people in all parts of Scotland should be able to live free from fear and harassment; welcomes the commencement of the Antisocial Behaviour etc. (Scotland) Act 2004 and the progress made to date to act against antisocial behaviour; believes that the preparation of antisocial behaviour outcome agreements linked to antisocial behaviour strategies by local authorities working with local communities will help build confidence across Scotland; notes that ongoing work is needed to build confidence in our communities, and urges local agencies across Scotland to use the full range of measures at their disposal appropriate to local circumstances.

09:45

Mr Kenny MacAskill (Lothians) (SNP): Ministers are correct to address the problem and the Executive is correct to take steps to deal with it. Antisocial behaviour blights communities and makes individuals' lives a thorough misery. It affects health and undermines the fabric of society. It is corrosive to communities.

We must remember that although some antisocial behaviour is criminal, some is not. We must deal with those matters differently. For example, it is clear that noise, on which the minister commented, must be addressed, as must drug peddling. However, other matters are not necessarily criminal, such as failing to clean the common stair or to cut the grass on a common or in a close. Such behaviour is antisocial and we must accept that it undermines the ethos of a community, but it cannot be dealt with as a criminal matter. That is not to say that all such behaviour is acceptable—clearly, it is not. All that I am saying is that some antisocial behaviour is not criminal and cannot be dealt with simply by the police or by prosecution. We require other avenues to deal with it.

We accept that part of the Executive's motion about taking the powers in the Antisocial Behaviour etc (Scotland) Act 2004, which we supported. It is necessary, however, to ensure that local authorities and other agencies are properly resourced, not simply chastised and castigated for not dealing with matters. However, if the measures are to work, it is important to have that aspect of the armoury.

Cathy Jamieson: Does the member accept that £113 million over the period that I specified represents extremely substantial resources to address the problems?

Mr MacAskill: I accept that that substantial amount of money has been provided, but local authorities have other departments that are imploding and must rob Peter to pay Paul. Local authority social work departments have difficulties and stretched resources. We welcome the money, but if it leaks out through other holes in the proverbial local authority bucket, a significant problem exists.

The powers are just one aspect and they are not the whole solution. The powers are fine for some, but probably only the few. We must address the root causes and not just the symptoms and the malaise. If we are to go to the roots of offending, we must address the causes of criminality and not just the crimes.

We must accept the extent of the problem. The minister is correct that whole areas are being made miserable, but in substantial parts of Scotland, such as the leafy suburbs in which I and no doubt other members live, antisocial behaviour is not a problem or is addressed in the community. We must put matters in perspective. Scotland is not a war zone, although—unfortunately—some areas tend to resemble one. We as legislators have a duty to address that.

We must not portray action as a war on a generation. The overwhelming majority of youngsters are a credit to themselves, to their families and to their communities. We must not be seen as lecturing and hectoring them. Moreover, we must remember that the root cause of a child or youngster's participation in criminality may be his mother's heroin addiction or his father's alcohol dependency. It ill befits those of our generation to castigate the younger generation if the problems stem from our generation. As I said, we must address the roots of criminality.

We must deal with the problem, create a culture and bring it on board in a variety of ways. I do not normally support Tony Blair, but it is necessary to encourage respect. The Scottish National Party's position is that taking powers is appropriate, but that it is essential for society and individuals to take responsibility. Individuals must accept that actions have consequences. If someone throws a stone, it might injure someone or break something. People cannot make excuses that they did not mean that to happen. They must remember that actions have consequences.

People must take it on board that they must respect others' rights. Other people in the community or in their stair have the right to have their views respected and to have the volume of music kept lower when they are trying to sleep. People must take their turn at cleaning the common stair and—especially if they are young, fit and able-bodied—at cutting the front green, rather than leaving it to a pensioner. All those matters require respect.

It is difficult to legislate for respect. That is why we believe that the powers are simply one aspect. Legislation cannot say, "You must respect your elders." That is impossible. However, that does not mean that we as a society do not strive to be tough on the causes of crime as well as on crime itself. That takes education, work with voluntary bodies and work with youngsters. The minister should take on board the points that Tony Blair has made, because it is correct to address not only social responsibility, but individual responsibility to others in the community. People practise that with their families and we must accept that they should also do so in the broader community.

How do we address that? We do not do that simply by repression. If we move youngsters from outside one shop or one place to another place, all that we do is displace the problem. We must do what Strathclyde police—to their credit—are trialling in the likes of South Lanarkshire, which takes on board what places such as Sweden do in trying to work out who the children are, why they are standing in a place and whether they have a problem at home. *[Interruption.]*

The Deputy Presiding Officer: Order.

Cathy Jamieson: Does the member accept that that is exactly what we are asking local authorities to do in their approaches to drawing up antisocial behaviour strategies for their areas? Will he accept that at no point in my speech did I suggest that antisocial behaviour was caused only by young people?

Mr MacAskil: I am happy to accept that and I am not suggesting that—I am well aware of the minister's commitment to youngsters. However, the perception—if not the reality from the minister—is of an attack on a generation of youngsters and of repression rather than seeking to reform and rehabilitate. We must learn lessons not only from Sweden, but—as the minister agrees—from what is happening in the likes of South Lanarkshire. We must work out the causes of criminality. If the cause is a parent's heroin addiction or another drug addiction, that must be addressed. If the cause is a lack of employment, we must tackle it. We cannot simply deal with the behaviour.

Back not only in 1997, but in the mid-1990s, when Labour attacked a Tory Government that had ravaged housing estates by creating areas of mass unemployment into which heroin flowed, Tony Blair said that Labour would be tough on crime and tough on the causes of crime. In moving our amendment, the SNP supports the Executive in being tough on crime, but the perception and the reality are that the Executive is not being tough on the causes of crime. That is why we must address social and individual responsibility and

respect for all. Our society should address the three Ds that blight our country—drink, drugs and deprivation.

I move amendment S2M-2893.2, to leave out from "welcomes" to end and insert:

"believes that the Antisocial Behaviour etc. (Scotland) Act 2004 offers further options and powers to relevant local authorities and agencies; notes, however, that appropriate resourcing of police, local authorities and other local, national and voluntary agencies is a prerequisite for tackling antisocial behaviour, as is co-operation and interaction between, and amongst, them and national government; believes that individuals must accept responsibility for their actions and the consequences of these and, in addition, respect the rights of others in their community and society, and further believes that it is essential that government at all levels accepts responsibility for all communities within Scotland and addresses, not just social exclusion, but also the scourge of drink, drugs and deprivation that scar our land."

09:53

Miss Annabel Goldie (West of Scotland) (Con): All political parties agree that antisocial behaviour blights too many of our communities. To that end, I record once again that the Conservatives supported the Antisocial Behaviour etc (Scotland) Act 2004. We supported it in committee and at stages 1 and 3, yet Mr McConnell harbours the illusion that we did not support it at all.

We were extremely uneasy with aspects of the 2004 act and particularly with the proposals for the dispersal of groups. We opposed that power emphatically because it does not provide a solution. It simply moves the problem from area B to area C. It would be better to deal with the difficulty in area B by using existing law than to put the problem on a conveyor belt to end up somewhere else in the community.

If I understood the minister's reply to my intervention, the dispersal power has been used once, so it is clear that not much appetite is felt for it. My experience is that not much appetite is felt for ASBOs for people who are under 16, which is something of a frustration to many of our children's panels.

Unfortunately, many of the difficulties about which we warned are coming to pass. There is no doubt that the Executive saw the 2004 act as its big solution, but without an adequate enforcement regime, the act is as helpful as a chocolate teapot. All the laws that the Executive can dream up are useless without a proper enforcement regime, which—unfortunately—is missing.

It is disturbing that three in every four crimes are not reported to the police. I suggest that many such crimes involve antisocial behaviour. How can the Executive claim to be making progress on the issue when members of the public have so little

confidence that they do not even bother to report crimes?

Stewart Stevenson: Will Miss Goldie correct the impression that is created by the way in which her amendment is phrased? The amendment seems to indicate that she lacks confidence in the police. Is that what she means to say?

Miss Goldie: I have no intention whatsoever of expressing a lack of confidence in the police—indeed, we have a policy that would produce another 1,500 police officers. We also desire improved accountability. Our policies show that we do not lack confidence in the police—we are simply articulating the universal concern that communities throughout Scotland have expressed.

The minister referred to having more police. I would be interested to hear how many more police there should be, as it seems that we are not succeeding in establishing acceptable visible policing in our communities. However, zero-tolerance policing has a proven track record, as I have illustrated many times previously.

The Deputy Minister for Justice (Hugh Henry): What Annabel Goldie has just said and the reference in her amendment to zero-tolerance policing indicate that she does not believe that it is right for chief constables to have operational responsibility. If the Conservative party ever gained power—I am talking about in a fantasy land—would she tell chief constables exactly how they should operate?

Miss Goldie: No. We have made it clear that that would not be the impact of our proposal for an elected police convener. By contrast, we have said that we would be happy for police boards to continue to have councillors on them, but the time has come for the public in a police board locality to have an opportunity to elect a convener who will say that they will drive forward a strategic plan for the area while operational decisions will be left to serving police officers.

Zero-tolerance policing works. I have referred to the experience in New York, but there has also been success in Broomhouse in Edinburgh. Police officers may deter and detect crime, but it is equally important that an increased police presence will re-engage with communities and the law-abiding majority. It is time that someone spoke up for the law-abiding majority, whose confidence has been dented. With that confidence at such a low ebb, we must surely be mindful of what we should do to restore it and put our justice system back in the premier position in which it ought to be.

Increasing the visibility of the police in our communities is necessary, but that will only treat the symptoms of antisocial behaviour. Mr MacAskill borrowed Mr Blair's phrase, "tough on crime, tough on the causes of crime", and it is

undoubtedly true that the increasing problem of family breakdowns must be addressed. From a Civitas study, we know about the disturbing pattern of a major contributor towards antisocial behaviour being children living without their father. The research data that were produced apparently show—sadly—that such children are more likely to do less well at school and are more likely to smoke, take drugs and engage in criminal activity.

Hugh Henry: That is outrageous.

Miss Goldie: I merely repeat what the study disclosed. The minister may not care for the disclosure, but he can check the research himself.

At his first press conference following re-election, Mr Blair said that he could bring in new laws, but that he could not

"raise someone's children for them."

I applaud the Prime Minister for having the courage to recognise the Government's limits in that field. I realise that it is not only young people who engage in antisocial behaviour, but if we are to make headway in solving the problem, we need to consider our children and help them to regain self-esteem, self-respect and respect for others. That task cannot fall to the state—it is the responsibility of parents. In many cases, the problem will—sadly—start with the parents. Their difficulties, anxieties and emotional turbulence will affect their children as sure as night follows day. There can be earlier intervention to identify parents who may be struggling to cope and whose children are therefore most at risk of becoming involved in crime.

Cathy Jamieson: Will the member take an intervention?

Miss Goldie: I hope that the minister will forgive me for not doing so, as I am in my final minute.

It seems to me that the approach that has been adopted in the United States has been successful. Of course, it has been largely undertaken by the voluntary sector, whose innovation and flexibility is valuable. I suggest that we must work more with the voluntary sector in Scotland.

There is no magic legislative sticking plaster that can whisk away the problems of antisocial behaviour in our communities, but a greatly improved and more accountable enforcement regime—and more police on our streets—would make headway. The Executive's motion slightly misses the point at this juncture.

I move amendment S2M-2893.1, to leave out from "welcomes" to end and insert:

"notes with regret that the Scottish Crime Survey indicated that three out of every four crimes are never reported to the police, indicating a lack of confidence from the public; notes the commencement of the Antisocial

Behaviour etc. (Scotland) Act 2004 but, in doing so, recognises that, without an adequate enforcement regime, measures included within the Act cannot work; ultimately believes that only when there is a greatly increased police presence on our streets, following zero-tolerance policing methods and re-engaging with communities, will we see a reduction in crime and antisocial behaviour, and therefore calls on the Scottish Executive to increase resources available to the police along with an improving accountability to ensure an improvement in the deterrence and detection of crime."

10:00

Mike Pringle (Edinburgh South) (LD): We are again discussing antisocial behaviour when the long evenings seem to be bringing problems on to the streets. The Antisocial Behaviour etc (Scotland) Act 2004, the provisions of which have now been commenced, has rightly been introduced as one measure to ensure that people feel safe in their homes and communities. The Liberal Democrats have always advocated a twin-track approach to tackling antisocial behaviour by supporting more police on the streets and activities to divert our young people away from trouble in the first place.

Petty crime and antisocial behaviour were on the increase and the 2004 act—thanks to Liberal Democrat influence—deals with the causes of antisocial behaviour rather than with simply punishment of the symptoms. The 2004 act is considerably different from the draconian bill that was first introduced. As a result of considered amendments, it offers workable solutions to the problems that many local communities face.

However, we must be honest. It is right to debate the subject, but the Antisocial Behaviour etc (Scotland) Act 2004 is not the only measure that will cure the problem. Shortly after I was elected back in 2003, the local council, in conjunction with strong community organisations and the police, dealt effectively with antisocial behaviour issues in parts of my area in south Edinburgh. The police set up a strong youth action team with dedicated police officers. They engaged with local children and diverted them away from causing the serious trouble that they used to cause. As a result of the introduction of the youth action team, calls to the police dropped by more than 40 per cent over the summer of 2003. The approach was so successful that the then Deputy Minister for Communities—Mary Mulligan—came to visit, as it was an example of best practice. I think that members of a parliamentary committee also came.

That great work has been extended to other areas of south Edinburgh. The police are organising late-night football competitions in Gracemount and there have been huge improvements in the quality of recreational facilities as a result of the considerable amount of

money that the City of Edinburgh Council has made available. There are new all-weather football pitches, basketball courts and playgrounds and calls to the police about antisocial behaviour are now at an all-time low. No area of my constituency is now considered by the council to be a problem and the youth action team strategy is being rolled out across the whole city—I congratulate the City of Edinburgh Council on that. Earlier this week, I spoke to the council's leader, Donald Anderson, and he assured me that the number of teams will be raised from four to six and that the approach is indeed being rolled out throughout Edinburgh. Such things were achieved before the act came into force.

However, in many areas of Scotland, the powers in the 2004 act are needed. For example, the antisocial behaviour strategies that are mentioned in the motion examine more closely the facilities and services that are available to under-16s and adults in an area that could prevent antisocial behaviour. There may also be rare instances in which the dispersal powers that are contained in the act might be used.

I was disappointed by recent comments made by Councillor Sheila Gilmore of the City of Edinburgh Council. She is in charge of tackling antisocial behaviour in the city and she claimed that the police are now frightened of using some of the powers in the new act. That is utter nonsense. Rather than thinking about meddling with operational matters, we must congratulate the police on the job that they are doing. When the bill was being considered at stage 1, the Association of Chief Police Officers in Scotland had serious reservations about dispersal powers. The chief constable of Dumfries and Galloway constabulary told ministers:

"ACPOS considers that current police powers are adequate"

and that the proposals for dispersal orders "would not be practical". Surely Councillor Gilmore cannot be surprised if the police do not want to use those powers. Some people would argue that problems are worse in Glasgow—others can decide whether that is correct—but I do not think that Glasgow has used any dispersal orders at all.

I welcome the real difference that police, council officials and local communities are making to antisocial behaviour and I know that the correct tools for each local area will be used to tackle the problems. Acceptable behaviour contracts, restorative justice projects and an expansion of recreational facilities are all part of the approach. Scotland's communities are getting safer—I hope that politicians welcome that and will do their bit to reduce the fear of crime that exists in many areas.

10:05

Richard Baker (North East Scotland) (Lab): It is a pleasure for me to open for Labour in the debate. As the motion recognises, the Antisocial Behaviour etc (Scotland) Act 2004, which was spearheaded by Labour ministers, is already having an impact in tackling the blight of antisocial behaviour and will have an even greater impact in the future.

Tackling the problem of antisocial behaviour has been at the heart of Labour's agenda, as our party is tired of the communities that we represent having their quality of life destroyed by the selfish, antisocial behaviour of a few. We are determined to stand up for the vast majority of people who want to live in safety and peace. That is why, at the last election, Scottish Labour stood on a platform of tackling antisocial behaviour, which was endorsed by the people of Scotland; it is why Labour put that issue at the heart of the partnership agreement; and it is why we should congratulate the Scottish Executive—especially the ministers who ensured that the act was passed—on introducing legislation that is already making a difference.

As someone who represents the north-east, I am keenly aware of people who have had their quality of life improved as a result of the act. I am sure that we will hear from other members how the application of antisocial behaviour orders is making a difference throughout the country, from tackling vandalism to allowing vulnerable older people to live in their homes free from the blight of noisy neighbours. In the north-east, especially, the new law is bringing about change for the better. Local agencies are putting the powers in the act to good use, and others around the country should follow their example. I welcome the fact that the number of antisocial behaviour orders that have been granted by the local authority in Aberdeen is among the highest in Scotland—not because the problems that we have in Aberdeen are different from those in any other community in Scotland, but because the council has a long-standing track record of success in implementing ASBOs.

Stewart Stevenson: Does the member recognise the fact that the number of ASBOs that are issued is a measure not of success but of failure?

Richard Baker: I have addressed that issue. As I said, the problems that we face are no different from those that are faced in other parts of Scotland, and the council has been right to issue those ASBOs. I have met people who have benefited as a result of that; that is evidence of success, not failure.

The council's ability to use the new powers successfully has been enhanced by Executive

funding for local authorities to make the new legislation work. Over the next two years, Aberdeen City Council will receive more than £3.5 million, and communities are already benefiting as a result of that. I have met those who have benefited.

It is not only the local authority that is using its new powers; Grampian police have been leading Scotland in tackling antisocial behaviour through the new law. In particular, the residents of Beach Boulevard in Aberdeen—who, for years, have had to put up with noise and nuisance from boy racers who have gathered in their community—have benefited from the new law by the police putting in place a dispersal zone there. That shows that Labour is leading the way in tackling such issues not only nationally, but at local level. It was after local Labour representatives Lewis Macdonald MSP, Frank Doran MP and Councillor Jim Hunter, working together, met the community and the police that the dispersal zone was established.

There have been well-publicised disagreements between me and Mike Rumbles over the issue, and I am aware that his opposition to dispersal zones is shared by some of his Liberal colleagues at Westminster. We have also heard doubts about the policy from Mike Pringle. However, the fact is that the measure that was taken at Beach Boulevard was exactly what the new legislation is for. I also say to Miss Goldie that there is no evidence of the problem moving elsewhere. It is clear that the measure has been a total success.

Miss Goldie: That is a rather startling, paradoxical statement. The power has been used only once, so we do not know how it is operating. The fact is that it is not being used.

Richard Baker: That is a paradoxical statement because the measure is working, as the statistics show. There has been a 53 per cent drop in the number of incidents of antisocial behaviour that are reported to the police in that area in the past three months, which has led the police to extend the duration of the dispersal zone for a further three months. The police think that it is working, and I think that we should take their advice on the issue.

Crucially, local residents who, for far too long, have been disturbed by the activities of the boy racers have said that their community has been transformed for the better as a result. Those who criticise the actions that have been taken by Grampian police should speak to the local residents—who have benefited hugely from those actions—and change their minds. We have heard opposition to the powers from the Opposition parties, but they have clearly been proved wrong. I hope that more police forces in Scotland will follow the excellent example of Grampian police.

Addressing antisocial behaviour is not just about punitive measures; that is why the motion that I lodged earlier this year on antisocial behaviour highlighted the give the Broch a break initiative, of which Stewart Stevenson will be aware. That initiative, which was run by Grampian police, not only tackled vandalism and underage drinking, but organised events that were aimed at providing alternative activities for young people in particular.

The new legislation is being backed up by the Executive with dedicated antisocial behaviour teams and community wardens working in our neighbourhoods alongside extra police officers. There is no excuse for the powers in the act not to be used effectively throughout Scotland to tackle a wide range of antisocial behaviour. Many people—from national groups such as the Scottish Retail Consortium to local communities who believe that the powers could make a difference to their lives—want the powers to be used more often, not less. The north-east is proof that, when the new legislation is used, it is effective in tackling antisocial behaviour and improving people's lives.

That is why Labour led the Parliament in introducing the 2004 act and it is why we are championing it in our communities. In doing that, we can ensure that our communities are better places in which to live.

10:11

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

The debate comes at a time when the activities of young people are in the spotlight once again. Many have condemned young people for the wearing of hooded tops, and some of the comments, quite frankly, have verged on the hysterical.

I agree that it is reasonable that people should remove the hoods of their tops when they are in a shopping centre so that their faces are not obscured, just as it is reasonable for motorcyclists to remove their crash helmets in the same circumstances. That is particularly true when someone enters premises such as a bank, as their appearance can cause alarm even if that is unintended. I used to ride a motorbike, and I found it a nuisance that I had to remove my crash helmet before I popped into my local bank. On colder days, I also had to remove a garment that resembled a ski mask, which I wore below my crash helmet to keep warm. Only once did I forget to take those off before entering my bank, but the look on the face of the nearest teller immediately reminded me that I had just walked into a bank wearing a leather jacket, gloves, a ski mask and a crash helmet. I was doing nothing wrong and I was not acting in a threatening manner, but because of the way in which I was dressed, people around me had a different perspective.

I use that example because, in debates such as this, we must remember that antisocial behaviour is sometimes in the eye of the beholder rather than based on the objective reality. There is no denying that there are people who behave in an appalling manner and cause untold misery to all around them. They should be dealt with, and I welcome the action and the initiatives that are being taken. However, there is a world of difference between behaviour that is criminal, such as vandalism, and groups of youngsters hanging around with their friends. I suspect that there are a few members who thought that they looked great when they met their pals on a Saturday night dressed as new romantics, punks, hippies, mods, rockers—or perhaps even teds, depending on their age. Groups of youngsters who are dressed in the fashion of the day have always seemed alarming to older generations: that is in the nature of the difference between the generations. When we are older, we forget what we were like when we were 15, and that allows us to find it intimidating to see groups of people who are dressed in what appears to be a peculiar manner hanging around together.

It may seem obvious to say that we should reward good behaviour rather than reinforce bad behaviour, but if the current rash of television programmes that deal with the disruptive behaviour of children are to be believed, many people have forgotten or have never learned that simple fact. If we ignore our children when they are good, they will never learn that their good behaviour is noticed and appreciated. It sometimes feels as though the Executive has forgotten that simple lesson in basic psychology. We should reinforce the behaviour that we want by paying it attention instead of reinforcing the behaviour that we want to discourage by focusing on it most of the time. If we do the latter, the result is a downward spiral of criticism, punishment and criminalisation when, in fact, we should separate out the good from the bad, then reward the good behaviour and punish the bad.

We seem to be concentrating on highlighting the bad behaviour while ignoring the vast majority who are well behaved. Diversionary schemes for those who have been involved in antisocial behaviour are welcome, but what about extra-curricular activities for those who behave themselves? We have all heard about schemes for kids who steal cars, which teach them about car mechanics and give them off-road driving lessons. I am not knocking such schemes, but what about the kids who do not steal cars? Do they not deserve to have their good behaviour acknowledged?

Cathy Jamieson: Significant additional resources have been put in through, for example, community safety partnerships to make activities available to a wider range of young people,

especially during school holiday periods. Does the member accept that the type of activity that he suggests is being funded by the Executive?

Mr Maxwell: I am not knocking what the Executive is doing by funding such schemes; I am pointing out that we tend to concentrate on the bad behaviour of young people without rewarding good behaviour. Given the problem that is created by the loss of sports fields and playing fields for young people in every community across the country, it is not reasonable to suggest that everything in the garden is rosy and that all our investment is creating a situation in which young people are happy and content with the facilities that are available to them.

It is little wonder that many people—not just the young—feel aggrieved at the concentration of effort on those who misbehave. It is all very well to criminalise those who behave in a criminal manner, but perhaps we need to identify which youngsters are the real troublemakers and which are just hanging around on the periphery.

It seems to me that, in any setting, people in a group often fall into three basic categories: those who will cause trouble no matter what; those who will not cause any problems; and those who, falling somewhere in the middle, will lean towards one or the other mode of behaviour depending on the prevailing circumstances. The trick is to ensure that those in the middle lean towards not causing problems. If we can achieve that, the vast majority in any group will not cause a problem. I believe that, if we rewarded good behaviour so that young people got the chance to try out new things or to spend their time in positive extra-curricular activities, the group in the middle would lean towards that type of unproblematic behaviour. That would lessen the problems that many communities face and allow the police to concentrate on their prime activity of catching criminals and dealing with criminality. The police would then be able to focus their resources on those who will cause trouble no matter what, rather than act as street-level social workers or youth workers.

That is why we need to invest in making clubs and sports facilities available locally and affordable for young people. Perhaps most important of all, we need to ensure that we give young people hope that they will have a job with some prospects, so that they can look forward to the future with keen anticipation. The consequences of our failing to do that are too grim to imagine.

10:17

Margaret Jamieson (Kilmarnock and Loudoun) (Lab): Never has legislation been more welcomed by individuals and communities than

the act that the Parliament passed to combat antisocial behaviour. Being an elected member is perhaps the only job in which one has the opportunity to gauge the blight that has been caused in the lives of those many constituents who, sometimes for many years, have been on the receiving end of relentless antisocial behaviour. My constituents who are victims of antisocial behaviour are no different from those of other members; to varying extents, they have suffered from those who do not give a jot about how their behaviour impacts on the lives of others.

I do not accept that all who display antisocial behaviour should be made subject to an antisocial behaviour order. In my view, such orders are a last resort that should be used when all else fails. I hope that, when the minister reviews local authorities' progress on the issue, she will take account of the use of alternatives when she determines local authorities' success in combating antisocial behaviour. The strategies that have been developed by the partners in each local authority area contain various remedies. In my area, those alternatives also have community input and community support. The options that are available are working, because they allow police, social work, education and housing authorities to work with and support those who are affected by antisocial behaviour in finding a remedy—which sometimes might involve the assistance of health professionals—in order to bring peace to the community.

During its passage through the Parliament, the Antisocial Behaviour etc (Scotland) Bill attracted much criticism—we have heard it again this morning—because of the perception that the bill would target all young people. To my knowledge, no antisocial behaviour reports have been pursued against young people in my constituency who are under the age of 15. The vast majority of such reports have been against adults. Those reports have been a wake-up call, in particular to those owner-occupiers who believed that they could do as they pleased because they were not answerable to any landlord.

Forgive me for giving an example, but one owner-occupier in my constituency regularly came home under the influence and played loud music in a way that disturbed the lives of the neighbours and occasionally frightened their children, who would awake with a start because of the loud music. A neighbour decided that enough was enough and called the police. On their arrival, the police could not get an answer at the door because the music was so loud. When they eventually gained entry and the music was turned off, one would have thought that there would be peace at last, but that was not the case. The inebriated owner-occupier decided that the neighbour had no right to complain—he thought

that he should be able to do as he wanted—so he proceeded to challenge the complainant. Fortunately, the police, who were aware that that might occur, had not left the area and were able to defuse the situation quickly. The police advised the neighbours in the street to contact East Ayrshire Council's antisocial behaviour co-ordinator, thereby demonstrating the partnership approach.

Bill Aitken (Glasgow) (Con): Will the member give way?

Margaret Jamieson: Let me finish.

The neighbours who were affected gave evidence in their own homes to the antisocial behaviour co-ordinator. Thanks to that evidence and the evidence that was produced by the police, the antisocial behaviour co-ordinator was able to issue a warning letter to the owner-occupier. Not only did that owner-occupier's behaviour change, but others in the area sat up and took notice of the fact that they can now be held to account for their behaviour.

Bill Aitken: Does Mrs Jamieson agree that the man's behaviour might have been modified much earlier if the police had acted appropriately by charging him with breach of the peace and dealing with him in court? That would have cut out a lot of delay and additional hassle for the neighbours, whose complaints were totally justified.

Margaret Jamieson: I find it extremely difficult to answer Bill Aitken's question because a report on the individual had already been sent to the procurator fiscal before the antisocial behaviour co-ordinator got involved. We may well need to return to that issue.

I will use that same example when I have a meeting in the constituency with a housing association that is not pursuing antisocial behaviour as vigorously as it has the powers to do. The housing association believes that the costs of pursuing such matters are beyond its means, despite the moneys that have been allocated by the Executive. In its view, such actions are not within its remit and are solely a matter for the police. I ask the minister to consider making a regulation to force such housing associations to exercise their powers and thereby to protect their tenants and communities.

No individual, family or community need suffer antisocial behaviour, as they now have a remedy that the Parliament should be proud of introducing. On behalf of my constituents, I welcome the success of the legislation to date. I share their confidence that it will help to build a better and safer community for all in the future.

10:24

Bill Aitken (Glasgow) (Con): The Executive motion states:

"That the Parliament believes that people in all parts of Scotland should be able to live free from fear and harassment".

If Cathy Jamieson is looking for a fight on that issue, it is clear that she will not get it. However, she may well find that the Parliament is a bit more sceptical about her need to persuade people of the existence of a problem that is manifest in the streets and recreational areas and on public transport in many of our towns and cities. Basically, the Executive was forced to do something and its response was the Antisocial Behaviour etc (Scotland) Act 2004. I remind Hugh Henry, yet again, that at the end of the day we supported the 2004 act absolutely, despite having reservations about significant sections of it.

The response that is contained in the legislation has been summarised today by the Minister for Justice, who claimed certain successes. After such a brief period, it is naive, to say the least, to claim that the legislation can be seen as a success. I accept that, after such a brief period, it would be unfair for me to claim that it is a failure but let us consider what has happened since the legislation was enacted. There have been four closure orders. The type of closure order that I have seen reported by the police related to cases in which conduct on premises was such that there were frequent disturbances and breaches of the peace. Why were the people involved not acted against and dealt with by the courts?

There have been 10 antisocial behaviour orders. I accept that such orders are a tool that can be used in the fight against antisocial behaviour. However, I was somewhat disappointed to see that, in one case at Linlithgow sheriff court, a custodial sentence was imposed only after an antisocial behaviour order had been breached three times. For the sort of people with whom we are dealing, ASBOs are not likely to be a significant deterrent.

There are also seizure orders. To some extent, those could be used to deal with the boy racers in Aberdeen, but I must ask what Grampian police were doing about the problem before it became so serious. Would not their traffic department have spent some time looking at precisely what was happening? The problem could have been removed without resort to the 2004 act.

Christine May (Central Fife) (Lab): Does Bill Aitken recognise that often orders to seize vehicles, such as those that were made in Fife, come only after other measures have been tried? Police in Fife had warned the young man whose vehicle they seized last week on at least one previous occasion, if not two.

Bill Aitken: Christine May has an advantage over me, as I do not know about the Fife case. However, it is apparent that in the Grampian and Aberdeen area no such measures were used before a seizure order was made.

Richard Baker: Does the member accept that the order was made to deal not with traffic offences, but with boy racers gathering in the community and creating nuisance while they were gathered?

Bill Aitken: They were making a lot of noise and disturbing local residents. By any standard, that is a breach of the peace. Why was action not taken?

The minister tells us that a number of fixed penalties have been issued. She did not tell us whether any of them had been paid, or how many had been paid. She made the constructive comment that wardens have a role to play, but they are certainly not a replacement for police. She mentioned the involvement of the Scottish Retail Consortium. When I speak to people from the retail trade, they complain about the cost of securing their premises, which is necessary because insufficient police are around, and about the number of people who reoffend while on bail.

As I have said before in the chamber, there are two factors that govern human behaviour. One is the certainty of discovery, and the other is adequate punishment. There are more police officers in post, but they are not where they should be—out on the streets. We must examine our court system, to see how it could be made more effective in dealing with minor offending. Having seen the United States system in operation, I am very attracted by what happens there. I know that the minister has visited a community court in New York, and I think that she agrees that we could consider that experiment and that we may be able to emulate it in certain respects. However, if we are to implement the model, we will need to re-examine our procedures and the way in which we are hide-bound by European regulations.

Although the problems are not caused exclusively by young people—far from it—the existing children's hearings system is not coping with them. That issue must be considered. Of most concern is the fact that, despite long and weary debate about antisocial behaviour in the chamber, the Executive refuses to recognise that there must be a toughening-up of attitudes to disposals for offences of disorder. We must ensure that fines are paid, because they are not being paid at the moment. We must ensure that community service is done, which is often not happening at the moment. We cannot allow the farce of early release, regardless of whether the individual concerned has behaved himself, to reduce the deterrent impact of custodial sentences.

We accept that it is still early days for the Antisocial Behaviour etc (Scotland) Act 2004. However, to suggest that the act is a great panacea, as a number of Labour members have done, is naive beyond belief.

10:30

Patrick Harvie (Glasgow) (Green): I lost count of the number of times during the passage of what is now the Antisocial Behaviour etc (Scotland) Act 2004 that those of us who advocated a different approach were accused directly of wanting not to address the problem, of wanting to ignore it and of wanting not even to acknowledge that it exists. As I have done in other debates on antisocial behaviour, I begin by saying clearly that antisocial behaviour is a problem that has a profound impact and that something must be done about it. However, all along I and many organisations that gave evidence to the Communities Committee during the passage of the Antisocial Behaviour etc (Scotland) Bill have argued that there has been too much emphasis on enforcement—I am not saying that enforcement is never necessary—and not enough emphasis on positive interventions that can change behaviour in a more constructive way.

A revival of youth work in Scotland is long overdue. Much can be achieved by working constructively with young people from an early age to engage with their attitudes and values. People who talk about respect must accept that it cannot be enforced, but can be learned. We should have examined the children's hearings system, which Bill Aitken mentioned. The system faces many problems that must be addressed to ensure that it is more effective. If measures had been taken in those areas—even if there had been political weight behind them—all of us would have been willing to consider what further enforcement powers were necessary. However, the Executive's whole approach has been the other way round. The focus on enforcement fails to address the causes of behaviour and therefore risks displacing it—moving it around—or even compounding it.

Bill Butler (Glasgow Anniesland) (Lab): Is Patrick Harvie not falling into the trap of characterising antisocial behaviour as a problem that is associated simply with young people? Is that not completely wrong, given the facts of the matter? Much antisocial behaviour is not caused by young people.

Patrick Harvie: I made that point many times during the passage of the Antisocial Behaviour etc (Scotland) Bill. However, there can be no doubt that the passage of the bill and the debate that accompanied it increased the perception that young people are the problem, not the solution.

Margaret Jamieson: The member is fuelling that perception.

Patrick Harvie: I am not. Will the member explain how I am fuelling it?

Margaret Jamieson: Patrick Harvie is going on about young people and the work that needs to be done with them. I do not dispute that that is necessary in some areas. However, it is wrong to characterise young people as the only individuals who cause antisocial behaviour.

Patrick Harvie: I agree entirely that that is wrong and I challenged the perception in committee during stage 1 of the Antisocial Behaviour etc (Scotland) Bill.

During the passage of the bill, the Executive called time and again for there to be more tools in the box. I argued then and repeat now that some of those tools are blunt instruments. I did not support their creation and I will not support a motion that calls for their use. I want to consider two examples of enforcement as they have played out south of the border—in England and Wales—and to talk about how that resonates with what is happening in Scotland.

Child curfew zones are not exactly the same as the dispersal measures that have been designed here, but they are similar in one respect—they deal with the presence of people, rather than people's behaviour. Richard Baker said that the behaviour of those whom he called boy racers was the problem. However, the legislation deals with presence.

Richard Baker rose—

Patrick Harvie: I will take one more intervention.

Richard Baker: Again, it is not a case of targeting young people—the boy racers are over 35.

Patrick Harvie: I think that I have dealt with that point. The focus on people's presence can result in innocent people—such as the 15-year-old whose case was taken on by Liberty south of the border—being dealt with by the same measures.

A second example—Stewart Maxwell referred to this—is the new concept of antisocial clothing. Mr Blair and Mr Prescott have both given their backing to the Bluewater shopping centre's ban on hooded tops and baseball caps. Again, the focus is not on behaviour, but on stereotypes. Mr Blair and Mr Prescott are talking about bans and restricting people's personal liberties. That is the end result of the agenda that is being pursued through this legislation.

How will the Executive respond when such measures are tried in Scotland, as is beginning to happen? This is not just about how to police bad

behaviour; it is about the nature of public space and our rights to use it, which are compromised when public space is replaced by private premises. It is no coincidence, and entirely understandable, that a shopping centre—a private business—recognises that young people spend less money and more time hanging around, which they should have the right to do in public places, and sees such people as a problem. If attempts are made in Scotland to place restrictions on the rights of people to dress as they like, without regard to their behaviour, what will the minister do?

The Executive has made laudable efforts to involve young people in political change and to become aware of their power to be the change in relation to global issues. Why can we not involve young people more in the local issues of antisocial behaviour that affect them as well as everyone else in society? What are local authorities doing to involve young people and to ensure that their voices are heard? Respect is a two-way street; we must give it to people and not simply demand it from them.

10:37

Bill Butler (Glasgow Anniesland) (Lab): I was content to support the passage of the Antisocial Behaviour etc (Scotland) Bill in the full knowledge that the provisions contained therein did not represent any kind of panacea, pace Bill Aitken; the bill was only one part of the Executive's wider package of reforms. Nonetheless, the measures are important and are beginning to play a significant role in the creation of communities free from fear and harassment.

Members will recall that the debate that took place during the passage of the bill was sometimes so heated that common sense seemed to have deserted some Opposition members. Colin Fox, whose speech will follow mine today, is a sober-sided and assiduous colleague on the Justice 2 Committee, but I recall him beginning his contribution to the debate on 2 October 2003 with the immortal lines:

"I know that Labour members are anxious. They have the smell of blood in their nostrils and want to get on to punishment, punishment, punishment."—*[Official Report, 2 October 2003; c 2299.]*

Wow. That was so melodramatic that it was almost Grand Guignol. The characterisation of Labour members' motives was reasonably entertaining at the time, but it bore absolutely no relation to the actual driving force behind the legislation, which came from the communities that we all seek to represent. Antisocial behaviour was and still is perceived to be a major issue for many communities in Glasgow and throughout Scotland.

Too many people have to live with the results of antisocial behaviour. The provisions of the Antisocial Behaviour etc (Scotland) Act 2004 were designed expressly to tackle the behaviour of a small minority of people of all ages—I say that to Mr Harvie—and from all backgrounds that can and does make the daily lives of a significant percentage of Scotland's citizens a misery.

Patrick Harvie: Will the member give way?

Bill Butler: I will in a second. No responsible Government could ignore or simply refuse to accept that fact. When the Labour-led Executive took action, it was correct to do so.

Patrick Harvie: No one was proposing that we should ignore that fact. The main point of my speech was that people of all ages can be guilty of antisocial behaviour. Does the member acknowledge that, although the act focused disproportionately on young people and the debate about it gave rise to a perception that has resulted in discrimination against young people, the problem remains with all age groups?

Bill Butler: I agree with the last clause of Mr Harvie's assertion, but the notion that the legislation is disproportionate is of his own making and relates in no way to the act that the Parliament passed. I inform him that Government strategy to combat antisocial behaviour is not based on an unthinking, disproportionate, draconian approach. On the contrary, the coalition's aim is to attempt to change people's behaviour and not simply to deal with the results of antisocial activities; it is about communities developing solutions to their problems.

I will give a few examples of that co-operative, inclusive approach, as outlined in Glasgow's antisocial behaviour strategy, which represents local government acting in concert with the Executive. A citywide group has been formed and given the responsibility to develop and implement the strategy. Because there is a recognition that antisocial behaviour is a multifaceted problem, the strategy is only one element among many in the delivery of a partnership approach to tackle the problems that contribute to antisocial behaviour. Central to that approach is a recognition of the vital role that local communities play both in the action required and the commitment needed to give the strategy the best chance of success.

In my Glasgow Anniesland constituency, the Drumchapel community safety forum, which is charged with the local development of the citywide approach, has been at the heart of a number of positive initiatives. For example, it has organised an antisocial behaviour focus group, including police and housing providers, which has established an information-sharing protocol allowing gaps in service provision to be identified

and addressed. The group has representatives from local housing organisations in Drumchapel and Blairdardie as well as the community safety patrol officers, local elected members and Streetwatch Glasgow.

The forum's activities include making local people aware of the support and assistance that is available to them. Stewart Maxwell asked for examples of positive extra-curricular activities. I will give him a particularly successful one: the forum organises sports activities for local young people on Thursday and Friday evenings in the Donald Dewar leisure centre in my constituency. Indeed, more than 120 young people regularly attend on Friday evenings. They are able to make use of the centre's facilities and access advice and information about a range of community safety issues. I am pleased to report that that commendable service for local young people picked up the Glasgow City Council award for the most innovative project in 2005.

Those examples of one forum's work in my constituency point the way forward to create a successful antisocial behaviour strategy that seeks to involve and not to demonise or ostracise. That approach is preventive, not punitive. It seeks to hand control back to communities and not to exert centralised control over them. It encourages co-operation, not confrontation.

I believe that the Antisocial Behaviour etc (Scotland) Act 2004 is, alongside the other Government measures, just beginning to make a positive difference to the everyday lives of my constituents and the people whom we all seek to represent throughout Scotland. On that basis, it is to be commended.

10:43

Colin Fox (Lothians) (SSP): Unfortunately, I cannot find a quotation from Bill Butler or any of the Labour members showing the extravagant claims that they made last year about the bill. However, I sense in Labour members' speeches the frustration that they clearly feel that the Antisocial Behaviour etc (Scotland) Act 2004 has not lived up to its billing. That sense of frustration is also clear in the minister's motion.

Bill Butler: Will the member give way?

Colin Fox: I will let the member intervene in a minute.

The motion rightly talks about the right of people in Scotland

“to live free from fear and harassment”.

I agree that people in Scotland are entitled to that and I hope that nobody in the Parliament would dissent from that view. People in Scotland also

have the right to live free from the fear of poverty, unemployment, exploitation at work, the cold in winter and poor health, but the Executive appears to be far less interested in addressing those fears.

The motion invites us to debate the effectiveness of the act. The act's effectiveness is questionable and it is right that we should remind the minister that, when the Parliament was discussing the legislation, many members had concerns about the proposals, on the ground that there are better ways of dealing with antisocial behaviour. The best way of tackling antisocial behaviour is by empowering communities and by providing resources and facilities for community support services to help people who are affected by antisocial behaviour. We need effective interventions to address the problem via fully resourced social work and community services. We could even increase the number of police officers who work in and are accountable to the communities concerned. Such avenues were obvious to the Executive, but it chose to ignore the funding demands arising from tried and tested methods of addressing the problem.

Cathy Jamieson: Colin Fox thinks deeply on the issues that we are considering, so I am astonished to hear him say that we have ignored funding and resources. Does he accept that the £113 million that has been allocated to back up antisocial behaviour strategies is additional to the £10 million that is available to community safety partnerships to support the voluntary sector organisations that deliver for young people and the £63 million or so that has been put into youth justice programmes? Does he accept that a significant amount of money has been allocated precisely to take the action that is needed to tackle the causes and the symptoms of the problem?

Colin Fox: The minister mentioned the £113 million for ASBOs when she intervened during an earlier speech. I will talk about funding later.

It is clear that the Executive is annoyed that, a year after the 2004 act was passed, local authorities are not using the range of powers in relation to which the £113 million was allocated. That is because local authorities throughout Scotland prefer to use more effective ways of dealing with the problems that communities face.

I do not know whether the minister has seen the Labour Research Department's recent publication—Labour members used to read those documents and I hope that they still do. The experience in England and Wales, where antisocial behaviour legislation has been in force for longer than it has been in Scotland, indicates that ASBOs are criminalising people for non-criminal behaviour, which is precisely what the advocates of the Antisocial Behaviour etc (Scotland) Bill said would not happen. New figures

for Scotland indicate that the time served in custody by children has more than doubled, from 300 days in 2003 to more than 800 days. The average time spent inside by children under 16 has increased from nine days to 28 days. I accept that that is partly because there is a severe shortage of secure units, but the situation is hardly likely to improve if ASBOs are more widely imposed on under-16s.

The motion acknowledges the need to

“build confidence in our communities”

throughout Scotland. It is perfectly clear that we can do that by supporting measures that we know will make a difference. Patrick Harvie was quite right to highlight issues about youth projects. How many youth projects, sports and leisure centres and playing fields have closed in the year since the bill was passed? I visited a highly valued and effective youth project in West Lothian last week, but there are anxieties about whether funding for that project will continue. The minister talks about spending £113 million, but funding such youth projects would constitute effective intervention to deal with the problem.

Cathy Peattie (Falkirk East) (Lab): I support community development and the important work that is being done with young people. However, does the member realise that the majority of people who cause disruption in my constituency are older folk who get drunk all weekend and try to beat up their neighbours, who have to phone the police to complain? People should not have to live like that. We are not just talking about youngsters.

Colin Fox: Cathy Peattie is right. The vast majority of ASBOs are granted in relation to older people. However, provisions in the 2004 act specifically targeted young people and Labour members should not be allowed to sweep that fact under the carpet.

The minister urges local authorities to use ASBOs and even talks about taking away £64 million of funding if they refuse to do so. A paper from Heriot-Watt University contains figures that make it clear that local authorities in Scotland have largely given what we might call the rubber ear to the proposals. It is clear that local authorities do not want or need the powers in the 2004 act. They regard the act's approach as bureaucratic and cumbersome and they think that there are better ways of dealing with the problem.

The message from local authorities is loud and clear. In 21 local authority areas, specialist teams have been established to deal with antisocial behaviour. I welcome the use of investigating officers, community safety officers and social protection teams, but it is clear that the 10 local authorities that have the lowest number of ASBO applications all use specialist teams. The wide

variation in the use of ASBOs among local authorities suggests that a political imperative is at play.

10:50

Mr Bruce McFee (West of Scotland) (SNP): The Scottish Executive's March 2005 social research paper, "Use of Antisocial Behaviour Orders in Scotland", to which Colin Fox referred, makes interesting reading. It confirms that there are huge discrepancies in take-up among local authority areas in Scotland, which are linked not to the prevalence of antisocial behaviour but to a number of other factors, including the different speeds at which local authorities and registered social landlords have geared up to use the powers in the Antisocial Behaviour etc (Scotland) Act 2004. The fact that responsibility for tackling antisocial behaviour has been located in housing departments has also skewed applications.

One element is missing from the statistics in the paper. They do not identify local authorities that decided not to use the powers or that decided to drag their feet on the matter. The paper highlights Glasgow as an area that has a relatively low level of applications for ASBOs, but Inverclyde Council sticks out like a sore thumb: there were no applications in the area in 2002-03 and there was just one application in 2003-04, although surely there are instances of antisocial behaviour in the area that need to be addressed.

We have been told and we will be told again that local authorities are required to prepare with chief constables a strategy for dealing with antisocial behaviour, which will help to form the basis of outcome agreements for funding. The denial or reduction of funding for local authorities that drag their feet will not provide one iota of help to the ordinary men and women who are being denied the benefits that the granting of an ASBO can bring in certain situations. At question time last week, I asked what remedies are proposed for citizens who live in areas in which the local authority is failing properly to address antisocial behaviour. Unfortunately, the Deputy Minister for Justice chose to interpret my question as a request for direct control over the actions of local authorities. His interpretation was wrong and my question remains: what remedy do those people have?

The social research paper suggests that as many as two thirds of ASBOs have been breached. We need answers on that. What is the breach rate and what is the response to breaches?

A number of members talked about antisocial behaviour and young people. We must consider whether the current approach strikes the right

balance. I will leave aside the headline-grabbing, tough soundbites about neds and hoodies and consider the hard statistics. Young people are more often the victims than the perpetrators of antisocial behaviour. The Scottish Parliament information centre produced a paper in September 2003 describing the findings of the Edinburgh study of youth transitions and crime. According to the SPICe paper, the study identified a close link between victimisation and offending and concluded:

"Being a victim of crime at the age of 12 is one of the most powerful indicators that a child will offend at 15. Likewise, offending at age 12 brings a strong possibility of victimisation at 15."

Cathy Jamieson: In the context of the member's comments, does he agree that it is important that we send the message to all agencies that simply to have a blanket ruling out of the use of powers in the 2004 act would fail the young people who risk becoming the victims of crime?

Mr McFee: I agree—perhaps the minister can convey that to her deputy minister.

The study went on to say:

"there is a close correlation between levels of parental supervision and offending".

However, it also said:

"The strongest correlation is between the numbers of friends of an individual young offender who are offenders ... and the individual's own offending."

The Scottish Executive's consultation paper in 2003 stated:

"a particularly worrying development in recent years is the number of children and young people who are involved in persistent crime and anti-social behaviour. While it is a small proportion of the total, this group put other children in the community at risk of getting involved in anti-social behaviour and are responsible for untold damage and misery."

The case for isolating the hard-core minority has been made over and over again, but, in taking that action, we must provide an alternative focus for those who hang around that minority and who are at risk of being sucked into problems and trouble. If we accept that the state has a duty to intervene, we must recognise how much better it is to intervene positively by helping those in our society who struggle to provide alternatives and who give up their own time to help to run voluntary groups than it is to intervene by clearing up the mess of failure. The requirement for an ASBO is a measure of our failure, not our success.

As some members will know, I recently brought a debate to the chamber on Renfrew and Inverclyde scout association. I do not have time to go through all the arguments again, but despite the warm words of support, encouraging letters

and glossy brochures from the Executive, the association has received not one brown penny from the Executive for the Lapwing Lodge project and it is not alone in that. Why do we continue to force our voluntary organisations to jump through hoops to obtain even the smallest grants, whether at Scottish Executive or local authority level? Why are well-established organisations left to wither on the funding vine, watching shiny new projects being launched in a blaze of publicity, only to see them close a few years later when the prospect of mainstream funding disappears? When will the Executive learn that short-term media hits and photo opportunities are just that?

By all means let us monitor the use of antisocial behaviour orders and see where they can be improved, but in doing so let us recognise that, if we fail to fund the positive, we will continue to pay the price of failure, which is a much higher bill.

10:57

Karen Whitefield (Airdrie and Shotts) (Lab): I welcome the opportunity to take part in the debate and to examine the initial impact of the Antisocial Behaviour etc (Scotland) Act 2004. I will focus on the act's impact on my local authority area of North Lanarkshire and in particular on the impact of ASBOs and interim ASBOs in challenging and ultimately changing antisocial behaviour.

The communities that I represent were crying out for measures to tackle the scourge of antisocial behaviour, against which ASBOs are an important tool. The vast majority of decent people in our communities are sick and tired of the destruction and mayhem that is caused by a small minority of people who seem to be oblivious to the impact of their behaviour. Admittedly, ASBOs, as reformed under the 2004 act, are not the only way in which we can challenge and change antisocial behaviour, but they can play a vital part in protecting the quality of life of many ordinary men, women and children in Scotland.

The act provides that

"a person engages in antisocial behaviour if he—

(a) acts in a manner that causes or is likely to cause alarm or distress; or

(b) pursues a course of conduct that causes or is likely to cause alarm or distress,

to at least one person who is not of the same household as him."

In practice, that includes a wide range of behaviour, such as verbal abuse, excessive noise, drunken and loutish conduct, graffiti writing and intimidation. The definition is wide, but flexibility is needed to protect people from the many forms that antisocial behaviour takes.

ASBOs were not introduced as a substitute for the criminal law or civil proceedings; they were

introduced to help local authorities to protect people within their areas. ASBOs are often characterised as tools to deal with serious neighbour disputes in which mediation and other approaches have not worked. It is important to recognise that ASBOs are available to deal with antisocial behaviour wherever it occurs.

Antisocial behaviour often has the greatest impact on people when it affects their home life, so it is understandable that ASBOs have been seen by some as a housing management tool. However, they are not restricted to dealing with neighbour problems or antisocial behaviour in a particular housing sector. They can, for example, be used to deal with antisocial conduct in and around retail premises or in parks or transport hubs. In North Lanarkshire, that message is finally getting through. In Airdrie, three ASBOs have been granted to deal with persistent antisocial behaviour in and around the town centre and those orders are working.

I recently spoke to Matt Costello, who heads up the antisocial task force that is located in North Lanarkshire's housing department. He was positive about the improvements that have been made to full and interim ASBOs and stated that, in North Lanarkshire, 122 ASBOs and interim ASBOs have been granted to date. Interestingly, he told me that between 80 and 85 per cent of ASBOs that are granted are successful, in that they alter antisocial behaviour and the ASBO is never breached. That is an important point.

Colin Fox raised concerns that ASBOs could too easily criminalise people, but that is not shown by the evidence from North Lanarkshire—in fact, quite the opposite. Properly used ASBOs have demonstrated clearly to those who engage in antisocial behaviour that communities and local authorities will not tolerate their behaviour. The challenge of being subject to an ASBO has successfully changed their behaviour.

Colin Fox: Can the member explain why North Lanarkshire Council has applied for 122 ASBOs and interim ASBOs when adjacent authorities and authorities with the same socioeconomic problems have applied for virtually nil? Why is there such a huge disparity between North Lanarkshire and other authorities?

Karen Whitefield: It is not for me to speak for other local authority areas, but I know that North Lanarkshire is committed to dealing with antisocial behaviour. The council knows that its communities care about antisocial behaviour and it wants to demonstrate that it will tackle it. It is using the powers that are available. Other local authorities have to face up to the same challenges, adopt the targets that North Lanarkshire has set and follow its good practice.

Matt Costello told me that the remaining 15 to 20 per cent of people who do not alter their behaviour are more efficiently and speedily dealt with by the courts. He also stated that the use of short Scottish secure tenancies has an effect on antisocial behaviour similar to the effect of ASBOs. Increased funding from the Scottish Executive has meant that the service provided by the antisocial task force has been expanded. It now employs additional people and provides more resources to communities. In addition, Strathclyde police have seconded one of their officers to work with the task force on a daily basis.

Members of the task force will be taking their examples of good practice to Belfast and will provide training to the Northern Ireland Housing Executive. They will be joined by local tenants and community groups to display the benefits that a good and effective antisocial behaviour task force can deliver and the difference that it can make to communities.

It is too early to assess the impact of the Antisocial Behaviour etc (Scotland) Act 2004 and other important Executive initiatives to combat antisocial behaviour, such as neighbourhood wardens, but the early signs from North Lanarkshire are positive. The balance is beginning to move towards protecting the right of the vast majority of people to a peaceful and fearless existence. I welcome the progress that the Executive has made. I urge the minister to continue to fight for the decent people who live in our communities. As Patrick Harvie said, respect is a two-way street. It is time that we gave respect to the vast majority of decent, hard-working families in Scotland.

11:04

John Swinburne (Central Scotland) (SSCUP): The Antisocial Behaviour etc (Scotland) Act 2004 is a promising piece of legislation that I fully support. Nevertheless, I realise that, as Bill Butler said, it is not a panacea, and it is still in its infancy.

Like MSPs throughout the chamber, constituents regularly raise the topic of antisocial behaviour in their correspondence with me. This morning I received yet another letter in a similar vein, from which I will quote. It said:

"Dear Mr Swinburne,

The situation is that my mother, in her late seventies, has been living in fear and misery for the past three to four years because of a very unsociable neighbour who has had an A.S.B.O. in place against him since May 2004. This, however, although improving the situation a little bit has not prevented him from breaking the order many times.

The worrying thing is that when brought to court for each offence, he gets off with it (because he just tells a pack of lies in court) and then laughs in my mother's face – which as you can imagine, is very distressing for her.

I thought that with the great publicity and high profile given to Anti Social Behaviour Orders in Scotland this would end my mother's misery, but in this case it does not seem to be a deterrent.

I would greatly appreciate it if we could arrange an appointment with you to discuss the matter further."

How would the minister advise the gentleman in that sad case? Would she or her deputy be prepared to sit in on the meeting with him and his mother to try to solve the problem, because I do not have the answer?

11:06

Paul Martin (Glasgow Springburn) (Lab): First, I condemn the comments made by Annabel Goldie, which generalised some of the antisocial activity of young people as being down to their not having a father. My father's father was a merchant seaman, so he was an absent father. Previous generations of war widows brought up their children in the most difficult of circumstances. Some of the most hard-working individuals I have ever met are single mothers who have put their children through university. To generalise the reasons for antisocial behaviour is typical of the views of some of the chattering classes.

Margaret Mitchell (Central Scotland) (Con): I do not dispute for a minute what the member says, but does he accept that Miss Goldie was referring to certain statistics and research that showed that there was sometimes a problem with the children of single parents and the incidence of crime?

Paul Martin: Individuals who seek to involve themselves in those statistics should get themselves into the real world of the hard-working individuals out there and the difficult circumstances that they face.

I commend the minister for delivering the Antisocial Behaviour etc (Scotland) Act 2004. The Labour-led Executive has delivered legislation that will make a genuine difference to communities throughout Scotland. There are two main areas of enforcement of the legislation that I think require attention. One of them is youth services, to which Patrick Harvie referred and to which I will return.

However, I turn first to the police authorities and how they enforce the act. The minister and the deputy minister will know that on a number of occasions I have raised the issue of policing and the need to review how we deliver our police services. I believe that there is a need to modernise the way in which our police forces are mobilised and structured. I have been an elected representative for 11 years and the very same policing issues that were raised with me on 17 December 1993 were raised with me last night at a public meeting—issues relating to the deployment of police services. I do not think that

our police forces have moved on in the new era of closed-circuit television systems and the internet. We need to consider how we modernise the approach that our police authorities take to delivering services to deal with many of the antisocial activities that have been mentioned.

There are a number of measures that do not require additional resources. We are obsessed with increasing the number of police officers, but that will not necessarily make a difference to my constituents who call the police office only to be treated in the most appalling manner when they report incidents in their community, a number of which are not followed through effectively. I have dealt with a number of individuals over the phone who have been dealt with in an appalling manner.

Problem solving saves police resources, but I do not see enough evidence that our police forces are considering ways in which they can solve problems. It would not require additional resources to ensure that there was stability in the police force, rather than the constant turnover of senior police officers.

Our obsession with police numbers is a red herring. We have to deploy our police resources in the areas where they are needed most. That might mean that the leafy suburbs do not get the same number of police officers as do areas such as Ruchazie in my constituency. We will have to review the way in which our police resources are deployed.

I turn to youth services. It is important to acknowledge that an element of the act was to ensure that we dealt with youth disorder. Parental accountability is an important issue. Too often I attend public meetings at which it is clear that parents believe that it is our role as politicians to deliver local youth services. I see a role for parents in that process. People do not have a God-given right to be a parent; parents have to play a role in partnership with communities in delivering services for their children.

We will have to improve the youth services that we deliver and acknowledge that although many of our services are of the highest standard, they are not being promoted in the way that they should be. I call on the minister to ensure that our local authorities modernise their approach to how they promote local services. I have attended public meetings on a number of occasions and told people that we have Olympic-sized swimming pools in Glasgow that are not being used to the extent that they should be and people have appeared to be surprised. Sometimes it is convenient for parents to be surprised because they do not always want to live up to their responsibilities. We should do more to ensure that they do so and to provide a national standard that young people can expect of their local youth services.

I welcome the act but plead with the minister to ensure that we can enforce it by modernising the police force and other authorities that are involved in its enforcement to ensure that we make progress.

11:12

Donald Gorrie (Central Scotland) (LD): An attractive pastime is to replay exciting events such as cup finals and league decider matches. There has been a certain element of that here: members have been replaying the Antisocial Behaviour etc (Scotland) Bill debate because many thought that they scored goals and felt that their opponents scored own goals, which they relished.

I want to advance beyond that and consider how we can deal with the things that are not going well and build on the things that are going well. First we have to acknowledge that we are all genuinely keen on local democracy, which includes the right of people to get things wrong, whether, in some people's eyes, the French or the Dutch, or the councils that are imposing or not imposing ASBOs—they are elected to get on with it. The Executive and the Parliament have to co-operate and encourage people to work together but, ultimately, whether to impose an ASBO is a local decision, which we have to live with.

Members have outlined examples of good local practice of councils involving the community in the way that was written into the act. A strong element of the act is that the local strategy has to involve consulting communities, especially young people, about facilities and producing facilities that they can use. As others have said in this and other debates, we have to consider the affordability and accessibility of facilities, on which some councils, for whatever reason, fall down.

Ultimately, the answer is people, not just facilities. Facilities are important. If one builds on all one's playing fields, one cannot be surprised if kids do not play football and get into trouble instead. However, people are more important, whether in funding or facilitating local sports clubs, in becoming qualified coaches or in developing teams and activities by working alongside young people.

In many cases, intelligent nursery teachers and local police can identify at the age of five or six young people who will end up in jail. They may not always be right, but they often are. Surely a commonsense society would put resources into dealing with kids at that age person to person, to try to straighten them out and to help their families to straighten them out. Many parents need a lot of support. We could almost be investing from the cradle to the grave because, as other members have said, it is not just a young-person problem;

people of all ages create difficulties. People can usually sort out other people.

We have to develop and to copy good practice. The minister and I attended an excellent event some months ago, which was the final of the twilight football league, which gets young people playing football in the evenings instead of getting into trouble. That is an excellent project and there are many other similar ones. My complaint is that our system does not copy such projects rapidly enough. People say, "Yes, that's a good project," about projects such as that or good projects that are run by other bodies, such as Barnado's and the Prince's Trust. Surely we should ensure, through the Executive, local authorities, the Big Lottery Fund or trusts, that there are more such projects. We are not good at copying good practice, but we should do it more. The ministers are trying hard but, together with the Convention of Scottish Local Authorities, they could notice what is going well and copy it. They could also point out to council X that its strategy on antisocial behaviour shows that it is weak on community activities and facilities and so on, and that it should do something to sort that out. Those are issues that can be attended to.

One other issue that always bugs me is the slowness of justice. Speeding up justice would have a great effect. People—young or old—making a nuisance of themselves and wandering about the streets without trial for months and months undermines the whole system. I suggested to some of my colleagues the idea of on-the-spot courts and fines, and getting sheriffs and magistrates to sit through the night to jail the drunks, but that was considered very illiberal. It may not be the right idea, but we should consider speeding up justice, which would help to create the public confidence of which so many members have spoken. Almost every speech has included some sensible points that we could build on. If we can cut out the party wah-wah and concentrate on the good ideas, we can get a long way.

11:18

Margaret Mitchell (Central Scotland) (Con): Today's debate and the speeches from members across the political divide have highlighted the fact that not only is antisocial behaviour a serious problem that blights communities throughout Scotland but, regrettably, it is on the increase. The Antisocial Behaviour etc (Scotland) Act 2004 was a flagship piece of legislation for the Executive and I have no doubts about the good intentions behind the proposals contained in it. However, the sad truth is that to date the act has been ineffective. Many of the powers in the act are lying dormant because police, housing associations and—as Bruce McFee pointed out—some local authorities

are unwilling to use them. Why? In the first instance, the process to obtain ASBOs can be cumbersome and inefficient. In some local authorities, it can take up to nine months from the time the first complaint is made to the police before an ASBO is issued.

Can members imagine how soul destroying it is for householders who have reported serious incidents on a number of occasions over a period of time, involving threatening behaviour from an individual brandishing not just an ordinary kitchen knife but a machete, to be told by the local authority ASB team to keep a diary of the offending behaviour? Then and only then will the wheels be put in motion to apply for an ASBO. That is the situation that the people to whom the minister referred—the elderly, mothers and others on a Bothwell housing estate—face today. No wonder people there and elsewhere in Scotland are losing confidence in the criminal justice system.

The Executive's failure properly to think through its ASBO policy has resulted in breaches of ASBOs—a criminal offence that carries a sentence of up to six months' imprisonment or a fine on summary conviction, and up to five years' imprisonment or an unlimited fine on indictment—being sidelined in favour of a charge using common-law breach of the peace.

Hugh Henry: Will Margaret Mitchell take an intervention?

Margaret Mitchell: Not at the moment.

I am given to understand that that is on the instruction of the Crown Office to procurators fiscal. I should be interested to hear the minister's comments on that point.

Furthermore, as some local authorities have discovered, there is a potential loophole when a breach of an ASBO comes to court. In one case, someone successfully argued that they did not know that an ASBO had been issued against them, despite a registered letter having been signed for. As a result, the police and the local authority have had to introduce a further procedure to ensure that that does not happen again and apply it retrospectively to all other cases.

In addition to that, dispersal orders have been rendered ineffective because, by being time and place specific, they are too restrictive. For example, if the timeframe that is specified is 24 hours, the subject of the order merely resumes their previous antisocial behaviour in the 25th hour. That, coupled with the fact that ASBOs are expensive because of all the notifications required, means that they are simply not being used. Meanwhile, other measures, such as closure of premises orders, can take years to implement.

The wheels of justice turn notoriously slowly but those are problems that have to be addressed now. All the legislation that the Executive is introducing is useless without proper enforcement. Taking up Donald Gorrie's point about good practice, I think that the Executive has the remedy in its own hands. It need look no further than the Broomhouse experience in Edinburgh, to which Annabel Goldie referred. The police had an almost constant presence, working shifts and changing duty times over a six-month period. That meant that troublemakers knew that the police would not be disappearing for long periods of time, and the results were impressive. Car crime fell by 80 per cent. Complaints against youths dropped by 62 per cent. In all that time there were no arrests. The presence of police on the beat provided an immediate and effective response to the problem of crime and antisocial behaviour. What is more, by the police acting as a deterrent rather than responding to an incident after the event, the quality of life in that local community was dramatically altered for the better, and the cost of expensive court cases, prison and probation was saved.

That is why I whole-heartedly support the amendment in Annabel Goldie's name and challenge the minister to tell us why he is not putting more money into providing more police officers, together with more police time, on streets throughout Scotland, when that is evidently the most effective and cost-effective way to address antisocial behaviour.

11:24

Stewart Stevenson (Banff and Buchan) (SNP): I would like to start with something quite obvious and something with which I hope we will all agree, which is to congratulate children throughout Scotland on their contribution to society, their engagement in the issues in our society and their articulation of issues. On all those fronts, today's children do much better than children did in my day—we were a repressed and inarticulate minority when I was a child.

Hugh Henry: Stewart Stevenson is making up for lost time.

Stewart Stevenson: That is a kind remark from the minister, who is obviously impressed by my ability to articulate and engage. However, he will have his chance to follow up that remark later.

At the core of the matter is an extremely important point: our kids do us proud, but a few blot the copybook for the overwhelming majority. I know that all members who are present agree with that, so we should keep it at the core of our debate, which has brought to the Parliament a variety of experience from many different

communities throughout Scotland. We must hold that variety and the need for a variety of responses close to us as we seek to understand the way forward.

There are no simple answers and there is no single answer. The Antisocial Behaviour etc (Scotland) Act 2004, which the Scottish National Party had reservations about but supported, makes a contribution to equipping communities and organisations to deal with the problems that many of our communities experience. I welcome the fact that, when we were dealing with the Antisocial Behaviour etc (Scotland) Bill, Margaret Curran accepted amendments in my name that mean that, in due course, the Parliament will formally hear of the progress that is being made.

I have a word of caution for the minister. We must not conflate crime with antisocial behaviour in a way that confuses and blurs the message. In her opening remarks, there was a danger of the minister doing that when she discussed drug dealers, who are criminals of the first order, in the same context as antisocial behaviour. Of course, all crime is antisocial—we have defined it to be so by its very nature—but we must be cautious.

After the minister made remarks commending the work of community wardens in my constituency on a previous occasion, I extracted those remarks from the *Official Report* and delivered them to the community wardens in my constituency. They welcomed the minister's support, which was much deserved, but they are already saying that resources are a problem. We have made a start on a journey, but there is much more to do. As the minister said, strategies must aid prevention and we must promote early intervention. That is an important point.

The debate has been one of the scariest for a long time. I am very worried about the fact that my colleague Kenny MacAskill agreed with the Prime Minister, adopted his language and supported his social attitudes. However, does that not touch on the fact that we share common concerns? Therefore, let us share common solutions.

Annabel Goldie once again articulated the benefits of zero tolerance. I will sound a note of caution on that. In New York, the crimes on which the police focused—which were largely crimes of violence and street crime—certainly disappeared from the areas where zero tolerance was exercised. However, beyond those areas, the levels of crime rose. Not only that, but in the areas in which zero tolerance was, quite reasonably, being imposed, there was a transfer from overt, violent street crime to more subtle forms of crime, partly commercial and retail crime.

Margaret Mitchell: Is Stewart Stevenson against a zero-tolerance policy?

Stewart Stevenson: I am not against zero tolerance; I am saying only that we should be cautious about the value that it can deliver.

Richard Baker made a slightly unusual speech. I was not aware that there were any personal residences on the Beach Boulevard in Aberdeen, but there was an issue there nonetheless. However, where are the boys, girls, men and women who previously gathered with their cars at the Beach Boulevard? If we were to ask the people in Torry and Nigg, we might get an answer. It is like squeezing the soap in the bath: we have simply sent them 3 miles down the road.

It was scary to discover that Stewart Maxwell once scared people with his motorcycle helmet. I confess to the Parliament that, when I was a nascent Teddy boy, my fluorescent socks used to alarm my parents and others.

Margaret Jamieson made the valid point that ASBOs should be a last resort. There is some danger that, in some parts of the debate, we might be suggesting that they are actually an early intervention and I hope that, in his closing speech, the minister will clarify that that is not the intention. Margaret Jamieson also highlighted the complexity of human behaviour and, indeed, misbehaviour.

I bring back to the Parliament a phrase from another time: tough love. We have to love the antisocial offenders. We must love them to death to move them into the main body of our society and away from a path that leads to criminality and incarceration. We must also help communities to help themselves and empower people who feel disempowered. If the Antisocial Behaviour etc (Scotland) Act 2004 and the funding from the Executive achieve that, they will have been worth while.

The Deputy Presiding Officer (Trish Godman): I call Hugh Henry to close the debate. Minister, you have just under 10 minutes.

11:31

The Deputy Minister for Justice (Hugh Henry): The debate has been interesting. It is also an opportune debate to have at this time. It has been brought to Parliament not because, as Colin Fox suggested, we believe that the Antisocial Behaviour etc (Scotland) Act 2004

"has not lived up to its billing",

but because we believe that it is right to acknowledge that new legislation exists, to acknowledge and welcome the progress that has been made to date in its use, and to acknowledge that the level of frustration and expectation in many communities is such that we hope that more will be done with this important tool that the Scottish Parliament has provided.

It is right that we focus some attention on the people who are responsible locally. In a sense, we have done our bit—we have passed the legislation and provided the money—and we want to encourage the people who are responsible at local level to implement the legislation and to use it appropriately.

Christine May: Will the minister join me in supporting the call that the editor of the *East Fife Mail* made to communities in east Fife to continue to support the police? Will he also encourage the editors of other local newspapers, whose influence on communities is powerful, to do the same?

Hugh Henry: I was encouraged by the response of local newspaper editors throughout the country when Parliament debated the Antisocial Behaviour etc (Scotland) Bill and I have been encouraged since then. Local papers have a huge influence in their communities and their response to the campaign to tackle drug dealing at local level has been positive and constructive.

It is right that we reflect on what has been done and, more important, on what is still to be done. We have come a long way since we passed the Antisocial Behaviour etc (Scotland) Act 2004. It is interesting that the debate about the act has heightened awareness of the broader issue of antisocial behaviour orders. I remind Parliament that the orders were not a product of the act; they existed beforehand. However, many people and communities throughout Scotland now see ASBOs in a new light because they are, to some extent, reinforced by other measures that we can take.

Colin Fox said that the act

"has not lived up to its billing"

and the Conservatives criticised us for lack of police numbers and lack of action, so it is right that I put those comments into context. It is only seven months since the power of dispersal came into being. We always acknowledged that it is a power of last resort and that other action must be taken before it is considered, but in the past seven months we have seen it being used appropriately in the Aberdeen area.

Richard Baker mentioned some of the specific problems in Aberdeen. I visited the area with him, and in response to Stewart Stevenson's question I point out that people who live in the vicinity are overwhelmingly in support of what has been done. Many of them said that this is the first time for a long time that they are able to have a decent night's sleep. Stewart Stevenson asked where the people who were causing trouble have gone. To use the words of a song that is, I am sure, familiar to him, the police have sent them

"... homewards
Tae think again."

They have gone back to the communities from where they came into Aberdeen to plague, annoy and frighten local residents. That is a good example of local agencies using the new powers.

Mike Pringle said that he was disappointed by comments about antisocial behaviour that were made by an Edinburgh councillor, and that the police should be congratulated on using the act and that councillors and elected representatives should not make criticisms on operational matters. I agree to some extent and I hope that Mike Pringle will join me in congratulating the police in Aberdeen, and in asking elected representatives who have criticised the police to reflect on their comments.

However, I profoundly disagree with Mike Pringle's comment that the act is different from what he called the "draconian" bill that was introduced. Perhaps I can have a conversation with him afterwards, because I was deeply involved all the way through the bill's process and to my recollection we did not depart from anything in the bill as introduced. We refined and improved it, but there were no significant changes. It is a myth to suggest that there was a major change.

There were some constructive contributions to the debate. I agree with Stewart Stevenson that Kenny MacAskill surprised everyone with his new Labour credentials, although he let them slip when he returned to his old mantra—which has been missing for a while from his justice responsibilities—and asked yet again for more resources. He said that agencies should be properly resourced. I have to say that during the life of the Scottish Parliament local authorities and other agencies have been resourced to an unprecedented level, whether for education, social work or a range of other services. On top of that, as the Minister for Justice said, we have invested more. We have provided £113 million to deal not only with antisocial behaviour orders but with wardens, mediation services and other positive ways of trying to resolve antisocial behaviour. We have put £10 million into community safety and £63 million into youth justice on top of all the other measures that are being taken.

I return to my point about having a degree of perspective about how long the Antisocial Behaviour etc (Scotland) Act 2004 has been in force. Not only is it only seven months since the power of dispersal came in, it is also only seven months since the power to close premises came in. There have already been, in Fife, two closure orders, one of which was against a private householder. It is only four months since the noise nuisance measures came in, but there have already been 76 warnings for noise nuisance in Edinburgh. It is only three months since the power to seize vehicles came in, but there have already

been, in Fife, three vehicles seized: one car and two motorcycles. I have been notified that other warnings have been issued in that respect in Grampian.

It is only two months since the fixed-penalty notice pilot in Tayside started, but 400 notices have already been issued. In a short space of time, we have seen some agencies positively embracing this important act. The message that we want to send out from today's debate is that some agencies have looked constructively at what the act can bring to communities and we want others to learn lessons from them and to copy their behaviour.

I turn to some specific points. Margaret Jamieson asked a question about housing associations.

The Presiding Officer (Mr George Reid): Very briefly, please.

Hugh Henry: Housing associations asked for and were given the power to introduce antisocial behaviour orders, and questions must be asked of them. Why are they failing their areas by ruling out antisocial behaviour orders without proper consideration? That is an important message for the housing association that Margaret Jamieson mentioned, but it is also important for many others.

Paul Martin asked about policing. There is an important issue to be addressed, but although he talks about deployment of the police we need to ask the local authority in the area whether it raised the matter with the chief constable.

The Presiding Officer: Mr Henry, you are well over time. We have questions at 11.40.

Hugh Henry: I beg your pardon. I was given wrong information.

We need to ask the police at local level what powers they have used and what they have done.

Important steps have been taken and the act is making a welcome contribution. I commend those who have taken action and I encourage those who have still to take action to examine what has been done in other areas of Scotland. The act is beginning to have an effect and I look forward to action being extended elsewhere.

Question Time

SCOTTISH EXECUTIVE

General Questions

11:41

Health Records (Gypsy Travellers)

1. Nora Radcliffe (Gordon) (LD): To ask the Scottish Executive what progress it has made on the Equal Opportunities Committee's recommendations on hand-held health records for Gypsy Travellers. (S2O-6936)

The Deputy Minister for Health and Community Care (Rhona Brankin): Developing services that are accessible and fair for all is a fundamental priority for the national health service in Scotland. The national resource centre for ethnic minority health, in partnership with the Gypsy Traveller community and the NHS, has developed a hand-held patient record of personal health, which we plan to launch later this month. Awareness-raising interagency training seminars, which will involve members of the Gypsy Traveller community, will also be available to NHS staff to support use of the records.

Nora Radcliffe: That is a welcome answer. Dr Rafik Gardee from the national resource centre for ethnic minority health told the committee:

"as the hand-held patient record is ready, it should be launched as soon as possible. That way, we would retain the confidence of the community".

He pointed out that training is fundamental and said:

"we have made a proposal to the Executive that the equality unit, the health improvement strategy division and the Health Department as a whole should do something constructive."

I am sure that they will. He seeks

"the necessary resources to ensure that training takes place."—[*Official Report, Equal Opportunities Committee*, 24 May 2005; c 956.]

He made the important point that—

The Presiding Officer (Mr George Reid): Question, please.

Nora Radcliffe:—the resource centre will do that training in association with Gypsy Travellers.

Rhona Brankin: I agree with that. It is important that everyone who is involved should be happy with the environment in which the records are rolled out. The awareness-raising training event for NHS and local authority staff was designed with representatives from the Gypsy Traveller community to be delivered by the community. It

will also be necessary to promote understanding and partnership between local NHS and community care services and the Gypsy Traveller community. I will ensure that my officials liaise with officials from other Executive departments to ensure that we all adopt the same approach.

Blood Screening

2. Patrick Harvie (Glasgow) (Green): To ask the Scottish Executive what the outcomes were of its recent meetings with HIV organisations to discuss its consultation on compulsory blood screening. (S2O-6952)

The Minister for Justice (Cathy Jamieson): Executive officials have taken part in discussions organised by HIV Scotland and Positive Voice as part of our consultation on blood testing—not blood screening—in specific circumstances following criminal incidents. Because of interest in the topic, the closing date for contributions to the consultation has been extended to Monday 6 June. We will consider the way forward in the light of all responses to the consultation.

Patrick Harvie: Does the minister accept that the Executive should have worked with those organisations on development of the proposals, rather than merely treating them as consultees? Does she accept that many of the arguments that were heard during those discussions place a serious question mark over the purpose of the proposals?

Cathy Jamieson: I put on record the interest of all members that the purpose of the proposals that are out for consultation is to seek to give better protection to victims of crime, particularly sexual crimes including rape, in which the victims believe that they might have been infected with HIV or other blood-borne disease. We also seek to protect police officers; that is the result of a petition that was lodged by the Scottish Police Federation. I accept that there are several difficult dilemmas around the subject, so it is important that we consult all relevant organisations. I hope that Mr Harvie will acknowledge that there has been constructive engagement with those organisations.

Clydesdale Bank (Closures)

3. Margaret Jamieson (Kilmarnock and Loudoun) (Lab): To ask the Scottish Executive what action it is taking to support businesses, communities and vulnerable individuals affected by the recent decision of the Clydesdale Bank to close branches. (S2O-6972)

The Deputy First Minister and Minister for Enterprise and Lifelong Learning (Mr Jim Wallace): I fully understand the concerns arising from the recent announcement by the Clydesdale

Bank regarding branch closures. Following that announcement, I had an early meeting with David Thorburn, the chief operating officer of the Clydesdale Bank, to discuss the implications for customers, employees, and the bank's future operations in Scotland. I understand from Mr Thorburn that the bank is working closely with trade unions to ensure that the process is properly managed. I am also aware that the bank has entered into an agreement with the Post Office whereby transactional banking services will be available to all Clydesdale Bank customers through the Post Office network.

Mr Thorburn was similarly clear that he expects the Clydesdale Bank's business advisers to continue to provide the full range of support to business customers, including visiting individual companies where necessary. If people who are affected need help to secure alternative provision, however, the enterprise networks stand ready to assist.

Margaret Jamieson: The minister will recall his visit to my constituency during the Easter recess and the subsequent agreement on work that is to be undertaken to assist Ayrshire's recovery. Does he agree that the actions of the Clydesdale Bank in giving notice to close three branches and leave only one branch in my constituency do nothing to promote Ayrshire? Will he take action to speed up assistance for Ayrshire so that companies such as the Clydesdale Bank will take on board their social responsibilities before seeking hard profit, for example their £2 billion in the last financial year?

Mr Wallace: I certainly recall the meeting that I had with Margaret Jamieson, Cathy Jamieson and other parliamentary representatives from Ayrshire. I assure Margaret Jamieson that I want to progress several of the positive ideas that came out of that meeting.

Obviously the Clydesdale Bank has indicated a strong commitment to remaining in Scotland. I have been assured that the arrangement that has been reached with the Post Office will mean that there will be banking facilities for Clydesdale Bank customers through the Post Office network and that no one should be more than five miles away from a Clydesdale Bank, although I accept that that might vary from place to place.

The Clydesdale Bank also assured me that it would normally seek to undertake visits to the individual businesses and companies that are customers of the bank, as well as having several flagship branches around Scotland where the bank can deliver a much wider range of services.

Paul Martin (Glasgow Springburn) (Lab): Will the minister refuse the response that he received from Mr Thorburn of the Clydesdale Bank, which is an attack on socially excluded communities? Will

he also write to all the major banking organisations to remind them of their social responsibility to provide services to a cross-section of communities, which depend on such services to prevent loan sharks from continuing with their activities?

Mr Wallace: I accept that the banks have a social responsibility. Paul Martin and other members will be aware that we have a financial inclusion action plan; Johann Lamont will announce more details about that in the coming weeks. That plan will insist on regular contact with the banks and it will consider a number of ways in which the banks can respond to groups in society with which they have not interacted until now. That plan is a very important part of the strategy that we are rolling out to bridge opportunity gaps.

Waste Water Services

4. Janis Hughes (Glasgow Rutherglen) (Lab): To ask the Scottish Executive how it will ensure that waste water services are not adversely affected by new housing developments. (S20-6969)

The Deputy Minister for Environment and Rural Development (Lewis Macdonald): Where Scottish Water believes that the waste water infrastructure is inadequate to support a proposed new development, it will advise the local planning authority accordingly. We will require Scottish Water to publish an annual report on the strategic capacity of its water and waste water networks as of 1 April 2006.

Janis Hughes: Given the amount of waste water flooding that has been experienced by some of my constituents and those of many of my colleagues, will the minister assure me that the responsibility for providing any remedial action that is deemed necessary by Scottish Water at the planning stage for new housing developments should be borne by developers?

Lewis Macdonald: A local authority may already impose planning conditions in approving a development that would require the developer to address constraints of the kind that Janis Hughes is concerned about. The developer would normally do that in partnership with the local council and Scottish Water. As of the next investment period, developers will be required to meet all the local network costs, subject to the usual arrangements for discounting for Scottish Water's future income. There will be a new alignment similar to that which applies in England and Wales; developers will automatically be involved in paying for necessary infrastructure improvements.

Linda Fabiani (Central Scotland) (SNP): As the minister knows, some systems are already running over capacity for historic reasons, which

means that there will be a split between costs for upgrading and those for expansion. Has agreement been reached between ministers, Scottish Water and the developers as to how those costs will be split?

Lewis Macdonald: In my statement to Parliament I made it clear that the new investment programme will require that the strategic network costs be met by Scottish Water and that local network costs be met by developers. That will be subject to a reasonable cost contribution from Scottish Water to reflect its income from that new infrastructure during the first 12 years of its life.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): Fife Council's draft structure plan specifies an overallocation of housing requirements in order to drive the regional economy. That is causing a lot of concern in communities such as Tayport, whose population is due to increase by 25 per cent, which will put water and sewerage services under strain. What priority for investment does the Executive attach to those overallocations of housing requirements under the quality and standards III programme?

Lewis Macdonald: We expect Scottish Water to work with local authorities and others under the quality and standards III programme to identify realistically what projects are likely to come on stream first and to address those needs first.

A75 (Improvements)

5. Alasdair Morgan (South of Scotland) (SNP): To ask the Scottish Executive what the specific programmed dates are for the start of construction of the six improvement schemes on the A75 between Stranraer and Dumfries. (S2O-6924)

The Minister for Transport (Nicol Stephen): Subject to satisfactory completion of statutory procedures, I expect construction of the six schemes to start in the 2006-07 financial year.

Alasdair Morgan: Similar questions have been asked by me and my colleagues for several years. Since I asked the same question in 2002, all that has happened is that all the schemes have slipped, in some cases by two to three years and now by three to four years. Will the minister accept that including schemes in a programme that slips continually is no answer to the transport problems of the south-west?

Nicol Stephen: Detailed proposals have been published for three of the schemes and the objections have been discussed with the people who made them. I hope that those three schemes can proceed without a public local inquiry. We are in a strong position to proceed with them.

The most significant of the other schemes is the Dunragit scheme; Alasdair Morgan will be aware

that there have been problems there because of an ancient monument site and the wish of the local community for the village to be bypassed. I am told that there is now a new scheme. I visited the location and urged development of a new scheme that would bypass the monument site and the village, which is now being worked on with the local council. I am optimistic that that very important scheme will now proceed.

I can inform Alasdair Morgan that detailed proposals are being developed for the Hardgrove and Cairntop schemes, not for overtaking opportunities but for a larger dual carriageway. I hope that that is positive news for the member. I am determined that all the schemes will process in 2006-07, or earlier if at all possible.

Alex Fergusson (Galloway and Upper Nithsdale) (Con): I share the minister's optimism about the possibility of a Dunragit bypass. However, is the minister aware that the continued delay of the schemes, to which Alasdair Morgan referred, simply exacerbates the problem of convoys of traffic speeding through villages such as Springholm and Crocketford on the A75? Residents are increasingly in danger whenever they need to cross the road. Does the minister agree that those villages also fully deserve a bypass? In the meantime, will the minister consider temporary installation of speed cameras to reduce persistent law breaking—which is what it is—once and for all?

Nicol Stephen: I am well aware of the importance of the schemes. The six schemes will involve total investment of about £30 million. They have been delayed and I share members' concern about that. As always, there are explanations to do with objections, to do with the details of the schemes and to do with the information that comes back after detailed site investigations.

As Minister for Transport, I am determined to ensure that the projects are pushed along and delivered on time and on budget. In the meantime, if safety measures can be put in place, I will always consider them. However, I am absolutely determined that the six schemes will all proceed in 2006-07. They will be good for the communities concerned and good for the economy of the area.

Health Services

6. Jackie Baillie (Dumbarton) (Lab): To ask the Scottish Executive, following publication of the report from Professor David Kerr, how it will ensure that health services are delivered as locally as possible. (S2O-6958)

The Minister for Health and Community Care (Mr Andy Kerr): The Executive's initial response to Professor Kerr's report was set out in Parliament on 25 May. I welcome the broad thrust

of Professor Kerr's proposals and will bring forward a detailed implementation plan in September.

Jackie Baillie: The minister will, of course, be aware that Professor Kerr's report helpfully states that any

"concentration of health services on fewer sites should be informed by"

clear and unambiguous evidence of actual clinical benefit. How will the minister ensure that the views of patients and communities are heard?

Mr Kerr: Professor Kerr has given us in Scotland the opportunity to lead the way in consideration of what services are to be provided and where, and of what services require, or do not require, to be aggregated into a specialist centre. The evidence is that we will be able to lead the world on those issues.

Professor Kerr also said, with regard to NHS reform and change, that this is the end of the take-it-or-leave-it culture. One size does not fit all. I am clear, and Professor Kerr is clear, about the fact that we need to continue the drive towards proper consultation and engagement. That engagement will be for members of the public but it will also be for patients' groups, the clinical community and local authorities, which will be an integral part of delivering Professor Kerr's proposals.

Mrs Nanette Milne (North East Scotland) (Con): I am sure that the minister will agree that local services need local health care teams. Will he tell me what plans he has to recruit and train the workforce and to inform it about changes to local services?

Mr Kerr: Yes indeed. Professor Kerr tells us that we must manage chronic conditions more effectively, that we must deal with elderly and vulnerable people more effectively and that we must reduce admissions to accident and emergency wards, and especially in the acute sector. Our workforce planning now, as in the past, reflects the direction of travel that Professor Kerr wants. We are training more allied health professionals—dietitians, physiotherapists and other clinical staff—in our communities. We will revise and develop our training plans in order to support the efforts that are being made.

During production of his report, Professor Kerr engaged with the education community, which will help to ensure that we get the required skills into the service. We need workforce planning and we need to change the way in which we educate our health care professionals.

Rail Services (Fife)

7. Scott Barrie (Dunfermline West) (Lab): To ask the Scottish Executive what its position is on

First ScotRail's increased journey times for its timetable in Fife and the impact that that may have on passengers' willingness to travel by train. (S2O-6959)

The Minister for Transport (Nicol Stephen): Passengers want a robust timetable and services that they can rely on. I have been assured that the additional two minutes that are being added to the Fife circle route reflect increased passenger loading times that are the result of increased passenger numbers and the level of congestion on the network. Wherever possible, however, I would like to see improvements in journey times.

Scott Barrie: I thank the minister for that response; it appears to be passengers' fault that the trains are not able to run on time.

Late trains are a major frustration for passengers; the answer to the problem should not necessarily be to increase journey times. Does the minister agree that the redevelopment of Waverley station is essential because that will increase the number of trains that can enter and leave the station and will therefore eliminate the need for trains to be held up adjacent to Princes Street gardens?

Nicol Stephen: I agree that redevelopment of Waverley station is vital. This week, a crucial meeting drew together all the project partners to consider the future of that project and its timetabling. The first phase of the redevelopment of Waverley is proceeding, but there are other measures that can be taken to improve the Fife circle services. As Scott Barrie knows, the introduction of the Stirling-Alloa-Kincardine line will help with freight movements across the Forth rail bridge; 15 per cent of the problems on the Fife circle are caused by freight movements.

Closer joint working between ScotRail and Network Rail is starting to happen and the provision of more drivers, increased service levels to get cleaning and dispatch right at stations and more effective timetabling of freight are being considered. I hope that all those improvements will have an impact. Reliability is important, but so too are fast trains.

The Presiding Officer: Before First Minister's questions, members will wish to welcome Halldór Blöndal, who is the President of the Icelandic Parliament, and a cross-party delegation of MPs. [Applause.]

First Minister's Question Time

12:01

Prime Minister (Meetings)

1. Nicola Sturgeon (Glasgow) (SNP): To ask the First Minister when he will next meet the Prime Minister and what issues will be discussed. (S2F-1679)

The First Minister (Mr Jack McConnell): I have no formal plans to meet the Prime Minister.

Nicola Sturgeon: I draw the First Minister's attention to the report on NHS 24 that the Scottish Executive is refusing to publish until after First Minister's questions, but which has been reported in today's *The Herald*. The report describes NHS 24 as

"the biggest health project ever launched by the SE ... with implications for every household in Scotland."

Why then did the First Minister fail to ensure that it was properly managed?

The First Minister: The purpose of calling for the report in the first place, when we announced the review in February, was precisely to answer some of the questions that Ms Sturgeon's question implies. Although NHS 24 serves more than a million callers every year very effectively, a significant number of individual complaints were made and many other people felt that the service was letting them down, even though they might not have complained formally. There were serious issues to be addressed and an experienced individual was asked to compile a report. I believe that he has done that effectively. The report is being published today and I expect the Minister for Health and Community Care to act on its recommendations.

Nicola Sturgeon: One of the serious problems that has been identified is the lack of management by the Scottish Executive. I refer the First Minister to page 8 of the report, which says:

"there was no-one within the SE with a programme manager role to ensure that this large and complex project was proceeding as planned."

I remind the First Minister that NHS 24 is a lifeline service. People who are ill or whose children are ill depend on it to access vital medical treatment. Does the First Minister agree that to have had no one in the Executive in overall charge of what is a vital service represents a serious failure to safeguard the public interest on his part and on the part of the Minister for Health and Community Care?

The First Minister: I am not able to comment on individual sentences that might have been taken in or out of context from a leaked report. I

hope that Ms Sturgeon will ensure that the Minister for Health and Community Care is made aware of where she received a copy of the leaked report from.

I hope, too, that the report makes a constructive contribution to the improvement of a service that, by and large, delivers its services successfully, but which has failed a number of the individuals who have tried to use it over the course of its existence. As a result of the report and of the experience of NHS 24, action will be required inside both NHS 24 and the Scottish Executive Health Department. That action will be taken properly and the Minister for Health and Community Care will respond to the report's recommendations this afternoon.

Nicola Sturgeon: It is rather disingenuous for the First Minister to suggest that he has not read the report that will be published this afternoon. I also suggest to him that a Government that had been doing its job properly would have known about the problems in NHS 24 and would have taken action to sort them out. I am referring to problems such as the shelving of the promised pilot project; the lack of any arrangements for rural communities; and the decision to press ahead with the roll-out, knowing full well that too few staff were in place to cope.

Last week, the chair of NHS 24 resigned, obviously because she anticipated the criticism that the report levels at her. When the First Minister gets round to reading the report, if he has not already done so, will he and his Minister for Health and Community Care accept full responsibility for their part in this fiasco, which could have put lives at risk?

The First Minister: I have two brief comments to make, the first of which is that it is important to keep the matter in perspective. Of the 1.25 million calls that were made to NHS 24, 86 resulted in a complaint being made. That said, I believe that not all of those who were dissatisfied with the service complained formally. A number of complaints were made and can be followed through and assessed, but many others would have been made by people who, although they wanted to complain, did not take the opportunity to do so.

We launched the review in February precisely because we take responsibility for these matters. That is precisely why the interim report has been produced so quickly and why the Minister for Health and Community Care will respond exceptionally quickly to implement the recommendations of the report and to ensure that the board and management of NHS 24 and the management of the Executive's Health Department respond correctly in advance of the final report, which is due in September.

Nicola Sturgeon: The report highlights a lack of management and leadership and suggests that the approach that was taken to the problems in this vital health service was tantamount to someone sticking their head in the sand. Is not the running theme of the Government's approach to health—whether on waiting times or the management of NHS 24—a failure to take responsibility and to act to ensure that the vital public and patient interest is protected? Does the First Minister accept that the buck stops with him?

The First Minister: Ms Sturgeon can try to deflect attention from the figures that were announced last week in my absence, but they show a remarkable reduction in the number of people who are waiting longest in our health service, in the waiting lists for out-patients and in the waiting times for out-patients. The figures are the result of the remarkable achievements by health professionals inside the national health service in Scotland who have been working hard to ensure that targets are met and that they deliver on the waiting times for those who wait longest. We will continue to exert pressure inside the system to ensure that the waiting times come down further for more people and that the lists are affected accordingly.

We will do the same thing with NHS 24. Ms Sturgeon would be entirely accurate to say that no one had accepted responsibility if there had been no review, if there was no report and if the report was not acted upon. Of course, what probably disturbs her most is that I ordered a review in February, it has taken place, it will be published today and all its recommendations will be acted on by the Minister for Health and Community Care. When the final report comes out in September, we will take exactly the same approach.

The thing that irritates Ms Sturgeon most is the fact that we do take responsibility and that we want to solve the problems. Ms Sturgeon and the Opposition find that so frustrating, yet they have proposed absolutely no alternative solutions or actions for the health service—they are devoid of ideas, devoid of policy and devoid of solutions. We are the Administration that is taking the actions and making a difference.

Cabinet (Meetings)

2. David McLetchie (Edinburgh Pentlands) (Con): To ask the First Minister what issues will be discussed at the next meeting of the Scottish Executive's Cabinet. (S2F-1680)

The First Minister (Mr Jack McConnell): At our next meeting of the Scottish Cabinet we will discuss our progress towards building a better Scotland.

David McLetchie: Undoubtedly, part of the discussion will be about tackling crime and

antisocial behaviour, which we debated earlier this morning. As the First Minister will be aware, two thirds of local authorities and more than 70 per cent of registered social landlords have told the Executive that they are unlikely to use antisocial behaviour orders for under-16s and, as all of us know well, police forces across Scotland are reluctant to use the new power of dispersal.

Is it not typical of a bullying and petulant Executive that, instead of listening to the people who have to tackle and deal with these problems in our local communities, it has tried to force unwarranted and unnecessary measures down their throats and now threatens them with a loss of funding if they fail to toe the line?

The First Minister: It is quite remarkable for the traditional party of law and order, which has changed its colours on many issues in the past decade or more, to change its colours on law and order, too. It is astonishing that Mr McLetchie says that any Government's appropriate response to the decision of some local authorities and agencies not to apply for antisocial behaviour orders because that is too difficult should be to walk away, to leave alone those who commit antisocial behaviour on our streets to continue doing so and not to take action or to raise the issue with local authorities and agencies.

If the Conservatives had any commitment to dealing with crime and antisocial behaviour, they would back Cathy Jamieson and demand that local authorities and agencies implement the law that is available to them and take action against antisocial behaviour.

David McLetchie: The trouble with the First Minister is that he is all political posturing and window-dressing. To tackle crime and antisocial behaviour, the police need greater resources to do the job, rather than the window-dressing of law after law that they cannot enforce effectively. That is the real difference between us.

When the measure was passed months ago, the First Minister and his Executive were well told by the police forces of Scotland that it was unnecessary, ineffective and counterproductive. They ignored that. The Executive has been embarrassed today because what we said would be the case has proved to be the case in the light of experience.

Instead of all the window-dressing, the Scottish Executive should listen to people such as the police and the Parole Board for Scotland's chairman. Yesterday, he said that criminals who would be denied parole because they were unfit for release were getting out anyway, because of the Executive's policy of automatic early release.

The Presiding Officer (Mr George Reid): Question, please.

David McLetchie: Why will the First Minister not heed the advice of the people who have to tackle crime, instead of engaging in this window-dressing nonsense that makes no difference at all?

The First Minister: Let us hear again that call from Mr McLetchie. He says that antisocial behaviour orders should not be used, that we should not stand up to antisocial behaviour and that people should just be allowed to continue with the behaviour that is causing havoc in communities. He said that clearly today. I am not normally political about crime and antisocial behaviour, but I advise every Labour and Liberal Democrat member to remind every one of their constituents that the Conservative party adopts that position. It says, "Do not use antisocial behaviour orders; do not take action against antisocial behaviour." It is wrong on both counts.

It is vital not only that the laws are in place, but that they are used consistently. Where they are used, they make a difference. They are making a difference in my constituency and in other constituencies. The councils and registered social landlords that are not yet using them should be, because they should represent their local voters and tenants by taking action where it is required.

The Presiding Officer: Be brief, please, Mr McLetchie.

David McLetchie: The First Minister well knows that the power of dispersal has not been used in his constituency and he should not try to pretend otherwise.

The problem with the Scottish Executive's approach to this issue and many others is that it does easy tasks such as passing laws that make no difference but dithers and delays over measures that would make a difference. That is the Executive's characteristic. The police have said that they have no confidence in the Executive on the matter.

The Presiding Officer: There must be a question.

David McLetchie: The Parole Board for Scotland has no confidence in the Executive on the matter. If those bodies have no confidence in the Executive, how on earth can the public have confidence in the Executive?

The First Minister: That is complete rubbish. All police associations in Scotland welcomed the passage of the Antisocial Behaviour etc (Scotland) Act 2004. Police officers who work closest to the ground—superintendents and constables—were desperate to have the powers and they are desperate to use them with backing from other authorities, which should give them that support.

We all know not only that there are record numbers of police officers in this country, which we need—the number is now higher than it ever was in 18 years of Conservative Governments—that there are higher levels of activity by those police officers, that more crimes are being cleared up and recorded and that more action is being taken against crime and antisocial behaviour, but that much more needs to be done, which is why the new laws are so important. Whether or not the Conservatives now advise Scotland's police forces and local authorities not to use the powers in question or to take action, I expect police forces and local authorities to use their powers, to take action and to put local communities first—and I expect that they will do so.

The Presiding Officer: Exceptionally, there are four supplementary questions that I judge to be important and urgent.

Sarah Boyack (Edinburgh Central) (Lab): What discussions is the Scottish Executive having with the City of Edinburgh Council, Lothian and Borders police and event organisers in connection with the G8 summit to ensure the safety and security of local residents and businesses and visitors to Edinburgh? I thank the First Minister for his previous commitment of financial support, but does he agree that we need an urgent review of the city's capacity to accommodate people who have a legitimate desire to protest, given the city's prominence as one of the world's capital cities?

The First Minister: I hope that everybody will calm down a little bit. People are organising legitimate protests. We live in a free and democratic society and protests are possible in this country. Protests should be well ordered, well organised and respectful of the cause with which they are associated. They should also be peaceful. Therefore, I urge everybody who will be involved in protests around the time of the G8 summit to behave in a peaceful way and to work closely with the responsible authorities. We will provide additional funding—which will be measured and appropriate—but we will not sign blank cheques. We will also facilitate discussions among the organisers and the relevant police and other authorities, which we are already doing. Those discussions should continue. If they do so, both legitimate protests and the safety and security of local citizens will be possible.

Shona Robison (Dundee East) (SNP): At the next Cabinet meeting, will the First Minister discuss the content of the "Frontline Scotland" programme that was screened last night? The programme was about Scottish haemophiliacs being infected with hepatitis C and HIV as a result of national health service treatment. Will the First Minister give a commitment today that the Executive will examine the evidence that was

contained in the programme and reconsider establishing a public inquiry into the worst medical disaster in the history of the NHS? Such an inquiry has been called for by those who have been affected and their families.

The First Minister: Shona Robison will be aware that Mr Kerr was to attend a recent meeting of the Health Committee to discuss the matter, but that he has been unable to comment further on the call for a public inquiry as a result of court action. We will comment once the courts and the other authorities have dealt with the legal issues appropriately. The need for a public inquiry remains an issue for debate and discussion, but it would be inappropriate for me to say anything further today.

Mr Duncan McNeil (Greenock and Inverclyde) (Lab): The First Minister will be aware of the publication today of the Accounts Commission's damning best-value report on Inverclyde Council, which has been met with anger and concern—if not much surprise—in my constituency. Does he agree that my community should not be resigned to having poor service from the council? Will he confirm that failure on such a scale will simply not be tolerated? Does he understand my constituents' concerns and doubts about the current leader and chief executive of Inverclyde Council being up to the task of sorting out the mess?

The First Minister: The Minister for Finance and Public Service Reform made it clear today that the report on Inverclyde Council should be taken seriously by all local people who are concerned. It is being taken seriously by those with responsibilities at the national level. The Minister for Finance and Public Service Reform expects urgent action—to which I believe the council has agreed—to address the issues that have been raised and we will closely monitor developments to ensure that there is progress. If there is no progress, further action will be needed.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): The First Minister will have seen the deeply disturbing story on the front page of *The Herald*, under the heading, "Toxic ships threat to Scotland". The story is about a company that owns 60-year-old ships that are full of toxic waste. It wants to buy the Nigg yard, which is in my constituency, and scrap the ships in it. Does the First Minister agree that the Nigg yard is a key asset in the Highlands? Does he agree that we have a skilled workforce and that there are highly desirable alternative buyers, such as the Cromarty Firth Port Authority, which envisages a long-term future for the yard that involves renewable energy fabrication work and a strategic rejigging of all oil, sea and energy-related work in the wider context of the Cromarty firth? Finally, will the First Minister

confirm that the Scottish Environment Protection Agency will evaluate all potential buyers in the context of the potential damage to our very special Highland environment?

The First Minister: It would be inappropriate for me to comment on the potential buyers and their role. Our commitment to the development of renewable energy production capacity should be clear to all members, and we will continue to support that in as many guises as we can.

On the speculation today about toxic ships, let me make it clear that any action of that sort at that yard or elsewhere would require the approval not only of the relevant planning authorities, but of the Scottish Environment Protection Agency, which would need to be assured that there was no threat to the environment either from the removal of ships from another yard to that location or from any work that might take place on the ships in that yard.

Secretary of State for Scotland (Meetings)

3. Colin Fox (Lothians) (SSP): To ask the First Minister when he will next meet the Secretary of State for Scotland and what issues he intends to discuss. (S2F-1681)

The First Minister (Mr Jack McConnell): I have no immediate meetings planned with the Secretary of State for Scotland.

Colin Fox: The First Minister will have seen the documentary evidence that was laid bare in Sunday's newspapers that exposes a highly questionable and even corrupt relationship between Lothian NHS Board and Labour politicians. In the light of those documents, does the First Minister believe that it is acceptable that the chairman of Lothian NHS Board gave a Labour MP the right to edit health board statements on hospital cuts before they were released? Is it also acceptable that the chief executive of the former West Lothian Healthcare NHS Trust circulated confidential, private communications to Labour councillors to give them party-political advantage during a controversial ward closure campaign?

The First Minister: At a glance, having seen the reports, I do not believe that either of those interpretations is an accurate analysis of the facts as they are laid out even in the newspapers. I also regard it as a matter for Lothian NHS Board, which should answer for its own actions.

Colin Fox: I am astonished by that answer. Has the Labour Party in Scotland become so mired in these practices that it cannot see political corruption in front of its own eyes? Let me help the First Minister with the answers. It is not acceptable for chairman Brian Cavanagh, a former Labour councillor, to seek Robin Cook's approval of press releases that are issued on behalf of Lothian NHS

Board. It is not acceptable that Peter Gabbitas, the then chief executive of West Lothian Healthcare NHS Trust, blind copied private correspondence to Labour councillors in West Lothian for political gain. It is not acceptable for Jennifer Stirton, the director of communications at Lothian NHS Board, to tell her staff to cover up my involvement in a public consultation exercise. Does the First Minister accept that he has a duty to defend integrity in public life in Scotland, and will he seek the resignation of the health board chairman for those clear breaches of public trust?

The First Minister: The Opposition parties—with, possibly, one exception—might want to hang people by newspaper reports, but I do not think that that is an appropriate or fair way in which to behave. Those at Lothian NHS Board who are responsible should answer for themselves. As would be expected of me, I have checked one of the pretty outrageous assertions that Mr Fox makes—the assertion that a health board allowed a member of Parliament, of any party, to veto a press release. That was certainly not the case in this instance. It is entirely appropriate that all health boards work with all local politicians of all parties not just in advance of decisions being made, but to ensure that their constituents can be reassured by the way in which those decisions are publicised. If any of the allegations that are being exaggerated by Mr Fox are true, Lothian NHS Board should deal with them. If Mr Fox is still dissatisfied, there are many other ways for him to raise his issues in the Parliament.

Developing Nations (Assistance)

4. Michael McMahon (Hamilton North and Bellshill) (Lab): To ask the First Minister how the skills and experience of Scotland's public sector can be used to assist developing nations. (S2F-1687)

The First Minister (Mr Jack McConnell): The best use of skills and experience from Scotland will be in helping training and trainers in Malawi and elsewhere. In that way, we can help to build their capacity to develop.

Michael McMahon: Is the First Minister aware that records show that the Boys Brigade took footballs to Malawi in the 1870s, which proves that Scotland was the first to take football to the rest of the world? In spite of Malawi's lack of opportunities, it might well develop enough talent to overtake Scotland in the FIFA rankings very soon.

On a more serious note, given that the First Minister has indicated that Scotland must play its part in developing Malawi's potential, is there a danger that his fresh talent initiative could run counter to that by attracting skilled workers away from working in the public services of Malawi and

other poor countries? How does the First Minister intend to prevent that while also attracting new talent to Scotland?

The First Minister: On Michael McMahon's first point, it is the case that Scotland took football to the world, but I hope that it comes back again some day. On that note, on behalf of all members in the chamber, I wish Walter Smith and his team every success against Moldova this Saturday. Thank goodness we are not playing Malawi, as the member's point might then be relevant.

On his second point, there is a serious issue about the potential conflict between our desire to attract fresh talent to Scotland and the impact that that might have on developing countries. From the very beginning of the fresh talent initiative, we have been extremely sensitive to the fact that any recruitment by us of skilled people in Africa and elsewhere could be detrimental to the local economy and local public services. That is why we have not pursued such recruitment as part of the fresh talent initiative and will not do so. In a free world, we cannot stop people applying for jobs here, but we can ensure that we do not actively recruit in Malawi, in Africa and in other developing areas. We will continue to take that approach.

The best way for us to help people in Malawi and elsewhere is to ensure that they are able to build capacity locally. In my discussions with him last week, the President of Malawi mentioned his own idea for what might be called a fresh talent initiative for his country to try to attract some of the Malawian diaspora back even for a short time to help to build skills capacity. We intend to help him with that, with the 5,000 Malawians who are currently based in Scotland.

Identity Cards

5. Stewart Stevenson (Banff and Buchan) (SNP): To ask the First Minister what discussions have taken place about the use of data originating from Scottish Executive departments and agencies in relation to the planned introduction of ID cards and biometric passports. (S2F-1689)

The First Minister (Mr Jack McConnell): We have maintained regular contact with the Home Office on the development of plans for identity cards, including provisions around the verification of information.

Stewart Stevenson: The First Minister will be aware of the serious and growing concern about the cost of the identity tax surrounding the proposals. Of equal concern is the important issue of whether data that are transferred from Scottish Executive sources will be treated in a secure way. Does the First Minister share my concern that the technical standards that will be used will allow any commercial organisation to retrieve data from a

biometric passport or ID card, without the person even being aware that that is taking place?

The First Minister: Mr Stevenson puts a bit of a hole in his own argument by mentioning biometric passports. He has tried to make a political point about identity cards by making a technical point that goes far wider than the issue of identity cards. I will be happy to respond to him on that issue in due course.

Patrick Harvie (Glasgow) (Green): I draw the First Minister's attention to the identity tax that Stewart Stevenson touched on. According to the Home Office, the figure for the cost of an ID card has risen to £93 but, according to independent researchers, those costs will rise further, to up to £300. Does the First Minister agree that even those members of his party who are untroubled by the civil liberties implications of ID cards should be deeply troubled by the social justice impact that such a high cost will have on the poorest individuals in society?

The Presiding Officer: This is about the implications for devolved matters.

The First Minister: The Presiding Officer and members in the chamber will understand that the two parties in the Executive do not share a common view on the introduction of identity cards—

Stewart Stevenson: The First Minister is on his own.

The First Minister: No, Mr Stevenson. As First Minister, I believe in doing these things reasonably and fairly, so it would be inappropriate for me to defend the Government's scheme in detail today.

I will say that, in the debates that we have on such issues, it is important that we are accurate and that we refer to the costs accurately. Many of the costs relate to the introduction of biometric passports, rather than to identity cards, and it is wrong to distort the debate in a way that implies something other than that. If Mr Harvie wants to ask me about the implications for devolved matters of the UK Government's bill, I will be happy to address that issue. I am sure that Mr McCabe will address it in the statement that he is due to make to the Parliament.

The Presiding Officer: We started a minute and a half late, so we still have time for question 6.

European Union (United Kingdom Presidency)

6. Iain Smith (North East Fife) (LD): To ask the First Minister what the Scottish Executive's priorities are for the UK presidency of the European Union. (S2F-1690)

The First Minister (Mr Jack McConnell): Scotland's priorities are twofold: first, to assist the

UK Government in delivering a successful and well-organised presidency, during which we promote Scotland as a vibrant, dynamic and welcoming country; and, secondly, to influence debate on issues such as better regulation, climate change and the future of structural funds.

Iain Smith: Obviously, dealing with the European constitution will take up a lot of time during the UK presidency, but the First Minister mentioned climate change, which Tony Blair has said will be one of his priorities for the UK presidency. When the First Minister next meets Tony Blair, will he take up with him the issue of the proposed wave farm off Orkney? The Department of Trade and Industry is refusing to provide sufficient grant funding for the project, which is important for developing renewable energy and dealing with climate change. There is a danger that the project will not go ahead because of the lack of support from the UK Government.

The First Minister: I understand that the Deputy First Minister and Minister for Enterprise is in discussions with the Department of Trade and Industry on the matter. Bilateral discussions are the right way of handling the issue. This and other important matters relating to the development of renewable energy form part of such discussions on a regular basis.

Point of Order

12:31

Mr David Davidson (North East Scotland) (Con): On a point of order, Presiding Officer. I assumed that, when members received ministerial replies to written questions, no other member would have access to the answer until it was printed in the next written answers report. On Tuesday at 5 pm, I received an answer to parliamentary question S2W-16538. Prior to that, I received a telephone call from a journalist querying why I had not issued a press release on the answer, as he had received one from a Lib Dem member at 3 pm. Given that I did not receive an e-mail giving the answer until 5 pm, will you investigate whether the answer was leaked to the member by a member of chamber office staff or by the Minister for Transport or a member of his staff? Will you confirm my understanding to be correct?

The Presiding Officer (Mr George Reid): We will look into the matter. However, it relates primarily to the internal arrangements in the appropriate ministry. The Minister for Transport is here, and I am sure that he will reflect on the matter and respond to Mr Davidson in due course.

12:32

Meeting suspended until 14:15.

14:15

On resuming—

Question Time

SCOTTISH EXECUTIVE

Education and Young People, Tourism, Culture and Sport

Youth Festivals

1. Mrs Nanette Milne (North East Scotland) (Con): To ask the Scottish Executive what contribution events like youth festivals make to Scotland's culture and tourism sectors. (S2O-6904)

The Minister for Tourism, Culture and Sport (Patricia Ferguson): We recognise that youth festivals are an important part of Scotland's cultural sector. There are also a number of events and festivals held across Scotland that contain significant youth or children's elements. All those events attract visitors and media attention to the area concerned. That is why EventScotland supports the Aberdeen international youth festival and other regional events such as big in Falkirk and word, which is the University of Aberdeen's writers festival.

Mrs Milne: I thank the minister for her answer. I am particularly pleased that she mentioned the Aberdeen international youth festival, in which I have a declared interest as a trustee. I hope that she can confirm today that she will attend the festival this year. Does she agree that festivals such as the one in Aberdeen are extremely important in encouraging young people to participate in the arts and to make long-lasting international friendships? Does she further agree that all those who are involved in the excellent Aberdeen international youth festival, which has now been going for more than 30 years, should be congratulated on organising 10 days of activities that will be enjoyed by young people not only from Scotland but from as far afield as China?

Patricia Ferguson: I am grateful to Nanette Milne for giving me the opportunity to recognise the good work that goes on both in Aberdeen and elsewhere and, in particular, the contribution made by volunteers, trustees and patrons such as Nanette Milne. The event to which she refers is a particularly important one, which is why I am so pleased that EventScotland was able to support it this year by giving some assistance.

I have also been interested to hear about the Aberdeen storytelling and theatre festival. I understand that, this year, it is hoped that the festival will be even bigger than it has been in

previous years. We can be confident that a number of cultural activities of particular interest to young people and children are happening this year. Diary permitting, I would very much like to attend.

The Deputy Presiding Officer (Murray Tosh): I am afraid that Mr Harper is not present to ask question 2. That is very regrettable from the point of view of the public in the gallery, from the point of view of ministers, who now lose their opportunity to make their points and—most important, I think—from the point of view of members who wished to ask supplementary questions. That is all lost. Members must make the effort to be here to ask their questions.

European Union Education Ministers (Meetings)

3. Michael McMahon (Hamilton North and Bellshill) (Lab): To ask the Scottish Executive what lessons can be learned from fellow European Union education ministers following recent meetings in Brussels. (S2O-6980)

The Minister for Education and Young People (Peter Peacock): I met representatives from Finland, Sweden, Denmark, Ireland, Luxembourg, the Netherlands and the Flemish Community of Belgium in Brussels last week to share ideas about our common interests and how we might learn from one another. It is useful to compare and contrast our approaches to education with those of other European nations and regions, and I plan to have further such discussions.

Michael McMahon: I am sure that the minister will have picked up a few tips from his fellow ministers. Being a member of this broad-minded Parliament, I ask the minister what lessons the EU can learn from us.

Peter Peacock: Members have no idea how relieved I am that that was not a question about the European constitution.

Michael McMahon is right to raise the fact that we can learn from other nations. That is exactly why we have such discussions. It is useful to contrast with others how we perform and to find out what they have found helpful for their own success.

It is equally true to say that we have things to offer other countries. In my discussions last week, it was clear that people are very interested in what we do to induct new teachers into our teaching profession and in how we have changed that in recent years. They are interested in how we use self-evaluation to help to improve performance in our schools and in our exam system and how we set standards for exams. They are also interested in teacher registration. Given what has been said recently about vocational courses in our schools, it

is interesting that other countries are also examining some of the same things that we have been looking at in our school-college review in order to ensure that there is a closer link between schools and vocational education and to avoid doing what many countries in the rest of Europe have been doing, which is to separate completely vocational courses from non-vocational or academic streaming in schools.

I could go on. For example, there is also interest in our enterprise education, in which Scotland leads the world, in our public-private partnership approach, through which we are rebuilding our school estate, and in how we keep our staying-on rates for schools high in comparison with many countries.

There are many things that we can learn; equally, there are many things that we can contribute to a wider European understanding of education.

The Deputy Presiding Officer: There is an almost tangible sense of expectation in the chamber. I call Phil Gallie.

Phil Gallie (South of Scotland) (Con): I congratulate the minister on the first part of his answer. Does not that show what can be achieved in Europe when people co-operate, work together and learn from one another? However, he will be aware of the recent votes on the European constitution—

The Deputy Presiding Officer: Make sure this is relevant, Mr Gallie.

Phil Gallie: Does the minister agree with me—for a change—that everything about the European constitution is all that is bad: compulsion, regulation and enforcement? He was right in his first response. Does he agree with me now?

Peter Peacock: I tend not to agree with Phil Gallie on most things European. I am a strong supporter of a strong Europe. Since the war, we have benefited in finding security, peace and co-operation, which are hugely important not just to this country but to Europe as a whole. I applaud what the European Union has done over the years; equally, it would be quite wrong for me to interfere in the proper democratic decisions made in other parts of Europe in the past few days. Some constitutional reform in Europe is required. One has only to attend a European education council meeting to realise how much reform is still needed.

Fiona Hyslop (Lothians) (SNP): Is the minister content with Scotland's current representation under existing treaties with regard to European education, and science and technology education in particular? Previously we have not been represented properly, because United Kingdom

Governments have not addressed the issue of science and technology education in Scotland. Did he address that issue at his recent meeting with ministers from other European countries?

Peter Peacock: We covered a number of issues and touched on science in the broadest of terms. I cannot say that we had deep discussions about it, but we intend to return to all sorts of discussions in the future. On the point about representation, I am of course satisfied that Scotland is well represented in Europe, not least because Scottish ministers lead the UK delegation at council meetings, as I did last week in Brussels.

Education (Parental Involvement)

4. Mrs Mary Mulligan (Linlithgow) (Lab): To ask the Scottish Executive how it will encourage more parents to become involved in their children's education. (S2O-6986)

The Minister for Education and Young People (Peter Peacock): We are determined to increase parental involvement in education. We have issued the first five titles in the making the difference series for parents; we are consulting on a draft bill to give parents more opportunities to take decisions locally; and this week we are launching parent partnership projects, which will provide schools with funding for local projects.

Mrs Mulligan: I recently attended a meeting of school board members from West Lothian, who were concerned that changes made to school boards by the Scottish Executive would reduce parental involvement in schools. Is that the minister's intention, and would he be willing to take suggestions from parents as to how school boards could be improved so that they offer more opportunities for parents to be involved in their children's education?

Peter Peacock: I am grateful to Mary Mulligan for asking that question. My clear intention is to seek to extend and enrich parental involvement. We want to do that because we know that if we can engage parents to support the learning of children such as those in the gallery from Inverkip Primary School, educational outcomes will improve as a consequence. The concept is simple: we want parents to be actively involved.

I am conscious of the anxieties that exist in school boards about the nature of the changes that we are proposing, but I stress a number of points. First, we are consulting parents—the consultation is open—and we are listening to what they have to say, which addresses one of the points that Mary Mulligan raised. We have sponsored a dozen meetings, and many others are taking place. We have already had 400-plus representations. I have met representatives of the Scottish School Board Association and other

school board representatives in different settings. I stress that we are listening.

I do not think that that any draft bill that has gone out to consultation has not had changes made to it before it got to its final stages in Parliament. I anticipate that that will happen with the draft Scottish Schools (Parental Involvement) Bill, on which we are consulting. We want not only to keep the best of what we have, but to provide more flexibility and choice and to adapt systems as we proceed. We want to involve more parents, because one of the weaknesses of the current legislation is that, by statutory definition, only 1 per cent of parents can be involved in their school board.

The issue is not just about representation; it is also about how we can encourage parents to get involved every day in supporting their child's learning. That is why we intend to use the draft bill to place on local authorities new duties actively to promote parental involvement and to increase rights to information in that context. That is about getting more successful pupils.

Lord James Douglas-Hamilton (Lothians) (Con): Does the minister agree that the draft Scottish Schools (Parental Involvement) Bill threatens to remove parents' current right to statutory representation, a move that is particularly perplexing in the light of the comments that were made by the Executive in a new 2004 foreword to the guidance on the School Boards (Scotland) Act 1988, which said that boards were in

"a unique position as a mechanism for the two-way flow of information between parents, schools and education authorities"?

Will the minister accept that the point that Mary Mulligan made has also occurred to us and that she is making valid and legitimate representations?

Peter Peacock: I completely agree that Mary Mulligan is making valid and legitimate representations. I have made it clear that we are listening. We are engaged in a consultation process, the aim of which is to increase parental involvement. As a result of our initial consultation, it is already clear that there are areas in which our proposals can be strengthened, which is what we intend to do.

Equally, I have to say that I do not think that what Lord James Douglas-Hamilton has said is correct. We are not proposing to remove statutory recognition. New parental forums would have the same statutory recognition that school boards currently have. Again, I stress that we want to ensure that more parents have more opportunities to become involved. From the research that we have done, we know that many parents find the current system off-putting. They say that they are

reluctant to participate, that the systems are formal and enclosed and that they feel intimidated by the bodies that they would have to become involved with. We want to remove the impediments to their involvement and encourage more representation. We are listening to what we are being told in that regard. I will listen closely to any constructive suggestions that Lord James Douglas-Hamilton or anyone else has to make, but I will not accept any ideological myopia on this subject.

Leisure Facilities

5. Pauline McNeill (Glasgow Kelvin) (Lab): To ask the Scottish Executive whether it has a strategy to ensure that young people in all communities have adequate access to leisure facilities. (S2O-6982)

The Minister for Tourism, Culture and Sport (Patricia Ferguson): The statutory responsibility to ensure that there is adequate provision of and access to leisure facilities lies with local authorities. It is for them to determine local needs and priorities.

Pauline McNeill: The minister might be aware that I have had a long-standing interest in establishing the views of young people, particularly those between the ages of 12 and 16, with regard to what they want to do with their leisure time. Does she agree that it is important to have good research and information on what young people want to do with their time? Does she further agree that it is important that the Executive work hand in hand with local authorities to develop a strategy to counterbalance the issues in the antisocial behaviour debate? The majority of young people would benefit from having available to them facilities from which they could choose. It might even enhance the reputation of our Parliament in the eyes of young people if we were active on this issue.

Patricia Ferguson: Pauline McNeill makes a valid point. I agree with her about the need to involve young people in the decision-making process on this issue and on a range of others. I hope that the new community planning process might give them such a voice.

A couple of specific examples have worked particularly well. The Executive has a particular strength with regard to our cross-cutting approach and I have been able to work with the ministers with responsibility for justice on the twilight basketball and football leagues, which have been popular with young people in Glasgow and have diverted them from other activities that they might otherwise participate in.

I am also aware that Glasgow City Council has recently undertaken an audit of its facilities, and it occurs to me that Pauline McNeill might like to

raise with the local authority the possibility of running a complementary exercise that would discuss those facilities with young people and find out where any gaps might be.

Coastal Paths

6. Marilyn Livingstone (Kirkcaldy) (Lab): To ask the Scottish Executive what action it is taking to encourage area tourist boards to promote the coastal path network. (S2O-6973)

The Minister for Tourism, Culture and Sport (Patricia Ferguson): In areas where the coastal path network is a high priority, for example in Fife, VisitScotland has entered into a partnership agreement to promote the coastal path in conjunction with local partners.

Marilyn Livingstone: I welcome the introduction of the coastal path network, particularly in Fife, and have seen at first hand the benefits that it has brought to the community that I represent. As the minister is aware, the Fife coastal path is accessible to wheelchair users and people who use mobility scooters. Indeed, organisations such as Forth and Tay Disabled Ramblers have made use of that welcome facility. What steps are being taken to promote access for users of wheelchairs and mobility scooters not just to the Fife coastal path but to paths throughout Scotland?

Patricia Ferguson: I was not aware of that aspect of the project and am obviously very pleased to hear about it. I know that the Fife coastal partnership is currently funding marketing activities such as brochure production, website promotion, direct mail and press trips to locations. Local businesses have also been encouraged to adopt the walkers welcome scheme, which is also part of such a partnership. That said, it would be entirely sensible for the partnership to consider the possibility of providing additional information on access for people who have disabilities or who use aids to mobility. I will certainly take the matter up with VisitScotland.

Alasdair Morgan (South of Scotland) (SNP): Fife is clearly to be congratulated on its coastal path. Indeed, a pan-Scotland coastal path from Gretna to north of Berwick would have considerable mileage, if not benefits. What role would the Executive have in bringing together all councils with maritime seabords to introduce such a coastal path, which would have considerable tourism potential?

Patricia Ferguson: As I understand it, there are already a number of what could be called core paths, which should link up to provide a core path network. However, I would be more than happy to consider any possibility for the Executive—or, at least, this part of the Executive—to become

involved in helping and encouraging such a project. Perhaps Mr Morgan might like to discuss the matter with me after question time.

Health (Sport)

7. Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): To ask the Scottish Executive whether it will further promote the link between active sport and achieving the target of a healthier nation. (S2O-6930)

The Minister for Tourism, Culture and Sport (Patricia Ferguson): The Executive is fully committed to improving the nation's health and well-being and regards sport and physical activity as playing a key role in achieving that aim. We are determined to play our part in helping to meet the targets of sport 21, which mirror those set out in the report of the physical activity task force.

Mr Arbuckle: Does the minister agree that increasing the number of full-time trained physical education teachers in the primary school sector would be one of the best investments that this country could make?

Patricia Ferguson: As Mr Arbuckle knows from previous debates, a big move is currently under way to encourage an increase in the number of PE teachers. I should also point out that the University of Strathclyde and Glasgow City Council are running a course that allows existing primary teachers to develop PE specialisms. The Education Department has had discussions with the deans of faculties of education at higher education institutions and is considering how that course can be rolled out elsewhere.

The Deputy Presiding Officer: Question 8 is in the name of Donald Gorrie. *[Interruption.]*

I have had a note from Mr Harper, indicating his apology to the chamber for missing his question because of a mistake in his timing. I cannot imagine what has happened to Mr Gorrie, but I apologise on the chamber's behalf to Mr Robson who, as a result, entirely misses out on this afternoon's question time.

Sportscotland (Funding Distribution)

9. Karen Whitefield (Airdrie and Shotts) (Lab): To ask the Scottish Executive how it monitors the distribution of funding from sportscotland to each local authority area. (S2O-6992)

The Minister for Tourism, Culture and Sport (Patricia Ferguson): The Executive does not monitor how funding from sportscotland is distributed to each local authority area. Sportscotland operates a range of application-based programmes, and funding is awarded against set criteria.

Karen Whitefield: Is the minister aware of North Lanarkshire Council's concerns over receiving sufficient money for its applications? Does she agree that sportscotland's funding has a cross-cutting element, in that it not only encourages greater physical activity but tackles ill health and deals with antisocial behaviour through the diversionary measures that have already been mentioned this afternoon? As a result, it is important that there is an increase in applications from local authority areas that have particular difficulties with ill health and antisocial behaviour. Does she also agree that local authorities and voluntary organisations must be creative in their thinking about what they can do with that money?

Patricia Ferguson: I agree entirely with what Karen Whitefield has suggested. In fact, there was an application from her own local authority in Lanarkshire for funding under the regional sports facilities programme and an award of some £5 million was made. The local authority is currently working with sportscotland to take that project forward to the second stage. Local authorities should take the opportunities that they have under that programme and a range of others operated by sportscotland. Sometimes those programmes cannot be broken down by individual local authority area because they may have a more cross-cutting nature.

We also wish to encourage local authorities to operate across boundaries, where that is appropriate and where they wish to do so, because it often makes sense to do that in the provision of facilities. As Karen Whitefield said, it is important for local authorities to think creatively, and there are partnership managers in place at sportscotland who will facilitate that process if local authorities wish to access it.

Finance and Public Services and Communities

Public-private Partnerships (Green Space)

1. Mr Adam Ingram (South of Scotland) (SNP): To ask the Scottish Executive what evaluation it has made of the impact of public-private partnership financing on community resources such as green space. (S2O-6917)

The Minister for Finance and Public Service Reform (Mr Tom McCabe): The Executive has not carried out any such evaluation. Regardless of the source of financing, it is the responsibility of individual public sector procuring bodies to assess their needs and priorities when instigating infrastructure projects. Any such assessment will include consideration of community elements.

Mr Ingram: The minister will be aware of last evening's members' business debate on the loss

of playing fields and open space, during which several members highlighted the adverse impact of PPP school building projects in particular, which are putting development pressure on playing fields and green space that are in council ownership. That concern has also been expressed by sportscotland. Will the minister act to relieve that pressure by helping councils to close the affordability gap that is associated with PPP schemes, and enhance councils' ability to acquire new sites for schools while protecting community green space?

Mr McCabe: The Scottish Executive already supplies significant amounts of finance for PPP projects. Local government in Scotland is enjoying unprecedented levels of finance—higher than ever in our history. There is not necessarily a direct correlation between PPP and green space. National planning policy guideline 11 addresses concerns about the use of open space, including playing fields, and confirms that playing fields should not be developed unless certain stringent conditions are met. There is also a requirement for sportscotland to be consulted on any application that would prejudice, or lead to the loss of, playing fields. If any planning authority or local authority is minded to grant permission against the advice of sportscotland, it is required to refer that decision to Scottish ministers.

Mr Mark Ruskell (Mid Scotland and Fife) (Green): The PPP school building programmes are giving rise to situations in which local authorities, as partners in PPP consortia, are applying to themselves for planning permission. That situation has given rise to major concerns in communities in the Stirling area. Can the minister assure us that his department will scrutinise such applications with rigour and ensure that, where proposals are at odds with local and structure plan provisions or where the application of due process is found to be flawed, there will be a public inquiry.

Mr McCabe: Adequate provision exists. If a situation such as that which was outlined by Mr Ruskell should occur, there is a requirement to refer the application to Scottish ministers for further consideration. I believe that the requirements that are already in place give more than adequate protection. Of course, if there were any evidence that the existing system is in some way failing to protect, we would always be prepared to review it. However, we do not believe that any such evidence exists.

The Deputy Presiding Officer: Ted Brocklebank.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): To ask the Scottish Executive how it plans to increase efficiency in government.

The Deputy Presiding Officer: I am sorry, Mr Brocklebank, but you are on screen as seeking to ask a supplementary question to Mr Ingram's.

Mr Brocklebank: I am sorry. I pressed my button to alert you to the fact that I wanted to come in later.

Retail Developments (Planning)

2. Susan Deacon (Edinburgh East and Musselburgh) (Lab): To ask the Scottish Executive what plans it has to address any concerns about the planning process in respect of retail developments. (S2O-6963)

The Minister for Communities (Malcolm Chisholm): The Executive will soon publish a planning white paper and a consultation paper on a revision to planning policy in respect of town centres and retailing.

Susan Deacon: I think the minister is aware that there has been considerable celebration in Portobello during the past week following the decision of an inquiry reporter to reject plans for an unwanted superstore in the area. Is he also aware that, despite that result, those of us who have been involved in the process over the past two years believe that it has brought into sharp focus a number of weaknesses and deficiencies in the decision-making process? Will he agree to meet me to reflect on that local experience so that it might inform thinking and policy at national level, particularly given the plans for forthcoming planning reform?

Malcolm Chisholm: I would certainly be delighted to meet Susan Deacon to discuss those issues. She has raised them with me already, so I know something about her concerns, but a further meeting would be most welcome.

I pay tribute to the role that Susan Deacon played in the campaign. I know that several key issues about the conduct of inquiries, the need to ensure that we engage early with communities and speeding up the planning process have been raised by that application as well as many others.

Public Services (Efficiency)

3. Stewart Stevenson (Banff and Buchan) (SNP): To ask the Scottish Executive how it measures efficiency in the public services. (S2O-6946)

The Minister for Finance and Public Service Reform (Mr Tom McCabe): When I gave evidence to the Finance Committee on 10 May, I made it clear that we are committed to making government more efficient and to saving money for the people of Scotland by delivering the same outputs in the public sector with fewer inputs. We are also looking for ways to improve public

services by freeing up staff time to deliver more outputs with the same inputs.

Stewart Stevenson: I am sure that we all share those laudable objectives. Is the minister aware of the difficulties that may be created by accounting for costs in the apparently simple-minded way that is outlined in the current proposals to release staff from their present positions? The difficulty is that the cost of a member of staff is not the same as the cost that is saved by moving that member of staff because the overheads are not moved if a member of staff is moved. Will he examine carefully the real savings and not what in many cases are the fantasy savings that are shown in the paperwork that the Executive has published?

Mr McCabe: I reject the notion that there is any fantasy about the figures that the Executive has published. The fantasy is in the peculiar situations that Mr Stevenson regularly suggests to Parliament.

There is no contradiction in our presentation of the information. We have never said that the saving is any different because a member of staff has been moved. What we have said is that there are opportunities, through the use of technology and through closer co-operation between organisations, for staff who currently engage in support services to retrain and to be available for the supply of services directly at the front line. People can feel and touch those services and they can see the difference that they make to the quality of their lives day to day.

Prime Minister's Delivery Unit

4. Dr Elaine Murray (Dumfries) (Lab): To ask the Scottish Executive whether it is aware of the work of the delivery unit at Whitehall and whether the Executive undertakes a similar approach with regard to achieving its priorities. (S2O-6987)

The Minister for Finance and Public Service Reform (Mr Tom McCabe): We take our own distinctive approach to monitoring and reporting the Executive's priorities. We are of course aware of the work of the Prime Minister's delivery unit in London. Officials here in Scotland have regular contact with that unit and share good practice with it.

Dr Murray: The minister will be aware that Professor Barber addressed the Finance Committee on 17 May. He described to the committee a process by which monthly reports on key milestones for the 20 top priorities, such as waiting time reductions, are monitored so that progress can be tracked and ministers know whether they are on target to achieve objectives. Is there a similar element within the Executive's distinctive approach that enables ministers to know whether they are on target to achieve what they want to achieve?

Mr McCabe: We have established an efficient government delivery unit within the Executive. The unit regularly reports to me. Ministers who are responsible for individual portfolios are aware of their responsibility to deliver savings. As I have said before, we are serious about efficient government. We seek to realise government's potential to release resources for the front line, to supply services to the people of Scotland far more effectively and efficiently and to create new services that better serve our needs in Scotland.

I confirm that we have recently discussed our efficient government work with senior ministers at Westminster. I am happy to confirm that they acknowledged the positive work that we are doing on efficient government here in Scotland.

Des McNulty (Clydebank and Milngavie) (Lab): An important element in Professor Barber's findings was that focusing on a small number of targets that were adopted by both ministers and senior civil servants led to both sides pulling together. Does the minister believe that the civil service in Scotland can learn things from the work of the Prime Minister's delivery unit? Instead of focusing on 400 partnership objectives, can we narrow those down to the most important priorities?

Mr McCabe: Indeed. We need to separate the 400-odd targets that are the focus of the partnership agreement from the specific efficient government targets. As I said, we believe that our efficient government measures will release resources that will allow us to focus on new services and to consider how we can deliver our work far more effectively.

As I mentioned, regular exchanges take place between officials in Scotland and officials down south. I have stressed that we need to be open minded and ready to learn from one another's experience. That is why we have such exchanges between officials and that is why I intend to have a specific discussion with the Gershon team in London, in addition to my recent discussions with my ministerial colleagues there. I am glad to be able to confirm, as I said a few moments ago, that we received an encouraging response from them about how we are going about that work here in Scotland.

Contaminated Land (Safeguards)

5. Mr Bruce McFee (West of Scotland) (SNP): To ask the Scottish Executive what safeguards are in place within the planning process to protect communities living close to contaminated land where development of that land is being proposed. (S2O-6920)

The Deputy Minister for Communities (Johann Lamont): Under the Environment Act 1995, a new regime for identification and

remediation of contaminated land came into force in Scotland in July 2000. The interaction between that regime and the planning system is set out in planning advice note 33, "Development of Contaminated Land"

Mr McFee: Glasgow and Clyde valley structure plan committee has recommended that some 2,300 houses and factories be built on the site of the former Royal Ordnance factory in Bishopton, Renfrewshire. Currently, there is no full audit of all chemicals and biological materials that were used, produced and stored at the site over the past 150 years, nor is there full audit mapping of the storage, containment and disposal of materials on site. Will the minister reassure the local community that such basic information will be required before any alteration to the structure plan is approved by ministers? Is she aware that, to date, the Scottish Environment Protection Agency has been unable to play a full role because Renfrewshire Council has failed to register the site as being contaminated?

Johann Lamont: I am aware of some of those issues because Trish Godman, the local MSP, has raised with me the issue of the proposed development. Obviously, I do not want to speak directly about an individual development that may come before Scottish ministers in the future.

The regime that is in place for contaminated land is serious and includes a commitment to understanding the anxieties of communities about contamination. Local authorities have a duty to investigate for contaminated land and to take remedial measures. Before any change of land use is granted, it is essential that contamination be assessed and risks identified, taking into account what the change in use is for. If necessary, the local authority must carry out the remediation work or ensure that such work is part of the planning conditions, in which case the challenge is enforcement. However, a model planning condition exists that can be submitted and approved by the planning authority. I am sure that we all share a commitment to and an understanding of the importance of local authorities carrying out those responsibilities.

The Deputy Presiding Officer: Question 6 was not lodged.

Credit Unions

7. Bill Butler (Glasgow Anniesland) (Lab): To ask the Scottish Executive what steps it is taking to support the credit union movement. (S2O-6961)

The Deputy Minister for Communities (Johann Lamont): The Executive is committed to supporting the work of credit unions as part of the financial inclusion action plan and the overall closing the opportunity gap approach. We

launched a £1.1 million capacity fund in September 2003 to increase credit unions' ability to help low-income households to gain access to financial services.

Bill Butler: I acknowledge and welcome the various methods of support that the deputy minister outlined. I look forward to welcoming her colleague, the Minister for Communities, to Drumchapel Community Credit Union tomorrow, so that he can meet its members and celebrate its 35th anniversary. The minister will be aware of the recent European Commission ruling regarding the effect of the removal of the cap on Government funding for credit unions, which currently stands at £68,000 over three years. Does the Executive welcome the ruling and intend to examine the level of financial support that it provides to credit unions, in order to make best use of the removal of the cap?

Johann Lamont: I welcome the question from Bill Butler, who as a fellow co-operator has indicated in the past his full commitment to credit unions. I pass on my congratulations to Drumchapel Community Credit Union on its anniversary. I not only welcome the decision on European Community state aid but think that we should congratulate the Scottish Executive on its pioneering role in pursuing the matter with the European Union and delivering on it. We should recognise that, as a consequence, other countries in the United Kingdom will pursue their notifications.

This is a welcome opportunity. We believe that credit unions have a particular role to play in addressing the problem of financial exclusion. We know that people in poor communities suffer disproportionately from that, as a consequence of some of the regulations that relate to the financial sector. We are keen for credit unions to play a role in supporting people in poor and disadvantaged communities, so that they can maximise the benefits to those people of being able to save.

Social Housing (Modernisation)

8. Mr Frank McAveety (Glasgow Shettleston) (Lab): To ask the Scottish Executive what action is being taken to modernise social housing in Glasgow. (S2O-6978)

The Minister for Communities (Malcolm Chisholm): Unprecedented levels of investment will go into the social housing stock in Glasgow city, with £1.5 billion being invested over a 10-year period in Glasgow Housing Association stock. This year, £127 million is being invested. In the current year, we will also invest more than £68 million in the city to improve the quality and availability of social housing that is provided by other housing associations.

Mr McAveety: I welcome the scale of investment that the minister has identified for Glasgow's obvious housing need. I recognise the work that has been done and the quality of housing regeneration that has taken place in the new Gorbals area in my constituency. It is now almost impossible to distinguish between housing that is owner-occupied and housing that is socially rented, which is an incredible achievement. Can he say what progress has been made on the target of achieving second-stage transfers in Glasgow, to ensure that many other communities across the city benefit from quality developments similar to those in the Gorbals?

Malcolm Chisholm: I was pleased recently to see housing developments in Frank McAveety's constituency, although not the particular development to which he refers. Along with Johann Lamont, I had a meeting recently with the Glasgow Housing Association to discuss second-stage transfers and other issues. We will have a follow-up meeting within the next few weeks. We are keen that second-stage transfers should go ahead as fast as possible. Some details regarding the disaggregation of stock are still to be resolved, but he can be assured that we are strongly committed to the process of second-stage transfer and to its taking place as soon as possible. We will repeat the point and get an update on the situation at our next meeting later this month.

The Deputy Presiding Officer: Question 9 has been withdrawn.

Efficiency in Government

10. Mr Ted Brocklebank (Mid Scotland and Fife) (Con): I apologise for slightly jumping the gun earlier, Presiding Officer.

To ask the Scottish Executive how it plans to increase efficiency in government. (S2O-6943)

The Minister for Finance and Public Service Reform (Mr Tom McCabe): Our plans for increasing the efficiency of public services in Scotland were set out in the document "Building a Better Scotland: Efficient Government—Securing Efficiency, Effectiveness and Productivity", which was published in November 2004. The efficiency technical notes that were published at the end March this year contain more details of the projects that we have identified to deliver cash-releasing savings. An updated version of the document, including the technical notes for projects that we have identified to deliver time-releasing savings, will be published in the near future.

Mr Brocklebank: Following Duncan McNeil's questions to the First Minister this morning, does the minister accept yesterday's highly critical report from Audit Scotland that at least one local

authority—Lib Dem-run Inverclyde Council—had absolutely no way of knowing whether or not it was delivering council services efficiently? Does he accept that Inverclyde is not alone among Scottish councils in showing what Audit Scotland calls a lack of "effective leadership and direction"? Can he give Parliament a categorical assurance that he will intervene directly to force other failing councils to implement the efficiency measures to which he and the Executive have committed themselves?

Mr McCabe: I think that Mr Brocklebank might be in unintentional danger of misquoting the Accounts Commission. It did not say that other councils were guilty of mismanagement in that sense. The report to which he refers is about Inverclyde Council specifically. I have made it perfectly clear that I find the circumstances that the report discovered to be completely unacceptable and I have made it clear to that council that I expect to see a recovery plan put in place along with timescales. I have said that I will attend that council personally early next week to reinforce that point. I have also pointed out to the council that should I and the Executive not see the required level of correction, other powers are available to us.

However, I stress that the Accounts Commission also said that some of the difficulties that it has uncovered have been in existence since 1996.

Presiding Officer's Ruling

14:56

The Deputy Presiding Officer (Murray Tosh): Before we go to the next item of business, there is an outstanding point of order to be dealt with. Earlier today, David Davidson asked the Presiding Officer to investigate whether the response to a question that he received on Tuesday was issued by the chamber desk or by the Scottish Executive prior to its being issued to him. Clearly, I cannot answer for what the Executive does in that regard, but I confirm that the response to the question was received by the chamber desk only at 5.02 pm on Tuesday, which was after it had been issued to Mr Davidson.

Protection of Children and Prevention of Sexual Offences (Scotland) Bill: Stage 3

14:56

The Deputy Presiding Officer (Trish Godman): The next item of business this afternoon is stage 3 of the Protection of Children and Prevention of Sexual Offences (Scotland) Bill. For the first part of stage 3 proceedings, members should have the following: the bill; the marshalled list, which contains all amendments selected for debate; and the groupings.

I will allow an extended voting period of two minutes for the first division. Thereafter, I will allow a voting period of one minute for the first division after debate on a group. All other divisions will be 30 seconds.

Section 1—Meeting a child following certain preliminary contact

The Deputy Presiding Officer: Group 1 concerns the definition of “sexual activity” and “sexual services”. I point out that if amendment 8 is agreed to, amendment 40 will be pre-empted; if amendment 10 is agreed to, amendment 41 will be pre-empted; and if amendment 12 is agreed to, amendment 49 will be pre-empted. Amendment 1, in the name of the minister, is grouped with amendments 2 to 8, 40, 9, 10, 41, 12, 49, 13, 14, 52, 53, 16, 21 and 22.

The Deputy Minister for Justice (Hugh Henry): These amendments do a number of things, but the effect of all the Executive amendments in this group is to provide clear and consistent definitions of “sexual activity” and “sexual services” for the bill.

We propose to change the way in which the grooming offence is constructed. As the provisions were drafted originally, the grooming offence would be complete if, following prior communication or meetings, the accused met or arranged to meet a child with the intention of committing a relevant offence. A list of sexual offences was included as relevant offences in schedule 1. However, the Crown expressed concerns about that approach. Its concern was that the court might require it to prove precisely which of the relevant offences the accused intended to commit. We recognise that that might create a loophole that would allow an accused to escape conviction if the Crown were not able to specify the exact offence that the accused had in mind—for example, whether it was to be rape or some other sexual assault.

15:00

Amendment 1 and consequential amendments propose a new approach, whereby the offence will be complete if, following prior communication or meetings, the accused meets or arranges to meet a child with the intention of engaging in unlawful sexual activity with the child. The approach is different from the one that is taken in England and Wales, but we think that it will work well in Scotland. The Crown will be required to prove that the accused intended to engage in unlawful sexual activity involving, or in the presence of, the child. However, the Crown will not be required to prove the specific activity in which the accused intended to engage.

In order to make that change, we must provide a definition of "sexual activity" that will apply to the grooming offence. The bill contains such a definition for risk of sexual harm orders, but amendment 21 will provide a new definition. The focus of the definition remains on whether a reasonable person who took into account all the circumstances of the case would consider the activity to be sexual. However, the approach also allows the purpose of the accused's activity to be taken into account alongside other circumstances, such as the nature of the activity.

Kenny MacAskill and Margaret Mitchell lodged amendments that attempt to take the approach that I described, but the Executive's proposed definition will go further, by including a range of associated activities, such as an attempt or conspiracy to engage in sexual activity and aiding and abetting another person in relation to engaging in sexual activity. The proposed new definition will be applicable consistently to all references to "sexual activity" in the bill.

Amendments 49 and 53, in the name of Kenny MacAskill, would simply lift the definition of "sexual" that applies in England and Wales, whereas the Executive amendments fit with the unique, Scottish approach that we have taken in the bill. During this morning's debate, Stewart Stevenson suggested that Kenny MacAskill had adopted a new Labour approach; this afternoon, Kenny MacAskill is trying to promote for Scotland an approach that was designed for England and Wales. The Executive's approach is more appropriate to a Scottish bill.

Executive amendments will amend provisions that refer to "prostitute" and "prostitution" so that they refer instead to

"the provision of sexual services".

As I said at stage 2, the approach means that we will be able to catch not only those who knowingly pay for sexual services from young people or arrange for young people to work in prostitution but those who exploit young people—particularly,

but not exclusively, young women—in so-called work such as lap dancing, pole dancing, stripping and operating telephone sex lines. Any kind of sexual service will be covered by the bill. To do that, we must ensure that we are happy with the bill's definition of "sexual services". Therefore, other Executive amendments in the group will provide a consistent definition of "sexual services" throughout the bill, which can easily be based on the new definition of "sexual activity" that will apply throughout the bill. Amendment 16 sets out exactly what is meant by "sexual services".

I am sympathetic to the aims of Kenny MacAskill and Margaret Mitchell in lodging their amendments, but I strongly argue that the Executive amendments will go further. I hope that Kenny MacAskill and Margaret Mitchell will agree that the Executive amendments will address the matters about which they were concerned and ensure that there is a single, clear, consistent definition in the bill. I hope that on that basis they will not move their amendments.

I move amendment 1.

Margaret Mitchell (Central Scotland) (Con): I welcome the new, more straightforward approach that the Executive has proposed, whereby unlawful sexual activity will be an offence and there will be no need to have recourse to schedule 1. As the minister rightly suggested, I lodged amendment 40, which relates to a communication that is sexual, and amendment 41, which relates to an image that could be regarded as sexual, because I was concerned about the interpretation of section 2.

Amendments 40 and 41 seek to protect anyone who is involved in teaching sex education, including professionals such as teachers or doctors, from malicious or false claims. They make it absolutely clear that for a communication to be sexual there must be the crucial element of sexual gratification—a term that is in line with the minister's own definition in amendment 12, which includes a reference to sexual gratification. I seek further assurance from the minister that professionals who are involved in sex education will not be left vulnerable by our failing to include a requirement to prove that a communication has been for personal sexual gratification.

The Deputy Presiding Officer: I call Kenny MacAskill. I apologise—I will start again. I call Bruce McFee to speak to amendment 49 and other amendments in the group.

Mr Bruce McFee (West of Scotland) (SNP): Thank you, Presiding Officer. I am not new Labour, which will be useful for me.

Amendments 8 and 10, in the name of the minister, seek to make matters clearer, but amendments 40 and 41, in the name of Margaret Mitchell, would do anything but. By introducing the

criterion that for a communication to be sexual a reasonable person must in all circumstances regard it to be sexual and for a person's own gratification could open up a Pandora's box. What if the communication is clearly for the gratification of a third party? We have heard much evidence about the operation of paedophile rings and the preparation of children to be abused by third parties. The bill hammers down that escape route and it is not worth while potentially opening it up again.

Amendments 49 and 53, in the name of Kenny MacAskill, seek to amend sections 8A and 8D. I accept some of what the minister said with regard to Executive amendment 12, but amendment 49 seeks to implement recommendations that were made by the Law Society of Scotland. It seeks to convert what is at present an objective test into a subjective one, so that even if an individual does not look likely to commit a sexual offence but is intent on committing one, that will still be covered. Amendment 53 is consequential on amendment 49.

Dr Sylvia Jackson (Stirling) (Lab): The Subordinate Legislation Committee had concerns about section 1(5), which confers powers on the minister to modify schedule 1 by order, subject to negative resolution. We thought that if that power stayed, the provision should be amended to the affirmative procedure. However, as we heard from the minister, the Executive undertook to reconsider the matter, and it has lodged amendment 22, which will remove schedule 1, and amendment 5, which will remove section 1(5), so we are pleased.

Hugh Henry: I have nothing much to add, except to say to Margaret Mitchell that the point that she raised will be addressed later in the discussion.

Amendment 1 agreed to.

Amendments 2 to 5 moved—[Hugh Henry]—and agreed to.

Section 2—Risk of sexual harm orders: applications, grounds and effect

The Deputy Presiding Officer: Amendment 36, in the name of Pauline McNeill, is grouped with amendment 37.

Pauline McNeill (Glasgow Kelvin) (Lab): I make clear from the outset that I lodged amendment 36 as a probing amendment, because without it there would have been no discussion of the implications of section 2 at stage 3. The Justice 1 Committee felt strongly that Parliament's attention should be drawn to section 2, because in order to protect children we are taking strong measures. We want to ensure that Parliament is absolutely satisfied that the right balance has been struck.

A chief constable will be able to apply to the sheriff court for a risk of sexual harm order if certain criteria are met, after which the sheriff will grant an order if he or she thinks that one is necessary. A sheriff can use the order to take any action that he or she thinks is necessary to protect a child. It is important to establish that, although the orders are a serious measure, they will be a civil measure and therefore the decision to grant one will be made on the balance of probabilities, not using the usual criminal test. Further, the conduct to which the chief constable may refer in the application for an order might be criminal behaviour, even though there might not be enough evidence to proceed with a criminal trial.

The key point of which I want members to be aware is that the RSHO is a far-reaching measure. We all know that we need our system to go further to protect children, but we must also do our best to satisfy the criterion of protecting the rights and interests of the accused, who in our system are innocent until proven guilty. The suggestion in amendment 36 is that not only the chief constable should be involved in assessing whether an application for an order should be made, but other people who may have important relevant information. In evidence to the Justice 1 Committee, social work organisations suggested that they have important information on, for example, those on their sex offenders list, whose previous convictions would not exclude them from a risk of sexual harm order. The organisations felt that they should have an input into the chief constables' decisions on applications.

I am satisfied that the Executive has got the measure right, but if I had not lodged amendment 36, many members would not be aware of the matter. The bottom line is that the provision puts a lot of faith in chief constables, given that they alone will decide whether applications should be made. I am sure that, like me, all members have a lot of faith in chief constables, but we must consider the possibility that they may make a wrong decision. If that happens, by the time that the application gets to the sheriff court, because the decision is to be made on the balance of probability, there might be a domino effect and an innocent person might be subject to an order.

I lodged amendment 36 to ensure that members have an opportunity to speak on section 2, although I know that we will talk about interim RSHOs later. Amendment 36 is simply a probing amendment, so I will seek agreement to withdraw it at the appropriate time.

I move amendment 36.

Margaret Mitchell: I have a lot of sympathy with the intent behind amendment 36.

I lodged amendment 37, which is also a probing amendment, to gain further and more specific information about the circumstances in which evidence or other information that has been submitted during a trial that has resulted in a not guilty verdict could be used as the evidence of one of the two acts that are necessary to trigger an application for a risk of sexual harm order. I ask the minister to elaborate on the exact circumstances in which he envisages such evidence being used.

Stewart Stevenson (Banff and Buchan) (SNP): Certain aspects of section 2 were discussed at stage 2, during which I lodged an amendment that sought to address issues relating to doctors, teachers and the publishing industry. I did not lodge a similar amendment for stage 3 because we agreed not to accept my amendment at stage 2, as the minister had suggested another way of dealing with the issue. In essence, the issue was that, under section 2(3)(c), one of the acts that can trigger an RSHO is

“giving a child anything that relates to sexual activity or contains a reference to such activity”.

Of course, such references may be made as part of sex education or advice in a magazine or newspaper. I accept that section 2(4)(b) states that the sheriff must be satisfied that

“it is necessary to make such an order for the purpose of protecting children generally or any child”.

However, it would be helpful if the minister were able to indicate firmly on the record that teachers who are discussing matters sexual with children for their protection and not for any other purpose, doctors who, in matters of sexual health, are talking to children or indeed giving them things that are sexual in nature, and responsible publishers such as D C Thomson, which I know we can trust in that regard and which has expressed some concerns to me, have the kind of assurances that will enable them to feel in no way inhibited in continuing to do the beneficial things that they do, which, in a narrow sense, could be caught by the provisions in the bill.

15:15

Hugh Henry: I understand what Pauline McNeill and Margaret Mitchell are attempting to achieve with the amendments in their names, but I cannot support those amendments. I turn first to amendment 36, in the name of Pauline McNeill. It would be wrong to be prescriptive about whom a chief constable should consult in considering an application for an RSHO. Every case will be different, and it will be necessary to consult different parties in each individual case. If the bill required some parties to be consulted but not others, it could be assumed that it is not necessary

to consult the others, even though it most certainly could be necessary in some cases. I would prefer that we issue guidance on the act setting out for chief constables the criteria that they should take into account in considering an application for a RSHO. The guidance will also list those whom they should consider consulting before making an application. That is a more appropriate way of dealing with that than setting it out in the bill.

What is made explicit in the bill, however, is that applications should be made only in cases where the chief constable considers that inappropriate behaviour has occurred on at least two occasions and that the person in question poses a risk of sexual harm to a child or to children generally. Pauline McNeill is right to point out the seriousness of the measure, to indicate that it could be far reaching, but she recognises that it is right for us to take action to protect children from serious harm.

Stewart Stevenson raises a point that was touched on earlier by Margaret Mitchell, to do with concerns expressed in relation to sex education, sexual health advice or indeed what may be included in some teenage magazines, and the fear that teachers, doctors and journalists or editors might be caught by the provisions in the bill. I want to put it on record and to give the assurance that groups or individuals communicating with a child about sexual matters for the purposes of sex education or health education will not result in an application for a risk of sexual harm order. However, I would not want that to be taken as carte blanche for irresponsible and inappropriate activity, either by any individual in those professions or by any groups. Responsible people behaving in a responsible manner and acting appropriately for the purposes of their profession would not be exposed to the risk of an application for a risk of sexual harm order. However, with that would go the warning that anyone who behaved inappropriately would leave themselves open to the risk of action, should that be appropriate.

Before applying for an order, the chief constable would have to believe that the person in question posed a risk of sexual harm. Before making an order, the sheriff would also have to be convinced that the person presented a risk of sexual harm to a child or to children. Those who are properly providing advice to young people should therefore continue to do so. They will not be caught by the provisions. I state in the clearest terms that it is not our intention to interfere with such advice or prevent it from being given. It is also worth noting that similar provisions were introduced for England, Wales and Northern Ireland in the Sexual Offences Act 2003 without any specific exceptions for those providing advice.

I understand the intention behind amendment 37, in the name of Margaret Mitchell, but it would not be wise to accept the amendment. Let us consider for example a person who is accused of committing a sexual offence against a child and is found not guilty of that offence. As members will be aware, such a verdict does not prove that the offence did not take place. It means rather that the case was not proved beyond reasonable doubt. However, it might still be possible to conclude on the balance of probability that the incident took place and we believe that if it was combined with a further such incident, it should be admissible for the purposes of making an application for a RSHO, not ruled out by virtue of the previous criminal trial.

Phil Gallie (South of Scotland) (Con): The minister said that doubts still remain about someone who is found not guilty in a trial. My understanding, which perhaps stretches the point, was that that might be the case if a court returned a not proven verdict but, surely, someone who is found not guilty is not guilty.

Hugh Henry: I have tried to explain that point, but I will go back over it. Phil Gallie is right in that if someone is found not guilty, it means that the case was not proved beyond reasonable doubt. The point that I am trying to make is that it might be possible to conclude on the balance of probability that an incident took place. We are talking about two different tests—a criminal test and a civil test—and saying that it is right that we should be able to take into account something that, on the balance of probability, we believe to have happened. To repeat the point, it is only right that the police and the courts should be able to take into account all sexually inappropriate behaviour against children to protect a child from further risk and there might be circumstances in which an incident that resulted in a not guilty finding should be used as part of an application for an RSHO.

Margaret Mitchell: Amendment 37 is a probing amendment to aid understanding of how that would work. What would happen if someone was found not guilty because the case was time barred, but sufficient evidence had been gathered to give cause for concern? Could that be a circumstance in which it would be legitimate to use the incident?

Hugh Henry: There could be a range of reasons why someone was found not guilty or action was not proceeded with. I emphasise that we would not be taking criminal proceedings against such a person for the incident, as we would not be saying that they had committed a criminal offence—that brings us back to Phil Gallie's question—but saying that there was reason to believe that they posed a risk of sexual harm to children. In those

circumstances, it is our duty to protect the children who are involved, which is why we are proceeding as we are.

Pauline McNeill: I accept that we could be too prescriptive about who is to be consulted and I withdraw amendment 36 on the understanding that, as the bill stands, the only person who has the right to gather information is the chief constable—no one else is mentioned in the bill—and on the understanding that the minister will produce guidance, which is the most sensible way to proceed. I hope that, in due course, the relevant committee will get to see the guidance that is issued.

Amendment 36, by agreement, withdrawn.

Amendment 37 not moved.

The Deputy Presiding Officer: Group 3 is on RSHOs and referral to Scottish ministers. Amendment 38, in the name of Stewart Stevenson, is in a group on its own.

Stewart Stevenson: The minister will know of the concerns that voluntary and other bodies that work with children have about the bill, as those concerns form a theme that has run through discussion of the bill. Under previous legislation, those bodies are required to obtain from Disclosure Scotland information that tells them whether people are fit and proper to work with children. The difficulty is that when an RSHO is granted there is no process whereby that information is provided to Disclosure Scotland and is therefore available to anyone who performs checks on people. My amendment 38 seeks to provide sheriffs with the power to refer cases to the Scottish ministers and to ask them to consider whether someone against whom an RSHO has been granted should be added to Disclosure Scotland's list of people who are unsuitable to work with children. The amendment would leave open the process of referring back to the sheriff any appeal of the decision that is made.

I will describe a scenario that illustrates the concerns that YouthLink Scotland and the organisations that it represents have about the administrative procedure by which it will be possible, under the provisions of the bill, eventually to get someone with an RSHO on the list at Disclosure Scotland. Of course, the minister may well disagree with aspects of the scenario, in which case I will be happy to hear from him. It is a complicated issue.

When the court grants an RSHO, the person's employer—that includes a person who is responsible for a volunteer—will be notified, if that is appropriate. It is then up to the employer to consider what action is appropriate. If the RSHO requires that the person must not work with children, the onus is on the employer to take the

necessary action. In the case of small employers or bodies, the person might have to be fired because there are no positions that do not involve working with children. The bill gives no statutory right for the employer to fire the person. Under employment legislation, the option is open for them to dismiss the person. That would be subject to review in the normal way and people could challenge it. Only after the person has been fired would they end up on Disclosure Scotland's list.

I describe the situation as I understand it. There may be other views, but it appears that there is a huge onus on organisations, and particularly on small ones. Such organisations were alarmed about the burden that was placed on them by the need for them to check with Disclosure Scotland when they employ people who will work with children, although they are now reassured. However, the core of the concern is that unless the matter is put on a statutory basis, failings in the system will put children at risk. It will certainly make things more complicated for voluntary bodies and there is concern that they might withdraw or reduce their commitment.

Unless we put the matter on a statutory basis that enables us, in the quickest and most effective way, to put people against whom RSHOs have been granted on to Disclosure Scotland's list of people who are unsuitable to work with children, we will have a problem. I hope that the minister will reassure us that we will not put children at risk by leaving the gap and that there is another way forward, or that he will accept the amendment. I will be interested to hear what he has to say. We have not resolved the matter yet and this is the last chance saloon for us to do so.

I move amendment 38.

15:30

Hugh Henry: I agree with Stewart Stevenson that we should do nothing that puts children at risk. I whole-heartedly agree that if RSHOs are sought against people who work in child care positions, their employers should be told about it. We are working on the implementation of the Bichard recommendations, and when they are fully implemented, employers will be notified as a matter of course where appropriate. However, that new system is still a couple of years down the line. I acknowledge that in the meantime we need an interim system that will work effectively to ensure that in appropriate circumstances employers are told if an RSHO is sought against one of their employees. That would allow the employer to consider whether they need to take action. There is therefore no real difference between small and large organisations or what currently pertains to legislation.

I will be quite clear about this: I do not believe that an automatic referral to the list of people who are disqualified from working with children is an option. Amendment 38 is defective in a number of ways. It does not link in with the legislative scheme for including people on the list of those disqualified from working with children that was established under the Protection of Children (Scotland) Act 2003. That means that the procedure for putting someone on the list, such as giving the person an opportunity to make representation, giving notice of inclusion, rights of appeal and so on, would not apply. The Protection of Children (Scotland) Act 2003 sets out the criteria that the courts must take into account before referring a person for automatic inclusion on the list, but amendment 38 sets out no such criteria.

Margaret Mitchell: The minister said that the Bichard recommendations will not be implemented for some time, so there will be interim guidance. Is that not justification for supporting Stewart Stevenson's amendment, because it would provide that added protection now?

Hugh Henry: To repeat two points, I said that we need an interim system that will work effectively and that will allow employers to consider whether they need to take action, and I believe that there is a fundamental defect in the amendment. Not only are we taking steps to put in interim measures, but it would be wrong to introduce a measure that we believe to be defective.

It is true that the current legislation allows for referral from the courts as a result of criminal conviction and anyone referred in that way is automatically placed on the list. However, to give the sheriff the power to refer for automatic inclusion on the list, with all the consequences for an individual's livelihood, on the basis of a civil order that can be time bound and quite specific, would raise important issues under the European convention on human rights. An administrative procedure that works within the current Protection of Children (Scotland) Act 2003 is the most effective way to achieve the outcome that we seek, which is getting the information to the employer and putting the person on the list in cases where that is appropriate.

We will develop guidance, along with the police, to ensure systematic consideration of the need to disclose information in respect of an individual being considered for or issued with an RSHO. In building the case to apply for an RSHO, the police will be expected to ascertain the individual's access to and dealings with children, including employment or other voluntary activities. Where an RSHO is made, the police will consider whether it would be appropriate for the existence of the

RSHO to be disclosed to the employer or to a voluntary organisation. If the subject of the RSHO is employed in a child care position or works with children in a voluntary capacity, that would certainly be grounds for the information to be disclosed.

To ensure that organisations are not left wondering what to do when they are told about an RSHO, we will issue guidance explaining RSHOs and encouraging organisations to assess whether it would be appropriate to move the person from working with children or to dismiss them as a result of the information. The guidance will remind organisations of their duty, if they take action, to refer the person to Scottish ministers for consideration for inclusion on the list. Even if the person is not placed on the list, if a subsequent disclosure check is made, the fact that an RSHO demonstrates concern about a risk to a child or children would be grounds for information about its existence to be released. So whether a person is currently working with children in a paid or unpaid capacity, or applies to work with children, I am confident that information about the existence of the RSHO will be and can be released to their employer, prospective employer or voluntary organisation.

Stewart Stevenson: Is the minister saying that, under all circumstances, all RSHOs pertaining to children will prohibit or inhibit someone from working, or from doing things that would end up known to Disclosure Scotland?

Hugh Henry: I think that that would be a logical conclusion. There might be circumstances that do not come to mind at the moment where that might not happen. That would be the logical conclusion, however.

I am confident that the employer or voluntary organisation will have sufficient guidance to know how to deal with the information. Some might view the requirements as an additional burden on organisations. In reality, however, employers and voluntary groups must assess the risk to children from their workers when they recruit or when any concern comes to light. I hope that child care organisations will be reassured, and that Stewart Stevenson, given those assurances, will accept that his amendment should be withdrawn.

Stewart Stevenson: I am slightly worried about a lack of clarity on the question whether the RSHO would, where appropriate to children, always end up on the register.

The Minister for Justice (Cathy Jamieson): For the avoidance of doubt, if someone is working in a child care position and an RSHO is sought against them, that information will immediately be notified to the scheme. It will then be available for the organisations concerned. That person's

suitability to work with children would then require to be reassessed. Their employer would be notified of any change in status.

Stewart Stevenson: That is crystal clear. I make the general observation that, in seeking to introduce risk of sexual harm orders, we are acknowledging the fact that the criminal justice system cannot completely cover the risks in the ways that we would wish. That is why we agree with the Executive as a matter of policy in supporting the introduction of RSHOs.

I am delighted that the minister has assured us that, in all instances, the RSHO, where it concerns children, will end up being noted on the list. People making inquiries of Disclosure Scotland will therefore not fail to see that a relevant RSHO is in place. That is at the core of what we are trying to achieve. On that basis, and with that assurance, I seek to withdraw the amendment.

Amendment 38, by agreement, withdrawn.

The Deputy Presiding Officer: Group 4 is on the serving of RSHOs and interim RSHOs. Amendment 39, in the name of Margaret Mitchell, is grouped with amendment 45.

Margaret Mitchell: Amendments 39 and 45 seek to ensure that there can be absolutely no doubt that the subject of an interim or full RSHO realises and is aware that the order has been served on them. That is necessary, given the sensitive nature of such orders and in recognition of the fact that, if an order is breached, the subject of that order is automatically guilty of a criminal sexual offence. That in turn can have far-reaching consequences regarding disclosure, employment and public hostility. It is important to make the crucial distinction in how the orders are served and to ensure that they are served by sheriff officers.

I move amendment 39.

Hugh Henry: The bill was amended at stage 2 so that it now specifies that an application for an RSHO

"shall be made by summary application."

As such, the normal sheriff court summary rules will apply. Those rules already contain provisions on the service of court orders. We expect specific summary application rules to be made in due course to provide further detail about how persons will be notified of the existence of RSHOs.

Such court rules have recently been made in connection with antisocial behaviour orders. The rules require that an ASBO must either be given to a person who is in court when the order is made or be sent to the person by recorded delivery or registered post. I am of the view that a similar provision would be suitable for RSHOs. Requiring

a sheriff officer to serve the order on the person in all circumstances is both costly and unnecessary. In any event, the appropriate place for rules about the service of court orders is the summary application rules. Margaret Mitchell's amendment 39 is therefore unnecessary.

The Deputy Presiding Officer: Before I call Margaret Mitchell I ask members to be just a little bit quieter. Miss Mitchell, please wind up and indicate whether you intend to press or withdraw your amendment.

Margaret Mitchell: I will press amendment 39, because I think there has been a failure on the part of the minister to recognise that there is a difference between breaching an antisocial behaviour order for something such as vandalism and breaching an RSHO with the sexual connotations that it has. For that reason I remain convinced that RSHOs should be served by sheriff officers.

The Deputy Presiding Officer: The question is, that amendment 39, in the name of Margaret Mitchell, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Curran, Frances (West of Scotland) (SSP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harvie, Patrick (Glasgow) (Green)
 Johnstone, Alex (North East Scotland) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 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)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)

Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 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)
 Finnie, Ross (West of Scotland) (LD)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 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)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)

Watson, Mike (Glasgow Cathcart) (Lab)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 21, Against 88, Abstentions 0.

Amendment 39 disagreed to.

Section 3—Interpretation of section 2

Amendments 6 and 7 moved—[Hugh Henry]—and agreed to.

The Deputy Presiding Officer: Amendment 8, in the name of the minister, has already been debated with amendment 1. I remind members that if amendment 8 is agreed to, amendment 40 will be pre-empted.

Amendment 8 moved—[Hugh Henry].

The Deputy Presiding Officer: The question is, that amendment 8 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 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)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 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)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 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)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 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)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Stone, Mr Jamie (Caithness, Sutherland and Easter Ross) (LD)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 White, Ms Sandra (Glasgow) (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)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

The Deputy Presiding Officer: The result of the division is: For 94, Against 14, Abstentions 0.

Amendment 8 agreed to.

Amendment 9 moved—[Hugh Henry]—and agreed to.

The Deputy Presiding Officer: If amendment 10 is agreed to, amendment 41 will be pre-empted.

Amendment 10 moved—[Hugh Henry]—and agreed to.

Section 5—Interim RSHOs

15:45

The Deputy Presiding Officer: Group 5 is on interim RSHOs. Amendment 42, in the name of Kenny MacAskill, is grouped with amendments 43, 44 and 46.

Stewart Stevenson: Amendments 42 and 46 originated from the Law Society of Scotland—*[Interruption.]*

The Deputy Presiding Officer: Members will need to be just a little bit quieter. That would be helpful to the speaker and to us up here.

Stewart Stevenson: It is a good thing that we are talking about RSHOs rather than ASBOs.

The amendments in Kenny MacAskill's name are intended to bring the wording in the bill more closely into line with the way in which other legislation is worded. The effect of amendment 42, therefore, is technical.

Amendment 46, however, relates to an important policy issue. If an interim RSHO is taken as the precursor to a full hearing of the case for the granting of an RSHO but it is not followed up by such a hearing, the person who was subject to the RSHO is entitled to have their character returned to the state that it was in at the outset. We know perfectly well that, in this delicate and difficult area of public policy, malicious accusations are made from time to time. It is right that those accusations be tested, because we cannot tell at the outset whether they are malicious. If an interim RSHO is granted and it transpires that the basis on which it was granted was false and, therefore, no full order will be granted, the person concerned is entitled to have their character returned to a lily-white state.

The SNP will support Margaret Mitchell's amendments, which relate to the setting of periods.

I move amendment 42.

Margaret Mitchell: It is nice to start on a note of unity. The Conservatives will be supporting the

amendments in Kenny MacAskill's name, which were inspired by the Law Society of Scotland, on the basis that the addition by amendment 42 of the term

"in the interests of justice"

would make the process more transparent and that amendment 46 is fair and reasonable.

Amendment 43 stipulates that the interim order should be in place for a maximum of three months, rather than the unspecified fixed period in the bill, and amendment 44 would ensure that, where an application has been made for extending the period of the order's effect, that period should be limited to a maximum of an additional three months.

Hugh Henry: I have listened to Stewart Stevenson, who spoke to Kenny MacAskill's amendments, and to Margaret Mitchell, but I am unconvinced that their amendments are necessary. Despite Stewart Stevenson's comments on amendment 42, I cannot for the life of me see the difference between saying it is "just" to do something and saying that it is

"in the interests of justice"

to do something.

However, not being a lawyer, I thought that I should have the matter checked out. After all, Kenny MacAskill, who comes from that noble profession, might well have some insight into it that I did not have. When I asked our lawyers to double and triple-check that I was not missing anything, they said that they could not see any significant difference between the two terms. Indeed, they believe that our formulation is more appropriate.

The effect of both formulations is the same. The sheriff cannot make an interim RSHO unless he is satisfied that it is just to do so. As a result, he would have to be satisfied that it is

"in the interests of justice"

to make the order. I hope that that is clear; indeed, I think that users of the legislation will certainly consider the matter to be clear. Perhaps members of the Law Society of Scotland will argue over the matter on cold, dark, wet nights when they have nothing better to do, but I do not think that amendment 42 is necessary.

I am also not convinced that amendment 46 is necessary. When the committee and I discussed the matter at stage 2, the committee agreed that an amendment was unnecessary. I believe that, even in cases in which an RSHO is not granted, the type of behaviour that leads to the application is sufficiently serious for the information to be kept. The police hold what might be regarded as soft information about people for a variety of reasons.

Indeed, it is vital that they do so; after all, if they have suspicions about someone, we rely on them to retain intelligence about that person to assist them in preventing potential crimes.

Moreover, there are various reasons why an RSHO might not be made. For example, it might not be possible to prove that the alleged behaviour took place. The sheriff might not be convinced by the evidence before the court that the person is a risk to children. I am sure that we would agree that, if a sheriff is not convinced of such things, he should not make an RSHO. However, that does not mean that the police should not be able to retain information about the person's behaviour if they still suspect that the person might be a risk. If they retain information on such behaviour, it is surely ludicrous not to retain the fact that an interim RSHO had once been made. What happens if the person in question engages again in sexually inappropriate behaviour with the child? If information about previous behaviour is not retained, it will appear as though that is the first incident of such behaviour.

Stewart Stevenson: Although one might argue that that is the effect of amendment 46, the intention behind it is certainly not to expunge from the record the information that leads the police to apply for an interim RSHO. After all, if, because of repeated malicious accusations from the same source, such information had turned out to be false, one would wish to retain that fact.

With all due respect, however, I should say that that issue is quite different from that of deleting from available records the fact that an interim RSHO had been granted. I would be interested to hear the minister confirm whether he has been advised that the effect of amendment 46 would be that the police were required to delete that information. That is neither the intention behind the amendment nor the understanding that I or the Law Society have.

Hugh Henry: I accept Stewart Stevenson's comments about the intention behind amendment 46. However, we are worried that it could have the undesired effect that I have set out. I will come later to his point about malicious and vexatious allegations.

Because it would not be possible to make another application for an RSHO until the person behaved in such a way again, a child could be put at more risk. Even worse, if a person were to move to another police force area and behave in such a way, the police in that area would be entirely unaware that that person had already come to the police's attention for those reasons. Indeed, we have had some cases in which people have moved between police force areas but information has not been properly transferred and the people have gone on to commit serious offences.

The Justice 1 Committee expressed concerns at stage 2 about cases in which full orders are not made because it had become apparent that an allegation had been malicious or vexatious. I explained in a letter to the committee that information about the complainant and the interim order would not be retained in such cases. A robust reviewing and weeding policy underpins the retention of police intelligence, and information found to be based on malicious or vexatious allegations would be deleted. The only circumstances in which information might be kept would be if it allowed the police to put together a case against the person making vexatious allegations. Stewart Stevenson has correctly drawn attention to the fact that we might need to be able to act on behalf of the person who is the victim of such vexatious or malicious allegations. However, I assure members that, in such cases, the information would be retained purely on the basis that the subject of the allegation was a witness to the case.

Moving on to amendments 43 and 44, in the name of Margaret Mitchell, I make it quite clear that an interim RSHO cannot be sought unless it is accompanied by the main application or unless the main application has already been made. An interim RSHO has effect only for the fixed period specified in the order and will cease to have effect, if it has not already done so, on the determination of the main application. The normal sheriff court summary time limits will apply to the determination of the main application, so it would not be possible for interim RSHOs to apply for long periods without the sheriff court considering whether a full application should be made. I hope, therefore, that Margaret Mitchell will agree that her amendments are unnecessary, that she is reassured by what I have said and that she will not move amendments 43 and 44.

Stewart Stevenson: I shall seek leave to withdraw amendment 42, on the basis that we can let the lawyers fight it out and see whether the minister gets any invitations to Drumsheugh Gardens.

I shall press amendment 46, however, because I am not satisfied with what I have heard. It seems that I am being told that, if interim RSHO information is retained, that information will be available to chief constables other than the one who applied for the interim order, yet the intelligence that led to the granting of the interim order would not be available. I am not at all convinced that that is a reasonable line of argument and that it is not possible to share intelligence across Scottish police forces without the fact being recorded that an interim RSHO has been made. I shall certainly protect our position by moving amendment 46 when the time comes.

Amendment 42, by agreement, withdrawn.

Amendment 43 moved—[Margaret Mitchell].

The Deputy Presiding Officer: The question is, that amendment 43 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East 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)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

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)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)

Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 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)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (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)

The Deputy Presiding Officer: The result of the division is: For 45, Against 65, Abstentions 0.

Amendment 43 disagreed to.

Amendment 44 moved—[Margaret Mitchell].

The Deputy Presiding Officer: The question is, that amendment 44 be agreed to. Are we agreed?

Members: No.

16:00

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East 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)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

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)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Mrs Margaret (Moray) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 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)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (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)

The Deputy Presiding Officer: The result of the division is: For 44, Against 66, Abstentions 0.

Amendment 44 disagreed to.

Amendment 45 moved—[Margaret Mitchell].

The Deputy Presiding Officer: The question is, that amendment 45 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harvie, Patrick (Glasgow) (Green)

Johnstone, Alex (North East Scotland) (Con)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Tosh, Murray (West of Scotland) (Con)

AGAINST

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)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 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)
 Finnie, Ross (West of Scotland) (LD)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 Gorrie, Donald (Central Scotland) (LD)
 Grahame, Christine (South of Scotland) (SNP)
 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)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Maxwell, Mr Stewart (West of Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)

Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

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

The Deputy Presiding Officer: The result of the division is: For 20, Against 87, Abstentions 2.

Amendment 45 disagreed to.

Amendment 46 moved—[Stewart Stevenson].

The Deputy Presiding Officer: The question is, that amendment 46 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East 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)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

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)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marlyn (North East Scotland) (Lab)
 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)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)

Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 44, Against 64, Abstentions 0.

Amendment 46 disagreed to.

Section 7—Offence: breach of RSHO or interim RSHO

The Deputy Presiding Officer: Group 6 is on breaches of RSHOs or interim RSHOs. Amendment 11, in the name of the minister, is in a group on its own.

Hugh Henry: The purpose of amendment 11 is to make it clear that RSHOs made in England, Wales or Northern Ireland under the Sexual Offences Act 2003 will apply in Scotland and that a breach of those orders in Scotland will be a criminal offence.

The 2003 act allows RSHOs to be made in England, Wales or Northern Ireland. The intention behind the 2003 act is that, unless the orders are expressly limited to a particular geographical area, they will apply in each of the other jurisdictions and that a breach of an order in one of the other jurisdictions will be an offence there. However, it is not clear that the orders would apply in Scotland, as the provisions in the 2003 act do not extend to Scotland. The amendment puts that beyond doubt.

Of course, orders that apply to a particular area or premises—for example, a particular school or sports centre—will not be breachable in Scotland. If the conditions in the order apply only to a particular area or premises, they will be breached only if the person does what he or she is restricted from doing in that particular place. However, orders that apply generally will apply in Scotland. For example, if a condition is not to go within a certain distance of any school, a criminal offence will be committed if that condition is breached in Scotland, even if the order was made in England.

I want to be absolutely certain that, if people who come to Scotland from other parts of the United Kingdom put our children at risk, we will have the powers to deal with them. It is also important that those who are the subject of an RSHO in Scotland cannot break the conditions of the order in other parts of the UK.

For those reasons, we are working with the Scotland Office and the Home Office on an order under section 104 of the Scotland Act 1998 to put it beyond doubt that RSHOs that are made in Scotland will apply in other parts of the UK and that breaching such orders will be an offence in the jurisdiction in which the breach takes place. I am pleased to be able to confirm that I have agreement in principle from the Parliamentary Under-Secretary of State for Scotland that such a section 104 order will be laid. I hope that the Parliament will agree that amendment 11 is necessary.

I move amendment 11.

Amendment 11 agreed to.

After section 8

The Deputy Presiding Officer: Group 7 is on the disclosure of RSHOs in criminal proceedings. Amendment 47, in the name of Pauline McNeill, is in a group on its own.

Pauline McNeill: Amendment 47 is a probing amendment, which I lodged because I was not wholly satisfied during stages 1 and 2 that the existence of an RSHO could not be referred to in a criminal trial. In my view, the presumption against disclosing such information should be similar to that which applies to previous convictions, as the information could be prejudicial to the jury's decision. The key issue about disclosure is that, as legislators, we need to be clear about what we intend by the bill. I want to be clear about the purpose of the RSHOs and how such orders will connect with the rest of the criminal justice system. I will be pleased if the minister can clarify what will happen in such circumstances.

I move amendment 47.

Hugh Henry: I am sympathetic to the intention behind amendment 47, as it is important that criminal proceedings are not prejudiced by information about the accused that is not relevant to the case. However, the relevancy of the information is the key issue. If a person is prosecuted for breaching an RSHO, it will of course be necessary for the existence of the RSHO to be disclosed to the court. Without such information, the trial would be meaningless.

In general, however, the Crown Office advises that the normal rules of evidence will apply to the disclosure of the existence of an RSHO. In other words, the court will not allow the existence of an RSHO to be disclosed unless it is satisfied that that is relevant to the case. Even if the accused is being prosecuted for a sexual offence, the Crown Office advises that the fact that an RSHO had been imposed previously would be unlikely to be relevant to proving that the behaviour in question had taken place. Indeed, even if the accused is

being prosecuted as a result of one of the incidents that led to the imposition of the RSHO, the fact that the RSHO had been imposed is still unlikely to have any relevance to the trial.

In a criminal trial, the court would be required to consider whether there is sufficient evidence to prove beyond reasonable doubt that the incident had taken place and that the accused was responsible. The fact that, in civil proceedings, the court had considered that there was sufficient evidence to prove on the balance of probabilities that the incident had taken place would be completely and utterly irrelevant. If the Crown attempts to lead irrelevant evidence in a criminal trial, it will be prevented from doing so by the judge. Therefore, I am confident that the normal court procedure and rules of evidence will ensure that irrelevant information about the existence of an RSHO will not be disclosed to the court during a criminal trial.

I am confident that amendment 47 is not necessary and I hope that Pauline McNeill will accept that reassurance.

Pauline McNeill: I am extremely happy with that answer, which is the one that I wanted on both counts. We now have clarity on the issue and I think that we have the right relationship between the RSHO and criminal proceedings. On that basis, I am happy to seek the Parliament's approval to withdraw amendment 47.

Amendment 47, by agreement, withdrawn.

Section 8A—Paying for sexual services of a child

The Deputy Presiding Officer: Group 8 concerns the offence of paying for sexual services of a child. Amendment 48, in the name of Kenny MacAskill, is grouped with amendments 50 and 51.

Stewart Stevenson: In view of the time, I will be very brief. Amendment 48 aims to catch someone who is seeking to buy the sexual services of a child for someone else and to ensure that, notwithstanding the fact that it may be possible to catch them elsewhere in the legal code, the offences prescribed in the bill are applicable to a third person who buys sexual services on behalf of someone else. The amendment is a simple, logical extension of the protections that the bill provides.

I move amendment 48.

Margaret Mitchell: We will support the Law Society-inspired amendment in Kenny MacAskill's name, which covers a potential loophole in the bill by including a reference to a third party.

My amendments 50 and 51 seek to ensure consistency in the approach in Scots law to the offence of having sex with a child under the age of

13. At present, unlawful sexual intercourse with a girl of that age can attract a maximum sentence of life imprisonment under section 5 of the Criminal Law (Consolidation) (Scotland) Act 1995. However, under section 8A of the bill, if payment or promise of payment is made in return for sexual intercourse with a child under 13 years of age, the maximum penalty is 14 years' imprisonment. The amendments seek to ensure that the offence in the bill carries a penalty as severe as the penalty for which the 1995 act provides.

Hugh Henry: First, I will address the amendment in Kenny MacAskill's name, to which Stewart Stevenson spoke. I do not believe that the amendment is necessary. I argue that the behaviour that Kenny MacAskill is trying to catch in the amendment is already likely to be an offence. If a person is deliberately assisting another to purchase the sexual services of a child, that person could be charged with aiding and abetting or conspiracy to purchase the sexual services of a child. Alternatively, if the person is deliberately arranging for the child to become involved in the provision of sexual services, so as to provide those services to another, that person could be caught by the offence at section 8D of the bill, which concerns arranging or facilitating.

Secondly, I turn to the amendments in Margaret Mitchell's name. I am not convinced that it is sensible to add another level of penalties in the bill for offences relating to those aged under 13. I am aware that the equivalent Westminster legislation includes a life penalty in cases where the offence was committed against a child under 13, but there are important differences between the Westminster legislation and ours. Whereas Margaret Mitchell's amendment takes in all the offences relating to under-13s, the Westminster legislation takes a two-tier approach, so that a life penalty is available only in cases where the sexual services constitute certain aggravated behaviour relating to the penetration of the body of the child.

We have widened the reach of the bill so that a range of sexual services is covered. Although we agree that paying for sexual intercourse with an under-13 may justify a life sentence, I am not convinced that everything that is found to fall within the definition of sexual services would justify a life penalty. In any event, it is important to reassure members that, in cases where someone has sexual intercourse with a child under 13, whether or not payment has been made, it will often be more appropriate to take proceedings under another offence. Section 5 of the Criminal Law (Consolidation) (Scotland) Act 1995, for example, makes provision for the offence of unlawful sexual intercourse with a girl under the age of 13 and provides a maximum penalty of life imprisonment. It will, of course, be for the Crown to decide in each case which offence the accused

should be prosecuted under. I hope that Margaret Mitchell will be reassured by my comments and will not move her amendments.

16:15

Stewart Stevenson: It is worth saying that section 8D would have the effect that the minister described should we agree to amendment 52. At the moment, however, that section relates only to child prostitution and pornography and not to sexual services. Therefore, there are some technical complications with the sequencing and I am not clear that the penalties that would apply without the amendments would be as serious. Can the minister indicate his answer so that I do not take up too much time?

Hugh Henry: I am not sure about that—

Stewart Stevenson: On that basis, I will press amendment 48.

The Deputy Presiding Officer: The question is, that amendment 48 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Canavan, Dennis (Falkirk West) (Ind)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 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)
 Johnstone, Alex (North East Scotland) (Con)
 Leckie, Carolyn (Central Scotland) (SSP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Stevenson, Stewart (Banff and Buchan) (SNP)

Sturgeon, Nicola (Glasgow) (SNP)
 Tosh, Murray (West of Scotland) (Con)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

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)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Finnie, Ross (West of Scotland) (LD)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (North East Scotland) (Lab)
 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)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 41, Against 58, Abstentions 0.

Amendment 48 disagreed to.

The Deputy Presiding Officer: Amendment 12, in the name of the minister, has already been debated with amendment 1. I remind members that, if amendment 12 is agreed to, amendment 49 will be pre-empted.

Amendment 12 moved—[Hugh Henry].

The Deputy Presiding Officer: The question is, that amendment 12 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Aitken, Bill (Glasgow) (Con)
 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)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 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)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Glen, Marilyn (North East Scotland) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 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)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 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)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Tosh, Murray (West of Scotland) (Con)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Adam, Brian (Aberdeen North) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Gillon, Karen (Clydesdale) (Lab)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 85, Against 21, Abstentions 0.

Amendment 12 agreed to.

Amendments 50 and 51 not moved.

Section 8B—Causing or inciting child prostitution or pornography

Amendment 13 moved—[Hugh Henry]—and agreed to.

Section 8C—Controlling a child prostitute or a child involved in pornography

Amendment 14 moved—[Hugh Henry]—and agreed to.

Section 8D—Arranging or facilitating child prostitution or pornography

Amendment 52 moved—[Hugh Henry]—and agreed to.

After section 8D

Amendment 53 not moved.

Section 8E—Sections 8B to 8D: involvement in pornography, etc

Amendment 16 moved—[Hugh Henry]—and agreed to.

Section 8H—Indecent photographs of 16 and 17 year olds

The Deputy Presiding Officer: Amendment 54, in the name of Marlyn Glen, is grouped with amendments 55, 56, 17, 57 to 59, 18, 60 to 62, 19, 63 to 65 and 20. I will list the considerable number of amendments that might be pre-empted. If amendment 54 is agreed to, I will not call amendments 55, 56 or 17. If amendment 56 is agreed to, I will not call amendment 17. If amendment 57 is agreed to, I will not call amendments 58, 59 and 18. If amendment 59 is agreed to, I will not call amendment 18. If amendment 60 is agreed to, I will not call amendments 61, 62 and 19. If amendment 62 is agreed to, I will not call amendment 19. If amendment 63 is agreed to, I will not call amendments 64, 65 and 20. If amendment 65 is agreed to, I will not call amendment 20.

I ask Marlyn Glen to move amendment 54 and to speak to the other amendments in the group—if she can be heard, because a lot of talking is going on. Mr Stevenson might have had a point when he mentioned antisocial behaviour orders. I ask members to keep quiet, please.

Marlyn Glen (North East Scotland) (Lab): Section 8H is a difficult section. I want to clarify a few points about the amendments in my name and I welcome the opportunity that that presents for the Parliament to have a debate on complex issues.

The bill seeks to protect children. It is relatively easy for us all to sign up to a measure that will protect vulnerable children and I applaud the bill's intention to give protection from abuse to young people up to the age of 18. However, tension arises because the age of sexual consent is 16, whereas the upper threshold of childhood in the bill is 18. It was right to ratify the European

directive that followed article 1 of the 1989 United Nations Convention on the Rights of the Child. The state should protect children from all forms of sexual exploitation and abuse. It was also right to ratify the 2000 optional protocol to the UN convention on the sale of children, child prostitution and child pornography. Those issues are not in dispute.

However, the bill's purpose is to combat sexual exploitation; its purpose is not to regulate the sexual life of young people. There was no intention to undermine the rights of young people who are over the age of consent—people to whom we usually refer as “consenting adults”—and who act within a legitimate, non-exploitative relationship. There is no call to change the age of consent. Young people, as well as older people, have the right to a private life. Section 8H deals with the private, consensual use of images; it does not address wider issues of pornography. We must deliver consistent, clear messages about sexual health and self-esteem, but it is highly questionable whether legislation offers an effective means of doing so.

My amendments 54, 57, 60 and 63 relate to the exceptions for photographs of 16 and 17-year-olds that are taken in private and with consent. The amendments would remove the exemption for people who are “married to each other” or “partners in a relationship”, because there are real questions about whether the existence of a relationship gives protection. The bill is not gender specific, but it is widely recognised that young women in some relationships are vulnerable as a result of a gender-specific imbalance of power. The YWCA Scotland's excellent display in the garden lobby at Holyrood this week makes that point.

The logical, legal and moral implications of the matter need much further consideration—more than we can give in this debate. There should be a wide discussion on the matter. We should concentrate on working to give young people, particularly young women, the confidence and self-esteem that they need if they are to value themselves and make informed decisions. The approach of the amendments in my name is supported by Council framework decision 2004/68/JHA, which provides that

“Even where the existence of consent has been established, it shall not be considered valid, if for example superior age, maturity, position, status, experience or the victim's dependency on the perpetrator has been abused in achieving the consent”.

I hope that the minister will give a commitment to keep the workings of section 8H under proper and timely review and to come back to the Justice 1 Committee and the Parliament so that we may consider how the approach that the amendments

propose works in practice and whether further adjustments are necessary.

I take the opportunity to support amendment 61, in Pauline McNeill's name. It is essential that the Executive is consistent in treating marriage and civil partnerships on a par in legislation. I welcome the fact that that is being done in other bills that are before Parliament and I support amendment 61 on that equal opportunity basis.

I understand the intention behind amendment 65, in the name of Kenny MacAskill, but do not support it. It sets out to introduce an exemption for those in a civil partnership, but unfortunately not on a par with that for those in a marriage. It also seeks to introduce an exemption for people who are living together, but since 16 and 17-year-olds who are in relationships often do not live together, the amendment is not helpful. Further, it uses the unfortunately clumsy description of a same-sex relationship that has

“the characteristics of the relationship between husband and wife”

rather than the characteristics of the relationship of civil partnership, so I do not support amendment 65.

I look forward to hearing members' speeches, in particular the minister's speech, and to what I hope will be a much wider-ranging discussion in the near future.

I move amendment 54.

Pauline McNeill: I will speak to amendments 55, 58, 61 and 64 in my name and other amendments in the group. As Marlyn Glen indicated, my amendments are about the reference to civil partnerships in the bill. We have the Civil Partnership Act 2004, so if we are going to include exemptions for relationships, we should also refer to civil partnerships. I oppose amendment 65, in the name of Kenny MacAskill, because attempts to refer to other types of relationship that are not defined in law are convoluted and difficult. It is appropriate that we adopt terms that are already used in our legislation.

As indicated, and with your permission, Presiding Officer, I will say something on behalf of the Justice 1 Committee about the process, because it is worthy of putting on the record. The Justice 1 Committee was advised in December that the Executive intended to lodge amendments at stage 2, which we understood to be the result of United Nations protocols and a Council framework decision to combat the sexual exploitation of children and child pornography. It is important to note that those place obligations on the Parliament.

We wrote to the Minister for Parliamentary Business a few days before the beginning of stage 2 to say that we had still not seen the amendments. At that time, we thought that they were fairly uncontroversial and straightforward. For the most part they were, with the exception of the amendment that Marlyn Glen has referred to.

I realise that we have European Union obligations, and that the timescale is not entirely within our hands, but lessons can be learned. It cuts across everything that we stand for if there is no proper scrutiny or consultation on such subjects. The Justice 1 Committee feels that, as there was no consultation on the amendments that were made at stage 2, and there is no policy memorandum, there is nothing to enable us to say that we know that the right decision has been made because we have consulted on it. That option is not open to us, although it normally would be. The Executive is conscious of that point, and I know that it sympathises with our position, but we need to examine the situation for future reference. We must examine whether other options are available so that it is possible to fulfil our obligations and have the proper scrutiny and standard of consultation that we expect.

The impact of not being able to consult is this: while on balance the Justice 1 Committee agreed with the Executive on putting a list of exceptions in the bill, including one to exempt 16-year-olds in relationships in particular circumstances, there was also a case for not including it. On balance, my view is that if we get a review from the Executive, I am happy to support the provisions, but there is a case for saying that if we feel that we must protect vulnerable 16 and 17-year-olds if indecent images are taken of them, we must ensure that the exceptions that we have are right. We must be wary of exempting people who are in a relationship when the vast majority of people in that age group will not be in a relationship.

As a committee, we have not tested the amendments that were made at stage 2 as members would expect us to have done. That is not necessarily the fault of the Executive, but Parliament should be aware of the situation. I hope that the Executive will accede to Marlyn Glen's request to examine the exceptions at some point in the future, to ensure that those that we pass into law are the right ones and that we have them for the right reasons.

16:30

Stewart Stevenson: Without question, the sections that were added at stage 2 are the part of the bill that most taxed the Justice 1 Committee, the minister and his officials, to the extent that the minister, unusually and helpfully—at least, it appeared to be helpful at the time—came back

after stage 2 with an options paper that had six options. We spent a considerable time having an open-minded discussion about the paper, the aim of which was to help resolve both his and our dilemmas.

I support Pauline McNeill's comment on behalf of the committee that it would have been helpful to have had more information earlier and more time to consult more widely on the issue. I say that without necessarily having the expectation that more information and time would have led us ineluctably to a single clear solution and determination—the issue ain't easy. However, the point is that in the bill, we have accepted in principle that 16 and 17-year-olds require a degree of protection in sexual matters. For the first time, we will create an offence of being the procurer or user of prostitution, for cases in which a 16 or 17-year-old is involved. We do that because we recognise that 16 and 17-year-olds still have maturing to do and deserve our protection. I am delighted with that change, and in the long term I seek the extension of the measure so that the offence in relation to prostitution that involves people of any age will be committed by the person who buys, not the person who provides. However, that is for another time.

Given that we have established the principle that 16 and 17-year-olds need a degree of protection in sexual matters, the question is what degree of protection we should afford them. In relation to the taking of indecent photographs, it is not unreasonable that a couple should be able to indulge in that activity—we would not necessarily wish to encourage it, but we would not want to prohibit it. However, the issue is what happens to the material that is created and what risk there is that it will move outside the relationship and be available to and exploited by others. The issue of where the balance lies is a judgment call for each member.

There is no easy answer, although a number of options are on the table. If the Executive supports Marlyn Glen's amendments, we are minded to go with that. We have lodged a set of amendments that were suggested by the Law Society of Scotland with the aim of clarifying the matter. I accept and acknowledge the merit in Marlyn Glen's comments about the wording of our amendments. We will wait and see what the Executive says, because we—and, I suspect, ministers—remain somewhat uncertain on the issue. The important point is that, post hoc, we do not close our minds to considering the effects of the measures. We should be prepared to say that we got the matter wrong, given that it will be all of us who got it wrong, not one individual or one political party.

Hugh Henry: I begin by dealing with the issue of process that Pauline McNeill raised on behalf of the Justice 1 Committee. I have apologised to Pauline McNeill for the difficult situation in which we placed the committee in trying to scrutinise and come to a conclusion on the issue. I am happy to put that apology on record again. I accept that, because of our delay in producing amendments, the committee was unable to give them adequate scrutiny or to carry out full and proper consultation, which has caused complications and difficulties. We would not want to act like that as a matter of course; indeed, for a range of bills we have striven to ensure that that has not happened. However, as Stewart Stevenson said, some of the complexities and difficulties in trying to work out what was best caused us to pause or delay, and that had a knock-on effect on the committee. I regret that that caused some problems.

At stage 2, we introduced amendments that extended the current offences in relation to indecent images of children. As a result of those amendments, offences concerning taking, possessing and distributing indecent images would apply to images of young people aged under 18 rather than just to images of people aged under 16. As Stewart Stevenson said, we considered a range of options, which we attempted to discuss. I am not sure that, in attempting to be helpful to committee members, we did not further complicate the problem and introduce further uncertainties. As Stewart Stevenson recognised, it is difficult to know exactly what is right in this matter and to strike a balance; nevertheless, we have to make a decision. Despite some of the earlier uncertainty, we are certain that the balance that we are striking is the correct one. I will return to that.

I want to clarify a point that Stewart Stevenson raised. He said that, if Marlyn Glen was minded to press her amendments and if we were minded to accept them, he would be content to support them. We believe that Marlyn Glen's amendments are at the other end of the spectrum from Kenny MacAskill's amendments; therefore, it would be illogical to see the two sets of amendments as doing the same thing. Indeed, Marlyn Glen said that she could not support Kenny MacAskill's amendments for that reason. Therefore, there is a certain illogicality in Stewart Stevenson's position.

We recognise that 16 and 17-year-olds are above the age of sexual consent and that they can quite lawfully engage in sexual activity and have certain rights in relation to what they can do in their private lives. Nevertheless, as members have said, it is right to remember that those young people are still at an age at which they are vulnerable and deserve our protection. As Stewart Stevenson said, we have recognised that vulnerability in other aspects of the bill; therefore,

there is no inconsistency in that respect. The question for Parliament is how we can balance the rights of 16 and 17-year-olds with the protection that they need and deserve.

Margaret Mitchell: Does the minister accept that part of the problem with section 8H is in establishing the definition of an established relationship and that the Law Society amendments that have been lodged in Kenny MacAskill's name provide the best definition of the type of relationship that we think the exemption should cover?

Hugh Henry: No. I think that those amendments introduce a degree of restriction that we have attempted to avoid. We have sought to reflect the fact that marriage is a recognised relationship and so is worthy of exemption. I will talk later about civil partnerships, and we will recognise Pauline McNeill's amendments, which help to clarify the status of such partnerships. However, it is for the courts to examine all the circumstances and to decide not just what constitutes a relationship but what constitutes—in the wording that the Executive amendment uses—an established relationship. It is possible to be in a relationship that is only a day or two days old. That would be a relationship, but that might not be sufficient to justify the kind of exemption that we are talking about. That is why we want to talk about established relationships that have a degree of permanence.

Kenny MacAskill's amendments go a step further and say that the exemption from the offence will apply only if the couple are husband and wife, civil partners or

"living with each other in a relationship which has the characteristics of the relationship between husband and wife except that the persons are of the same sex".

As Marlyn Glen said, the phrase "living with each other" does not reflect the reality of the lives of many 16 and 17-year-olds who are in relationships but neither married nor living together. They might have a relationship of a year or two's standing but still live with their parents, or they might live in separate towns. Kenny MacAskill's amendments 56, 59, 62 and 65 would introduce a degree of restriction on the exempted relationships that does not adequately reflect reality for 16 and 17-year-olds. We must strike a balance, as Stewart Stevenson said, and the Executive has struck a balance that is appropriate in the circumstances.

The exceptions are cases in which the young person is 16 or over and has consented to be in the picture, the picture is for the private use of the accused and is not being shown to anyone else and the accused and the young person in the picture are married or are partners in a relationship. In those circumstances, the accused will be exempt from criminal liability. The

introduction of the exceptions resulted in discussion, and the committee was rightly concerned about the difficulty of defining relationships and the need to tighten up what is meant by being “partners in a relationship”. That is why we have lodged amendments that seek to give a degree of clarity by referring to an established relationship.

We considered whether we had achieved the correct balance between rights and protection and considered a range of possibilities similar to those that we are examining today. It is our duty to give 16 and 17-year-olds as much protection as we can without overly impinging on their rights to a private life.

The Deputy Presiding Officer (Murray Tosh): Minister, I am beginning to be a bit concerned about the timetable. I would appreciate it if you were able to bring debate on the group to a close early.

Hugh Henry: I will pursue the matter quickly.

Unlike Marlyn Glen, I do not accept that it is enough simply for the young person to consent to the taking or possession of the indecent photograph and, as I have said, Kenny MacAskill's amendments 56, 59, 62 and 65 are much more restrictive. Having given the matter further thought, we have come to the view that a requirement for an established relationship will give us the correct balance, and I believe that the exceptions are realistic. Amendments 17 to 20, in the name of Cathy Jamieson, make that proposal. The reference to partners in an established relationship will, of course, include same-sex relationships, regardless of whether they have been formalised into a civil partnership. However, it is important that we recognise such relationships formally, so I am happy to support Pauline McNeill's amendments 55, 58, 61 and 64.

Marlyn Glen: I press the minister on whether he has listened to the request to review and monitor what happens with the provisions.

Hugh Henry: That is the next point that I was going to make. It is my intention to review the use of the offences over the next couple of years to ensure that we have got the exceptions right. That would apply to any bill that the Parliament passes—we always want to ensure that legislation is right and works appropriately; however, in this case, I put on record my assurance that we will report to the Parliament our findings if there are any unanticipated complications.

I hope that that reassures members. The Executive's intention, like that of other members of the Parliament, is to get the bill right. I hope that Marlyn Glen and Kenny MacAskill will be content not to press their amendments.

The Deputy Presiding Officer: I will allow a brief speech from Patrick Harvie.

Patrick Harvie (Glasgow) (Green): I am grateful for the time and aware that there is not much of it. I speak in favour of Marlyn Glen's amendments and urge her to press them. I speak not as a member of the committee that has dealt with the bill, but as one with a background in supporting young people in their sexual health and sexual rights.

There is a great danger that the bill, which is intended to address abuse and exploitation, will end up legislating against something of which people merely disapprove. Stewart Stevenson is right to say that 16 and 17-year-olds are entitled to a degree of protection on sex and sexuality. We have a responsibility to offer such protection when abuse and exploitation are the target, but the effect of section 8H will be to catch consensual, non-abusive behaviour of which some people might simply disapprove.

As Marlyn Glen said, young people are less likely to be in relationships. They are much less likely to be in established relationships, as the Executive's amendments have it, but they are over the age of consent. We are talking about 16 and 17-year-olds, who are entitled to have sex lives without interference. They are entitled to make mistakes and to do things of which we disapprove. That is what consent is all about. The minister recognises that they are over the age of consent and are entitled to lead their own sex lives, so why should the state decide to intervene merely because they have made a choice to use their mobile phones to take a few snaps of each other in a perfectly innocent and non-exploitative way?

I am also uncomfortable with the emphasis on marriage and civil partnerships in the provisions, because it seems to imply that for people to have sex lives outside those forms of relationship is to be frowned upon. It is not our business to frown upon that. Consent is consent. We run the risk of legislating because of disapproval rather than legislating against abuse or exploitation. Again, I urge Marlyn Glen to consider pressing her amendments.

16:45

Marlyn Glen: One of the difficulties with this part of the debate is that the committee did not have time to examine whether section 8H cuts across the rights that young people have. I am aware of the difficulty that members—not only members of the committee—have in making decisions on the amendments in group 9. However, I listened carefully to the minister's response and I accept his assurances. I will seek the Parliament's approval to withdraw amendment 54. I hope that

we will return to have a more wide-ranging debate at a later date.

Amendment 54, by agreement, withdrawn.

Amendment 55 moved—[Pauline McNeill]—and agreed to.

Amendment 56 not moved.

Amendment 17 moved—[Hugh Henry].

The Deputy Presiding Officer: The question is, that amendment 17 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Alexander, Ms Wendy (Paisley North) (Lab)
 Arbuckle, Mr Andrew (Mid Scotland and Fife) (LD)
 Baillie, Jackie (Dumbarton) (Lab)
 Baker, Richard (North East Scotland) (Lab)
 Barrie, Scott (Dunfermline West) (Lab)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Chisholm, Malcolm (Edinburgh North and Leith) (Lab)
 Craigie, Cathie (Cumbernauld and Kilsyth) (Lab)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Curran, Ms Margaret (Glasgow Baillieston) (Lab)
 Davidson, Mr David (North East Scotland) (Con)
 Deacon, Susan (Edinburgh East and Musselburgh) (Lab)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Eadie, Helen (Dunfermline East) (Lab)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Ferguson, Patricia (Glasgow Maryhill) (Lab)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 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)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lochhead, Richard (North East Scotland) (SNP)
 Lyon, George (Argyll and Bute) (LD)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)

Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McFee, Mr Bruce (West of Scotland) (SNP)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Neil, Alex (Central Scotland) (SNP)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robison, Shona (Dundee East) (SNP)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 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)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Swinburne, John (Central Scotland) (SSCUP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 White, Ms Sandra (Glasgow) (SNP)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)

ABSTENTIONS

Leckie, Carolyn (Central Scotland) (SSP)

The Deputy Presiding Officer: The result of the division is: For 98, Against 6, Abstentions 1.

Amendment 17 agreed to.

Amendment 57 not moved.

Amendment 58 moved—[Pauline McNeill]—and agreed to.

Amendment 59 not moved.

Amendment 18 moved—[Hugh Henry]—and agreed to.

Amendment 60 not moved.

Amendment 61 moved—[Pauline McNeill]—and agreed to.

Amendment 62 not moved.

Amendment 19 moved—[Hugh Henry]—and agreed to.

Amendment 63 not moved.

Amendment 64 moved—[Pauline McNeill]—and agreed to.

Amendment 65 not moved.

Amendment 20 moved—[Hugh Henry]—and agreed to.

The Deputy Presiding Officer: Group 10 is on consent in relation to indecent photographs of 16 and 17-year-olds. There is very little time, so I ask members to make the very briefest of speeches. Amendment 66, in the name of Kenny MacAskill, is in a group on its own.

Stewart Stevenson: Amendment 66 seeks to make it clear that the child can give consent on the usual legal basis.

I move amendment 66.

Hugh Henry: I understand the argument but I believe that amendment 66 is unnecessary. It is essential that those who consent as a result of misunderstanding, pressure or threats are not taken to have consented as a matter of law. It is also true that the bill as currently drafted does not contain a definition of consent. However, because a specific definition is not provided, the reference to consent in the current provisions relies on the existing meaning of consent under Scots law. The Scottish courts have made it clear that consent must be freely given by a person who is capable of understanding the implications of doing so. Case law has established that it should not be the direct result of violence or of the accused having taken advantage of an age difference between himself and the victim or of his position of responsibility for that victim. I am therefore confident that the standard Scots law meaning of consent will be sufficient to ensure that young people are protected, and I do not believe amendment 66 is necessary.

The Deputy Presiding Officer: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

While the clock is ticking, I advise members that we have gone past the time that is allowed, so I

exercise my discretion under rule 9.8.4A(a) to extend the time for the consideration of amendments. That will impact on the time that is available for the stage 3 debate. I might need to take one or two members out of that debate or impose very tight speaking times. We have one more group of amendments to consider and we need to allocate some time for that.

FOR

Adam, Brian (Aberdeen North) (SNP)
 Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gibson, Rob (Highlands and Islands) (SNP)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Grahame, Christine (South of Scotland) (SNP)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Johnstone, Alex (North East Scotland) (Con)
 Lochhead, Richard (North East Scotland) (SNP)
 MacAskill, Mr Kenny (Lothians) (SNP)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Milne, Mrs Nanette (North East Scotland) (Con)
 Mitchell, Margaret (Central Scotland) (Con)
 Monteith, Mr Brian (Mid Scotland and Fife) (Con)
 Morgan, Alasdair (South of Scotland) (SNP)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 White, Ms Sandra (Glasgow) (SNP)

AGAINST

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)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 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)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Glen, Marilyn (North East Scotland) (Lab)
 Godman, Trish (West Renfrewshire) (Lab)
 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)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

The Deputy Presiding Officer: The result of the division is: For 44, Against 63, Abstentions 0.

Amendment 66 disagreed to.

Section 10—Interpretation

Amendment 21 moved—[Hugh Henry]—and agreed to.

Schedule 1

OFFENCES FOR THE PURPOSES OF SECTION 1

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

Schedule 2

MINOR AND CONSEQUENTIAL AMENDMENTS

The Deputy Presiding Officer: Group 11 is on circumstances in which the offender is subject to 2003 act notification requirements. Amendment 23, in the name of the minister, is grouped with amendments 24 to 35.

Hugh Henry: The amendments seek to make changes to the way in which sexual services, indecent images and grooming offences are listed in schedule 3 of the 2003 act. Listing in that schedule means that part 2 of the 2003 act applies to the offence. That has several implications, including the imposition of the notification requirements of the sex offenders register. A number of offences are already listed in schedule 3 without qualification, which means that conviction for those offences will result in the automatic imposition of the notification requirements.

We added new offences to schedule 3 at stage 2, although we did so with some qualifications. We specified that the notification requirements would be imposed automatically only in cases where the victim was under 16 and the offender was either 18 or over or had been sentenced to a minimum of 12 months' imprisonment. In order to ensure that no one who should be on the sex offenders register escapes it, we also added a catch-all provision to each offence, so that the court could impose the notification requirements in other cases if it considered it appropriate to do so.

Our catch-all provisions did not, however, allow the court to have discretion in all cases. Because of the way in which those provisions were drafted, the court could have discretion only in cases where the victim was under 16. In effect, if the victim was 16 or over, the court would have no powers to impose a notification requirement on the offender under any circumstances. That was not how we had intended those catch-all provisions to work. The amendments in the group change the way in which the offences are listed in schedule 3, so that the catch-all provisions will apply in all cases regardless of the age of the victim.

There is another technical difficulty with the amendments that were agreed to at stage 2. As they are currently drafted, the catch-all provisions refer specifically to the notification requirements of the 2003 act. That might cast doubt on whether all the other provisions in part 2 of that act would apply, despite the fact that they would apply to the other offences that are listed in schedule 3 to the bill. We want to be clear, for example, that the court can impose a sexual offences prevention order on an offender who had been convicted of taking indecent photographs of a child, but who was only 17.

I move amendment 23.

Amendment 23 agreed to.

*Amendments 24 to 35 moved—[Hugh Henry]—
and agreed to.*

Protection of Children and Prevention of Sexual Offences (Scotland) Bill

The Deputy Presiding Officer (Murray Tosh):

The next item of business is a debate on motion S2M-2771, in the name of Cathy Jamieson, that the Protection of Children and Prevention of Sexual Offences (Scotland) Bill be passed.

16:57

The Minister for Justice (Cathy Jamieson):

I spent many years working in child protection, working with young victims of abuse. I have seen at first hand the damage that can be caused by those appalling crimes. Like other members, I have heard directly from victims. I have heard their testimony, not just about how the physical harm that they sustained has affected them, but—even once their physical wounds have healed—about how the emotional and psychological trauma continue for years to come.

That is why we must do all that we can to stop that abuse happening to our children. That is why we must ensure that the law allows for early intervention to prevent predatory sex offenders from targeting our children. If they manage to commit their despicable crimes, we must ensure that the law will deal with them in an appropriately robust manner. The Protection of Children and Prevention of Sexual Offences (Scotland) Bill aims to do just that. That is why I am pleased to bring the bill to Parliament today.

I thank the Justice 1 Committee and its officials, as well as our own Executive officials, for their hard work. I pay particular tribute to the Deputy Minister for Justice, Hugh Henry, for his attention to detail during the passage of the bill, at both stage 1 and stage 2. We always try to listen to what committees say as we take legislation through Parliament. We have listened to the views of the Justice 1 Committee, and we have amended provisions in accordance with those views. That has been important. It has also been important that, as we have gone through the process, we have taken account of the views of those who work in child protection. I am pleased that the new provisions that I hope we will agree to today will add to our ability to help to protect our children effectively.

The bill that is now before the Parliament goes further than ever before in its aim of protecting young people from sexual harm. As we have heard, the bill now includes a range of offences to tackle the sexual exploitation of young people under the age of 18. First, it criminalises those who purchase sexual services from someone under the age of 18. As we heard, that could

include any form of sexual service, including prostitution, lap-dancing or sex chat lines. The bill extends the current law on indecent pictures of children so that it applies to young people under 18, rather than only to those under 16—with some exceptions to ensure both that the civil liberties of the young people involved are protected and that we give young people protection when necessary.

Finally, the bill creates offences to deal with those who recruit young people into pornography and the provision of sexual services, as well as those who make the arrangements for those activities to take place. Even if those people are not obtaining the sexual services or taking, possessing or distributing the indecent pictures themselves, we will ensure that they are brought to justice for the harm that they do to our young people, however indirectly. There is no place in our society for the exploitation of young people. I believe that the bill will go a long way towards tackling exploitation and making Scotland a safer place for our youngsters.

I put on record my thanks to the Justice 1 Committee, given the comments that Pauline McNeill and others made about the time that was available to it to deliberate on difficult and sensitive issues. The committee had to weigh up the balance between rights and protection and the balance between adults' rights and the rights of children and young people. It had to come to a decision, irrespective of the shortage of time. In essence, the committee had to do what a number of child protection professionals have to do daily, which is to consider the evidence before them and take a decision that they believe to be in the best interests of children and young people. Our job as legislators is to put in place a framework to help those professionals to protect our children and young people, which the bill does, whether they are children in their local play park, teenagers in an internet chat room or young people in a relationship who are vulnerable to being recruited into some form of exploitation.

No one can turn back the clock to undo the damage that has been done to children and young people in the past, but we must do everything that we can to do better in the future and to ensure that in Scotland our children have every possible protection. I therefore commend the bill to Parliament.

I move,

That the Parliament agrees that the Protection of Children and Prevention of Sexual Offences (Scotland) Bill be passed.

17:02

Stewart Stevenson (Banff and Buchan) (SNP): We have trod a relatively long and very twisty road to get to this stage. Passing the bill will

increase protection for children. A number of issues remain unresolved, but that is not to say that those issues were capable of being resolved in the bill or in legislation at all.

If I take issue with anything that the minister said, I do so about one thing only and as a matter of emphasis. The minister said that the bill will help professionals to protect children. That is excellent and, of course, I support it. However, we must consider in what other ways we can protect children and what other people have to be involved in that.

One thing that is outside the legislative framework but to which we have to turn our minds as politicians is helping children to protect children from sexual exploitation. When the high-tech crime unit came to show us some of the things that happen in the world of the internet, even those of us who spent an entire career in computers found that there were gaping holes in our knowledge, understanding and experience; I saw things of which I had not previously been aware in any way, shape or form. The development of new technologies, particularly in various areas of communication, is extremely rapid. Given that we are probably not the users of the technologies that create the greatest risks for children, the only way in which we can improve substantially the protection of children is to help children to protect children, because they understand the technologies. I hope that the Executive will not feel that the job is done when, at 5.30 or thereabouts, we pass the bill. There is more to do.

Another area of challenge to which we have to turn our minds is that which always occurs in relation to offending of a sexual nature: we have to raise our game on detection, prosecution, incarceration, treatment and rehabilitation. We know that we see but a tiny portion of the offending that goes on in sexual matters and that, of that tiny portion, we successfully prosecute only a tiny portion. It is suggested that less than 5 per cent of rapes end up in a conviction. I had to say "suggested", because I do not think that we can put our hands on our hearts and say that we have an absolutely reliable figure; we can rely only on the fact that we do not fully know.

The same will be true in relation to many of the offences that we have created under the bill that concern the inappropriate sexual behaviours that we seek to address. Therefore, the high-tech crime unit within the Scottish Drug Enforcement Agency, which is a useful start, needs to have more resources and more ability to help the wider police force and the community to detect and respond to sexual offending that involves technology. We have to consider further ways in which we can resource and respond to matters in that regard.

As a child, because I was fortunate to have it brought to my attention by my parents, I was aware of the risks of paedophilia. I suspect, however, that that was extremely unusual. Further, I also had a pretty good idea who the paedophiles who had not gone into the criminal justice system were in the town in which I was brought up. That knowledge and information were protection for me. We must not be afraid to ensure that children are informed about challenging social and sexual matters. We must not shy from that.

I have received a wee note from YouthLink Scotland, which says that it remains a little bit concerned about an issue relating to the risk of sexual harm orders. It points out that, although Disclosure Scotland might be aware of RSHOs, that does not mean that people will be placed on the disqualified list, which means that issues remain regarding whether the person will be adequately known about. It might be possible for the minister to address that matter.

I am happy to support the bill.

17:07

Margaret Mitchell (Central Scotland) (Con): I thank the Justice 1 Committee clerks, the committee's convener and my fellow committee members for their work in relation to the passage of the bill. I give a special mention to Professor Christopher Gane, who steered the committee through complex legislation.

I welcome the general principles of the bill and take particular pleasure in the provision that is contained in section 1, which I hope will send out a clear message to those who would prey on vulnerable children. In addition to that, section 1 establishes parity with England and ensures that there is no difference between our provision for such offences and that which exists south of the border. It also provides a deterrent, which is important, and highlights the particular danger of grooming via the internet or even at the school gate.

Since entering Parliament almost two years ago, I have campaigned on the issues that we are discussing. What struck me then and still strikes me now is the conclusion of an American survey concerning the victimisation of children via the internet. The study said that, sadly, the internet is not always as safe an educational and recreational environment as we would hope that it would be. I hope that section 1 raises awareness of that fact.

There was a lot of soul searching about the other provisions in the bill. There was concern about balancing the integrity of our justice system with the clear need to protect young and vulnerable people. A breach of the civil orders in the bill constitutes a criminal offence of a sexual

nature, which heightens the tensions surrounding the issue and can have far-reaching consequences.

Although we accepted the lower burden of proof—in other words, the balance of probabilities—for issuing RSHOs and interim RSHOs, we attempted to ensure today that the process was robust and that there were no unintended consequences by lodging amendments that contained possible safeguards. For example, we lodged amendments on the teaching of sex education, on time limits on the issuing of an interim RSHO—which by its very nature should be immediate and issued in an emergency situation—and on very specific circumstances in which a previous not guilty verdict could be used.

One of the main difficulties with the European Council framework decision on child prostitution and pornography was the inclusion of 16 and 17-year-olds in the definition of children. I hope that the exemptions that have been agreed to today will satisfy the terms of that decision.

I very much welcome the legislation on the understanding that it will be monitored stringently, especially in relation to RSHOs, and I hope that it will make a real difference to vulnerable children.

17:11

Mike Pringle (Edinburgh South) (LD): I am pleased to speak in the debate. However, as I joined the Justice 1 Committee only in time for stage 3 of the bill, I am afraid that I am not as well informed about its detail as other committee members. As a result, I am grateful to several committee members who gave me good guidance, and to Hugh Henry, who brought me up to date with the issues surrounding the bill.

The Liberal Democrats fully support changes in legislation to prevent sexually predatory behaviours and we support the bill's expanded scope to protect children and young people from sexual exploitation. Although legislative change must have child protection as its paramount consideration, it must also be compatible with the rights that are enshrined in the European convention on human rights. That fact might have led to the rejection of some amendments this afternoon.

The bill introduces risk of sexual harm orders which, as we all know, are aimed at protecting children who are considered to be at risk of sexual harm from others, and makes breach of such orders a criminal offence. I understand that in the bill as originally drafted by the Executive, only an adult aged 18 or over could commit the offence of meeting a child following certain preliminary contact—in other words, grooming—and could

have an RSHO imposed on them. Those age limits were in keeping with comparable offences in England and Wales that were made under the Sexual Offences Act 2003. The bill has now removed that age limit, which means that an RSHO may be sought by the chief constable in respect of a person of any age who meets the criteria. I must say that I have considerable sympathy with Children 1st, which wanted the age limit to stay at 18.

Mrs Mary Mulligan (Linlithgow) (Lab): I appreciate that Mike Pringle joined the committee after we had had the seminar on those matters. However, does he accept that the committee lodged the amendment on that not simply because we thought that the age limit should be removed, but in response to other children's charities, which said that they were aware of young people who were exhibiting behaviour that should be dealt with through RSHOs?

Mike Pringle: I am happy to accept that point. Perhaps I was under some misapprehension. However, I should say that the briefing from Children 1st, which I received only last week, was compelling and made a very good point. Clearly, that organisation wanted the age limit to remain. All I am saying is that I am sympathetic to its concerns. I am sure that none of us would want unnecessarily to criminalise people under 18 and I am sure—and I hope—that chief constables, procurators fiscal and the courts will have a sympathetic and understanding attitude to dealing with those individuals.

I now turn to what Marlyn Glen's amendments showed was a contentious issue: the question of indecent photographs of 16 and 17-year-olds. If someone over 18 has such photographs and they are consensual, there is no problem, but if someone who is 16 or 17 has such photographs there could be a problem. I would have been likely to support Marlyn Glen had she pressed her amendments.

As the bill stands, 16 and 17-year-olds can take explicit sexual photographs of each other if they are married or in an established relationship. I imagine that all of us could probably define what an established relationship is, but what does "established relationship" mean to a 16 or 17-year-old? To some, it could be their first experience of love at the age of 16 or 17. It could last a week and then be over. It has been suggested that, with the wording that is now in the bill, 16 or 17-year-olds are less likely to make rash or impetuous decisions to consent to such pictures, which they might later regret. Does anyone really believe that such people will give any thought to that when they are embarking on brief but passionate affairs? I do not think so. As I said with regard to RSHOs, it is to be hoped that the police,

procurators fiscal and courts will be careful and understanding in deciding which 16 and 17-year-olds they take action against. I am delighted that the minister gave a commitment to Marlyn Glen to review that part of the legislation after a suitable time.

I have highlighted the two issues that have caused me some concern. In respect of all other aspects of the bill, I have absolutely no doubt that it is very much to be welcomed and that the further protection that it offers to children is a considerable step forward. I am happy to support the bill.

The Deputy Presiding Officer: I am grateful to the Liberal Democrats and the Conservatives for waiving their closing speeches, which means that I can give three minutes to Patrick Harvie and three minutes to Pauline McNeill.

17:17

Patrick Harvie (Glasgow) (Green): I am, as I said earlier, an outsider to the committee process. As a small group without a member on all committees, it is sometimes difficult for Green members to keep track of legislation. In this case, however, coming late to the bill has been even more challenging than usual, and I express my sympathy for the committee, which has clearly tried hard to make the best of a flawed process.

I have heard serious criticism of the bill from outside Parliament—from non-governmental organisations, from professionals and from individuals. That criticism has not been of the intention to tackle the serious offences that the minister described as despicable, which should be the target of the bill, but of the way in which the bill risks making offences of perfectly normal and innocent sexual activity and sexual exploration by young people, including people who are over the age of consent. If we want young people to learn to exercise that consent responsibly and to respect themselves and one another, we have to make it clear that we respect their ability to do so and their right to do so; 16 and 17-year-olds rarely go behind the bike sheds to discover their sexuality these days. Very often, they go online—to chat, to flirt, to get to know one another and to express their sexuality in a perfectly normal and non-abusive way.

Our duty to extend the protection of the law against abuse into that new domain in society should not result in interference in behaviour that is normal, non-abusive and entirely private. During the stage 1 debate, I expressed my disappointment that the bill had given rise to serious concerns in that regard, when it should have focused on the clearly unacceptable offences that we would all find unforgivable and intolerable.

I am sorry to say that those concerns have not all been satisfactorily addressed, and I reiterate that that is not a criticism of the committee, which was left with insufficient time to deal with some aspects of the bill. The infringement of 16 and 17-year-olds' right to consent remains an issue. There is also ambiguity around what is appropriate or inappropriate behaviour, and around what is appropriate or inappropriate material and information to give to young people. The idea—that is contained in many parts of the bill—that we should leave that to the discretion of an individual remains a serious problem.

I will vote in favour of the bill, but I will do so with grave concerns and with a desire to see the review that the minister spoke about being conducted. It should be a review not only of specific aspects, but of many aspects of the bill that have been rushed and have been introduced in a form that still gives rise to serious concerns. Those matters should be reviewed soon and should be subject to further scrutiny in Parliament. I regret not being able to support measures in the bill that are greatly needed without also having to support some aspects that give rise to very serious concerns.

17:20

Pauline McNeill (Glasgow Kelvin) (Lab): I thank the Justice 1 Committee, which has done excellent work. I am grateful for the remarks made by both ministers when they signalled their appreciation of what we have gone through.

This has been another small bill that deals with complex issues. When first we looked at it we thought, "Here's another wee bill; it won't take much time." We now know from experience that a bill being small does not mean that it is not complex. I will run through a few issues and address some of the points to which Patrick Harvie referred.

One of the most important points is about proving the offence; I think that we have done the right thing on that. We are reassured by where we have ended up, because proving the offence is the most important issue. However, legislation alone is not the most important tool in fighting sexual crime against children: we know from cases that have been highlighted to us that what can be provided by way of resources along with surveillance and intelligence work by police forces is just as important. There is more work for us to do.

It is important to note that the bill stands alongside much other legislation and the work on dealing with serious violent and sexual offenders that was commissioned by the Executive and carried out by MacLean and Cosgrove. Other important work has been done. I hope that the

courts will continue to use the new order for lifelong restriction for very serious offences.

Monitoring of people who are on the sex offenders register is worthy of further attention because the quality of that monitoring is what really matters. We must get to grips with that.

There is a greater incidence of situations in which adults entrap young people simply for sexual gratification than of cases in which they intend to go further. The committee was adamant about that, but we are now satisfied that there will exist the relevant offences to criminalise adults who also engage in that activity.

I will deal with the ages at which a person is defined as being a child. The idea that we can be consistent about that is nonsense—it is necessary to consider each situation on its own merits. In respect of sexual exploitation, we are obliged by Europe to define a child as being someone up to the age of 18. Let us not forget that. That is different from defining the age of a child for another purpose. It is wrong to suggest that there should be a review to come up with an age that applies in all circumstances. It cannot be done, so at stage 2 we removed the age limit for an offender, with the Executive's support, for that reason.

Although Children 1st made in its submission a very good point about one scenario, the other scenario is that a 15-year-old could be found to be grooming a 12-year-old. Under our current law we will prosecute a 15-year-old who rapes a 12-year-old child and we will send him to the criminal courts. Because we received evidence that predatory behaviour could be shown by a 15-year-old to a younger child, we felt that, on balance, we had to remove the age limit. Let us not forget that the children's organisations who argued for that change also want us to change the primary legislation on children's hearings so that all those who are under the age of 18 go to children's hearings. That completes their argument. Members should understand that that is the context in which we removed the age limit.

I am sure that I am running out of time.

The Deputy Presiding Officer: Yes. I must hurry you.

Pauline McNeill: The bill is good and I hope that members understand why the committee came to its conclusions. I am pleased that the Executive has said specifically that it will review the matter and I am confident that it will do so.

17:24

Mr Bruce McFee (West of Scotland) (SNP): The bill has come a long way since stage 1. Many concerns that the committee expressed at that

stage were addressed at stage 2 and various loopholes have been closed.

For the record, I say that I concur wholeheartedly with comments about the Executive amendments that were made by Pauline McNeill on behalf of the committee, but I also recognise the position of ministers.

The bill will generally improve protection for children. Not only will it make it an offence to contact and travel to meet a person under 16 to engage in sexual activities, it will also introduce risk of sexual harm orders, which can be imposed on individuals who display worrying patterns of behaviour of a sexual nature, or who have engaged in inappropriate sexual conduct towards a child. The bill will also provide adults and children with additional protection from sex offenders by allowing the courts to impose sexual offences prevention orders on people who have been prosecuted for certain offences.

That said, we must be careful and recognise that we need to get the message out to parents and wider society that, of itself, the bill will not adequately protect children. On that, I agree heartily with the sentiments of Children 1st, which has said that legislation alone will not protect children. Emphasis should be placed on education and prevention, with sexual abuse of children being seen as a public health priority. Danger to children comes not only from strangers or paedophiles whom they might meet on the internet, but from people who are closer to home—abuse may be perpetrated by an individual whom the child thought he or she could trust.

We will support the bill because we believe that it will contribute to the safety of children. However, let the message go out loud and clear that child protection is a job that is not just for legislators. In the words of Children 1st,

“Child protection is everyone’s business.”

17:26

The Deputy Minister for Justice (Hugh Henry): In response to Stewart Stevenson’s question about YouthLink Scotland, I assure him that my ministerial colleagues with responsibility for education and young people will pursue the matter with that organisation.

The bill has been a difficult experience for everyone concerned, but I thank the Justice 1 Committee in particular. I appreciate the difficulties that the committee faced, but I believe that we now have a better bill as a result of its endeavours. I also want to put on record my thanks to the Scottish Executive officials who worked hard to get the bill to this stage. Our officials were often up against tight deadlines, but

they sought valiantly to support ministers and the committee—as, I think, the committee appreciated—through what was a difficult process.

In the course of deliberations, we all learned as we went along, but one shocking thing that emerged in the evidence that the committee took is—as Stewart Stevenson mentioned—the speed with which technology is changing. The evidence that the committee heard from the police and from academics also revealed the cunning that is demonstrated by some of the people who use technology and other techniques to trap and abuse young children. It is astonishing just how manipulative those people can be. We heard all sorts of distressing examples of the lengths to which such people will go in trying to manipulate young people into positions in which they can be abused. It is right that we have reflected some of those concerns in the bill by seeking to move with the times and by trying to be as flexible as possible while retaining some certainty in law.

Another important outcome of the committee’s discussions and deliberations is that we have now extended some of the definitions in the bill. For example, it is right that we have moved beyond simple definitions of abuse in relation to prostitution by ensuring that the offences that are introduced will apply to people who cynically, and purely for profit, try to manipulate and exploit young people not just in prostitution but through telephone sex lines or in some of the sleazy establishments to which people will go for a certain element of gratification. It is proper that those definitions have been widened.

I genuinely believe that Parliament has worked well with Government in trying to introduce legislation that will give added protection. It is encouraging that Parliament is able to send a unified message to people throughout Scotland that we will do everything in our power to protect young children and that we will not accept sexual exploitation and abuse of young children. I hope that the bill will play a significant role in the future in providing the protection that society rightly wants for children.

Parliamentary Bureau Motion

17:30

The Deputy Presiding Officer (Murray Tosh): The next item of business is consideration of parliamentary bureau motion S2M-2900, on the establishment of an ad hoc committee.

Motion moved,

That the Parliament agrees to establish an Ad Hoc Committee of the Parliament as follows:

Name of Committee: Ad Hoc Standards Committee;

Remit:

1. To consider and report in respect of a report submitted by the Scottish Parliamentary Standards Commissioner;

In particular as to—

(a) whether a member's conduct is in accordance with the Standing Orders and the Code of Conduct for MSPs, matters relating to members' interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties; and

(b) the application of the Code of Conduct for MSPs.

2. Where the Committee considers it appropriate, to recommend by motion that a member's rights and privileges are withdrawn to such extent and for such period as are specified in the motion.

Duration: Until the Committee has reported;

Convenership: The Convener will be a member of the Labour Party and the Deputy Convener a member of the Scottish National Party;

Membership: Trish Godman (Labour), Scott Barrie (Labour), Alasdair Morgan (SNP), Lord James Douglas-Hamilton (Conservative), George Lyon (Liberal Democrats).—[*Ms Margaret Curran.*]

Decision Time

17:30

The Deputy Presiding Officer (Murray Tosh): The first question is, that motion S2M-2876, in the name of Andrew Arbuckle, be agreed to.

Motion agreed to.

That the Parliament agrees to the general principles of the Baird Trust Reorganisation Bill and that the Bill should proceed as a Private Bill.

The Deputy Presiding Officer: The next question is, that amendment S2M-2893.2, in the name of Kenny MacAskill, which seeks to amend motion S2M-2893, in the name of Cathy Jamieson, on antisocial behaviour, be agreed to. Are we agreed?

Members: No.

The Deputy Presiding Officer: There will be a division.

For

Baird, Shiona (North East Scotland) (Green)
Ballard, Mark (Lothians) (Green)
Crawford, Bruce (Mid Scotland and Fife) (SNP)
Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
Ewing, Mrs Margaret (Moray) (SNP)
Fabiani, Linda (Central Scotland) (SNP)
Gibson, Rob (Highlands and Islands) (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)
Lochhead, Richard (North East Scotland) (SNP)
Marwick, Tricia (Mid Scotland and Fife) (SNP)
Matheson, Michael (Central Scotland) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Morgan, Alasdair (South of Scotland) (SNP)
Neil, Alex (Central Scotland) (SNP)
Robison, Shona (Dundee East) (SNP)
Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
Scott, Eleanor (Highlands and Islands) (Green)
Stevenson, Stewart (Banff and Buchan) (SNP)
Sturgeon, Nicola (Glasgow) (SNP)
White, Ms Sandra (Glasgow) (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)
Boyack, Sarah (Edinburgh Central) (Lab)
Brankin, Rhona (Midlothian) (Lab)
Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
Brown, Robert (Glasgow) (LD)
Butler, Bill (Glasgow Anniesland) (Lab)
Byrne, Ms Rosemary (South of Scotland) (SSP)
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)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Gillon, Karen (Clydesdale) (Lab)
 Glen, Marilyn (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)
 Johnstone, Alex (North East Scotland) (Con)
 Kerr, Mr Andy (East Kilbride) (Lab)
 Lamont, Johann (Glasgow Pollok) (Lab)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 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)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 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)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

MacDonald, Margo (Lothians) (Ind)

Martin, Campbell (West of Scotland) (Ind)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)

The Deputy Presiding Officer: The result of the division is: For 24, Against 84, Abstentions 3.

Amendment disagreed to.

The Deputy Presiding Officer: The next question is, that amendment S2M-2893.1, in the name of Annabel Goldie, which seeks to amend motion S2M-2893, in the name of Cathy Jamieson, be agreed to. Are we agreed?

Members: No.

The Deputy 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)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Johnstone, Alex (North East Scotland) (Con)
 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)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, John (Ayr) (Con)

AGAINST

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)
 Boyack, Sarah (Edinburgh Central) (Lab)
 Brankin, Rhona (Midlothian) (Lab)
 Brown, Robert (Glasgow) (LD)
 Butler, Bill (Glasgow Anniesland) (Lab)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 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)
 Finnie, Ross (West of Scotland) (LD)
 Fox, Colin (Lothians) (SSP)
 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)
 Leckie, Carolyn (Central Scotland) (SSP)
 Livingstone, Marilyn (Kirkcaldy) (Lab)
 Lyon, George (Argyll and Bute) (LD)
 Macdonald, Lewis (Aberdeen Central) (Lab)
 Macintosh, Mr Kenneth (Eastwood) (Lab)
 Maclean, Kate (Dundee West) (Lab)
 Macmillan, Maureen (Highlands and Islands) (Lab)
 Martin, Paul (Glasgow Springburn) (Lab)
 May, Christine (Central Fife) (Lab)
 McAveety, Mr Frank (Glasgow Shettleston) (Lab)
 McCabe, Mr Tom (Hamilton South) (Lab)
 McConnell, Mr Jack (Motherwell and Wishaw) (Lab)
 McMahon, Michael (Hamilton North and Bellshill) (Lab)
 McNeil, Mr Duncan (Greenock and Inverclyde) (Lab)
 McNeill, Pauline (Glasgow Kelvin) (Lab)
 McNulty, Des (Clydebank and Milngavie) (Lab)
 Morrison, Mr Alasdair (Western Isles) (Lab)
 Muldoon, Bristow (Livingston) (Lab)
 Mulligan, Mrs Mary (Linlithgow) (Lab)
 Munro, John Farquhar (Ross, Skye and Inverness West) (LD)
 Murray, Dr Elaine (Dumfries) (Lab)
 Oldfather, Irene (Cunninghame South) (Lab)
 Peacock, Peter (Highlands and Islands) (Lab)
 Peattie, Cathy (Falkirk East) (Lab)
 Pringle, Mike (Edinburgh South) (LD)
 Purvis, Jeremy (Tweeddale, Ettrick and Lauderdale) (LD)
 Radcliffe, Nora (Gordon) (LD)
 Robson, Euan (Roxburgh and Berwickshire) (LD)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, Tavish (Shetland) (LD)
 Smith, Elaine (Coatbridge and Chryston) (Lab)
 Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

ABSTENTIONS

Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Fergus (Inverness East, Nairn and Lochaber) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Martin, Campbell (West of Scotland) (Ind)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 White, Ms Sandra (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 15, Against 76, Abstentions 22.

Amendment disagreed to.

The Deputy Presiding Officer: The next question is, that motion S2M-2893, in the name of Cathy Jamieson, on antisocial behaviour, be agreed to. Are we agreed?

Members: No.

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

Smith, Iain (North East Fife) (LD)
 Smith, Margaret (Edinburgh West) (LD)
 Swinburne, John (Central Scotland) (SSCUP)
 Turner, Dr Jean (Strathkelvin and Bearsden) (Ind)
 Wallace, Mr Jim (Orkney) (LD)
 Watson, Mike (Glasgow Cathcart) (Lab)
 Whitefield, Karen (Airdrie and Shotts) (Lab)
 Wilson, Allan (Cunninghame North) (Lab)

AGAINST

Aitken, Bill (Glasgow) (Con)
 Baird, Shiona (North East Scotland) (Green)
 Ballance, Chris (South of Scotland) (Green)
 Ballard, Mark (Lothians) (Green)
 Brocklebank, Mr Ted (Mid Scotland and Fife) (Con)
 Byrne, Ms Rosemary (South of Scotland) (SSP)
 Canavan, Dennis (Falkirk West) (Ind)
 Davidson, Mr David (North East Scotland) (Con)
 Douglas-Hamilton, Lord James (Lothians) (Con)
 Fergusson, Alex (Galloway and Upper Nithsdale) (Con)
 Fox, Colin (Lothians) (SSP)
 Fraser, Murdo (Mid Scotland and Fife) (Con)
 Gallie, Phil (South of Scotland) (Con)
 Goldie, Miss Annabel (West of Scotland) (Con)
 Harper, Robin (Lothians) (Green)
 Harvie, Patrick (Glasgow) (Green)
 Johnstone, Alex (North East Scotland) (Con)
 Leckie, Carolyn (Central Scotland) (SSP)
 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)
 Ruskell, Mr Mark (Mid Scotland and Fife) (Green)
 Scanlon, Mary (Highlands and Islands) (Con)
 Scott, Eleanor (Highlands and Islands) (Green)
 Scott, John (Ayr) (Con)

ABSTENTIONS

Adam, Brian (Aberdeen North) (SNP)
 Crawford, Bruce (Mid Scotland and Fife) (SNP)
 Ewing, Mrs Margaret (Moray) (SNP)
 Fabiani, Linda (Central Scotland) (SNP)
 Gibson, Rob (Highlands and Islands) (SNP)
 Grahame, Christine (South of Scotland) (SNP)
 Hyslop, Fiona (Lothians) (SNP)
 Ingram, Mr Adam (South of Scotland) (SNP)
 Lochhead, Richard (North East Scotland) (SNP)
 MacDonald, Margo (Lothians) (Ind)
 Martin, Campbell (West of Scotland) (Ind)
 Marwick, Tricia (Mid Scotland and Fife) (SNP)
 Mather, Jim (Highlands and Islands) (SNP)
 Matheson, Michael (Central Scotland) (SNP)
 McFee, Mr Bruce (West of Scotland) (SNP)
 Morgan, Alasdair (South of Scotland) (SNP)
 Neil, Alex (Central Scotland) (SNP)
 Robison, Shona (Dundee East) (SNP)
 Stevenson, Stewart (Banff and Buchan) (SNP)
 Sturgeon, Nicola (Glasgow) (SNP)
 White, Ms Sandra (Glasgow) (SNP)

The Deputy Presiding Officer: The result of the division is: For 67, Against 26, Abstentions 21.

Motion agreed to.

That the Parliament believes that people in all parts of Scotland should be able to live free from fear and harassment; welcomes the commencement of the Antisocial Behaviour etc. (Scotland) Act 2004 and the progress made to date to act against antisocial behaviour; believes that the preparation of antisocial behaviour outcome agreements linked to antisocial behaviour strategies by local authorities working with local

communities will help build confidence across Scotland; notes that ongoing work is needed to build confidence in our communities, and urges local agencies across Scotland to use the full range of measures at their disposal appropriate to local circumstances.

The Deputy Presiding Officer: The next question is, that motion S2M-2771, in the name of Cathy Jamieson, that the Parliament agrees that the Protection of Children and Prevention of Sexual Offences (Scotland) Bill, be passed.

Motion agreed to.

That the Parliament agrees that the Protection of Children and Prevention of Sexual Offences (Scotland) Bill be passed.

The Deputy Presiding Officer: The final question is, that motion S2M-2900, in the name of Margaret Curran, on the establishment of an ad hoc committee, be agreed to.

Motion agreed to.

That the Parliament agrees to establish an Ad Hoc Committee of the Parliament as follows:

Name of Committee: Ad Hoc Standards Committee;

Remit:

1. To consider and report in respect of a report submitted by the Scottish Parliamentary Standards Commissioner;

In particular as to –

(a) whether a member's conduct is in accordance with the Standing Orders and the Code of Conduct for MSPs, matters relating to members' interests, and any other matters relating to the conduct of members in carrying out their Parliamentary duties; and

(b) the application of the Code of Conduct for MSPs.

2. Where the Committee considers it appropriate, to recommend by motion that a member's rights and privileges are withdrawn to such extent and for such period as are specified in the motion.

Duration: Until the Committee has reported;

Convenership: The Convener will be a member of the Labour Party and the Deputy Convener a member of the Scottish National Party;

Membership: Trish Godman (Labour), Scott Barrie (Labour), Alasdair Morgan (SNP), Lord James Douglas-Hamilton (Conservative), George Lyon (Liberal Democrats).

Scottish Parliament (Powers)

The Deputy Presiding Officer (Murray Tosh):

The final item of business today is a members' business debate on motion S2M-2841, in the name of John Swinburne, on the powers of the Scottish Parliament. The debate will be concluded without any question being put. I invite those members who wish to speak in the debate to press their request-to-speak buttons as soon as possible.

Motion debated,

That the Parliament welcomes the increased focus afforded specific groups within Scotland following the creation of the Parliament as a result of devolution; also notes the Parliament's inability to fully address the needs of groups such as senior citizens, and therefore believes that the time is now right to explore options for increasing the powers of the Scottish Parliament to properly address the needs of all Scottish citizens.

17:36

John Swinburne (Central Scotland) (SSCUP):

In 1999, when the universally respected Donald Dewar was asked about the possibility of the powers of the new Scottish Parliament being increased in the future, he replied along the lines that if that was the will of the Scottish people, so be it.

Scotland as a nation has now served its political apprenticeship. We have had six formative years since the referendum and devolution granted us a Parliament of our own. It is now time to look ahead and to try to anticipate the real needs of Scotland, not just for the next few years, but for decades still to come.

There will be countless problems to overcome, not least the demographic situation in the future. It is now that we should show foresight and start the groundwork to ensure that we will be able to cope with every eventuality and contingency that might arise in future.

The obvious key to the matter is control of finances. We must display greater faith and confidence in our ability to manage our financial affairs without having to rely on a block grant given to us by way of the Barnett formula.

To avoid any confusion, I declare that I am a unionist. It is as such that I say that there is something very demeaning about the current system that gives an unacceptable sense of subservience as our nation accepts financial crumbs from Britannia's table. We must rise above that level of financial inertia and negotiate with our friends at Westminster means whereby the common links of centuries are maintained, but with a new pride delivered to Scotland to help to drive us towards the First Minister's goal of making

Scotland the best small nation in the world. That will never be achieved without control of our purse strings.

Negotiations must start now to enable an amicable Treasury transfer from Westminster to Holyrood—on a Bosman ruling, of course—with no strings attached. That would be accepted here with supreme confidence because we would then be able to operate as an all-embracing, proper Parliament in which reference to Sewel motions, for example, would be confined to the embarrassing past. Certain aspects of governance would still prevail, such as the Ministry of Defence and possibly the Foreign and Commonwealth Office—with an embassy in Edinburgh.

The improvement of all aspects of our nation and its people would become the driving force behind our emerging Parliament. The re-establishment of our worldwide reputation for educational excellence would be one of our initial targets. Health and the problems that are often associated with longevity would be another top priority, together with a genuine growing of the economy, including direct help with all aspects of manufacturing and industry to re-establish Scotland in that field. Another challenge would be Government support and backing for new active green methods of power generation—not by importing technology from abroad, but by investing in research and development to make Scotland the world leader in the field.

Scotland is a very rich country, fully capable of realising a national dream that would make us the envy of all. In this place we can all play our part as we help to force up standards at all levels throughout the country. Dare I suggest that Holyrood would then, at last, be in a position to give every senior citizen an acceptable pension of £160 per week, to eliminate means testing and to abolish council tax, which would allow elderly people in our society to enjoy, rather than have to endure, retirement?

Is it too much to expect that this productive and compact little country should at last be able to provide the best quality of health care for its people, from the cradle to the grave? Members of the Scottish Parliament should thrash out our many health problems in a consensual way, instead of having the sterile, confrontational, pathetic attempts at health debates with which we are currently afflicted. We should also strive for genuine full employment, which would include the over-50s. We could eliminate ageism. All we need is full financial control.

I ask members to imagine a scenario: Tony Blair loses a vote in the House of Commons on identity cards or another proposal in the Queen's speech. In frustration, he calls a snap election. The country returns a Conservative Government—a similar

situation happened in 1951, under Clement Attlee. How secure would our Barnett formula block grant be in such circumstances? We should anticipate such a scenario and act accordingly.

Mr Brian Monteith (Mid Scotland and Fife) (Con): Will the member give way?

John Swinburne: I have nearly finished.

We should give control of our finances to Holyrood and make the Scottish Parliament a proper Parliament that has genuine powers. We must look ahead and demand those basic constitutional rights now.

The former manager of Motherwell Football Club and Rangers Football Club, big Jock Wallace, used to say to his players before they went on to the park, "Get out there and retaliate first!" Perhaps it is time for Holyrood to do likewise.

In conclusion, I will tell members what happened to me this morning. There is a Gideon's Bible in nearly all hotel rooms and the one in my room had fallen to the floor, where it lay open. Naturally, I picked it up and glanced down at the text, which was Isaiah, chapter 10. I read the opening verses, which I found to be extremely appropriate to the Parliament and also a wee bit scary:

"Woe to those who make unjust laws and to those who issue oppressive decrees ... to deprive the poor of their rights and withhold justice from the oppressed of my people, making widows their prey and robbing the fatherless. What will you do in the day of reckoning?"

Perhaps it is time that we got our act together.

The Deputy Presiding Officer: Four-minute speeches, please.

17:42

Christine Grahame (South of Scotland) (SNP): I congratulate John Swinburne on securing the debate, which the Scottish National Party welcomes.

Devolution has been a success to some extent. We have been able to hold the Executive coalition to account and scrutinise legislation. There has been too much legislation, but we have been able to pass decent laws, which would not have received parliamentary time at Westminster. During the six years since devolution, I have been a member of the Scottish Parliament and I have witnessed the maturing of the Parliament. I liken my MSP class of 1999 to a primary 7 class, whereas the class of 2005 is more like the sixth year. We have travelled a long way, individually and collectively, since 1999. In time, the shadow of the cost of the Holyrood building will disappear and we will be judged, as we should be judged, on our performance as politicians, individually and collectively. However, it is apparent that devolution

is a journey, not an end in itself. I say that not just because I favour independence but because it is a fact.

There are and always will be tensions between reserved and devolved matters. For example, energy is reserved, but the environment and planning are devolved, so there are tensions to do with nuclear power stations, which are not wanted by the people of this country. There are tensions to do with debt. Consumer credit is reserved, but we must pick up the pieces of freely available consumer credit. We have to deal with the bankruptcies, broken marriages and ill health of people who carry huge burdens of debt, but we can do nothing about the enticements of consumer credit that lead so many people into debt.

Scotland's population is increasingly elderly. We have more pensioners than we have primary and secondary schoolchildren and, thankfully, many people are living longer. That is reflected in the fact that we can buy 100th birthday cards in ordinary retail shops. There must be lots of 100-year-olds.

The demographic change will impact on our public services, such as health, housing and transport. The Parliament has done some good things. Free personal care had cross-party support, although we lost the £20 million that was saved in benefits. Westminster clawed that back—it did not come to this Parliament—so when we make savings we do not get the money to put into other areas. Free concessionary travel from 2006 for our older people and the central heating programme are both good initiatives.

However, we have no control over pensions, tax and benefits. One in five of our pensioners lives in poverty and 40 per cent of those who are entitled to the pension credit simply do not apply for it. Many of the pensioners who live in poverty are single women who are not even entitled to the shamefaced £79 per week basic state pension. There is no point in having heating installed through the central heating programme if people cannot put their heating on. This Parliament can do nothing about that.

It is as plain as a pikestaff that what England needs is its independence, which I would give it tomorrow, so that ridiculous and unjust political borders are removed and we become a true, normal Parliament that is responsible to the people and responsive to the people. We could deal with the big issues that are important to people, such as war, as well as the smaller ones. Would we have gone to Iraq if we had been an independent Parliament? I doubt it. We could deal with international affairs. On poverty, I welcome the First Minister's statement on Malawi, but, like Norway, we could do so much more as an independent nation. There is only one way

forward, and that is towards democratic, accountable and accessible independence.

17:46

Mr Brian Monteith (Mid Scotland and Fife) (Con): I thank John Swinburne for bringing this debate and you, Presiding Officer, for allowing me to take part in it.

Before I respond to John Swinburne's motion, I will respond to his description of a Tory victory following a snap election, which was based on the example of a Conservative victory in 1951. It might be useful to remind members that there followed 13 years of Tory rule that rather quickly abolished ID cards, ended rationing and produced an economic situation that was generally referred to as a time when we had never had it so good. Perhaps the prospect of a Tory victory in a snap election is not as great a threat as he suggests.

Members know that I am attracted to the idea of this Parliament having more powers, in the sense that that would make it financially accountable, but I come at that idea from a completely different direction to that taken by Mr Swinburne. His example of unionism is not one that I or many unionists whom I know would easily recognise.

This Parliament has been a significant disappointment to many of its advocates. Let me give three examples. People in Scotland's cultural businesses, whom I meet regularly, have seen what happened to Scottish Opera. They saw how the Jonas report, which warned of a deficit crisis, was ignored—it was covered up, then its predictions came to pass. Now they fear greater centralisation of the arts, controlled through the Cultural Commission's recommendations. They are waiting to see what the Executive will do when it appoints a new director general for the national galleries. Centralisation through this Parliament is the fear.

In health, we have seen greater centralisation, with hospitals threatened with closure because of the changes made by this Parliament that take more powers away from local communities and direct them towards the centre. In education, there is greater central direction, not least in the latest move to remove the statutory right of representation for parents on school boards. When I hear of more powers for this Parliament, I am not immediately attracted to the suggestion.

The Parliament's budget has increased from £16 billion to £25 billion, but there has been no corresponding increase in accountability for spending. Because of that largesse, we regularly see underspends and carry-overs. None of the subjects that Mr Swinburne covered—education, health, direct help to industry and green energy technology—was an issue on which the

Parliament could not already have attempted to do something, although he was right to point out the treatment of the elderly, in which the Parliament has a role.

However, before we go down the road of discussing financial provision for the Parliament, we should consider that the percentage of old-age pensioners in Scotland is higher than in England and think carefully about the burden that that will create as a result of the future funding of pensions. Let us hear about that before we suggest having more powers.

17:51

Donald Gorrie (Central Scotland) (LD): John Swinburne has raised an important issue and it is probably time that the Parliament considered it. We have been going for six years now, during which time we have accumulated a lot of experience. I have some suggestions for the Deputy Minister for Parliamentary Business, of which I have given him no warning.

We should start assembling evidence on whether we should ask for greater powers for the Parliament. We have a lot of experience and we have gained considerable further powers, such as those over transport. In fact, the much-maligned Sewel motions have often involved Westminster giving us small bits of increased power. I ask Mr Scott to get his officials to trawl through all aspects of Government to identify issues on which the present situation is unsatisfactory and leaves wrinkles in the carpet. We could assemble all those issues and perhaps have a committee examine them to see what is really important and to come up with suggestions to put them right. One or two of the issues might be dealt with on a one-by-one basis, but others may need a full bill at Westminster, which would obviously be a big issue that we would have to take up with Westminster.

We should examine how we can make ourselves more effective. As Sewel motions arouse great heat, which is sometimes artificial and sometimes genuine, we need to deal with them better. We need a more thorough investigation by the relevant committee into whether the system is adequate. Given that we are pressed for time and that we overlegislate as it is, it is sometimes helpful for the Westminster Parliament to legislate for us. If that benefits us, we should be prepared to go along with it. It would be helpful to have an examination of the history of Sewel motions; what has gone right and wrong; and the issues on which we would like greater powers. Obviously, there are different political perspectives on how much power we wish to achieve, but, even on that issue, views have changed. Developments in Europe raise another front in the warfare about independence; recent events may have altered the situation severely.

The minister should ponder the issue that John Swinburne raises and set his people in motion to start dealing with it. We should come up with a full list of issues on which there is reasonable agreement in the Parliament. We can then put that into the United Kingdom system and talk to our colleagues at Westminster, who may even talk to us—miracles never cease.

17:54

Brian Adam (Aberdeen North) (SNP): I hope that Donald Gorrie's shopping list can be extended and that whatever influence he has in his party, let alone in the Executive, might be put to good use between now and 2007. However, his preferred candidate is perhaps the less likely of the two to drive forward the agenda that he described.

In politics, there are always creative tensions—Christine Grahame referred to some—which can be quite constructive. I have no problem with that. One of the great disappointments in the Parliament is budget day. We have a budget day every year on which the budget is proclaimed throughout the land, in council chambers as well as in this chamber. Yet, in the headlines the following day—and politicians are always interested in the headlines—there is virtually no mention of the national budget and what we have decided to do, although there are headlines across the board about what is happening in our local communities. That is because we are not accountable in that way for the major amount of finance.

In that, I agree with Mr Monteith. There is nothing wrong with our arriving at the same conclusion from different perspectives. Financial accountability is very important and the day that we have headlines screaming about what is happening in the budget in Scotland will be a great day for democracy in Scotland. Financial accountability should be on whatever shopping list is being taken by the Scottish Government to the UK Government to expand the powers of the Scottish Parliament.

We have some significant problems—that was always going to be inevitable. There is much debate about Sewel motions and how the Executive has chosen to use them. It often uses them because it is running scared of the public reaction that there might be if it chose to exercise the powers that have been devolved. I was a little surprised that Mr Monteith did not highlight the fact that we have not used all the powers that we currently have; however, there was only so much that he could address in four minutes.

We have not heard, so far, about the paucity of times that the other part of the Scotland Act 1998 has been used, which allows powers to flow from

Westminster to the Scottish Parliament. That has happened very rarely and only on fairly minor, technical matters. We should be striving for section 30 consents on a regular basis. That power was used on one significant occasion for the transfer of between £200 million and £300 million to the budget of the Scottish Parliament for the supporting people budget, which is significant in relation to benefits. That was a counterpoint, to some extent, to the losses that we have had as a direct consequence of our exercising our democratic rights in relation to free personal care, which resulted in a loss of tens of millions of pounds from the benefits side. The total budget did not increase because of the transfer of the money from the supporting people fund; it was merely that the control of that money was devolved to the Scottish Parliament. Therefore, we have had some net loss of budget.

I welcome the fact that we are debating increasing the powers of the Parliament, as that is what the people want. It is certainly what the majority of MSPs want. I long for the day when that will happen, and I hope that it will be soon.

17:58

Margo MacDonald (Lothians) (Ind): I thank John Swinburne for bringing this debate to the chamber and express my regret that every single Labour MSP is either washing their hair or walking their dog.

I will put my cards on the table—I am not a unionist, although my colleague John Swinburne is. I consider myself a citizen of the British isles. I am Scottish and, as such, I have something in common with everyone in the British isles, including those who live in the Republic of Ireland, which is a separate country. When my daughter lived and worked in Ireland, I was no further removed from her than I was from my sister who lives in Yorkshire, who was in the same state as me but in a different country. I believe that all three of us are members of the same social union. There is such a thing as a social union, as distinct from a political union. I would like to see an end of the political union in which we are held and the development of our social union; however, I believe that devolution militates against that.

The rumblings that we hear from the further reaches of the Tory party—and, it must be said, the Labour Party in England—about the embarrassment of the goings on in the Scottish Parliament are a product of devolution and are harming the social union that I happen to hold dear.

Independence and a sovereign Parliament would be good for us—just ask the Irish and the Norwegians about that—but we are addressing

the Scotland Act 1998 and its result, which is this Parliament. As far as I am concerned, the major structural defect in that act is the fact that the organisation that it created is only a spending organisation. Theoretically, we have the power to levy an additional income tax, but it is unlikely ever to be used because it raises complicated questions about exactly who is a Scottish taxpayer. Never mind the political implications, it would present enormous logistical problems, even for the Inland Revenue's sophisticated computer system.

The real powers that we do not have are easy to define, as they are listed in schedule 5 to the Scotland Act 1998. It is a formidable list and it was calculated by its authors in Westminster to put the Parliament firmly inside a cage. We cannot decide on Scotland's constitutional relationship with the rest of the United Kingdom. If, for example, we had to choose the Liberal Democrat position of a federal relationship, we could not implement it even if the Scottish people had voted on it and it was their proven desire. We are also denied a say in the critical economic area of international trade policy although we know how essential such a say is for small nations. Think of the Windward islands and the banana republic there, which has direct access to the World Trade Organisation. We cannot have such access as a devolved Parliament. Incidentally, we cannot have that access without a foreign office of our own, which is where I disagree with John Swinburne again. We must have a foreign office if we are to operate the sort of foreign policy that Scots support and that is suited to our status as a small European country.

Unfortunately, I do not have time to take fiscal autonomy to bits. Suffice it to say that it is an expression that covers a multitude of sins and I do not want to be associated in any way with sin. However, I agree with Donald Gorrie that the Parliament should set up a committee to examine the powers in schedule 5 to the Scotland Act 1998 and identify which of them could be transferred to the Scottish Parliament in whole or in modified form. The rational way to proceed is through proper consideration with the assistance of experts, a dialogue with Scottish MPs—whose position in Westminster would obviously be further undermined by any further transfer of powers—and a discussion with the Government in London to determine how far we can develop devolution and how easily we can transfer to sovereignty.

18:03

Mark Ballard (Lothians) (Green): I thank John Swinburne for bringing the topic to the Parliament for discussion, as it is important that the Parliament should debate its powers and Scotland's constitutional situation.

Several members have mentioned Sewel motions. I have been involved in the Procedures Committee's inquiry into Sewel motions and our discussions have reminded me with enormous clarity—although I knew it in theory—that we still have a sovereign Parliament at Westminster, which has chosen to devolve powers to this Parliament and not to legislate on devolved issues without our permission in a Sewel motion. I was particularly struck by the evidence that Henry McLeish, the former First Minister, gave to the committee, in which he highlighted the fact that there is no constitutional protection for the Scottish Parliament.

I got involved in politics as Margaret Thatcher abolished the Greater London Council despite the overwhelming opposition of the people of London to that move. She was able to abolish the GLC and change the local government settlement entirely because she had a majority in Westminster. In the same way, a majority in Westminster could wipe out the Scottish Parliament. I campaigned for the Parliament and millions of people in Scotland voted for it, but Westminster sovereignty—an absurd notion that goes back to the sovereignty of the monarch—could wipe it out. That is an absurdity.

Christine Grahame: On the point about sovereignty, the interesting case of the Lord Advocate v MacCormick established that sovereignty in Scotland lies with the people. If the people decide that they want their sovereignty, they shall have it.

Mark Ballard: I fully agree that Scotland is ruled by the people, as it should be, and that the sovereign represents the people. Sadly, that is not the way in which Westminster operates.

Whatever Scotland we have—whether it is the independent Scotland that I seek or whether the union continues in a different form, as John Swinburne proposes—we need the powers of every level of government and we need them enshrined in a proper written constitution, not the unwritten constitution with a sovereign Parliament that we have at the moment.

The Scottish Parliament needs more powers. I believe that it should be the independent Parliament of an independent Scotland but, whatever we do, there must be constitutional protection. Scotland is being held back by the Parliament's lack of powers. I seek integration of the tax and benefits system and the chance to bring in a citizens income to tackle pensioner poverty, the problems of endemic unemployment and underemployment and the huge disincentive in our current tax system. That disincentive means that moving from benefits into employment attracts some of the highest marginal rates of tax. We do not have the chance to discuss and debate those

ideas. We need to change our tax regime so that we tax pollution and resources rather than work. We need to introduce carbon taxes to allow the development of the green energy industry that John Swinburne mentioned. Again, however, we do not have the chance to talk about that issue.

Whether we have an independent Scotland or whether Scotland continues as part of the union, we need a proper constitution to enshrine the powers of this Parliament. If the Parliament is to achieve its aims and fulfil the aspirations of the people of Scotland, who voted for it, it needs powers to determine tax and benefits. It needs the full powers of a Parliament.

I thank John Swinburne for his motion and express my disappointment at the lack of members—particularly from the red benches—who are present to listen to and participate in the debate.

18:07

Jim Mather (Highlands and Islands) (SNP): I, too, congratulate John Swinburne, not just on securing the debate, but on his unswerving support for more powers. I describe the position of open logic in which he has put himself as history proof. He is in good company. I am not referring to the fact that there are no Labour members present, because many of them have put themselves on the right side of history in the past. When Donald Dewar opened the Scottish Parliament in 1999, he said that the Parliament is not a means to an end, but a means to ends. Wendy Alexander wrote a book on the subject and Henry McLeish waxed lyrical on it.

Others have also made themselves history proof: Lord Steel, from the Liberal Democrat side of the Parliament; John Randall, the former registrar general for Scotland; and Robert Crawford, within 48 hours of resigning from Scottish Enterprise. Now, the two Liberal Democrat leadership candidates have put themselves in that position and on the Tory benches we have Murdo Fraser, with his fiscal autonomy proposition.

The majority is going in that direction. Even at the low point of the Fraser inquiry, 66 per cent of the population wanted more powers for the Parliament. In August last year, 46 per cent of the business community supported that position and a huge 26 per cent were neutral on the issue. As far back as October 2003, the majority of MSPs were seeking more powers.

The reason for that is that the need is there. Scotland has had perennial low growth for the past 30 years. Its working-age population of 3.1 million will drop to 2 million during the next two generations. Ireland's population was 2.8 million in

1973, but figures published four months ago show that it has now risen to 4 million—indeed, there are forecasts that it could be 5 million by 2019. The figure for Norway is 4 million and is forecast to be 5 million by 2050.

The need for more powers is driven by demographics, by incomes—particularly the low pensioner incomes for the current generation and future generations—and by life expectancy, which is the key value, or the crucible in which we burn everything off. Scotland has the lowest life expectancy of the 24 Organisation for Economic Co-operation and Development countries, despite the fact that many people choose Scotland as their retirement destination. I echo John Swinburne's aspiration for pensioners in Scotland to get a fairer deal, with pensions that are comparable to those in other countries and that are linked to earnings.

I applaud pensioners' aspirations for a better Scotland—a country that grows rather than shrinks, that maintains Scotland's voice, culture and values, that can provide their children and grandchildren with opportunities and a rewarding life and that will boost self-esteem and well-being. Pensioners are under the obligation not to accept second best, because that would subject us to the risk of becoming second best.

Perhaps there is scope for us to learn from the American over-95 group that was interviewed by Anthony Campolo Jnr. He found three factors in their responses to the question, "What would you do differently if you were to live over again?" The first was that they would reflect more on life while they lived it—they would consider where they were and where they were going. We could well do that in Scotland. The second factor was that they would take more risks, as that would allow them to handle the danger of inertia and passivity. The third was that they would do something that lived on or created a worthwhile legacy.

I want our older and younger people to have a healthy attitude of enlightened self-interest and altruism. That is the normal combination in other countries and it is the great combination that could deliver a different Scotland. However, we need the powers. Once again, I say well done to John Swinburne for making the link between power and well-being in Scotland and in his community.

18:11

Dr Jean Turner (Strathkelvin and Bearsden) (Ind): I thank John Swinburne for choosing such a wide subject. I tend to stick to what I know best.

I am open to persuasion that we could be an independent country. After going to the Baltic states and seeing small countries doing very well on their own, we have to ask why we should always be attached to Westminster. I had no hesitation in voting for a devolved Parliament

because, as did many of my colleagues, I thought that Westminster was far too remote and that Scotland was just an add-on to legislation for England and Wales. When I listened to the radio, it was about England and Wales all the time but not about Scotland.

Many of us thought that our Scottish health service and education systems were not too bad until Westminster started to change them. In many ways, we felt that we were dragged down by what England felt that it had to do.

When I voted for the Parliament, I thought I was voting for a Parliament that would be closer to the people and more accessible; that might be true physically, but I was also thinking that we are a small country of only about 5 million people and I thought that there would be a clearer understanding of our needs in our own Parliament. Naturally we would inherit problems and have to take into account the varied geography of our nation, but those are not insurmountable problems. I expected that we would have to consider how we would sustain communities throughout Scotland and how we would supply adequate health cover, education systems, affordable housing, transport, and so on. However, I was horrified to find out that our health service was shrinking to provision in the five major cities, although I hope that in some ways we are managing to turn that around. That might be possible since the Kerr report, but a lot of work needs to be done.

I never thought that it would be easy and I knew that there would be problems. I thought that the people would be patient if they knew that Parliament was taking on board their hopes for the future. We thought that our opinions would matter in respect of the many changes that were proposed, for example, to our health services. However, it gradually appeared that our opinions were not heard—even submitting a petition to the Public Petitions Committee seemed to have no impact.

Some people think about other ways to be heard. One way is to vote for an independent candidate. Some members who are not here think that independent members are not relevant, but they should ask why the independent vote grows and why independent members have been voted in. Perhaps those members should ask what their electorates are saying to them. If they do not want to listen, they will never hear the answer.

I am here because people felt that their voices were not being heard. When perfectly good services were being dismantled and taken bit by bit from Stobhill hospital to other hospitals, the changes did not always mean that a better service was being provided. Change should be to something of the same quality or better.

Various groups might have been set up to gauge and take on board the opinions of the public but, if people on a forum decide, for example, that they want three accident and emergency units in Glasgow, it might come out as if they said they wanted two.

Two years ago, I was stunned by what I heard when I went to an event up the road at the Hub, which was attended by about 200 people who suffer from multiple sclerosis; all were also suffering from lack of services. I wandered through that overcrowded hall, and it consistently emerged that people did not have enough physiotherapy, that they did not have any hydrotherapy and that they had not seen their neurologist for years. There are not enough people to provide those services. We need to decide what we are going to do for people who suffer from chronic pain, epilepsy, asthma, autism and ME. Are we simply going to accept that the incidence of MS is growing in Scotland faster than in other places and ignore it? We have to find out why that is happening.

As a nation, we will be judged by how we treat our elderly people and those who are less fortunate and who do not enjoy good health. We cannot respect ourselves or be respected if we do not tackle those problems by spending money now in order to save money in the long term. More important is the need to relieve pain and hardship. We have made a good start in this Parliament, and I hope that we grow.

18:16

The Deputy Minister for Finance and Public Service Reform (Tavish Scott): I thank Mr Swinburne for choosing a thoughtful subject for this evening and for taking a considered approach in what he said. Indeed, he initiated what has been a considered and thoughtful debate. The powers of Parliament is an area of considerable interest, which will bring different political persuasions to bear. In particular, it is an area of deep philosophical interest for those of us who enjoy the world of politics.

If I should say anything at the beginning of my remarks, it is that all of us in the world of politics must convince the public that the particular route that we advocate is the right and appropriate one. In 1997, and then in the election campaign in 1999, that spirit was epitomised, not least because there had been a referendum and the people of this country had endorsed the devolution settlement and the tax-varying powers that go with it. Although it was a debateable and argumentative point at the time, there was legitimacy to the process that was then undertaken.

John Swinburne has won debating time for an important issue. Members' business is highly valued and is best used—I speak as one who has benefited from it in the past—to raise important but invariably local issues in Parliament. He has raised an issue on behalf of the people who put him in this place. That is, of course, his right. I observe in passing that many of the issues that he has raised, while certainly being core to his party's manifesto, are reserved, which he mentioned in his speech. In some ways he might, as a unionist, be better to stand for election to Westminster. Perhaps he will, however, be so good as to recognise that it was the introduction of proportional representation that has given him and others the opportunity to be part of this Parliament.

It is right to reflect on the achievements of devolution after its first six years. I agree fully with the motion's implicit acceptance that devolution has been a success. In some ways, one might summarise the motion as calling for us to go forward, not back. I can see why some members might find that thought to be attractive.

Mark Ballard: Will the minister take an intervention?

Tavish Scott: I will in a minute.

There must be a coherent basis for constitutional change—and coherence is something that we expect from the Greens.

Mark Ballard: I thank Tavish Scott for allowing me to intervene. He has intervened on me in the past to comment on the absence of certain parties from the chamber. Given his comments on the importance of this issue, the wide range of political opinions and even “forward, not back”, would he care to comment on the absence of some parties from this debate, during which their members could have heard the interesting speeches from all parts of the political spectrum—apart from one?

Tavish Scott: Thankfully, we live in a free world, a free democracy and a free Parliament. It is up to individual members whether they wish to attend. Perhaps the thought of my winding-up speech was enough to send many members to receptions that are taking place in Parliament this evening. For that, I can only sympathise and agree.

People who debate the powers of Parliament must do so from a basis of coherence. In the spirit of the debate, it is vital that we approach such subjects in a responsible and adult fashion. I do not agree with the contention that we cannot have a responsible adult debate about our policies until we are responsible for raising our taxes. Even this week—this is a small but significant example—Parliament debated the effectiveness of a previously passed transport bill. It is right to consider what has been achieved by the legislation that we have passed and how it needs

to be improved. That is an adult and responsible approach to developing our own systems and structures and conducting our politics.

Brian Adam: One of the changes that has been made in the past six years is that our Minister for Transport is now no longer responsible just for roads but for railways. Would not it be appropriate for him also to be responsible for air travel? To add that to the shopping list that the minister's colleague suggested would be a creative means by which we could make progress. It would be interesting to hear the Executive's view on how we might make progress.

Tavish Scott: Mr Adam would accept that the Minister for Transport is responsible for public service obligations and the lifeline services to some of the Western Isles in the area that Mr Mather represents. It is a partnership agreement commitment that Mr Stephen will take forward proposals on Highlands and Islands air services generally. I do not accept the contention that he has no power in that area. Of course there is a live debate, such as we are having this evening, about what further powers might be gained in that regard.

I will deal quickly with the points about pensioners that John Swinburne and others, such as Christine Grahame, made this evening. Pensioners have benefited from the current devolution settlement. Christine Grahame was fair to point out that because of this Parliament, pensioners in Scotland have free personal nursing care, free national bus travel and the central heating initiative, which I believe is a particularly important policy and which I know from my constituents is immensely valuable to many people throughout Scotland.

I agree that it is not acceptable that 8 per cent of pensioners live in absolutely low-income households, but that figure is down from some 30 per cent in 1996-1997. That is surely progress on which we would all want to build, and is a demonstration of how the current devolved settlement works for the benefit of a key group of Scottish citizens.

The devolution settlement that was agreed in 1999 has not been fixed for all time: indeed, Mr Adam mentioned the additional powers in relation to railways that have arrived on Parliament's doorstep. I have no doubt that the settlement will continue to evolve. The challenge is to build on those developments. I note the following for the benefit of members who made speeches from their political perspectives—and rightly so—about nationalism and an independent Scotland. When I worked at Westminster, there was only one question time a month for Scottish ministers and one Scottish bill a year if we were lucky. Scottish ministers were rarely available in Scotland

because of their Westminster responsibilities. There was no scrutiny before 1999. Jean Turner was right to make the point about the number of people who lobby actively in this place and who make their case to MSPs of all political persuasions. That is the basis for the settlement that we have.

Ultimately, as with all such issues, it is right that the people decide.

Meeting closed at 18:23.

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